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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

(2013) 7 MLJ 199 (SC)

Gothamchand Jain

Vs

Arumugam @ Tamilarasan

Civil Procedure – Limitation Act – Applicability to Union Territory – Indian Limitation Act, 1963, Article 54 – French Code Civil, Article 2262 – Appellant filed suit for specific performance, same was resisted on ground of limitation - Trial Court decreed in favour of Appellant, same confirmed by District Judge – Defendant filed second appeal –High Court held, Article 54 of 1963 Act would apply in matter of filing suit in Pondicherry and not Article 2262 of French Code – Suit for specific performance not saved by Article 54 of 1963f Act, which provided that suit to be filed within three years of agreement – High Court dismissed suit – Appeal –Whether by virtue of Limitation Act, 1963 passed, Union Territory of Pondicherry had become part of India – Act which governs limitation is general law of land that is Indian Limitation Act – As per Section 1(2), 1963 Act extends to whole of India, except Jammu and Kashmir – Since Union Territory had become part of India, Limitation Act automatically extended to Pondicherry – Section 54 of 1963 Act is applicable to suit and not Article 2262 of French Code - High Court rightly held suit filed beyond period of limitation as under Article 54 of 1963 Act and that suit is clearly barred.

2013 (5) CTC 212

Kishan Gopal & Anr

Vs

Lala & Ors

Motor Vehicles Act, 1988 (59 of 1988), Section 166 - Death of 10 account of Accident – Whether Proved – Death of 10 years, old boy on account falling down from Trolley – Evidence of Father of Deceased about his son falling down from Trolley of Tractor as same turned upside down on account of rash and Negligent driving by driver –Evidence of Father not challenged by Insurance Company --- FIR and Charge –sheet filed against Driver and Owner of vehicle not disputed – Finding of Tribunal that death of deceased in accident was not proved, contrary to facts and materials on records.

Motor Vehicles Act, 1988 (59 of 1988), Section 149(2) & 170(b) – Claim Petition –Driver and Insured both remaining ex parte in proceedings before Tribunal – Insurance Company, held, without obtaining permission of Tribunal, cannot contest case on defence of insured – Defence of Insurance Company, held, would be limited as Stipulated in Section 149(2) - Decision of Apex Court in National Insurance Company Ltd. v .Nicolletta Rohatagi, 2002(4) CTC 243 (SC) relied upon.

Motor Vehicle Act, 1988(59 of 1988), Sections 166 & 163—A, Second Schedule to – Death of 10 years old son of Appellants – Compensation – Quantum of – Deceased son assisting parents in their Agricultural occupation – National Income of deceased taken as ₹ 30,000/- p.a.—Multiplier of 15 applied and compensation arrived as ₹ 4,50,000/- - ₹ .50,000/- awarded under Conventional heads – Compensation of Rs.5lakh as total awarded to parents of deceased at 9% interest p.a. from date of filing of Application till date of payment.

(2013) 7 MLJ 530 (SC)

**Sanobanu Nazirbhai Mirza and Ors
Vs
Ahmedabad Municipal Transport Service**

- (A) **Motor Vehicle – Compensation –Interference of High Court –Deceased, working as polisher succumbed to injuries sustained in accident –Tribunal awarded sum on claim petition filed by Appellants/ Legal representatives of deceased—On appeal, High Court reduced compensation –Appeal –Whether interference of High Court with quantum of compensation awarded by Tribunal is legal, valid and justified – Held, important aspect that deceased was skilled worker not taken into consideration by both Tribunal and Tribunal and High Court –Tribunal and High Court gravely erred by taking low notional income of deceased though there is evidence on record –Both Tribunal and High Court not assigned reason for not accepting evidence on record with regard to nature of work being performed by deceased –Erroneous approach adopted to determine just and reasonable compensation in favour of legal representatives of deceased, who was sole earning member of family – Interference of High Court with quantum of compensation awarded by Tribunal not justified – Appeal allowed.**
- (B) **Motor Vehicle – Enhancement of compensation—Motor Vehicle Act, 1988, Section 166 – Whether Appellant entitled to enhanced compensation though not specifically claimed – Held, amount calculated under various heads of losses, to be awarded in favour Appellants – Statutory duty of Tribunal and Appellate court to award just and reasonable compensation awarded more than what was claimed by Appellants as they are legally and legitimately entitled compensation with interest – Appellants entitled to enhanced compensation though not specifically claimed.**

SUPREME COURT CITATIONS CRIMINAL CASES

2013 (5) CTC 106

Dr. Subramanian Swamy & Irs

Vs

Raju, through Member, Juvenile Justice Board & Anr

Criminal Jurisprudence – Third Party intervention in Criminal proceedings – When warranted – Delhi Gang Rape incident – Proceedings against one of Accused, who was Juvenile pending before Board – Application by Petitioners for interpretation of provisions of Act – Held, Petitioners not seeking impleadment inquiry against Accused – Petitioners seeking authoritative pronouncement of true purport and effect of 2000 Act in cases, when offence committed by Juvenile under Indian Penal Code would be required to be tried by a regular Court of law governed by provisions of Cr.P.C. – Said interpretation, held, to have wide ramifications on indefinite number of persons not presently before Court – Said interpretation not a merely affect case of Accused in instant case – Petitioners, held, having locus to file instant Petition – Notice issued to Respondents to bring their pleadings on record – Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000), Section 2(p).

Criminal Jurisprudence – Administration of Criminal Justice – Stages of, discussed.

2013-4-L.W. 256

Arun Bhandari

Vs

State of U.P and Ors

Constitution of India, Article 226/quashing of summons, inherent power, exercise of, whether proper,

Criminal Procedure Code, Section 190/ taking cognizance, issuance of summons by Magistrate, whether proper, Section 482, quashing of summons, by High Court, inherent power, exercise of, whether proper,

I.P.C., Section 406,420/ Agreement to sell, Privity of contract, Civil / Commercial transaction, criminal offence, ingredients quashing of, Scope of.

Agreement was entered to sell, between appellant and R2 (wife), R3 (husband) – Money was paid to R2 and R3 – R2 transferred property by power of attorney given to her by original allottee to 'MG'- Appellant demanded refused of money and lodged a FIR – Magistrate took cognizance of criminal liability and issued summons –But High Court quashed the order taking cognizance and summoning of wife /R2 – On appeal Supreme Court , held: allegations against respondent No.2 not only pertain to her presence but also her connivance with her husband and transfer of property using power of Attorney in favour of MG--Allegation of collusion by husband and wife stated.

A case may look to be of civil nature or involve a commercial transaction but such civil disputes may contain ingredients of criminal offences.

Prima facie there is allegation that there was a guilty intention to induce the complaint to part with money.

Neither the FIR nor the protest petition was mala fide, frivolous or vexatious – Prima facie makes out a case against the husband and the wife regarding collusion and the intention to cheat from the beginning, inducing to hand over a huge sum of money to both of them – Conduct of respondent Nos.2 and 3 would show that they had the intention to cheat from the stage of negotiation – Order passed by the High Court set aside – Order of cognizance is prima facie valid.

2013 (5) CTC 318

Econ Antri Ltd

Vs

Rom Industries Ltd. & Anr

Negotiable Instruments Act, 1881 (26 of 1881), Section 142(b) – One month limitation to file Complaint from date of cause of action – Day, on which cause of action arose, whether to be excluded from period – Ratio laid down in Saketh case that day, on which cause of action arose, is to be excluded for counting period of one month stipulated in Section 142(b), is based on various English decisions and decision of Apex Court in Haru Das Gupta case – Decision of Apex Court in SIL Import USA case, wherein no reference has been made to precedents and English decisions, held, contrary to decision in Saketh case and incorrect law – Decision in Saketh case held, would hold as correct law and any decisions contrary to same would not be correct law.

General Clauses Act, 1897 (10 of 1897), Section 9 – Negotiable Instruments Act, 1881 (26 of 1881), Section 142(b) – Use of word ‘from’ – Applicability of 1897 Act – 1897 Act applicable to 1888 Act by virtue of Section 9(2) of 1897 Act – As per Section 9 of 1897 Act word ‘from’ to be used for purposes of excluding first in a series of days for calculating any time period – Consequently, for calculating period of one month as stipulated in Section 142(b), date on which cause of action arose to be excluded.

Negotiable Instruments Act, 1881 (26 of 1881), Sections 138(c) & 142(b) – Use of words ‘of’ and ‘from’ – Word ‘of’ used in Section 138(c) not to be interpreted differently from word ‘from’ used in Section 142(b).

2013- 2-L.W. (CrI) 384

Natasha Singh

Vs

CBI (State)

Criminal Procedure Code, Section 311/Application to examine 3 witnesses, for additional evidence, in defence, a Panchanama witness, a Company Secretary, a handwriting expert, Court’s power and discretion, Scope of.

I.P.C., Section 120-B r/w. Sections 420, 467, 468, 471/Additional evidence, corruption case,

Prevention of Corruption Act (1988), Section 13(2) r/w. Section 13(1)(d)/Additional evidence, corruption case,

Criminal Trial/Corruption case, Additional evidence, when can be permitted.

Appellant preferred an application under Section 311 for permission to examine three witnesses.

One was a panchnama witness, in defence, Company Secretary of the appellant, and a hand-writing expert.

Discretionary power upon court to be exercised judiciously and not arbitrarily.

Determinative factor is whether summoning/recalling of the said witness is essential to the just decision of case.

Adducing evidence in support of the defence is a valuable right – Denial of such right would amount to the denial of a fair trial.

Accused has right to adduce evidence in rebuttal of the evidence brought on record by the prosecution – Court must examine whether such additional evidence is necessary.

2013- 2-L.W. (Crl) 417

Dharam Pal & Ors
Vs
State of Haryana & Anr

Criminal Procedure Code, Sections 190, 200, 202, 203, 319/Magistrate's powers, committal to Sessions Court, Cognizance to be taken, Scope of, Issuance of Summons, against whom, when can be done.

Held: Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(3) – Magistrate has ample powers to disagree with the Final Report that may be filed by police under Section 173(3) and proceed against the accused persons de hors the police report – If Magistrate disagrees with the police report, he has two choice – What are, stated.

He may act on the basis of a protest petition that may be filed – Or he may, disagreeing with the police report, issue process and summon the accused.

Role of Magistrate under Section 209 to take cognizance or not, Effect – Magistrate plays a passive role in committing the case to Sessions Court – Kishnun Singh's case 1993 L.W.(Crl.) 56 agreed – Session Courts has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders.

Without recording evidence, upon committal under Section 209, the Session Judge may summon those persons shown in column 2 of the police report to stand trial along with those named therein.

2013- 2-L.W. (Crl) 454

MRs. Aparna A. Shah
Vs
M/s Sheth Developers Pvt. Ltd & Anr

Negotiable Instruments Act (1881), Sections 138/141/ drawer of cheque', joint account holder, whether liable/vicarious liability when arises, Scope of.

Appellant is not a drawer of the cheque and she has not signed the same – Though it contains name of appellant and her husband, husband alone has signed – Only the drawer of the cheque can be prosecuted.

In case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder – It is an exception to Section 141 – Process deserves to be quashed.

(2013) 3 MLJ (CrI) 720 (SC)

Gurdip Singh
Vs
State of Punjab

Criminal Law – Dowry death – Indian Penal Code (45 of 1860), Section 304-B and 498 –A – Indian Evidence Act (1of 1872), Section 113-B –Appellant/father–in-law of deceased, convicted and sentenced under Sections 498-A/304-B – Appeal – Whether conviction of Appellant under Section 304-B was justified – Held, for conviction under Section 304-B of IPC in terms of 113 of 1872 Act, it is obligatory for prosecution to establish that death occurred within seven years of marriage – Section 304-B of IPC permits presumption of law only in given set of facts and not presumption of fact – Prosecution failed to establish crucial fact on death occurring within seven years of marriage – Sessions Court has gone only on assumption with regard to date of regarding date of marriage – No witness gave clear evidence regarding date of marriage - Harassment proved in evidence of prosecution witnesses – Appellant/accused was also taunting deceased demanding dowry- Evidence available that deceased was harassed by both accused two weeks before her death-Conviction of Appellant under Section 304-B of IPC set aside– Conviction under Section 498-A of IPC confirmed – Appeal allowed.

HIGH COURT CITATIONS CIVIL CASES

2013 (5) CTC 12

L.P. Alaghappa Chettiar and Anr

Vs

V. Janardhanan and Anr

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11(b) & (d) & Order 14, Rule 2 – Tamil Nadu Court Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1955, Section 12(2) – Plaintiff sought to be rejected on ground of Valuation – Contention that Court-fee has to be paid under Section 40 of Tamil Nadu Court Fees and Suits Valuation Act, 1955 and that Court-fee paid under Sections 25(d) & 27(c) is erroneous – Order 7, Rule 11, CPC has limited application – For its applicability, it must be shown that Suit is barred under law – Since Plaintiffs are not parties to Sale Deed, which is being attacked as sham and nominal, Suit for declaration without seeking relief of cancellation of Sale Deed is maintainable – Court-fee issue is a matter between Government and litigant – Issue regarding Court-fee is not a mere issue of law – Written Statement already filed – All issues raised by Defendant will have to be considered at time of trial.

2013 (5) CTC 49

Mariammal & Anr

Vs

Subbuthai & Ors

Hindu Law – Joint Family Property – Right of Father to alienate property – Father of Hindu Joint Family entitled to alienate Joint Family Property – Transfer made by Father need not be for legal necessity and will be binding on all members of Family – In instant case, Sale Deed executed by Father not tainted with illegality or immorality – Said Sale Deed to be presumed to be executed by Father as Joint Family Manager – Plaintiff, held, bound by Sale Deed executed by Father – Suit filed by Plaintiff for claiming half share in Joint Family Property, dismissed – Second Appeal allowed.

2013 (5) CTC 146

K.M. Karuppana Gounder (died) & Ors

Vs

The Revenue Divisional Officer, Periyar District, Erode & Ors

Land Acquisition Act, 1894 (1 of 1894), Sections 18 & 30 – Code of Civil Procedure, 1908 (5 of 1908), Order 47, Rule 1 – Order setting aside Award of reference Court granting enhancement of Compensation – Review of – Award amount accepted by Claimants under protest – Petitions filed by Claimants of enhancement of rate of Compensation – During trial, parties conscious that Petitions were for enhancement of Compensation and not for apportionment of Compensation awarded – Reference of Claimants erroneously death with by Land Acquisition Officer under Section 30 converted into one under Section 18 by Reference Court – Division Bench of High Court in Appeal setting aside said order of conversion on ground that same was without jurisdiction – Division Bench not presented with written objections of Claimants – Enhancement in Compensation awarded to certain Claimants by another Division Bench, who were similarly placed to Claimants in instant Review Petition – Claimants, whose lands were acquired in 1980, prejudiced by non-receipt of Compensation till date - In Such

circumstances, Order of Division Bench setting aside order of conversion of proceedings, ought to be reviewed – Order under review recalled – Judgment of Reference Court confirmed – Claimants, held, entitled to Solatium of 30% with interest

2013 (5) CTC 154

Balammal and Ors
Vs
Muthiar Begum and Anr

Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rule 29 – Stay of Execution proceedings – Whether warranted – Suit for Recovery of possession and mandatory injunction decreed – High Courts in Second Appeal considered request of Judgment-debtor and granted time to deliver vacant possession – On default by Judgment-debtor, Decree-holder filed Execution Petition – Petition filed by Judgment-debtor under Section 47, C.P.C. was dismissed – Subsequently Judgment-debtor filed new Suit for declaration of title to same property – Judgment-debtor also invoked Order 21, Rule 29 – Said Petition for stay dismissed – Judgment-debtor, having acceded to deliver vacant possession, not entitled to prevent Decree-holders from enjoying fruits of decree – Application filed under Order 21, Rule 29, rightly dismissed by Executing Court – Civil Revision Petition dismissed.

2013 (5) CTC 260

S. Balasubramanian
Vs
V. Govindan

Code of Civil Procedure, 1908 (5 of 1908), Order 37, Rule 3 – Summary Suit – Application seeking leave to defend, dismissed – Order challenged in Revision – Court has to see whether facts narrated in Affidavit filed in support of Application seeking leave to defend, disclose any triable issue – If there are triable issues, leave to defend has to be granted – Court cannot go into correctness or otherwise of facts stated in Application seeking leave to defend – Defendant had categorically stated that he had not executed Suit Promissory Note, that he signed only blank Stamped Papers at instance of a third party and that he had lodged a Police Complaint against third party for not returning Stamp Papers – Contentions raised by Defendant can be gone into only during Trial – Trial Court was not correct in going into facts and giving finding on merits – Impugned order set aside – Leave to defend granted – Civil Revision Petition allowed.

(2013) 7 MLJ 273

M. Ashok Kumar and Anr
Vs
N. Janarthana Mudaliar (deceased) and Ors

Civil Procedure – Rejection of plaint – Code of Civil Procedure, 1908, Order 7 Rule 11 – Dispute on alienation of trust properties – Trial Court rejected plaint – First appeal-late court remanded case with specific finding on merits – Second appeal – Whether first appellate court was justified in giving specific finding on merits of case – Held, for summarily rejecting plaint, case should be brought within parameters of ingredients in Order 7 Rule 11 of Code – Present case involves mixed questions of law and fact, Order 7 Rule 11 cannot be invoked to get plaint rejected in limine – First appellate court correctly set aside order of Trial Court – First appellate court not justified in giving specific finding in its judgment, on merits of case – First Appellate Court to restrict its discussion concerning applicability of Order 7 Rule 11 – Directions issued Second appeals disposed of.

2013 (5) CTC 291

Kadayanallur Town Thalaivar Samuthayam

Vs

The Assistant Commissioner, Land Reforms, Tirunelveli and Ors

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (T.N. Act 58 of 1961), Sections 2(2), 20-A, 22 & 77 – Suit for declaration and Injunction – Plaintiff neither a Religious Institution nor a Religious Trust, but a separate community – In such circumstances, institution of proceedings under Section 20-A against Plaintiff, illegal – Nonetheless, proceedings under Section 20-A, not within ambit of Section 77 whereby proceedings of Civil Court would be barred – Consequently, dismissal of Suit filed by Plaintiff on ground that same was barred under Section 77, erroneous and set aside - Plaintiff having purchased Suit property by virtue of valid Sale Deed, action of Respondent-Authorities unjustified – Suit filed by Plaintiff decreed as prayed for – Second Appeal allowed.

(2013) 7 MLJ 328

S. Manoharan

Vs

Karunamurthy

Civil Procedure – Amendment of plaint – Alternative relief – Limitation – Code of Civil Procedure, 1908, Order 6 Rule 17 – Specific Relief Act, Section 22 – Suit for specific Relief Act, Section 22 – Suit for specific performance of agreement of sale dismissed – Application seeking alternative relief for refund of advance money by way of amendment of plaint filed 5 years after dismissal of suit – Amendment application allowed - Civil revision petition – Alleged that alternative relief sought to be introduced by way of amendment is barred by limitation – Whether Court below erred in allowing amendment application when it is barred by limitation – Held, application seeking for amendment came to be filed nearly after five years from date of dismissal of suit – Alternative relief for refund of advance amount clearly barred by limitation on date of application seeking for amendment – Petitioner not availed remedy of law within time frame as available to him under law – No purpose in allowing amendment petition – As per Section 22 of Specific Relief Act, Amendment is permissible only during pendency of suit for specific performance and not after decree is made or at appellate stage – Respondent not entitled to claim protection under Section 22 of Specific Relief Act – Impugned order allowing amendment petition not sustainable in law.

(2013) 7 MLJ 435

Indian Bank Circle Officer, rep. by its Chief Manager and Anr

Vs

V.K. Balaji

(A) Civil Procedure – Civil Suit – Maintainability of – SARFAESI proceedings – Code of Civil Procedure, 1908, Section 9 – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002, Section 34 – Plaintiff was in possession of suit property – Landlord mortgaged suit property in favour of Defendant bank – Failure to repay loan amount under SARFAESI Act, Defendant took possession of suit property and Plaintiff was demanded to vacate property – Plaintiff filed suit under Section 9 of Code – Trial Court dismissed suit – First Appellate Court reversed findings of Trial Court, decreed suit that Plaintiff should not be disposed – Second appeal – Whether First Appellate Court was justified in holding that suit was maintainable, despite embargo contained under Section 34 of SARFAESI Act and dictum as found in the judgment Sree Lakshmi Products v. State Bank of India – Held, Civil Court has no jurisdiction to grant injunction against

authorities under Section 34 of SARFAESI Act – Plaintiff had effective remedy to approach Tribunal, but choose to invoke Section 9 of Code which was antithetical to mandate found in the judgment of precedent case – Plaintiff should not have filed suit seeking injunction – First Appellate Court was not justified in holding that suit was maintainable contrary to Section 34 of SARFAESI Act – Second appeal dismissed.

(B) Interpretation of Statues – Statue has to be interpreted in such a manner so as to make it meaningful and the interpretation should not render any of the provisions otiose.

(2013) 7 MLJ 597

Palanisamy
Vs
Rajamani @ Rajammal

Family Law – Maintenance – Hindu Marriage Act, Section 25 – Divorce sought by wife granted – Present suit filed for maintenance - Trial Court decreed suit, awarded maintenance – Appellate Court enhanced maintenance – Second appeal – Whether Lower Courts right in awarding maintenance when valid agreement entered into by Appellant and Respondent with respect of alimony long back – Held, nothing on record to indicate at time of granting divorce, permanent alimony was granted under Section 25 of Hindu Marriage Act – On absence of permanent alimony being granted, Divorcee/wife entitled to claim maintenance from Appellant/husband – No infirmity in order of Lower Courts – High Court not expected to interfere with maintenance matter – No question of law was involved in second appeal for consideration – Second appeals dismissed.

(2013) 7 MLJ 604

M. Ranalingam
Vs
A. Muthusamy and Ors

Property Law – Suit for partition – Suit property purchased in name of first defendant-Kartha of joint family – Alleged that property is joint family property – Plaintiff sought 1/5th share in suit property – Whether suit property was self-acquired property of First Defendant or joint family property of Plaintiff and Defendants 1 to 3 and 5 to 8 – Held, in settlement deed, suit property was described as self-acquired property of First Defendant and it was accepted by Plaintiff – Plaintiff himself admitted that joint family was not having any property or income – Suit property was sold by First Defendant during his lifetime in favour of tenth and eleventh Defendants – Plaintiff cannot claim any right over property – No infirmity in findings of Trial Court – Appeal dismissed.

(2013) 7 MLJ 627

Harikrishnan Daga (Deceased) Rep. by his Lrs and Ors
Vs
Loknath Rao, Proprietor Udupi Hotel Sri Ganesh Bhavan, Chennai

(A) Tenancy Law – Eviction - Demolition and Reconstruction – Tamil Nadu Buildings (Lease and Rent) Control Act,, Section (2) (b) – Madras City Municipal Act IV of 1919, Section 258 – Petitioners/landlords filed suit for eviction against tenant – Rent Controller allowed eviction petition on ground of demolition and reconstruction – Rent Control Appellate Authority dismissed eviction petition, on ground landlord not proved bonafide and sufficient means – Revision – Whether requirement of landlord on ground of demolition and reconstruction is bonafide – Held, portion of building collapsed during pendency of petition – Building not in good shape and condition - Corporation issued notice under Section 258 of 1919 Act that portion of building collapsed and that remaining part of building is in

dangerous state – Landlord called upon to pull down building immediately – Plan filed before Corporation towards demolition – Circumstances proved that building was in bad condition and required immediate demolition – Alleged building stood as witness supporting bonafide requirement of landlord for eviction – Bonafide need under Section 14(1)(b) cannot be held not proved merely because landlord had not proved merely because landlord had not shown sufficient means – Petitioners made out case for eviction under Section 14(1)(b).

(B) Tenancy Law – Eviction – Bonafide requirement – Written undertaking – Tamil Nadu Buildings (Lease and Rent) Control Act, Section 14(2) (b) – Appellate Authority rejected petition on ground that landlord had not given mandatory undertaking under Section 14(2)(b) of Act – Alleged that in absence of undertaking, right of tenant for repossession deprived – Whether petition for eviction can be rejected if no written undertaking as contemplated under Section 14(2)(b) of Act is given in petition – Held, requirement to furnish undertaking would arise only when Rent Controller is satisfied with bonafide requirement of landlord under Section 14(1)(b) – Before ordering eviction or while passing eviction, can call landlord to give affidavit of undertaking under Section 14(2)(b), if landlord had not given the same already in his petition – Non-furnishing of such undertaking is only technical error and same is curable at any stage of proceedings – Omission or failure to give such undertaking in original application, does not vitiate proceedings or defeat claim of landlord – Act does not state that no petition shall be filed by landlord without undertaking.

**HIGH COURT CITATIONS
CRIMINAL CASES**

(2013) 4 MLJ (Crl) 41

T. Subbulakshmi and Anr
Vs

Commissioner of Police, Chennai-8 and Ors

Criminal Law – Seizure of bank account Code of Criminal Procedure, 1973 (2 of 1974), Section 102(3) – Petitioners involved in land grabbing – Criminal case registered against petitioners – Bank account of petitioners frozen – Seizure of bank accounts not reported to concerned Magistrate – Petitioners sought directions for respondents to defreeze their bank accounts – Whether freezing of bank account by Police officer during course of investigation has to be reported to concerned Magistrate – Held, bank account is property within meaning of Section 102 of Code – Section 102(3) mandates report of seizure of property to Magistrate - Freezing of bank account is an act of investigation, duty cast upon Investigating Officer to report the same of Magistrate - Any violation in following procedure under Section 102, freezing of bank account cannot be legally sustained – 2nd Respondent/Police did not report freezing of bank accounts of Petitioners to concerned Magistrate, but same was mandatory under Section 102(3) – Proceedings of 2nd Respondent in freezing bank accounts of petitioners not legally sustainable, quashed – Criminal original petitions allowed.

2013- 2-L.W. (Crl) 289

S. Balasubramanian, Director, Addison Paints & Chemicals Ltd, Huzur Gardens,
Sembium, Chennai -600 011 & Anr

Vs

The State of Tamil Nadu Rep. by the Labour Welfare Officer III Circle Chennai – 600 035 & Ors

Industrial Disputes Act (1947), Sections 32, 29, 12(3)/‘Company’ as accused, arraying of, whether necessary, Vicarious liability, Scope of

Section 32, ID Act creates vicarious liability on the persons enumerated for the offence committed by the company.

For punishing an accused under Section 32, the Company should be arrayed as an accused – Only when the Court records a finding that the Company is guilty of the offence, other persons enumerated in Sec.32, such as, Director, Manager, Secretary, Agent etc., can also be punished.

Company-“Addison Paints & Chemicals Limited”, against which, the award was passed and which had allegedly committed the offence has not been arrayed as an accused – Conviction not sustainable – Accused who are not before Court, also acquitted.

2013- 2-L.W. (Crl) 318

Mahapoobjan

Vs

The State represented by its 1. The Secretary to Department of Home, Secretariat, St George Fort,
Chennai – 9. Ors

Juvenile Justice (Care and Protection of Children) Act (2000), Sections 2(k),(l), 7A, 19, 49,

Juvenile Justice (Care and Protection of Children) Rules (2007), Rule 12.

Detenu, a “juvenile in conflict with law” at the time of commission of offence, cannot be sentenced to life.

On the date of offence, he was below 18 years of age.

After disposal of his case and crossing 18 years of age, as per Section 7-A and explanation to Section 20, he can claim juvenility at any stage of the case.

(2013) 3 MLJ (Crl) 534

Kani @ Kaniamma and Anr

Vs

State rep. by Inspector of Police, H-6, Radhakrishnan Nagar Police Station, Chennai City

Criminal Law – Murder and cruelty – Dying declaration – Indian Penal Code (45 of 1860), Sections 302 and 498-A – Deceased’s mother found her daughter in flames, admitted her in hospital wherein she died – Dying declaration given by deceased before her death – 1st Appellant/1st accused/mother-in-law convicted by Session Judge for offences under Sections 498-A and 302 and 2nd Appellant/2nd accused convicted of offence under Section 498-A – Criminal appeal – Whether appellants/accused to be acquitted of charges under Sections 302 and 498-A of IPC – Held, doctor clearly deposed that deceased informed of having attempted self-immolation, such position recorded in Accident Register – One of the sisters of deceased was a Police Constable, possibility exists for Investigating Agency to act in manner as would serve intent of deceased’s family members – Inclusion of last word expressed by deceased in dying declaration recorded is an interpolation – Suspicious word not mentioned in body of statement, included as separate word immediately below – Evident to naked eye that spacing between other lines in statement is larger and in available space suspicious word was inserted – Unsafe to base findings on dying declaration – Based on evidence of doctors and accident register, 1st Appellant acquitted of offence under Section 302 – As per evidence of R.D.O., deceased and 2nd Appellant lived happily – Both appellants acquitted of offence under Section 498-A, IPC – Conviction and sentence imposed set aside, appellants acquitted – Criminal appeal allowed.

2013- 2-L.W. (Crl) 557

V. Arulkumar

Vs

The State, Rep. by Inspector of Police, SPE/CBI/ACB, Chennai

Criminal Procedure Code, Section 306/Tender of pardon, by Metropolitan Magistrate, whether proper, Special judge, to grant, power of,

Evidence Act, Section 136, Tender of pardon, Scope of,

I.P.C., Sections 120-B r/w. 420, 467, 468, 471/ tender of pardon,

Prevention of Corruption Act (1988), Section 13(2) r/w 13(1)(d)/Tender of pardon.

As per Section 5(2) of P.C. Act, the Special Judge has been conferred power to tender a pardon to the accused – Tender of Pardon by Metropolitan Magistrate to the Accused in this case is not sustainable.

(2013) 3 MLJ (Crl) 637

Tamilselvi and Ors
Vs
K. Viswanathan

Criminal Law – Maintenance – Claim for – Trial Court granted monthly maintenance to petitioners (wife and child) – Respondent/husband filed revision against order – Petitioners sought enhancement of maintenance award – Criminal Revision petitions – Whether quantum of maintenance awarded by Trial Court was sufficient for petitioners – Held, it was proved that respondent/husband was in possession of certain immovable properties – Quantum of maintenance awarded by Trial Court not sufficient to maintain expenses of petitioners – Second Petitioner is minor, studying at reputed school – Education of minor is of paramount importance – Sufficient monthly maintenance is required by both wife and minor child – Respondent to pay enhanced monthly maintenance – Criminal revision filed by petitioners partly allowed – Revision filed by respondent dismissed.

(2013) 3 MLJ (Crl) 661

Thesappan
Vs
State rep. by Inspector of Police, Keelaiyur Police Station, Nagapattinam District

Criminal Law – Rape and murder – Indian Penal Code (45 of 1860), Sections 302 and 376 – Appellant/Accused No. 1 convicted and sentenced for offences under Sections 376 and 302 – Accused No. 2 acquitted – Criminal appeal by Accused No. 1 – Whether conviction and sentences imposed on appellant legal – Held, delay in registration of FIR was inordinate and unexplained – No independent witness has been examined by Prosecution – Non examination of material witnesses was fatal to prosecution case – Evidence of Prosecution witness to effect that they witnessed the occurrence, was hardly believable – No blood stained earth or sample earth had been seized from alleged scene of occurrence – No DNA attest conducted to establish link – Failure of prosecution to challenge order of acquittal of Accused No.2, who stands on similar footing as appellant, understandable – Conviction and sentences imposed on appellant set aside – Criminal appeal allowed.

(2013) 3 MLJ (Crl) 677

Sundaram Finance Limited, rep. by its Deputy Manager (*Legal), T.N. Ashok, Chennai 600 002
Vs
State represented by, Inspector of Police, R7, K.K. Nagar Police Station, Chennai
(in Cr.No.783/2002) and Anr

Criminal Law – Sale of vehicle – Disputed ownership – Indian Penal Code (45 of 1860), Section 379 – Criminal case filed against accused for theft of vehicle – De-facto complainant filed petition to permit petitioner/company to sell vehicle, same dismissed – Interim custody of vehicle given to Revision Petitioner – Impugned order challenged – Revision petition filed to sell vehicle – Whether Revision Petitioner entitled to sell vehicle – Held, interim custody of vehicle given to Revision Petitioner with conditions – No locus-standi to sell vehicle before determining veracity of claim with regard to ownership – Revision not maintainable without adding necessary party – Physical possession of vehicle vested with person who field complaint under Section 379 – No clarity on ownership and possession of vehicle – No fault in impugned order passed by Magistrate – No particulars produced with regard to ownership of vehicle – Revision Petitioner not entitled to sell vehicle – Revision dismissed.
