

**Vol -IX
Part-IV**

APRIL, 2014

IMPORTANT CASE LAWS

Compiled by

**Tamil Nadu State Judicial Academy
Chennai – 28**

INDEX

S. NO.	IMPORTANT CASE LAWS	PAGE NO.
1	Supreme Court - Civil Cases	01
2	Supreme Court - Criminal Cases	06
3	High Court - Civil Cases	10
4	High Court - Criminal Cases	14

TABLE OF CASES WITH CITATION

SUPREME COURT CITATION OF CIVIL CASES

SL. NO.	CAUSE TITLE	CITATION	PAGE NO.
1	State of Haryana and Ors Vs Narvir Singh And Anr	(2014) 1 SCC 105	01
2	Tarabai (Dead) Through LRs. Vs State Of Karnataka And Ors	(2014) 2 SCC 145	02
3	Kollam Chandra Sekhar Vs Kollam Padma Latha	(2014) 1 SCC 225	03
4	Rajinder Kumar and Ors Vs Shri Kuldeep Singh and Ors	(2014) 2 MLJ 496 (SC)	03
5	Syed Sadiq and Ors Vs Divisional Manager, United India Insurance Company Ltd	(2014) 2 SCC 735	04

SUPREME COURT CITATION OF CRIMINAL CASES

SL. NO.	CAUSE TITLE	CITATION	PAGE NO.
1	Devendra Krishanlal Dagalia Vs Dwarkesh Diamonds Pvt. Ltd. and Ors	(2014) 1 MLJ (Cri) 82 (SC)	06
2	Rameshchandra Ambalal Joshi Vs State of Gujarat and Anr	2014 (2) CTC 205	06
3	State of Rajasthan Vs Roshan Khan And Ors	(2014) 2 SCC 476	07
4	State of Gujarat Vs Girish Radhakrishnan Varde	(2014) 3 SCC 659	08
5	Anil Kumar And Ors Vs M.K. Aiyappa And Anr	(2013) 10 SCC 705	08

HIGH COURT CITATION OF CIVIL CASES

SL. NO.	CAUSE TITLE	CITATION	PAGE NO.
1	Kalyani.R and Ors Vs T. Rose Mukundakumar	(2014) 2 CTC 157	10
2	Suseelamma. M & Ors Vs The Chief Controlling Revenue Authority, Office of the Inspector General (Registration), 120 Santhome High Road, Chennai 600 028.	2014- 1 – L.W. 211	10
3	Nagaraj. D Vs A. Devaraj	(2014) 2 CTC 256	10
4	Rajasundaram and Ors Vs C. Thayamma	(2014) 2 CTC 313	11
5	Ratna Kounder Vs Annamalai and Ors	(2014) 2 CTC 421	11
6	Revathi A.M.P rep. by her Power of Attorney A.M.V. Sukumaran Vs Subashchandran	(2014) 2 MLJ 439	11
7	Boovaraghamoorthy. V Vs District Revenue Officer, Villupuram District, Villupuram and Anr	(2014) 2 MLJ 485	12
8	Nico Quality Products, Rep. by its Partner Mr. K.C. Vijay, 1 st Floor, No.4/1 Kandaswamy Street, Mylapore, Chennai – 600 004 Vs M/s. N.C. Arya Snuff & Cigar Co., rep. by its Partners: S. Chandrasekaran, S. Thara, V. Anuradha, 19, Davidson Street, Chennai – 600 001 & Ors	2014 – 1 – L.W. 731	12
9	Sironmani Vs C.D. Anna Sholly	2013 – 5 – L.W. 738	13
10	Singaravel Vs Murugesu Udayar (Died) & Ors	2014 – 1 – L.W. 926	13

HIGH COURT CITATION OF CRIMINAL CASES

SL. NO.	CAUSE TITLE	CITATION	PAGE NO.
1	Guna @ Vella Guna @ Gunasekaran and Anr Vs District Magistrate, Government of Puducherry, Office of the District Magistrate, Puducherry	(2014) 1 MLJ (CrI) 98	14
2	Karvendan Vs State represented by The Inspector of Police, Kumaratchi Police Station, Cuddalore District	(2014) 1 MLJ (CrI) 111	14
3	Murugan. G Vs State by Inspector of Police, Choolaimedu Police Station, Chennai-94	(2014) 1 MLJ (CrI) 162	14
4	Rajarathinavel. S and Ors Vs Visalatchi Enterprises, a Partnership Firm, rep. by it's Power of Attorney, S. Subramanian, Madurai	(2014) 1 MLJ (CrI) 180	15
5	Santhanakrishnan. K Vs Deputy Superintendent of Police, Mayiladuthurai and Ors	(2014) 1 MLJ (CrI) 282	15
6	Sterling Holiday Resorts (India) Limited, Chennai 600 018 and Ors Vs Murlu Khemchand, Managing Partner, P.M. Associates, Udthagamandalam	(2014) 1 MLJ (CrI) 288	16
7	Uma Maheswari & Ors Vs The State rep. By The Inspector of Police, Central Crime Branch, Egmore, Chennai – 600 008	2014 – 1 – L.W. (CrI.) 407	16
8	Jayachandran Vs Manjula	(2014) 1 MLJ (CrI) 448	16
9	Sampath Shylaja Kumar Vs State by Deputy Superintendent of Police, CBI, SCB, Chennai.	(2014) 1 MLJ (CrI) 525	17
10	Senthil Kumar. T Vs Superintendent of Customs, Prosecution Unit (AIR), Customs House, Chennai	(2014) 1 MLJ (CrI) 564	17

SUPREME COURT CITATIONS CIVIL CASES

(2014) 1 Supreme Court Cases 105

STATE OF HARYANA AND ORS

Vs

NARVIR SINGH AND ANR

- A. Property Law – Transfer of Property Act, 1882 – Ss. 59 and 58(f) – Mortgage by deposit of title deeds (MDTD) – Requirement of registration – When arises – Memorandum or instrument in relation to MDTD – Memo analysis – Constitutive of MDTD or merely cognitive/evidencing the MDTD – Determination of
- Held, ordinarily MDTD is not registerable if title deeds of the pledged interest are deposited in notified town in view of S.59 that provides exception in respect of MDTD as far as registration thereof is concerned – No instrument is required to be drawn for a valid MDTD –Thus, even if a simple (cognitive) memorandum is prepared to evidence handing over of deposit of title deeds by borrower to creditor, it does not require registration – However, if the memorandum/instrument in question is constitutive of the transaction i.e the memo creates rights and liabilities or extinguishes them with regard to the MDTD, then, held, registration of such constitutive memorandum/instrument is compulsory
 - Request of Bank for mutation of schedule property in revenue records in view of mortgage of said property effected by deposit of title deeds in lieu of a term loan, rejected on ground that without registration and payment of stamp duty, “charge” of mortgage cannot be entered in revenue record – Sustainability – Held, document merely recording/ evidencing a transaction of mortgage by depositing of title deeds which is already concluded and that did not create any rights and liabilities, is not required to be registered – In instant case, except depositing original deeds with the Bank, no instrument was in existence creating or extinguishing rights and liabilities of parties – Since such transaction does not require registration, question of payment of registration fee and stamp duty does not arise – Hence, High Court rightly directed authorities concerned to enter said charge in revenue records – Registration Act, 1908, Ss. 17(1)(c) & (b)
- B. Property Law – Transfer of Property Act, 1882 – Ss. 58(f), 59 and 9 – Mortgage by deposit of title deeds (MDTD) –How to be effected – Reducing transaction into writing/deed/memorandum/instrument – Not required – Held, when debtor deposits with creditor title deeds of the property in a notified town for the purpose of security, it becomes a mortgage by deposit of title deeds – No instrument is required to be drawn for mortgage by deposit of title deeds – Delivery of documents of title to immovable property in a notified town with the intent to create a security thereon is sufficient
- C. Property Law – Transfer of Property Act, 1882 – Ss. 58(f) and 59 – Mortgage by deposit of title deeds (MDTD) – Valid creation of – Requirement that title deeds be deposited with creditor in any of the towns specified in S. 58(f) or town notified by State Government – Critical nature of such requirement for MDTD to be valid – Towns where title deeds were deposited in present case, if notified towns – Question not determined by High Court – Said issue going to root of the matter, hence matter remitted to High Court for determination afresh

(2014) 2 Supreme Court Cases 145
TARABAI (DEAD) THROUGH LRS.
Vs
STATE OF KARNATAKA AND ORS

- A. **Contract and Specific Relief – Specific Relief Act, 1963 – Ss. 9 and 10 – Suit for specific performance of compromise entered into before court – Absence of cause of action**
- **Proceedings initiated under Land Acquisition Act for acquisition of appellant’s land for purpose of constructing administrative building of Small Scale Industries Development Corporation – During pendency of writ petition before High Court challenging acquisition proceedings, compromise arrived at whereby R-2 (Chief Manager, Industrial Estate) agreed to recovery to appellant of a portion of the land and to construct administrative building on remaining portion - Compromise taken on record by High Court by its order – Deed of reconveyance in favour of appellant executed in respect of a portion of land – But no notification issued withdrawing that portion from acquisition under S. 48 of Land Acquisition Act – Government, instead of constructing administrative building immediately in terms of compromise, allotted acquired portion of land to a private company – Suit filed by appellant for specific performance of compromise and return of acquired portion of land – However, even prior to filing of suit, Government, realising its mistake, had taken steps to withdraw allotment made in favour of the company –Held, there was no cause of action for appellant-plaintiff to seek reconveyance of parcel of land in question as respondents had already retracted steps for revocation of allotment well before filing of suit and as no notification had been issued for withdrawal of land under S. 48, hence land continued to remain with Government – Thus there was no breach of compromise on part of Government - Mere delay in constructing administrative building cannot constitute a ground for grant of decree for specific performance of compromise – Land Acquisition Act, 1894 – Ss.16 and 48 – Civil Procedure Code, 1908, Or.23 R.3 and S.80**
- B. **Land Acquisition Act, 1894 – Ss. 16 and 48 – De-acquisition of land – Only mode by which land may be de-acquired is by valid withdrawal notification under S.48 – Reconveyance of acquired land without a prior withdrawal notification is inefficacious and void – Property Law – Nemo dat quod non habet – Transfer of Property Act, 1882, Ss. 7, 8 and 54**
- C. **Administrative Law – Promissory estoppels – Plea of, against Government, when must be raised – Compromise arrived at before court between appellant and R-2, Chief Manager of State Industries Development Corporation, whereby R-2 agreed to reconvey a portion of land to appellant, whose land was acquired by Government and to construct an office building on remaining portion – But instead of constructing building, Government allotted portion which was to be reconveyed to appellant, to a private firm – However, realising its mistake, Government took steps to withdraw allotment before filing of suit by appellant for specific performance of compromise and reconveyance of remaining parcel of land – High Court declined to grant decree for specific performance to appellant and to grant compensation claimed by allottee firm for some developments made on allotted land – Held, allottee firm’s claim for compensation was unwarranted as such claim could have been made on basis of promissory estoppels against Government but such plea had not been mad – Civil Procedure Code, 1908, Or.23 R. 3 and S. 80**

(2014) 1 Supreme Court Cases 225

**KOLLAM CHANDRA SEKHAR
Vs
KOLLAM PADMA LATHA**

- A. Family and Personal Laws – Hindu Law – Hindu Marriage Act, 1955 – S. 13(1)(iii) Expln. And S. 9 – Divorce on grounds of “unsoundness of mind” and “mental disorder” including schizophrenia – When may not be granted – Mere existence of mental disorder insufficient to justify dissolution of marriage – Need for existence of serious mental disorder – Further held, one spouse cannot simply abandon the other spouse because the latter is suffering from sickness
- In instant case, medical report failed to support case of appellant husband that respondent was suffering from serious case of schizophrenia – Rather, report indicated that although respondent was suffering from “illness of schizophrenic type” but did not show symptoms of psychotic illness, had responded well to treatment from acute phases and her symptoms were fairly under control with medication and further that if there was good compliance with treatment coupled with good family and social support, a schizophrenic patient could continue normal conjugal and marital relationship – Besides, respondent wife had not only completed MBBS but had also done a postgraduate diploma in Medicine and was continuously working as a Government Medical Officer – Had she been suffering from any serious kind of mental disorder, it would have been imposing for her to work in said post – Impugned judgment not granting decree of divorce and allowing petition for restitution of conjugal rights, upheld – Special Marriage Act, 1954, S. 27(1)(e)
- B. Family and Personal Laws – Marriage - Strong foundation of marriage – To weather strong and embrace sunshine, both with equanimity
- C. Family and Personal Laws – Divorce – Welfare of child prime consideration

(2014) 2 MLJ 496 (SC)

**Rajinder Kumar and Ors
Vs
Shri Kuldeep Singh and Ors**

- A. Civil Procedure – Executable decree – Ex parte decree – Code of Civil Procedure, 1908, Order VIII Rule 10, Order IX Rule 13 – Eight legal heirs of deceased entered into agreement to sell suit property to Respondent/purchaser of suit property, earnest money paid and possession of one garage handed over – Appellant/ judgment debtor, claiming to be grandson of deceased and minor during agreement to sell, sought for declaration that agreement illegal – Suit dismissed, again restored – Respondent/ purchaser of suit property filed suit for specific performance, decreed ex parte – Decree attained finality – Execution petition filed – Appellant/judgment debtor filed application objecting to execution – High Court held that judgment and decree executable – Meanwhile, Appellant/judgment debtor applied for rescission of agreement, dismissed – Review petition dismissed – Whether decree passed in favour of Respondent/purchaser of suit property is executable – Held, judgment pronounced under Order VIII Rule 10 of CPC since no written statement filed – Court opted to pronounce Judgment ex parte – Merely because it is ex parte decree, same does not cease to be decree – Ex parte decree valid decree for all

purposes – Though Judgment says that suit decreed as prayed for, suit was one for specific performance of agreement - Once decree for specific performance attained finality, weak and lame contentions regarding executability of decree cannot be made – If suit for specific performance not decreed as prayed for, then alone question of reference to alternative relief will arise – No question of any alternate relief since suit for specific performance for conveyance of property decreed – Decree executable for all intents and purposes – Appeal dismissed.

- B. Contract – Specific performance – Rescinding of contract – Specific Relief Act, 1963, Section 28 – Whether application for rescission by Appellant/judgment debtor was properly decided – Whether Respondent/purchaser of suit property should be held to be entitled to decree for specific performance of agreement after long efflux of time – Held, in contract, no time fixed for payment and Respondent/purchaser obliged to pay purchase money within reasonable time – Respondent/purchaser made attempt, though belatedly, for getting obligations performed – Respondent/purchaser also at fault in not taking prompt steps – Conduct of Appellant/judgment debtors, who were vendors, also at fault – Efflux of time and escalation of price of property, by itself, cannot be valid ground to deny relief of specific performance - Circle rate of residential property based on which unearned increase calculated show sharp increase – In case of decree for specific performance where equity weights with court, so is situation in considering application for rescinding contract - Trial court should have passed equitable order while considering application for rescission - High Court not made attempt to balance equity – For doing complete justice, Respondent/purchaser to pay land value to Appellant/judgment debtors, who are vendors as per circle rate – Respondent/purchaser to meet liability arising by way of unearned increase to be paid to Land and Development Office – Appeals partly allowed.

(2014) 2 Supreme Court Cases 735

SYED SADIQ AND ORS

Vs

DIVISIONAL MANAGER, UNITED INDIA INSURANCE COMPANY LIMITED

- A. Motor Vehicles Act, 1988 – S. 166 – Compensation – Permanent disability – Estimation of functional disability or loss of earning capacity – Manual labour cases where loss of limb is often equivalent to loss of livelihood – Impact of permanent disability on earning capacity – Appellant claimant, vegetable vendor aged about 24 yrs sustaining injuries to lower end of right femur, left upper arm and his right leg had to be amputated – Held, occupation of vegetable vending is not confined to selling vegetables from a particular location but involves procuring vegetables from wholesale market or farmers and then selling it in retail market, often in car which requires 100% mobility – Hence, his functional disability estimated at 85% (High Court determining disability at 65%) for determining loss of income – Workmen’s Compensation Act, 1923, S. 4
- B. Motor Vehicles Act, 1988 – S. 166 – Compensation – Determination of – Proof of income – When not mandatory – Self-employed labour in unorganized sector – Claimant, a vegetable vendor sustaining 85% functional disability in motor accident – Held, cannot be expected to produce documents to prove his monthly income – Tribunal as well as High Court erred in asking for the same – Considering present state of economy and rising prices in agricultural products, held, vegetable vendor reasonably capable of earning ₹ 6500 p.m – Compensation awarded accordingly
- C. Motor Vehicles Act, 1988 – S.166 – Compensation – Income – Calculation of prospective increment of self-employed people – Claimant, a vegetable vendor, aged about 24 yrs suffering 85% functional disability in motor accident – Held, is entitled to 50% increment in future prospects of income

- D. Motor Vehicles Act, 1988 – S.166 – Compensation – Multiplier – Appropriate multiplier – Claimant aged about 24 yrs – Following Sarla Verma, (2009) 6 SCC 121, held multiplier would be 18 for the purpose of calculating compensation
- E. Motor Vehicles Act, 1988 – S. 166 – Compensation – Permanent disability – Amputation of right leg – Medical expenses – Held, considering that appellant may be required to change his artificial leg from time to time ₹ 1 lakh awarded for medical costs and incidental expenses including future medical costs
- F. Motor Vehicles Act, 1988 – S. 166 – Compensation – Cost of litigation – Claimant, vegetable vendor suffering 85% functional disability in motor accident – Held, entitled to litigation costs amounting to ₹ 25,000 – Civil Procedure Code, 1908, S.35
- G. Motor Vehicles Act, 1988 – S. 166 – Compensation – Computation of – Permanent disability – Appellant claimant, a vegetable vendor aged about 24 yrs suffering 85% functional disability in motor accident in which his right leg was amputated – Held, claimant entitled to ₹ 17,90,100 under the head of “loss of future income” including 50% increase in future cost of litigation ₹ 25,000, medical and incidental cost ₹ 1,00,000, loss of amenities ₹ 75,000, loss of marriage prospects ₹ 50,000, pain and suffering ₹ 75,000, and cost of artificial leg ₹ 50,000, thus claimant entitled to total compensation of ₹ 21,65,100 with interest @ 9% p.a. – Debt, Financial and Monetary Laws – Interest – Compensation as interest/Interest on compensation.
- H. Motor Vehicles Act, 1988 – S. 166 – Compensation – Permanent disability – Estimation of functional disability or loss of earning capacity – Occupation involving manual labour – Held, Court should be sensitive in such cases – Appellant claimant vegetable vendor sustaining type-3 compound fracture of right femur, tibia, middle shaft tibia and fibula – Held, High Court erred in fixing his functional disability on lower side at 25% - Determining his functional disability at 35% average monthly income at ₹ 6500, increment on future income at 50% and applying multiplier of 18, claimant entitled to ₹ 7,37,100 under head of “loss of future income”, litigation costs at ₹ 25,000, pain and suffering ₹ 60,000, medical and incidental charges ₹ 1,00,000, loss of amenities ₹ 40,000, future medical expenses ₹ 15,000, thus total compensation amounting to ₹ 9,77,100 with interest @ 9% p.a.
- I. Motor Vehicles Act, 1988 – S. 166 – Compensation – Permanent disability – Manual labour – Estimation of functional disability – Appellant claimant, cleaner of lorries by profession, aged about 22 yrs suffering from comminuted fracture (i.e. producing multiple bone splinters) in accident consequent to which he is unable to bend, stretch or rotate his right hand, nor able to lift heavy objects which was an essential feature of his livelihood – Hence, his functional disability assessed at 85% (High Court determining functional disability at 13%) – Based on Karnataka State Minimum Wages Rules, appellant entitled to ₹ 4246 p.m. which rounded off to ₹ 4300, and adding barter charges ₹ 700, his monthly income determined as ₹ 5000 – Applying multiplier of 18 and 50% increase in future loss of income appellant entitled to ₹ 13,77,000 under head of “loss of future income”, ₹ 60,000 towards pain suffering, ₹ 50,000 towards medical and incidental expenses, ₹ 50,000 towards loss of amenities, ₹ 5000 towards future expenses and ₹ 25,000 towards litigation costs, in total compensation amounting to ₹ 15,67,000 with 9% interest p.a.
- J. Tort Law – Negligence – Contributory Negligence – Proof – Accident taking place in middle of road – Held, in absence of any evidence to prove contributory negligence by appellants, they cannot be fastened with such liability

SUPREME COURT CITATIONS CRIMINAL CASES

(2014) 1 MLJ (CrI) 82 (SC)

Devendra Krishanlal Dagalia
Vs

Dwarkesh Diamonds Pvt. Ltd. and Ors

- A. Criminal Procedure – Investigation Process – Recall of summons – Code of Criminal Procedure, 1973, Sections 201 and 204 – In Complaint filed by Appellant under Section 138, Respondents filed application for return of complaint for want of jurisdiction – Magistrate allowed application, returned complaint – On criminal revision to Sessions Judge, matter remitted back to magistrate – Order passed by Sessions Judge set aside by High Court – Appeal – Whether Magistrate after having found sufficient ground for proceeding in case and issuing summons under Section 204, has jurisdiction to recall or review order by exercising its power under Section 201 – Held, Section 201 can be applied immediately on receipt of complaint, if Magistrate not competent to take cognizance of offence – Once Magistrate taking cognizance forms opinion that there is sufficient ground for proceeding and issues summons under Section 204, not question of going back following procedure under Section 201 – In absence of any power of review or recall order of issuance of summons, Magistrate cannot recall summon in exercise of power under Section 201 – Impugned order of High Court set aside – Order of Sessions Judge affirmed - Appeals allowed.
- B. Negotiable Instruments – Complaint – Maintainability of – The Negotiable Instruments Act, 1881, Section 138 – Whether petition maintainable at place of complaint on ground that goods supplied, cheques handed over and legal notice issued from there – Held, offence under Section 138 can be completed only if five acts are present – Complainant can choose any one Court having jurisdiction over any one local area within territorial limits of which any one of those five acts were done – Business dealing held at place where complaint filed, products also supplied from same place – Cheques handed over at concerned place and legal notice for dishonor of cheques too issued from same place – As at least one act out of ingredients of Section 138 committed at place of complaint, complaint preferred maintainable.

2014 (2) CTC 205

Rameshchandra Ambalal Joshi
Vs

State of Gujarat and Anr

Negotiable Instruments Act, 1881 (26 of 1881), Section 138, Proviso (a) – General Clauses Act, 1897 (10 of 1897), Section 9 – Presentation of Cheque within six months – Calculation of six months – Cheque drawn on 31.12.2005 – Cheque presented for payment on 30.7.2006 – Held, date, on which Cheque is drawn, is to be excluded – Thus, for calculation of period of six months, relevant date in instant case would be 1.1.2006 – As per British Calendar, period of six months as contemplated to expire on 30.6.2006 – Cheque in instant case as presented on 30.6.2006, held, presented within prescribed period.

Negotiable Instruments Act, 1881 (26 of 1881), Section 138, Proviso (a) – General Clauses Act, 1897 (10 of 1897), Section 9 – “Six months from date on which it is drawn” – Held, use of word ‘from’ is for determining

purpose of commencement of time as per Section 9 – Consequently, date on which Cheque is drawn is to be excluded for determining limitation as per Proviso (a) of Section 138.

Negotiable Instruments Act, 1881 (26 of 1881), Section 138, Proviso (a) – General Clauses Act, 1897 (10 of 1897), Section 3(35) – Presentation of Cheque within six ‘months’ – Meaning of month – Month as per 1897 Act to mean a month as per British Calendar – Period of six months in Proviso (a) of Section 138 of 1888 Act, held, not be calculated on basis of 30 days in each month.

(2014) 2 Supreme Court Cases 476

STATE OF RAJASTHAN
Vs
ROSHAN KHAN AND ORS

- A. Evidence Act, 1872 – S. 114-A – Presumption under – Conviction on basis of - S. 114-A clearly provides that in a prosecution for rape under S. 376(2)(g) IPC, where sexual intercourse by accused is proved and the question is whether it was without consent of woman alleged to have been raped, and she states that she did not consent, court shall presume that she did not consent – Since prosecutrix (PW 2) in present case has categorically stated that sexual intercourse was committed with her by the 6 respondent-accused without her consent and forcibly, court has to draw presumption that she did not give consent to sexual intercourse committed on her by accused persons – Defence has not led any evidence to rebut this presumption – High Court could not have thus held that there were circumstances to show that PW 2 had consensually accompanied the accused persons – Conviction of all 6 accused, restored – Sentence of 10 yrs’ RI, confirmed – Penal Code, 1860 – S. 376(2)(g) – Gang rape – Consent
- B. Penal Code, 1860 – S. 376(2) (g) & Explan. 1 thereto and S. 366 – Gang rape – Invocation of presumption under S.114-A, Evidence Act, 1872 upon clear allegation of prosecutrix as to gang rape – Failure to rebut the same – Effect – Conviction of all six accused persons with aid of Explan.1 to S. 376(2)(g), restored – Sentence of 10 yrs’RI, confirmed
- Complainant’s 15-16 yrs old daughter, slightly weak-minded, disappeared – Complainant found A having sexual intercourse with his daughter and she was shouting – Complainant (PW 1) and his brother caught hold of A who later informed that 5 other persons had also performed sexual intercourse with his daughter and they knew of remaining 5 persons – Evidence of PW 1 and PW 2 that all the 6 respondents had committed rape on the prosecutrix is also corroborated by complaint made by PW 1 to the police within a few hours of the incident as provided in S.157, Evidence Act, 1872 – As per FSL Report, human semen was detected in vaginal swab and vaginal smear, salwar and kameej of prosecutrix, two pants, and two underwear of accused – Medical evidence, also corroborated evidence of PW 1 and PW 2 (the prosecutrix) that there was sexual intercourse between prosecutrix and accused persons – Trial Judge relied on evidence of complainant and prosecutrix and convicted all 6 respondents – High Court held that prosecutrix could be aged up to 19 yrs and there were circumstances to suggest that she went with respondents on her own, and delay on part of complainant to lodge FIR cast serious doubt on prosecution case – Held, delay in FIR has been sufficiently explained – Theory of consent of prosecutrix in case of gang rape is not acceptable for want of rebuttal of presumption under S.114-A, Evidence Act, 1872 when prosecutrix categorically alleged rape by 6 persons – No father would lodge FIR cast serious doubt on prosecution case – Held, delay in FIR has been sufficiently explained – Theory of consent of prosecutrix in case of gang rape is not acceptable for want of rebuttal of presumption under S. 114-A, Evidence Act, 1872 when prosecutrix categorically alleged rape by 6 persons – No father would lodge a false complaint that his daughter has been gang-raped – High Court should not have doubted prosecution story on ground of delay in lodging FIR – By virtue of Explan. 1 to S. 376(2)(g), it is not necessary that prosecution should adduce clinching proof of a completed act of rape by each one of accused on the victim – Evidence Act, 1872, Ss. 114-A and 157

- C. Criminal Procedure Code, 1973 – S. 154 – FIR – Delay in FIR – Whether adequately explained – PW 1 stated that after he found his daughter at about 1.00 a.m. on 28-4-1999 with A, and while 5 other accused persons had fled, they returned to their house at 2.00 a.m. and remained at their house till before sunrise and thereafter lodged FIR at police station at 6.00 a.m. – P.W 1 further stated that delay from 2.00 a.m. to 6.00 a.m. in lodging report was on account of fact that his wife was sick and he was also frightened and there was no other person to go to police station – PW 1 also stated that he returned home from police station at about 9.00 a.m. – SHO stated that informant appeared in police station with written report at 6.00 a.m. – Yet the High Court came to the conclusion that the report must have been filed at about 11.15 a.m. and it was ante-dated to 6.00 a.m. - Held, this conclusion of High Court is only a surmise not based on any evidence – FIR was filed by PW 1 at 6.00 a.m. in morning reporting an incident that he had witnessed between 1.00 a.m. and 2.00. a.m. and the period from 2.00 a.m. to 6.00 a.m. has been sufficiently explained by PW 1 in his evidence that he could not leave his wife alone, until sunrise – PW 1 has explained the delay adequately – Conviction of all 6 respondent-accused under S.376(2)(g) and sentence of 10 yrs' RI, restored – Penal Code, 1860, S. 376(2)(g).

(2014) 3 Supreme Court Cases 659

STATE OF GUJARAT
Vs
GIRISH RADHAKRISHNAN VARDE

- A. Criminal Procedure Code, 1973 – Ss. 190, 173, 154, 156, 200 & 202 and 216, 218 & 228 – Cognizance stage and Framing of charges stage – Powers of Magistrate at each stage, when: (1) case filed on police report, and (2) case filed on direct complaint to Magistrate, clarified – Magistrate taking cognizance of offence on submission of charge-sheet by police in a case based on FIR – Powers of – Scope – Exclusion or inclusion of charge for any offence/any section of IPC into charge-sheet by Magistrate at the stage of taking cognizance of matter – Held, is not permissible – Addition or subtraction of charge for any offence/any section is permissible by trial court only at the time of framing of charge under Ss. 216, 218 or 228 CrPC as the case may be – Procedure to be adopted by trial court in addition or subtraction of charge for any offence/any section in cases instituted on police report, distinguished from the one to be adopted in cases directly instituted before Magistrate on basis of complaint – Thus, order passed by Judicial Magistrate concerned permitting addition of three sections of IPC into charge-sheet after the charge-sheet was submitted before it for taking cognizance of matter, held, cannot be approved – However, complainant/prosecution/State can certainly raise plea as to addition of relevant sections of IPC at the time of framing of charges by trial court
- B. Criminal Procedure Code, 1973 – Ss. 190, 154, 155, 156, 200, 202 and 173 – Modes available for instituting a criminal case in court – Through police (police report case) or directly through Magistrate (complaint case) – Informant may directly approach the Judicial Magistrate concerned or the officer in charge of the police station concerned – On approaching the Magistrate, it is open to the Magistrate but not obligatory upon him to direct investigation by police

(2013) 10 Supreme Court Cases 705

ANIL KUMAR AND ORS
Vs
M.K. AIYAPPA AND ANR

- A. **Public Accountability, Vigilance and Prevention of Corruption – Prevention of Corruption Act, 1988 – Ss. 19(1) and (3) – Sanction under S. 19(1) – Held, is a precondition for ordering investigation against public servant under S. 156(3) CrPC even at pre-cognizance stage – Non-effect of absence of sanction in some circumstances under S. 19(3) – Held, does not mean that requirement of sanction is not mandatory – Private complaint against public servant under S. 200 CrPC – Reference of complaint by Magistrate under S. 156(3) CrPC for investigation by police – No sanction order under S. 19(1), PC Act, 1988 – Reference, not valid – Investigation under S. 156(3) CrPC cannot be ordered without previous sanction under S. 19(1), PC Act, 1988 – Criminal Procedure Code, 1973, Ss. 197, 200, 202, 156(3) and 482**
- B. **Criminal Procedure Code, 1973 – Ss. 200, 202 and 156(3) – Power of Magistrate under, to order investigation upon private complaint – Exercise of – Requirement of application of mind, emphasized – Held, Magistrate while exercising powers under S. 156(3) is required to apply his mind which should be reflected in his order though a detailed expression of his views is neither required nor warranted**
- C. **Criminal Procedure Code, 1973 – Ss. 156(3), 200 and 202 – Order directing investigation under S. 156(3) Held, does not amount to taking cognizance of the offence – Hence, Special Judge under Prevention of Corruption Act, 1988 referring private complaint against public servant for investigation under S. 156(3) CrPC, cannot be said to have taken cognizance of offence since it is a pre-cognizance stage – Public Accountability, Vigilance and Prevention of Corruption – Prevention of Corruption Act, 1988 – Ss. 4 and 5 – Words and Phrases – “Cognizance” – Scope of**
- D. **Public Accountability, Vigilance and Prevention of Corruption – Prevention of Corruption Act, 1988 – S. 5(4) – Special Judge – Status – Held, is treated as Magistrate and enjoys all Magistrate powers available under CrPC**
- E. **Criminal Procedure Code, 1973 – Ss. 200, 202, 156(3) and 190 – Private complaint – Reference for police investigation under S. 156(3) – Competent Magistrate – Held, is the one who is empowered under S. 190 to take cognizance**

HIGH COURT CITATIONS CIVIL CASES

(2014) 2 CTC 157

R. Kalyani and Ors
Vs
T. Rose Mukundakumar

Indian Stamp Act, 1899 (2 of 1899), Sections 33,35 & 36 – Impounding of Document – Whether warranted – Suit for Permanent Injunction – Sale Deed sought to be marked by Defendants objected by Plaintiff – Trial Court permitted marking of Sale Deed without considering objections of Petitioner/Plaintiff, judicially - Held, as document was insufficiently stamped, duty of Trial Court was to impound same – Order of Trial Court dismissing Application of Plaintiffs for impounding of Sale Deed, set aside – Trial Court directed to dispose of Application in consonance with decisions of Apex Court.

2014– 1 – L.W. 211

M. Suseelamma & Ors
Vs

The Chief Controlling Revenue Authority, Office of the Inspector General (Registration), 120 Santhome High Road,
Chennai 600 028.

Stamp Act (1899), Section 47-A, 10/Appeal, Article 23/'conveyance'; Article 55/'Release', difference,

Hindu Succession Act (1956), Section 8/Conveyance, Release, difference.

Release Deed, stamp duty payable, what is, whether document is release deed or conveyance, construction of – Right of Releasee, Effect of – Notice treating document as conveyance as releasees 2 to 4 have no pre-existing right over the property – Challenge to – Invoking of Article 55 A – Scope of.

Held: Releasee 2 to 4 have not inherited property under Section 8 – Recitals in the document captioned as 'Release Deed' do not reflect a HUF – Document of dual nature, viz., 'Release' chargeable under Article 55 A with regard to 21.43% of undivided share of the property and the rest of 64.29% undivided share as 'Gift' chargeable under Article 33 of Schedule – 1, on the ground that 2nd, 3rd and 4th releasees do not have any pre-existing right over the property, upheld.

(2014) 2 CTC 256

D. Nagaraj
Vs
A. Devaraj

Tamil Nadu Court Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1955), Sections 52 & 42 – Court-fee payable in Appeal – Computation of Court-fee – Suit for Specific Performance of Contract - Plaintiff valued Suit for Specific Performance in respect of unperformed part of contract – Sale Agreement was entered in respect of two items of properties – Defendant completed sale in respect of one item of property prior to filing of Suit – Plaintiff valued Suit for Specific Performance in respect of item two of property alone – Trial Court decreed Suit – Defendant filed First Appeal, wherein Court examiner directed Defendant to pay Court-fee on basis of sale consideration mentioned in Agreement of Sale – Appellate Court directed Defendant to pay Court – fee for total sale consideration mentioned in Sale Agreement – Court –fee in Appeal should be computed in respect of unperformed part of Sale

Agreement – Order of Appellate Court directing Defendant to pay Court-fee on basis of entire sale consideration is erroneous – Defendant directed to pay Court-fee in respect of unperformed part of Agreement of Sale.

(2014) 2 CTC 313

Rajasundaram and Ors
Vs
C. Thayamma

Transfer of Property Act, 1882 (4 of 1882), Sections 60 & 62 – Suit for Redemption of Mortgage – Application for Final Decree – Whether time barred – Usufructuary Mortgage entered into between parties on 19.7.1957 – Suit for redemption of mortgage filed in 1981 – Preliminary Decree passed in suit in 1983 – First Appeal filed by Defendants dismissed in 1992 and Second Appeal dismissed in 1996 - Contention of Defendants that Plaintiff guilty of non-payment of amount – Held, when Appeal is pending Plaintiffs cannot be expected to remit amount – Application filed by Plaintiffs seeking grant of Final Decree based on Preliminary Decree immediately after dismissal of Second Appeal – Deposit made by Plaintiffs along with said Application – Held, once Court has directed to receive amount and amount has been acknowledged by Court within extended period of time, amount would be presumed to be deposited within period prescribed by Court – Application filed by Plaintiffs after dismissal of Second Appeal, not time-barred – Plaintiffs, held, entitled to right of redemption after payment was made before Trial Court – Order of Appellate Court dismissing Application filed by Plaintiff, set aside – Second Appeal allowed.

Transfer of Property Act, 1882 (4 of 1882), Section 58 – Mortgage – Whether Usufructuary Mortgage or Anomalous Mortgage – Mortgage Deed containing stipulation that, at end of Mortgage Plaintiff either to pay back amount or hand over possession of land – Recital in Deed that Plaintiff to be held 'personally responsible,' if mortgage amount not paid – Said recitals, held, not conferring right on Defendant to sell property – Mortgage, held, Usufructuary Mortgage and not Anomalous Mortgage.

(2014) 2 CTC 421

Ratna Kounder
Vs
Annamalai and Ors

Specific Relief Act, 1963 (47 of 1963), Section 38 – Code of Civil Procedure, 1908 (5 of 1908), Order 8 – Suit for bare Injunction, decreed by Trial Court and confirmed in Appeal – Second Appeal at instance of 1st Defendant – Defendants purchased Suit property from predecessors-in-title of Plaintiffs – Defendants have categorically denied title of Plaintiff and also established their title - But Plaintiffs have not cared to amend Plaintiff and continued to prosecute Suit for bare injunction – Plaintiffs have not seriously disputed title of Defendants or amended prayer seeking Declaration of Title – There cannot be any injunction against true owners – Plaintiffs have not established their possession on date of filing of Suit – Since there is cloud cast upon title of Plaintiffs, Suit for bare injunction cannot be maintained in absence of prayer for Declaration of Title – Impugned Judgment in absence of prayer for Declaration of Title – Impugned Judgment set aside – Second Appeal allowed.

(2014) 2 MLJ 439

A.M.P. Revathi rep. by her Power of Attorney A.M.V. Sukumaran
Vs
Subashchandran

Tenancy Law – Eviction – Different user – Act of Waste – Petitioner/Landlady rented suit premises to tenant for residential purpose – Subsequently, tenant without permission of Petitioner converted premises for non-residential purpose, altered petition premises, same caused impairment to value of building – Petitioner filed eviction petition on ground of personal occupation, act of waste and different user – Rent Controller held requirement of building for personal use not bonafide, but allowed eviction petition on ground of act of waste and different user – On appeal, reversed – Revision by Petitioner/Landlady – Whether Petitioner entitled for eviction of tenant on ground of 'different user', 'act of waste' and 'personal occupation' – Held, lease agreement stipulated that

petition premises can be used only for residential purpose – Tenant alleged that there is another lease agreement which stipulates use of non-residential purpose but same not produced in evidence – Tenant gave positive evidence that he put name board in premises and was using portion of premises for non-residential purpose – Petitioner entitled for eviction on ground of ‘different user’ – Agreement stipulates that without permission of Petitioner, no alteration can be made – No documentary evidence to prove that Petitioner gave consent to make alteration – Tenant in violation of lease agreement made alteration – Petitioner entitled for eviction on ground of ‘act of waste’ – Landlady made out case for eviction on grounds of ‘different user’ and ‘act of waste’, other ground urged, viz. ‘own use and occupation’ need not be gone into – Revision allowed.

(2014) 2 MLJ 485

V. Boovaraghamoorthy

Vs

District Revenue Officer, Villupuram District, Villupuram and Anr

(A) Right to Information – Locus Standi – In execution proceeding, 2nd Respondent’s property sold in public auction to Petitioner’s father – Subsequent proceedings filed by 2nd Respondent were decided against him – Application under Right to Information Act by 2nd Respondent before Public information officer, seeking sundry information on property, same furnished – Not satisfied with information furnished, moved appeal before District Revenue Officer followed by second appeal before Tamil Nadu State Information Commission – Action initiated by State Information Commission and District Revenue Officer/1st Respondent issued notice calling upon Petitioner and his father for enquiry to inspect and measure property – Writ petition challenged impugned notification issued by 1st Respondent – Whether 2nd Respondent has locus standi to file an application before State Information Commission – Held, 2nd Respondent wrongly approached Tamil Nadu State Information Commission overlooking factual and legal proceedings decided in favour of petitioner – Erred in claiming suit property, when same was sold in public auction in favour of Petitioner’s father – Second appeal filed by 2nd Respondent before State Information Commission ought not to have been entertained when 2nd Respondent lost his property in original suit – 2nd Respondent suppressed and misled District Revenue Officer and State Information Commission for issuing notice against Petitioner – No locus standi to maintain any petition when all civil proceedings ended against 2nd Respondent finally – Writ petition allowed.

(B) Right to Information – Disclosure of information – Exemption from – Right to Information Act, 2005, Section 8(1) (a) and (b) Whether application filed by 2nd Respondent seeking information under Section 8(1) (a) and (b) exempted from disclosure of information – Held, when Petitioner became absolute owner of property purchased in public auction, same becomes final against 2nd Respondent and his family – Further attempt of 2nd Respondent to invoke Right to Information Act indiscriminately would lead to incitement of offence between parties making impractical demands – No locus standi to maintain application under Right to Information Act – Any inadvertent and slightest negligence by Information officer in providing wrong information to 2nd Respondent would constitute contempt of court – Since property sold long back, seeking information now in respect of patta is absolutely unfair and unjustified – Exemplary costs imposed on 2nd Respondent for misuse of process of law.

2014 – 1 – L.W. 731

M/s. Nico Quality Products, Rep. by its Partner Mr. K.C. Vijay, 1st Floor, No.4/1 Kandaswamy Street, Mylapore, Chennai – 600 004

Vs

M/s. N.C. Arya Snuff & Cigar Co., rep. by its Partners: S. Chandrasekaran, S. Thara, V. Anuradha, 19, Davidson Street, Chennai – 600 001 & Ors

Trade Marks Act, Sections 42, 45/Form TM-20, TM-24, Rules 72,75,

Stamp Act (1899), Section 35/Deed of assignment, trade mark, not duly stamped, reliability, Scope of, infringement, passing off, plea of.

Injunction to restrain infringing of registered trade marks, and passing off – Deed of assignment – Unregistered – Reliance of – Application for registration of assignment deed, within six months from date of assignment, non filing of – Effect – Whether it becomes ineffective, Section 42, whether condition precedent.

Held : if the assignment of trade marks is made, whether registered or unregistered without the goodwill of the business, then filing of application to the Registrar for advertisement of assignment is mandatory.

Object of Section 42 is to make the assignment of trade marks to be known to the general public – Section 42 condition precedent for assignment to take effect if the application is not made as required under S. 42, assignment shall become ineffective.

Deed of assignment ineffective – Applicant failed to apply for advertising the assignment within six months.

Deed of assignment is not duly stamped – Clear bar under Section 35 – Prayer for injunction restraining the respondents from infringing the trademarks is not maintainable.

2013 – 5 – L.W. 738

**Sironmani
Vs
C.D. Anna Sholly**

Tamil Nadu Buildings (Lease and Rent Control) Act (1960), Section 10(3) (a) (i), (iii) 'carrying on business'; what is, Scope of, 'carrying on business'.

Held : Landlady/respondent is not in occupation of any other non-residential portion owned by her directly or physically – Because she is the owner of a portion of the petition mentioned premises, that will not disentitle her seeking eviction of the tenant.

“Carrying on business” does not necessarily mean all steps required for carrying on business to be taken - It will be sufficient if even one step is taken and proved.

Landlady has pleaded her bona fide requirement to carry on business.

2014 – 1 – L.W. 926

**Singaravel
Vs
Murugesu Udayar (Died) & Ors**

Partition/Oral, Proof of, relief, grant of.

Suit for declaration of title based on Oral partition, not proved – Plaintiff established title only with respect to one item – When plaintiff claims a larger interest and is able to establish a lesser extent, to that extent, a decree can be granted – Court cannot grant a relief not specifically claimed in the plaint – Granting a relief of partition would be inconsistent with what has been pleaded.

**HIGH COURT CITATIONS
CRIMINAL CASES**

(2014) 1 MLJ (CrI) 98

**Guna @ Vella Guna @ Gunasekaran and Anr
Vs**

District Magistrate, Government of Puducherry, Office of the District Magistrate, Puducherry

Criminal Procedure – Jurisdiction – Maintainability of petition – Code of Criminal Procedure, 1973, Section 144(1)(2) and (5) – Magistrate order prohibiting Petitioners from entering Union Territory region for specific period except when Petitioners summoned to attend cases in that region – Whether Magistrate order amenable to revisional jurisdiction and revisions maintainable against Magistrate orders or else parties to be directed only to resort to Section 144(5)-Held, jurisdiction under Section 144 could only be exercised when situation warranted imminent and emergent action to prevent danger leading to grave consequences – Orders did not disclose emergency situation to justify ex parte order without serving notice on or without giving opportunity of hearing to persons against whom order directed under Section 144(1) – Magistrate failed to disclose nature of information received and nature of document relied on by him – Copy of report not furnished to Petitioners and it did not form part of orders – Ex parte order not preceded by preliminary enquiry conducted by Magistrate – No new ground could be permitted to be raised in course of argument to defend legality of Magistrate orders except facts mentioned in orders – Orders vitiated by perversity, serious irregularity and infirmity – Impugned orders set aside – Revisions allowed.

(2014) 1 MLJ (CrI) 111

**Karvendan
Vs**

State represented by The Inspector of Police, Kumaratchi Police Station, Cuddalore District

Criminal Law – Murder – Circumstantial evidence – Indian Penal Code, 1860, Sections 302 and 201 – Alleged that Appellant murdered deceased – Upon investigation, prosecution witness/Inspector examined post mortem certificate, obtained evidence from witnesses and filed final report against Appellant – Trial Court convicted under Sections 302 and 201 of IPC for murder of deceased – Appeal – Whether circumstances relied by prosecution proved beyond doubt – Held, prosecution failed to prove motive of accused to commit offence, as no witnesses stated about alleged intimacy between Appellant and deceased – Husband and daughter of deceased stated that body of deceased was in decomposed state and could not be identified – Based on ornaments worn, daughter identified decomposed body to be that of deceased – Prosecution witnesses allegedly seen deceased with accused, seven days earlier – Prosecution failed to prove last seen theory satisfactorily – Prosecution witnesses went in search of Appellant to village and found that his house was locked, except this no other material evidence to show that Appellant was absconding – No evidence to show ornaments recovered belonged to deceased, as same was not shown to brother, husband and daughter of deceased – Prosecution not proved any of the circumstances – Appellant acquitted – Appeal allowed.

(2014) 1 MLJ (CrI) 162

**G. Murugan
Vs**

State by Inspector of Police, Choolaimedu Police Station, Chennai-94

Criminal Law – Murder – Culpable Homicide not amounting to murder – Indian Penal Code, 1860, Sections 299, 300, 302 and 304 Part I – Appellant convicted by Trial Court under Section 302 for setting wife on fire – Appeal against conviction – Whether conviction of Appellant under Section 302 of IPC justified – Held, prosecution failed to prove either motive or intention of Appellant - No reference in dying declaration made by deceased that Appellant suspected her fidelity – When quarrel between husband and wife was ensuing, suddenly Appellant threw bucket of kerosene and set deceased on fire – Deceased was taken to hospital by prosecution witness and Appellant – No pre-meditation and in thick of quarrel on account of wife’s provocation, Appellant committed Offence – Appellant cannot be convicted under Section 302 IPC – Act of appellant falls in second part of Section 299 IPC coupled with Exception – I of Section 300 IPC, punishable under Section 304 Part-I of IPC – Impugned order of conviction and sentence passed under Section 302 set aside – Appellant convicted under 304 Part 1 of IPC – Appeal partly allowed.

(2014) 1 MLJ (CrI) 180

S. Rajarathinavel and Ors

Vs

Visalatchi Enterprises, a Partnership Firm, rep. by it’s Power of Attorney, S. Subramanian, Madurai

Negotiable Instruments – Dishonour of cheque – Liability of resigned Director – Negotiable Instruments Act, 1881, Sections 138, 141 and 142 – Code of Criminal Procedure, 1973, Section 482 – Impugned cheques issued to complainant, dishonoured – Complaint filed against 2nd accused/Managing Director of 1st accused company including Petitioners who were shown as Directors – Petitioners claimed to have resigned from respective offices of directorship of Company long prior to commencement of alleged transaction and cannot be responsible for dishonor of cheques – Whether Petitioners can be made liable for offence under Sections 138, 141 and 142 of NI Act – Whether impugned proceedings against Petitioner is liable to be set aside - Held, for holding person liable under Section 141 NI Act, every person, in charge of and responsible for conduct of business of company, deemed to be guilty along with company – Liability arises from being in-charge of and responsible for conduct of business at relevant time when offence committed and not on mere holding designation in company – Certified copies of Form No. 32 maintained by ROC explicated that Petitioners resigned from offices of directorships of 1st accused company at time of alleged transaction and issuance of cheques – Vicarious liability cannot be fastened as Petitioners already resigned – Proceedings against Petitioners quashed – Petitions allowed.

(2014) 1 MLJ (CrI) 282

K. Santhanakrishnan

Vs

Deputy Superintendent of Police, Mayiladuthurai and Ors

- A. Criminal Procedure – Quashing of Proceedings – Code of Criminal Procedure, 1973, Section 482 – Indian Pena Code, 1860, Sections 307 and 109 – Tamil Nadu Property (Prevention of Damage and Loss) Act, Seciton 3(1) – Charges framed against Petitioner accused under Sections 307 read with 109 of IPC and Section 3 (1) of Act – Accused prayed to quash proceedings alleging that ingredients of offences framed not attracted – Alleged that complaint filed was counter blast to earlier complaint filed by accused against his son – Whether initiation of proceedings against accused could be quashed for reason that materials available did not prima facie sustain charges framed against him – Held, complaint, FIR, statement of witnesses and final report would not attribute specific overt act against accused, nature of role played and manner of act of instigation by him – Accused’s instigation of other accused for commission of offence bald and vague, ingredients for charges framed against him prima facie not attracted – Initiation of proceedings against accused would amount to be abuse of process of law – Proceedings against accused quashed – Petition allowed.**
- B. Criminal Procedure – Maintainability of Petition – Quashing of Proceedings – Accused already filed original petition for same relief to quash proceedings, same dismissed for non-representation of accused’s counsel – Petitioner filed application to set aside order, same returned by Registry questioning maintainability – Accused came forward with present petition – Whether Petition which is second one of same na-**

ture maintainable when earlier petition had been quashed – Held, Court should not decide criminal case against accused in absence of his counsel, if counsel does not appear negligently or deliberately – Accused should not suffer for fault of his counsel – Rejection of prior application for quashing is no bar for quashing proceedings at later stage, same would amount to revision or review of High Court's earlier order – Decisions in State of Orissa v. Ram Chander Agarwala, etc. and Superintendent and Remembrancer of Legal Affairs, W.B. v. Mohan Singh and Others applied – Petition which is second one of same nature entertained.

(2014) 1 MLJ (Crl) 288

Sterling Holiday Resorts (India) Limited, Chennai 600 018 and Ors

Vs

Murli Khemchand, Managing Partner, P.M. Associates, Udthagamandalam

Criminal Law – Criminal Trespass – Theft in dwelling house – Code of Criminal Procedure, 1973, Section 482 – Indian Penal Code, 1860, Sections 447, 380 and 378 – Private complaint by Respondent Associates against Petitioners for offences under Sections 447 and 380 IPC – Petitioners/accused sought to quash proceedings initiated against them – Whether private complaint disclosed commission of offences under Sections 447 and 380 IPC – Held, accused should have trespassed into land in possession of complainant to make out offence under Section 447 IPC – Property must have been taken away from possession of complainant to sustain complaint for offence under Section 380 IPC – Bare reading of penal sections shows that complainant must have been in actual physical possession of property – Physical possession of properties not with complainant, same established from complainant's own documents – Symbolic possession is not actual physical possession – Court cannot import concept of symbolic possession into definition of theft in Section 378 IPC and expand its contours – Section 378 IPC not applicable – Complaint misconceived, abuse of process of Court – Ratio in India Oil Corporation vs. NEPC Limited applied – Proceedings initiated against Petitioners quashed – Petition allowed.

2014 – 1 – L.W. (Crl.) 407

Uma Maheswari & Ors

Vs

The State rep. By The Inspector of Police, Central Crime Branch, Egmore, Chennai – 600 008

Criminal Procedure Code, Section 482/Quashing of FIR, Section 102, Defreezing of bank account,

I.P.C., Sections 406, 420, 120-B/De-freezing of bank accounts, Scope of.

Civil transaction – Building agreement – Joint development – Prima facie allegations disclosing cognizable offence, cheating, criminal breach of trust – FIR cannot be quashed – Bank accounts, freezing, de-freezing of – When, how, to be done – Informing of jurisdictional Magistrate, 'forthwith', what is – Effect of – Non-informing – Failure to do so will vitiate freezing of accounts.

(2014) 1 MLJ (Crl) 448

Jayachandran

Vs

Manjula

Criminal Procedure – Maintenance – Distress Warrant – Dstraint Warrant – Code of Criminal Procedure 1973, Sections 128, 421 and 431 – Petition filed by Respondent wife under Section 128 for directing Petitioner husband to clear arrears of maintenance – Husband failed to appear before Court in spite of due summons – Court set husband ex-parte, issued distress warrant through Additional Educational Officer – Court order challenged on ground that relief to be granted under Section 128 is to issue dstraint warrant as provided under Sections 421 and 431, if husband fails to pay maintenance arrears – Whether issuance of distress warrant for failure to pay arrears of

maintenance legal – Held, issuance of distress warrant for failure to pay arrears of maintenance illegal – Decision in S.T. Prabhakar v. Secretary to Government, Home Department and Others followed – Issuance of distress warrant modified as distraint warrant – District Collector directed to realize maintenance of arrears from salary of husband by issuing attachment order.

(2014) 1 MLJ (Crl) 525

**Sampath Shylaja Kumar
Vs**

State by Deputy Superintendent of Police, CBI, SCB, Chennai

Criminal Procedure – Cancellation of bail – Power of Sessions Judge – Code of Criminal Procedure, 1973, Sections 167(2), 436, 437(5) and 439(2) – Indian Penal Code, 1860, Sections 294(b) and 506(ii) – Tamil Nadu Act 14 of 1982 – Petitioner/Accused arrested under Provisions of IPC and remanded to judicial custody – Later, detained under 1982 Act – On petition filed by wife, investigation transferred to CBI – Petitioner filed petition under Section 167(2) of Cr.P.C, seeking statutory bail as investigation not been completed within statutory period – Magistrate granted bail but not released from prison in view of order of detention under 1982 Act – Investigation taken by CBI – By order, Court revoked order of detention made against accused under 1982 Act – Magistrate granted bail to Petitioner – Another case registered against Petitioner and arrested under Sections 294(b) and 506(ii) of IPC for threatening witness in original case, later released – Respondent/CBI filed petition under Section 439 (2) seeking cancellation of bail on ground that Petitioner threatening witness – Sessions Judge cancelled bail, same challenged in revision – Petitioner alleged that only Magistrate can entertain petition for cancellation of bail under Section 437(5) – Whether Sessions Judges lacks jurisdiction to entertain petition for cancellation of bail when bail was granted by Judicial Magistrate – Held, bail granted to accused under Section 167(2) of Cr.P.C shall be deemed to be an order of bail issued under Sections 436, 437 or 439 of Cr.P.C – Bail granted under Section 167(2) of Cr.P.C can be cancelled either by High Court or Court of Sessions under Section 439(2) – Revision dismissed.

(2014) 1 MLJ (Crl) 564

**T. Senthil Kumar
Vs**

Superintendent of Customs, Prosecution Unit (AIR), Customs House, Chennai

Criminal Laws - Narcotics – Seizure of Contraband Goods – Analysis of Sample – Narcotics Drugs and Psychotropic Substances Act – Search made on petitioner in Airport based on specific information by Deputy Commissioner of Customs – Substance suspected to be narcotic drugs recovered – Respondent/authorities, at time of seizure tested sample through test kit and started that it was ‘Ephedrine Hydrochloride’ – Petitioner arrested and remanded to judicial custody – After making chemical analysis, Respondent/authorities filed report stating that drug was only ‘Methamphetamine Hydrochloride’ and not Ephedrine Hydrochloride’ –Petitioner filed petition before Special Court to send second sample to another laboratory to ascertain its nature, same dismissed – Revision – Whether sending of second sample for analysis is totally unnecessary – Held, report of Chemical Analyst states that sample of seized contraband is only drug ‘Methamphetamine Hydrochloride’ – Assertion made by investigating agency at time of seizure by using test kit cannot be given much importance – Both drugs are narcotic drugs and possession of both drugs punishable under Act, sending of 2nd sample for analysis dos not arise – Petitioner/Accused entitled for copy of Chemical Analysis report – Petition disposed of.
