



# TAMIL NADU STATE JUDICIAL ACADEMY

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## IMPORTANT CASE LAWS



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## **HIGH COURT - CRIMINAL CASES**

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## SUPREME COURT CITATIONS CIVIL CASES

2015 (5) CTC 108

Sherali Kham Mohamed Manekia

vs.

State of Maharashtra

Date of Judgment : 27.02.2015

Code of Civil Procedure, 1908 (5 of 1908), Order 40, Rule 1 – Appointment of Court Receiver – Discharge of Court Receiver – Plaintiff purchased evacuee property in Auction sale – Plaintiff filed Suit for Specific Performance and for appointment of Receiver – High Court appointed Receiver pending Appeal to take possession of Suit property and collect rents from persons in actual possession of Suit property – Trial Court disposed of Suit with liberty to Plaintiff to move High Court for Direction for taking possession of Suit property from Court Receiver and in First Appeal, Judgment of Trial Court was affirmed – Whether appointment of Court Receiver stands discharged after disposal of First Appeal or he continues in his office till Order of Discharge is passed by Court – When Receiver is appointed in Interlocutory Application without any time limit, he can continue till final Judgment – Function of Receiver comes to an end with final decision of case – Receiver appointment stands discharged after disposal of First Appeal – Law of Receiver.

2015 (2) TN MAC 211 (SC)

Rajan

vs.

Soly Sebastian

Date of Judgment : 28.07.2015

**INCOME** – Fixation of – Injured/Claimant aged 30 yrs., a Car Driver by profession – Notional Income fixed at Rs.2,000 p.m. by Tribunal confirmed by High Court in Appeal – Not proper – Held, High Court erred in not interfering with Notional Income as fixed by Tribunal – Minimum Wages as fixed by State Government on 11.1.2000 ought to have been considered by High Court as accident took place in year 2000 – Apex Court taking Notional Income at Rs.3,500 p.m. and adding 50% towards Future Prospects, fixed monthly income at Rs.5,250 [Rs.3,500 + Rs. 1,750].

**MULTIPLIER** – Proper Multiplier – Injured/Claimant aged 30 yrs. – Multiplier of 17 as applied by Tribunal and High Court being in consonance with ratio in Sarla Verma (SC), confirmed.

**NON-PECUNIARY DAMAGES – PAIN & SUFFERING – LOSS OF AMENITIES** – Determination – Award of Compensation under Non-Pecuniary heads to be ascertained considering facts and circumstances of each case – Guidelines laid down in R.D. Hattangadi (SC) as followed in Rekha Jain (SC) required to be followed – Injured/Claimant aged 30 yrs. a driver suffered 100% disability – Compensation under Pain & Suffering awarded at Rs.40,000 enhanced to Rs.1,50,000 – Rs.30,000 awarded under Loss of Amenities also enhanced to Rs.1,50,000.

**MOTOR ACCIDENT CLAIM** – Compensation – Quantum Enhancement – Injured/Claimant aged 30 years, a Car driver, suffered 60% disability – Tribunal fixing disability at 60% and Notional Income at Rs.2,000 p.m. awarded Total Compensation of Rs.3,70,000 as against claim of Rs.10,31,000 – High Court in Appeal, however, taking loss of earning capacity at 100% , enhanced Total Compensation to Rs.5,73,900 – If, proper – Income : Rs.2,000 p.m. as fixed by Tribunal and as confirmed by High Court, held, not proper : Taking income at Rs.3,500 p.m. and adding 50% towards Future Prospects, Apex Court fixed monthly earning at Rs.5,250 p.m. – Loss of Earning Capacity : Taking loss of earning capacity at 100%, Apex Court awarded Rs.10,71,000 [Rs.5,250 x 12 x 15] as against

Rs.4,08,000 – Loss of Earning during Treatment : Rs.73,500 [Rs.3,500 x 21] awarded as against Rs.42,000 as Claimant was not able to work for 21 months – Pain & Suffering : Enhanced from Rs.40,000 to Rs.1,50,000 – Loss of Amenities : Enhanced from Rs.30,000 to Rs.1,50,000 – Medical Expenses : Rs.22,400 confirmed – Future Medical Expenses : Rs.1,00,000 awarded as against Rs.20,000 – Extra-Nourishment : Rs.10,000 awarded as against Rs.6,000 – Transport Expenses : Rs.10,000 awarded as against Rs.5,000 – Attendant Charges : Rs.10,000 confirmed – Damages to Clothings : Rs.500 confirmed – Total Compensation : Enhanced from Rs.5,73,900 to Rs.15,97,400 – Interest : 9% p.a. confirmed – Insurer directed to pay enhanced Compensation within 6 weeks’ period.

**(2015) 7 Supreme Court Cases 263**

**Chauharya Tripathi**

**vs.**

**Life Insurance Corporation of India**

**Date of Judgment : 11.03.2015**

**A. Labour Law – Industrial Disputes Act, 1947 – S. 2(s) – “Workman” – Development Officers working in LIC – Held, are not “workmen” under S. 2(s) – Impugned judgment setting aside award of Industrial Tribunal-cum-Labour Court on ground that dispute was not adjudicable by Tribunal since aggrieved persons working as Development Officers in LIC were not “workmen” under schematic context of Act, held, thus calls for no interference – Insurance – Development Officers – Not workmen**

**B. Constitution of India – Art. 141 – Per incuriam decision – What is and what is its precedential value – Legal position, stated – Held, once judgment is declared per incuriam, it has no precedential value – Thus, held, R.Suresh, (2008) 11 SCC 319 cannot be regarded as precedent for proposition that Development Officer in LIC is a “workman” since the judgment does not say so and it was rendered in ignorance of ratio laid down by Constitution Bench in H.R.Adyanthaya, (1994) 5 SCC 737 and also principle stated by three- Judge Bench in Mukesh K. Tripathi, (2004) 8 SCC 387 that decision in S.K.Verma, (1983) 4 SCC 214 was not a precedent as S.K.Verma was held to be per incuriam by Constitution Bench in H.R.Adyanthaya – Thus, pronouncement in R.Suresh case, held, per incuriam – Industrial Disputes Act, 1947, S.2(s)**

**C. Constitution of India – Art. 141 – Ratio decidendi – What is – Reiterated, a case is only an authority for what it actually decides, and not what logically flows therefrom**

**2015 (4) CTC 441**

**Shamsher Singh**

**vs.**

**Rajinder Kumar**

**Date of Judgment : 16.04.2014**

**Specific Relief Act, 1963 (47 of 1963), Section 20(2)(a) – Discretion as to decreeing Specific Performance – Performance of Contract causing hardship to Defendant - Suit for Specific Performance of contract – Trial Court refused to grant relief of Specific Performance and granted damages in lieu of Specific Performance - Interference by Appellate court – Terms of Contract stipulates that “when seller fails to execute Sale Deed on date fixed, then Seller should pay double amount of advance money and in case buyer did not cooperate for execution of Sale Deed on due date, then advance money paid by a buyer will be forfeited and buyer shall have right to get Sale Deed executed through Court – Terms of Contract provides unfair advantage for Plaintiff over Defendants – Grant of specific relief to Plaintiff would amount to be inequitable – Discretion exercised by Trial Court refusing to grant specific relief cannot be interfered.**

**(2015) 5 MLJ 871 (SC)**

**Kirpal Kaur**

**vs.**

**Jitender Pal Singh**

**Date of Judgment : 14.07.2015**

**Succession Laws – Partition – Gift Deed – Validity of – Hindu Succession Act, 1956, Section 8 – Appellant/Plaintiff filed suit for partition of properties in favour of her late husband’s share – Preliminary decree passed holding that in view of ‘A’ schedule property, Plaintiff got 1/5<sup>th</sup> share, but not in ‘B’ schedule property, since it is self-acquired property of deceased 1<sup>st</sup> Defendant – On appeal, Division Bench held that ‘B’ schedule property is self-acquired property of deceased 1<sup>st</sup> Defendant – Appeal – Whether Plaintiff entitled to share in ‘B’ schedule property - Held, deceased 1<sup>st</sup> Defendant admitted that he received money from Plaintiff’s husband and Plaintiff’s husband also had share in ancestral property – Further, admitted in another proceeding between parties that he received specific amount by way of bank draft and cash from Plaintiff’s husband, which utilized by deceased 1<sup>st</sup> Defendant for reconstruction of building in ‘B’ schedule property - Trial Court and First Appellate Court did not appreciate and re-appreciate evidence in favour of Plaintiff in proper perspective to record finding on her claim for division of share in her favour in respect of schedule ‘B’ property – Since concurrent finding by Trial Court and First Appellate Court erroneous and liable to be set aside, gift deed of schedule ‘B’ property executed by deceased 1<sup>st</sup> Defendant in favour of 2<sup>nd</sup> Defendant during pendency of proceedings invalid – Also, since deceased 1<sup>st</sup> Defendant died during pendency of proceedings, Section 8 will come into operation in respect of ‘B’ schedule property, even if same considered to be self-acquired property of deceased 1<sup>st</sup> Defendant- For such reason also, Plaintiff entitled to 1/4<sup>th</sup> share in schedule “B” property – 1/4<sup>th</sup> share in schedule “B” property equally assigned to Plaintiff and Defendants – Impugned judgments with regard to ‘B’ schedule property by Trial Court and First Appellate Court set aside – Appeal allowed.**

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## SUPREME COURT CITATIONS CRIMINAL CASES

(2015) 3 MLJ (Crl) 27(SC)

Jagtar Singh  
vs  
State of Haryana

Date of Judgment 19.06.2015

Culpable Homicide – Culpable Homicide not Amounting to Murder – Common Intention – Indian Penal Code, 1860, Sections 304 Part II, 304 Part I, 302 and 34 – Appellant/accused along with co-accused convicted under Section 304 Part II read with Section 34, same challenged – High Court upheld conviction of Appellant, but acquitted co-accused from his charge – Appeal – Whether conviction of Appellant under Section 304 Part II read with Section 34 justified – Held, evidence proves that injury caused by Appellant to deceased resulted deceased first becoming unconscious and later succumbed to it – Ocular evidence properly appreciated by Trial Court and High Court for holding Appellant guilty for committing offence, same deserves to be upheld – No inconsistency or exaggeration noticed in evidence adduced by prosecution – No case found to differ with finding of Lower Courts – Appellant also not able to show as to why finding of High Court rendered bad in law and legally unsustainable – Enough evidence both ocular and documentary to prove that motive existed prior to commission of crime in question – Having regard to nature of injury caused by Appellant and manner in which it was caused and taking cause of death into account, Lower Courts justified in bringing case under Section 304 Part II instead of bringing same either under Section 302 or/and Section 304 Part I – Punishment of five years appears to be just and proper, but it could have been even more because eventually incident resulted in death of person, though Appellant did not intend to cause death of deceased – In absence of cross appeal by State on issue of quantum of sentence, not proper to go into question of adequacy of sentence – Conviction and sentence awarded to Appellant by Lower Courts upheld – Appeal dismissed.

(2015) 3 MLJ (Crl) 244 (SC)

State of Rajasthan  
vs  
Sri Chand

Date of Judgment 11.5.15

Rape – Attempt to rape – Probation – Indian Penal Code (Code 1860), Sections 354, 376 and 511 – Probation of Offenders Act, 1958 (Act 1958) – Accused respondent was charged with attempt to rape of a minor – Trial Court on appreciation of evidence acquitted accused of charges under Section 376/511 of Code 1860 while convicting him under Section 354 of Code 1860 – Trial Court also granted probation – On appeal, High Court dismissed contentions of State – Whether respondent is guilty of attempt to rape and if Trial Court was right in granting probation – Held, accused fled away on when PW3 came to place of incident due to shouting of prosecutrix – This shows accused wasn't determined to have sexual connection with prosecutrix despite all resistance and odds – There are inconsistencies in statement of prosecutrix – Important eye witness is not produced as witness – Court finds it difficult to hold that offence of attempt to rape is proved to sufficient measure – Accused is not a minor, rather he has committed offence against minor girl who is helpless – Further, it is clear from evidence on record that he ran away only when prosecutrix screamed which shows that accused could have had worse intentions – Offence is heinous in nature and there is no reason for granting benefit of probation – Trial Court has not given any special consideration to character of accused apart from fact that this was first conviction

of accused – Court allows appeal to limited extent that accused respondent is not granted benefit of probation but conviction is maintained under Section 354 Code 1860

**(2015) 6 Supreme Court Cases 465**

**M.Narayan**

**vs.**

**State of Karnataka**

**Date of Judgment : 17.04.2015**

- A. Penal Code, 1860 – Ss. 304-B, 306 and 498-A – Dowry death – Bride driven to commit suicide by hanging – Defence theory of mental imbalance or eccentricity on part of deceased bride so as to probabilise any act of self-elimination without any compelling reason, emphatically belied by appellant’s persistent and hurtful demand for dowry and her pitiable condition, being subjected to continuous and ruthless harassment and ill-treatment resulting in severe physical and mental torture – Reversal of acquittal of appellant husband, confirmed**
- B. Penal Code, 1860 – S. 304-B r/w S. 113-B, Evidence Act, 1872 - Supplementary and fortifying nature of – Reiterated, give rise to a statutory presumption of guilt against accused on satisfaction of ingredients stated in S. 304-b**
- C. Crimes Against Women and Children – Dowry Prohibition Act, 1961 – S. 2 – “Dowry” – Meaning of – “In connection with the marriage of the said parties” – Connotation of Reasonable connection with death of a married woman, would ordinarily enough – Reiterated, following Rajinder Singh, (2015) 6 SCC 477, any money or property or valuable security demanded by any of the persons mentioned in S. 2 of the 1961 Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless the facts of a given case clearly and unequivocally point otherwise – Words and Phrases – “Dowry” – Penal Code, 1860, Ss. 304-B, 306 and 498-A**
- D. Penal Code, 1860 – S. 304-B – Words “soon before” and “immediately before” – Distinction between, reiterated – Held, qua words “soon before” appearing in S. 113-B, Evidence Act and S. 304-B IPC, same is laden with notion of proximity test, but not synonymous with term “immediately before” – Evidence Act, 1872 - S. 113-B – Words and Phrases – “Soon before” and “immediately before”**

**(2015) 6 Supreme Court Cases 674**

**Kulwinder singh and Another**

**vs.**

**State of Punjab**

**Date of Judgment : 05.05.2015**

- A. Narcotic Drugs and Psychotropic Substances Act, 1985 – Ss. 35 and 15 – Recovery of contraband from truck – Factum of conscious possession – Invocation of presumption of culpable mental state – Expression – Invocation of presumption of culpable mental state Expressions ‘conscious’ and ‘possession’ – Meaning of, restated – Conviction confirmed – Held, once possession is found, accused is presumed to be in conscious possession – Further, if accused takes a stand that he was not in conscious possession, he has to establish the same – Herein, defence plea that both appellant-accused were only travelling in truck and had no knowledge of what the bags contained, rejected**
- B. Narcotic Drugs and Psychotropic Substances Act, 1985 – S. 15 – Recovery of contraband from truck – Test identification parade (TIP) – Non-conduct of – Defence plea of non-establishment of identity of both appellant-accused, because of – But, two witnesses identified appellants in court – Nothing elicited in cross-examination to discard their testimony – Conviction not vitiated**

**- Held, identification parades belong to stage of investigation, and there is no provision in CrPC which obliges investigating agency to hold, or confers a right upon accused to claim, TIP – They do not constitute substan-**

tive evidence and these parades are essentially governed by S. 162 CrPC – Failure to hold TIP would not make inadmissible evidence of identification in court – Weight to be attached to such identification should be a matter for courts of fact

- C. Narcotic Drugs and Psychotropic Substances Act, 1985 – Ss. 50 and 15 – Search and seizure – Recovery of contraband from truck – Compliance with S. 50, not required – Held, S. 50 is not applicable to search of vehicle/container/bag/premises – S. 50 only applies in case of personal search of person – But it is not extended to search of vehicle or container or bag or premises – Herein, it is undisputed that bags containing poppy husk were seized from truck in which appellants were sitting – Thus, it is not a case of personal search of person – Therefore, appellants' contention is rejected – Their conviction is confirmed
- D. Narcotic Drugs and Psychotropic Substances Act, 1985 – S. 15 – Recovery of contraband from truck – No independent witness examined to substantiate allegation of prosecution as they had been allegedly won over by accused – But, evidence of official witnesses, trustworthy and credible – Prosecution case, trustworthy – Held, no reason not to rest conviction on basis of such evidence of official witnesses – Conviction confirmed

**(2015) 5 Supreme Court Cases 705**

Shamima Farooqui

vs.

Shahid Khan

Date of Judgment : 06.04.2015

- A. Family and Personal Laws – Family Courts Act, 1984 – Ss. 7(1) Expln. (f) and 7(2)(a) – Maintenance - Family Court can grant maintenance allowance to divorced Muslim woman under S. 125 CrPC – Criminal Procedure Code, 1973 – S. 125(1) Expln. (b) – Reiterated, applicable to divorced Muslim woman
- B. Criminal Procedure Code, 1973 – Ss. 125(2) & (1) second proviso – Speedy disposal of application for maintenance essential – Belated disposal without grant of interim maintenance not justified – Court's approach – In case of delay caused by dilatory tactics adopted by parties, court should endeavour to curtail such designed procrastination of proceedings – On its own part, court should avoid lethargy and apathy and adopt a proactive approach which should be instilled by judicial academies functioning under High Court – Maintenance granted from date of application in 1998 till passing of order of maintenance in 1998 till passing of order of maintenance in 2012, without any grant of interim maintenance, not justified – Family Courts Act, 1984, S.7
- C. Criminal Procedure Code, 1973 – S. 125 – Maintenance allowance to wife – Wife has absolute right of maintenance – Husband not absolved from his obligation to provide maintenance merely on his plea of financial constraints, so long as he is healthy, able-bodied and capable of earning for his own support
- D. Criminal Procedure Code, 1973 – S. 125 – Maintenance allowance to wife – Quantum – Principle of sustenance – Sustenance does not mean bare survival and it gains more weightage when children are also with wife – Quantum should be adequate so as to enable wife to live with dignity, similar to standard with which she would have lived in her matrimonial home – In this context status and strata become relevant – Retirement of husband from service cannot be sole consideration for High Court for further reduction of a nominal amount of maintenance awarded by Family Court – Constitution of India – Art. 21 – Family and Personal Laws – Maintenance - Quantum - Right to live with dignity
- E. Criminal Procedure Code, 1973 – Ss. 401 and 125 – Revisional jurisdiction of High Court – Non-application of mind – Findings of lower court neither perverse nor erroneous but instead based on proper appreciation of evidence on record and endeavour to do substantial justice – Interference of High Court therewith, only because it would have arrived at a different or another conclusion, held, reflects non-application of mind and not sustainable

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## HIGH COURT CITATIONS CIVIL CASES

2015 -4- L.W. 65

Subbulakshmi and another  
vs.  
Sivanraj (died) and another

Date of Judgment : 31.06.2015

C.P.C., Order 22, Rule 10, 'legal representative', determination of,

Constitution of India, Article 227, abatement, legal representative, determination of.

Petitioners filed a suit for maintenance and for creating a charge over the suit property owned by sole defendant, who died – application by the petitioners to implead the third party purchaser was dismissed – question is whether suit would abate on account of the death of sole defendant – held: court has discretion to decide – issue to be decided by the trial court on merits.

(2015) 6 MLJ 132

George Kavalam

Vs

P.Vijayalakshmi

Date of Judgment 18.06.15

- A. Contract – Specific Performance – Readiness and Willingness – Specific Relief Act, 1963 (Act 1963), Section 16(c) – Appellant/Plaintiff filed suit for specific performance directing Respondent/Defendant to execute sale deed in respect of suit property in his favour and for cost, same decreed – On appeal, Additional District Judge set aside decree of Trial Court – Second appeal – Whether District Judge right in reversing decree of Trial Court, when Plaintiff complied with Act 1963 by proving his readiness and willingness from date of agreement – Held, in suit for specific performance, not enough for Plaintiffs to prove execution of agreement and passing of consideration in form of advance – As per Section 16(c) of Act 1963, Plaintiff to plead and prove that he either performed his part of obligations or ready and willing to perform his part of obligations under sale agreement – In compliance with Section 16(c) of Act 1963, Plaintiff made plea that right from date of execution of sale agreement, he was ready and willing to pay balance amount and get sale deed registered in his name and it was Defendant, who postponed same – In addition, even in written statement, no specific denial of readiness and willingness by Plaintiff and also no evidence adduced by defendant on that regard – But, by cumulative effect of oral and documentary evidence, Plaintiff proved his readiness and willingness to perform his part of obligations – Also, proved his capacity to make payment, same not disproved by Defendant – Finding of Trial Judge Regarding readiness and willingness by Plaintiff also ought not to have been interfered with by Lower Appellate Judge and no justification for such interference – Decree of Lower Appellate Court set aside – Decree of Trial Court restored – Appeal allowed with cost.
- B. Contract – Sale Agreement – Validity of – Whether District Judge right in reversing decision, when Defendant did not dispute signature in agreement and failed in establishing that agreement concocted with help of third party individual – Whether District Judge right in holding that Plaintiff did not prove agreement and consideration, when Plaintiff proved execution of agreement and contents of same prove payment of advance and in absence of plea or evidence by Defendant regarding means of Plaintiff – Held, Trial Judge



arrived at correct conclusion that sale agreement was genuine, same supported by consideration – Payment of advance also proved – But, defence plea that said document created using signatures obtained in blank stamp papers not proved, same came to be upset by Lower Appellate Judge without justification and without assigning valid reasons – Conclusion of Lower Appellate Judge seems to have been made on suspicions and surmises and not on preponderance of probabilities – District Judge not right in reversing decision, when Defendant did not dispute signature in agreement and failed in establishing that agreement concocted with help of third party individual – Also, not right in holding that Plaintiff did not prove agreement and consideration, when Plaintiff proved execution of agreement and contents of same prove payment of advance and in absence of plea or evidence by Defendant.

2015 -4- L.W. 250

Thangaraj

vs.

Maragatham (died) and others

Date of Judgment : 11.06.2015

C.P.C., Order 21, Rule 57, determination of attachment, Order 38, Rules 5, attachment before judgment, Rules 11, 11A

Attachment before judgment, continuation of, scope.

Suit for recovery of money decreed – Execution proceeding initiating, scope of – Attachment before judgment, ordered – Two execution petitions were dismissed on failure to pay – Third execution petition was filed without seeking attachment contending property had been attached before Judgment, attachment continued despite orders of dismissal of earlier execution petitions containing no direction for continuance of the attachment effected before Judgment – Judgment debtors (R3 & R4) conveyed property to respondents (R1, R2) – After such sale, executing court passed an order for attachment – Respondents-purchasers preferred a claim petition praying for an order to set aside attachment.

Effect of order 21, rule 57, exclusion of order under vis-à-vis Order 38 rule 11, 11A, whether – scope of.

Held: whether by order 38 rule 11, application of order 21 rule 57 stands excluded towards an attachment before judgment – such a claim of exclusion cannot be countenanced, reading of Order 38 Rule 11, 11A make clear that, though a property attached before Judgment need not be re-attached on the filing of the first application for execution, by virtue of Order 38, Rule 11A attachment becomes an attachment in execution under Order 21 Rule 57.

It is clear that attachment was not subsisting as on the date of purchase of the property by the respondents – Not hit by lis pendens.

2015 -4- L.W. 263

A.K. Nithyanandham

vs.

Saraswathi Velusamy and another

Date of Judgment : 13.08.2015

Partnership act (1932), Section 69.

Unregistered partnership, suit for dissolution – Scope of - Suit for accounts after 27 years, whether maintainable – Partnership whether existed – Purpose was to invest in properties by NRIs – Plea of partnership, whether proved.

**Held: No.** – appellant received money only to purchase lands and sell them, non-maintenance of separate accounts, effect of.

Agreement was to share profits, i.e. service charges – Not a single transaction took place, appellant dealt with properties as of his own – Test to decide partnership is right to participate in profits of trade – Oral partnership, plea of, not proved, dissolution of firm granting of, Scope, Intention, conduct of parties, real test – Agreement termed as partnership – Suit dismissed.

**2015 (4) CTC 369**

**N.K. Ramanuja Thatchariar**

**vs.**

**S. Veeraraghava Thatchariar**

**Date of Judgment : 14.07.2015**

**Code of Civil Procedure, 1908 (5 of 1908), Order 23, Rule 3 & Order 7, Rule 11** – Rejection of Plaint under Order 23 – Sustainability – No cause of action – Defendant based his Application to reject Plaint on ground that he had entered into Compromise with Plaintiff and that there exists no cause of action for Plaintiffs to continue Suit – Held, Plaint can be rejected only on grounds stated under Order 7, Rule 11, hence stand of Petitioner cannot be sustained – Very Application filed under Order 23, Rule 3 for rejection of Plaint is also not maintainable, as said provision is meant for recording of Compromise and passing of Decree in terms of Compromise – Revision dismissed.

**Code of Civil Procedure, 1908 (5 of 1908), Section 151 & Order 23, Rule 3** – Compromise and withdrawal of Suit – Whether Petition under Order 23, Rule 3 to reject Suit can be construed as Memo to record Compromise and pass Decree? – Held, in Petition filed by Petitioner, there is no prayer to record Compromise, on contrary Petitioner only seeks rejection of Plaint – Therefore, in absence of specific averments, Petition filed under Order 23 cannot be construed as Memo to record Compromise – Moreover, Respondent/Plaintiff has specifically averred that Compromise was not acted upon, said fact can be established only through evidence – Furthermore, there is no provision under CPC to direct Plaintiff to withdraw Suit – Hence, present Petition is not maintainable – Revision dismissed.

**2015 (4) CTC 378**

**M.K.Alan (Deceased)**

**vs.**

**R. Balasubramanian**

**Date of Judgment : 02.06.2015**

**Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (T.N. Act 18 of 1960), Sections 9(3) & 10(2)(i) & (vii)** – Denial of Title of Landlord – Eviction of Tenant – Whether justified – Suit for eviction on ground of denial of title filed by Landlord – Contention of Tenant that there was dispute between Landlord and his family members with regard to ownership of property and they were unsure of person to whom to pay Rent – Held, dispute between Landlord and his family members resolved long back by Decree of Court to which instant Tenants were also party – Moreover, tenants if unsure could have deposited Rent under Section 9(3) to Competent Authority – Petitions filed by Tenants under Section 9(3) found to be highly belated as same filed after committing six years of default – Tenants also guilty of prolonging said Petition for four years without depositing Rent – In such circumstances, held, eviction of Tenant on ground of denial of title of landlord, justified and not interfered with – Civil Revision Petition dismissed.

(2015) 5 MLJ 551

Ramasamy  
vs  
Arulmighu V.V.Perumal Temple

Date of Judgment 18.06.2015

Property Laws – Adverse Possession – Temple Land – Limitation Act 1963 (Act 1963), Articles 65 and 111 – Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 1959), Sections 63, 69, 70 and 108 – Suit property was claimed to an adverse possession of appellant/plaintiff – Respondent temple placed claim on ground of order of Inam Abolition Tribunal – Lower Courts dismissed claim of appellant/plaintiff applying Article 111 of Act 1963 and Section 108 of Act 1959 – Whether Article 65 and not Article 111 of Act 1963 is applicable for recovery of possession of temple land and if plaintiffs have substantiated their case that they have perfected title by adverse possession – Held, Plaintiffs have not substantiated their case that they have perfected title by adverse possession by their continuous, uninterrupted adverse possession for not less than 12 years as contemplated under Article 65 of Act 1963 – There was a break in adverse possession before completion of statutory period of 12 years – Lower appellate court applied an erroneous provision, namely Article 111 instead of Article 65 of Act 1963 – Finding that plaintiffs had not perfected title by adverse possession deserves to be sustained on ground that plaintiffs have not proved that they had been in continuous adverse possession of suit property with necessary animus for more than 12 years – First respondent/first defendant temple has established its title based on oral evidence and order of Inam Abolition Tribunal – Order of Tribunal conclusively establishes title of temple – Title of temple as per said order, has been admitted by appellants/plaintiffs – Only based on such admission they claimed perfection of title by adverse possession – Plaintiffs miserably failed in their attempt to substantiate their contention that they have perfected title by adverse possession – Conjoint reading of Sections 63, 69, 70 and 108 of Act 1959 will make it clear that suit filed by plaintiffs is one barred by provisions of Act, 1959 – Hence finding of courts below that suit is barred by provisions of Act, 1959 is in tune with provisions of Act, 1959 – Appeal dismissed.

2015 (4) CTC 736

H. Mohamed Ghouse  
vs.  
The Chief Executive Officer, Tamil Nadu Wakf Board

Date of Judgment : 27.07.2015

Wakf Act, 1995 (43 of 1995), Section 32 – Wakf Board is empowered to exercise its powers in respect of Private Wakfs where Scheme Decree is passed by Court – Power under Section 32 includes power to appoint and remove Mutawallis – Board in such cases apply relevant Scheme Decree – Power can be exercised even without taking over control and management of subject matter of Wakf – Applicant, who sought to be appointed as Committee Member directed to approach Wakf Board.

(2015) 5 MLJ 769

S.N. Thiyagarajan  
vs.  
S. Rathinammal

Date of Judgment : 13.07.2015

Succession Laws – Partition – Interim Relief – Suit for partition filed by Plaintiffs/1<sup>st</sup> to 3<sup>rd</sup> Respondents based on interest devolved on them from original owner, who alleged to have executed Will not giving share to Plaintiffs' predecessor-in-interest – Plaintiffs alleged that Will in question never projected after death of original

owner and not proved, as no probate obtained – But, partition deed, settlement deed and sale deed took place based on Will and Plaintiffs alleged that they were not aware of same – Along with plaint, Plaintiffs filed application for interim relief – Single Judge held that in absence of probate proceedings qua registered Will and knowledge of Plaintiffs about property dealt with in accordance with Will, interim relief is necessary, same challenged – Whether impugned order passed by Single Judge justified – Held, relief claimed in interim stage shows that Plaintiffs conveniently did not claim injunction qua their share in property No.1 fallen to other two sons of original owner nor claimed right to preserve consideration realized by legal heirs of another son of original owner – But, target seems to be only Appellants, who are purchasers of property No.2 and would like to construct on property – Plaintiffs put pressure on Appellants/third party bona fide purchasers – Test of inordinate delay in approaching Court not properly explained – Also, no irretrievable prejudice caused, if share of Plaintiffs satisfied from share of other inheritors of property to exclusion of Appellants, who are third party purchasers of only one of the properties – Interim injunction granted by impugned order vacated and same set aside.

(2015) 5 MLJ 835

G. Selvam  
vs.  
Kasthuri

Date of Judgment : 10.07.2015

Civil Procedure – Preliminary Decree – Framing of Issue – Impleadment of Parties – Maintainability of Revision – Code of Civil Procedure, 1908 (Code 1908), Order 20 Rules 4 and 5 – Constitution of India, 1950, Article 227 – Plaintiff filed suit for partition – Trial Court passed ex parte preliminary decree allotting share to Plaintiff – Plaintiff filed final decree application and during pendency of same, Plaintiff died – Respondents remained ex-parte and without impleading legal representatives of deceased Plaintiff, Trial Court passed final decree – On appeal, Lower Appellate Court held that death of Plaintiff will not abate proceedings – On second appeal, High Court remanded mater back to District Munsif Court for fresh disposal after impleading legal representatives of deceased – Legal representatives of deceased 18<sup>th</sup> Defendant filed revision alleging Order 20 Rule 5 of Code 1908 – Third party Petitioner also filed petitions to implead them as parties – Whether preliminary decree by Trial Court is in conformity with Order 20 Rule 4 and 5 of Code 1908 and legal – Whether third party Petitioners could be impleaded as parties – Whether revision under Article 227 of Constitution challenging preliminary decree maintainable – Held, Order 20 Rule 4 of Code 1908 shows that judgments shall contain statement of case, points for determination, decision and reasons for such decision – Facts show that Defendants set exparte and Trial Court did not frame issue, but simply examined PW-1 and found that claim by him proved – Judgment by Trial Court contrary to Order 20 Rules 4 and 5 of Code 1908 and illegal – 17<sup>th</sup> Defendant was not alive on date of passing of preliminary decree – Trial Court should have dismissed suit as abated in absence of bringing legal representative of 17<sup>th</sup> Defendant on record – Also, many of the parties to suit died and their legal representatives not brought on record and purchasers of land also not brought on record – Revision under Article 227 of Constitution challenging preliminary decree maintainable – Judgment by Trial Court set aside – Matter remanded to Trial Court for fresh disposal – Trial Court directed to dispose of suit after impleading parties and affording opportunity to them – Petition allowed.

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## HIGH COURT CITATIONS CRIMINAL CASES

2015-2- LW. (Crl.) 84

A.Raja @ Arokiya Raj

vs.

The State, rep by The Inspector of Police

Date of Judgment : 23.04.2015

IPC., Section 457, child statement, reliability, scope of,

Evidence act, Section 6, child's statement, reliability

Protection of Children from Sexual Offence (POSCO) act, (2012), Section 7 'sexual assault' Section 11 'Sexual harassment'; Section 8, 12, 29,

Criminal Trial/Child evidence, reliability of. Statement of child, appreciation of, how to be done – Scope of,

PW-1 in evidence (9 year old girl) stated that when she was sleeping, accused removed her pant and her jatti and touched her vagina – statement by PW-1 to mother, PW-2 – PW-1 told PW-2 that accused removed her pant alone, relevant under Section 6 – Contradiction between two versions effect of.

Section 7 – Ingredients, what are – there should have been a sexual intent on the part of an accused – criminal intent can be presumed by this Court – Act of accused does not fall within sexual assault – Basic ingredients of Section 7 not established presumption under Section 29 cannot be drawn.

Expression, “making the child to exhibit her body” in Section 11(ii) would include removing dress of the child so as to get the body of the child exposed – Act of the accused removing the pant of PW-1 fall within “sexual harassment”, liable to be punished under Section 12.

2015-2- LW. (Crl.) 116

R. Sasidaran @ Sasi

vs.

The State rep by The Inspector of Police

Date of Judgment : 11.06.2015

Prevention of Corruption Act (1988), Section 7, 13(2) r/w Section 13(1)(d).

Absence of evidence that appellant had demanded bribe, received same and handed over currency notes to the second accused – Absence of recovery currency notes either from the appellant (First accused) or from the second accused – Phenolphthalein test cannot be treated as substantive evidence so as to come to the irresistible conclusion that the appellant demanded illegal gratification and accepted the same.

(2015) 3 MLJ (Crl) 274

Ravishankar

vs.

Sasikanth

Date of Judgment : 08.06.2015

Negotiable Instruments – Dishonor of Cheque – Presumption – Negotiable Instruments Act (Act), Section 118 and 138 – Liability of accused/revision petitioner arose through purchase of yarn from Respondent/complainant

– Cheque issued by accused was dishonoured – Respondent filed private complaint under Section 138 of Act against accused – Trial court found accused guilty of offence under Section 138 of Act – Appeal against conviction was dismissed – Accused is now before court in revision – Whether presumption as contemplated under Section 118 read with Section 138 of Act has been proved – Held, under Section 138 of Act, for purpose of drawing presumption as contemplated under Section 118 read with Section 138 of Act, burden lies on complainant to prove guilt of accused – To substantiate complaint, complainant proved ledger book which has entries relating to transaction – Accused also did not dispute signature in cheque by sending reply to statutory notice sent by complainant – Complainant has discharged their initial burden and it is accused who did not disprove complainant given by complainant – Revision dismissed.

(2015) 3 MLJ (Crl) 292

N. Balasubramanian  
vs.  
Inspector of Police

Date of Judgment : 12.06.2015

Discharge – Discharge Petition – Proceedings – Quashing of - Indian Penal Code, 1860 (Code 1860), Sections 120(b), 420, 467, 468 and 471 – Prevention of Corruption Act, 1988 (Act 1988), Sections 7, 13(1)(d) and 13(2) – Respondent filed charge sheet against accused Nos.1 to 9 for offences under Section 120(b) read with Sections 420, 467, 468 and 471 of Code 1860 and Sections 7 and 13(2) read with Section 13(1)(d) of Act 1988 – Petitioners/accused Nos.2, 3, 6 and 9 filed petitions for discharge and also for quashing of proceedings – Whether Petitioners could be discharged from criminal case filed against them – Whether proceedings initiated against Petitioners could be quashed – Held, prosecution proceeded on basis that with connivance and in conspiracy with Customs officials, seal affixed on refund claims which were received later – Tribunal proceeded on basis that seals genuine and there was clear rubber stamp and no allegation that seal not genuine nor seals affixed by accused on their own – As seals genuine, it was concluded that application filed within period of limitation – Tribunal did not go into allegation of forgery – Supreme Court also did not go into disputed question of fact as to forgery of seal – But, held that finding of fact arrived by Tribunal that applications for refund of duty filed within period of limitation calls for no interference – Since question as to whether seal in question forged was left open by Supreme Court, not open to Petitioners to contend that Supreme Court upheld finding of Tribunal that applications filed within period of limitation and seal ought to have been affixed on date on which it was filed – Such aspects properly considered by Lower Court, while dismissing applications for discharge – No material found to interfere with finding of Lower Court – Having regard to pendency of cases at instance of accused, trial not delayed by prosecution – No question of prejudice caused to accused by reason of delay and accused to be blamed for delay and prosecution cannot be quashed on that ground – Petitions dismissed.

(2015) 3 MLJ (Crl) 311

Hemalatha  
vs.  
State rep. by the Inspector of Police

Date of Judgment : 10.06.2015

Impleadment of parties – Impleadment of Accused – Power to Proceed – Code of Criminal Procedure, 1973 (Code 1973), Section 319 – Indian Penal Code, 1860 (Code 1860), Sections 406, 498(A) and 506(ii) – Dowry Prohibition Act (Act), Section 4 – Based on complaint by defacto complainant, Respondent/police registered case and filed charge sheet under Sections 498(A), 406 and 506(ii) of Code 1860 and Section 4 of Act, same taken cognizance by Magistrate – During trial, complainant deposed that Petitioners/in-laws of complainant also committed offences of harassment by demanding dowry and criminal intimidation to her – Based on such deposition, Respondent filed petition under Section 319 of Code 1973 before Lower Court seeking to implead Petitioners also as accused, same allowed – Revision – Whether Petitioners could also be impleaded as accused - Held, power under Section 319 of Code 1973 is extraordinary power which is required to be exercised sparingly and if compelling reasons exist for taking cognizance against persons against whom action not taken, power under Section 319 of Code 1973 can be exercised – Facts show that Petitioners are in-laws and they are in no way

connected with accused – Evidence of PW-1 not properly appreciated by Lower Court – Perusal of records shows that involvement of in-laws in case not proved by PW-1 – In absence of specific overt act against Petitioners, not proper to implead them merely because their name find place in FIR - Though names of Petitioners find place in FIR, subsequently, their names dropped out after due investigation and such vital points not considered by Lower Court - Inclusion of Petitioners is not fair, reasonable and correct – Order by Magistrate set aside – Revision allowed.

(2015) 3 MLJ (Crl) 331

K. Ranganathan

vs.

Commissioner, Erode City

Date of Judgment : 24.06.2015

Criminal Procedure – Registration of Births and Deaths – Return of Petition – Registration of Births and Deaths Act, 1969 (Act 1969), Section 13(3) – Hindu Adoptions and Maintenance Act, 1956 (Act 1956), Sections 12 and 16 – Petitioner filed petition before Magistrate for change of name of parents of adopted child – Magistrate returned petition directing petitioner to approach concerned Court – Challenging returns made by Judicial Magistrate, current petition filed – Whether Magistrate was right in rejecting petition for issue of second birth certificate to petitioner’s adopted daughter – Held, Act, 1969 only provides for registration of date of birth and also provides for procedure to alter date of birth, if any error is noticed – Act 1969 does not contemplate registration of names of parents of new born – If any alteration other than date of birth is required to be done in statutory register, parties cannot approach Magistrate under Section 13(3) of Act 1969, but can only file a civil Suit – Name of biological parents in Births and Deaths Register should not be changed, just because child has been given in adoption – Petitioner can issue private notification in Gazette about change of initials for adopted child – Authorities have to follow mandates of Section 12 of Act 1956 and name of parents in records should be that of adoptive parents – Petition closed.

(2015) 3 MLJ (Crl) 406

Durai

vs.

State by IP, Krishnagiri Taluk

Date of Judgment : 18.06.2015

Rash Driving – Causing Death by Negligence – Indian Penal Code, 1860, Section 279, 304A and 337 – Petitioner/bus driver, due to rash and negligent driving, hit bullet from behind and in that impact, driver of bullet and pillion riders succumbed to injuries sustained by them – Case registered against Petitioner under Sections 279, 337 and 304A – Trial Court convicted Petitioner under Sections 279 and 304A – But, Petitioner not convicted under Section 337 – Petitioner unsuccessfully assailed judgment of conviction by Trial Court by filing appeal – Revision – Whether Lower Courts right in holding that Petitioner drove bus in rash and negligent manner and remained as cause for accident – Held, judgments of Lower courts show that PW19/eye witness stated that Petitioner drove vehicle by speaking to passengers, same not warranted – Further, to establish his case that he was not driver at that point of time, Petitioner did not even produce trip sheet – If same produced, it would have enabled Lower Courts to conclude that Petitioner did not drive alleged vehicle – PW18/Motor Vehicle inspector stated that no mechanical defect in bus at time of accident, same would show that accident took place only because of speed at which bus driven by Petitioner, same resulted in death of innocent persons – Lower Courts right in concluding that Petitioner solely responsible for accident and no reason found to interfere with same – Trial Court directed to take steps to secure presence of Petitioner to undergo remaining sentence – Revision dismissed.

**(2015) 3 MLJ (Crl) 429**

**K.Muthu Mariappan**

**vs.**

**State rep. by the Inspector of Police**

**Date of Judgment : 12.06.2015**

**Criminal Laws – Sexual Assault – Kidnapping – Sentence – Indian Penal Code, 1860 (Code 1860), Sections 363 and 366(A) – Protection of Children from Sexual Offences Act, 2012 (Act 2012), Sections 4, 5 and 6 – Appellant charged for offences punishable under Sections 366(A) of Code 1860 and Section 4, 6 r/w Section 5(1) of Act, 2012 – Trial Court convicted appellant under Section 366(A) of Code 1860 and Section 4 of Act, 2012 – Sentences ordered to run concurrently – Against conviction and sentence, appellant has come up with Criminal Appeal – Whether conviction of appellant for offences under Code 1860 and Act 2012 is right and if sentence imposed ought to be reduced – Held, plain reading of Section 366(A) of Code 1860 would make it clear that person kidnapping and person with whom minor girl is forced or seduced to have sexual intercourse should be two different persons – Therefore, conviction of appellant under Section 366(A) of Code 1860 is not sustainable and instead, liable to be punished only under Section 363 of Code 1860 – Prosecution has proved that accused had sexual intercourse with PW-2, repeatedly – Thus, accused has committed offence of aggravated penetrative sexual assault, as defined in Section 6 r/w Section 5(1) of Act 2012 – Trial Court has, however, not convicted accused under Section 5(1) and instead convicted appellant under Section 4 of Act 2012 – In absence of any appeal by State, Court cannot convert conviction into one under Section 6 r/w Section 5(1) of Act 2012 – Accused was hardly aged about 23 years at time of occurrence – It is not brought to notice that after occurrence, accused has committed any other offence – There is likelihood of his reformation – Section 4 of Act 2012 prescribes minimum punishment for term of seven years with fine – When intention of Legislature is to impose stringent punishment for not less than seven years, Court has got no option, except to impose minimum punishment – Trial Court has imposed rigorous imprisonment for ten years, same needs to be reduced to rigorous imprisonment for seven years – Appeal partly allowed.**

**(2015) 3 MLJ (Crl) 487**

**G. Narayanasamy**

**vs.**

**State rep. by Inspector of Police, AWPS**

**Date of Judgment : 23.06.2015**

**Cruelty to Woman – Indian Penal Code, 1860 (Code 1860), Section 498A – Dowry Prohibition Act (Act), Section 4 – After trial, Trial Court convicted Petitioner/accused No.1 under Section 498A of Code 1860 and also under Section 4 of Act, while acquitting accused Nos.2 to 5 – On appeal, judgment by Trial Court confirmed – Revision – Whether ingredients of Section 498A of Code 1860 made out in complaint and established by prosecution beyond reasonable doubt during course of trial – Held, PW-1 sent back to her parents' house within 10 months of marriage and even during such short stay, Petitioner made her to write letter to effect that even if she dies, it cannot be attributed against family of accused – Further, for non-fulfilment of dowry, PW-1 restrained to visit her parents' house and parents of PW-1 also restrained to visit PW-1 in matrimonial home – Invitation extended by PWs 2 and 3 to family of accused to visit their house for commemoration of specific festivals not accepted due to non-payment of money by PWs 2 and 3 for purchase of motor bike – Prosecution proved beyond reasonable doubt that ingredients of Section 498A of Code 1860 attracted against Petitioner – When evidence looms large against Petitioner, judgment of conviction by Lower Courts are on basis of evidence and no reason found to interfere with it – Orders by Lower Courts confirmed – Trial Court directed to take steps to secure presence of Petitioner to undergo remaining period of sentence – Revision dismissed.**



**(2015) 3 MLJ (CrI) 500**

**Govindasamy**

**vs.**

**State rep. by the Inspector of Police**

**Date of Judgment : 29.06.2015**

**Criminal Laws – Seizure of Contraband – Penalties – Confiscation by Forest Officer – Tamil Nadu Forest Act, 1982 (Act 1982), Sections 21(d), 21(e), 21(f), 36(A), 36(E), 41(3) and 49(A) – Probation of Offenders Act (Act) – Petitioner/accused tried under sections 21(d), 21(e), 21(f), 36(A) and 36(E) of Act 1982 – After trial, Petitioner convicted under Sections 36(A) and 36(E) of Act 1982 – But, acquitted of offence under Sections 21(d), 21(e) and 21(f) of Act 1982 – Conviction and sentence passed against Petitioner confirmed on appeal – Present revision with allegation that if judgments of conviction by Lower Courts need no interference, still he can be released by extending provisions of Act, as his involvement in present case is first of its kind and he exhibits exemplary behavior and character – Whether conviction and sentence passed against Petitioner under Sections 36(A) and 36(E) of Act 1982 justified – Whether Petitioner can be released by extending provisions of Act – Held, in compliance with Section 49(A) of Act 1982, seized goods produced before Authorized Officer by Respondent – Further, as required under Section 41(3) of Act 1982, seized goods marked and numbers assigned – Respondent also prepared form “H” and “form 95” and produced it before Trial Court to prove seizure of goods – Seizure of goods and consequential procedures followed by Respondent proper and valid – Non-production of goods by Respondent before Trial Court will not vitiate case put forward by prosecution – Provisions of Act cannot be invoked as matter of course, but discretion vested with Courts to extend provisions of Act having regard to facts and circumstances of that case – Having regard to facts on record and quantum of seized goods, provisions of Act cannot be extended to Petitioner – Conviction and sentence imposed on Petitioner confirmed – Petition dismissed.**

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