

**Vol -X  
Part-II**

**FEBRUARY, 2015**

# **IMPORTANT CASE LAWS**

*Compiled by*

**Tamil Nadu State Judicial Academy  
Chennai – 600 028**



# INDEX

S. NO.	IMPORTANT CASE LAWS	PAGE NO.
1	Supreme Court - Civil Cases	01
2	Supreme Court - Criminal Cases	04
3	High Court - Civil Cases	07
4	High Court - Criminal Cases	12

# TABLE OF CASES WITH CITATION

## SUPREME COURT - CIVIL CASES

SL. NO.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE NO.
1	Sri Gangai Vinayagar Temple and another vs. Meenakshi Ammal and others	2015 -1- L.W. 1	09.10.2014	Res judicata – Estoppel – Suit for injunction	01
2	Rathnavathi and another vs. Kavita Ganashamdas	2015 -1- L.W. 24	29.10.2014	Bar of suit – Order 2 Rule 2 – Suit for Specific Performance	01
3	Sameer Singh and another vs. Abdul Rab and others	2015 -1- L.W. 280	14.10.2014	Execution – Order 21 Rules 91 to 103	02
4	Sunil vs. Sakshi	(2015) 1 MLJ 621 (SC)	14.01.2015	Hindu Law – Dissolution of marriage	02
5	Phool Patti vs. Ram Singh	(2015) 1 MLJ 831 (SC)	06.01.2015	Registration – Gift Deed – Family Settlement – Compulsory Registration of	03

## **SUPREME COURT - CRIMINAL CASES**

<b>SL. NO.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>PAGE NO.</b>
1	Darga Ram vs. State of Rajasthan	(2015) 1 MLJ (Crl) 224 (SC)	08.01.2015	Murder – Rape – Circumstantial evidence – Juvenile delinquent – Benefit of	04
2	Vinod Kumar vs. State of Punjab	(2015) 1 MLJ (Crl) 288 (SC)	21.01.2015	Prevention of Corruption – Illegal Gratification – Presumption	04
3	Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao Phalke	(2015) 1 MLJ (Crl) 308 (SC)	16.01.2015	Criminal Procedure- Rejection of Closure Report – Legality of	05
4	Banarsi Dass vs. State of Haryana	(2015) 1 MLJ (Crl) 339 (SC)	18.12.2014	Dowry Death – Cruelty – Dying Declaration	05
5	Inder Singh vs. State of Rajasthan	(2015) 1 MLJ (Crl) 349 (SC)	06.01.2015	Murder – Attempt to Murder – Unlawful Assembly	06

## HIGH COURT - CIVIL CASES

SL. NO.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE NO.
1	Madura Coats Pvt. Ltd vs. Tirunelveli Dist. Co-op. Milk Producers Union Ltd.	(2015) 1 MLJ 298	07.11.2014	Cooperative Societies – Principal and Agent Relationship – Barred by limitation	07
2	Ramaswamy Gounder vs. Palanichamy Gounder	2015 (1) CTC 353	12.12.2014	Suit for Specific Performance - Appreciation of evidence – Proved – Section 3 of Evidence Act	07
3	C.R. Umapathy vs. D. Sathyanarayana Chettiar	2015 (1) CTC 398	07.11.2014	Suit for Declaration and Permanent Injunction – Relief of Possession to be added vide amendment - Mutually destructive pleas	08
4	Christudas vs. Carolin Boby	2015 (1) CTC 411	21.11.2014	Application for Withdrawal of Suit – By pendent lite purchaser - Validity of – Suit for Partition	08
5	The Idol of Sri Renganathaswamy, Srengam vs. M. Pandian	2015 (1) CTC 429	01.12.2014	Trust – Nature and object of - validity of sale of Trust Property - Necessary parties to Litigation pertaining to Trust	09
6	V. Baby vs. Sekar	(2015) 1 MLJ 443	02.12.2014	Civil Procedure – Affidavit – Cross-Examination of Deponent – Power of Court	09
7	Mohammad Farook vs. Kanniga	(2015) 1 MLJ 448	06.11.2014	Civil Procedure – Appointment of New Advocate Commissioner – Scrapping of Old Reports – Measurement of Properties	10
8	M. Gopinathan Pillai vs. K. Radhakrishnan	(2015) 1 MLJ 451	14.10.2014	Civil Procedure – Obstruction Petition by Third Party – Validity of – Order 21 Rule 97	10
9	A. Arokyadoss vs. V. Radhakrishnan and others	2014 -5- L.W. 844	03.12.2014	Hindu Law/Joint family property, Co-parcenary - Kartha - Alienation	10
10	United India Insurance Co. Ltd. vs. N.V. Shyamala	2014 (2) TN MAC 865	30.10.2014	Liability of Insurer – Violation of condition of policy – Burden of proof	11

## **HIGH COURT - CRIMINAL CASES**

<b>SL. NO.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>PAGE NO.</b>
1	N. Dhamodharan vs. B. Usha	(2015) 1 MLJ (Cri) 136	27.10.2014	Criminal Procedure – Appointment of Commission – Cross-examination of witness	12
2	Dharani Sugar Mills Unit-II vs. T.V. Malai Dist. F.P. Sangam	(2015) 1 MLJ (Cri) 138	30.10.2014	Criminal complaint – Quashing of – Criminal breach of trust	12
3	M. Selvam vs. Superintendent of Police, Madurai District	(2015) 1 MLJ (Cri) 142	05.11.2014	Warrant – Non-Bailable warrant – Cheque Bounce – S.41 Cr.P.C.	12
4	State represented by The Inspector of Police vs. Senthil	(2015) 1 MLJ (Cri) 159	31.10.2014	Murder – previous enmity – Appeal against acquittal	13
5	R. Dineshkumar vs. State	(2015) 1 MLJ (Cri) 166	13.11.2014	Summon – Prosecution witness – Tender of pardon – Accomplice	13
6	T. Sulochana vs. Inspector of Police	(2015) 1 MLJ (Cri) 265	28.11.2014	Investigation – Re-open of investigation – Negligence – Compensation	14
7	MedMeme, LLC vs. iHorse BPO Solutions Pvt Ltd.	(2015) 1 MLJ (Cri) 269	11.11.2014	Criminal complaint – Criminal Procedure – Bar on prosecution – Arbitration clause	14
8	Mohammed Kasim vs. K. Rayappan	(2015) 1 MLJ (Cri) 318	13.01.2015	Trial – Joint Trial – Dishonour of Cheque cases – Separate complaints	15
9	K. Ragupathi vs. State	(2015) 1 MLJ (Cri) 324	18.12.2014	Outrage of modesty – Prosecution – Investigation – Validity of – Charge – Vitiating of proceedings	15
10	K. Anandan vs. K. Manoharan	(2015) 1 MLJ (Cri) 332	17.12.2014	Criminal proceedings – Remand – Power of – Ss.167 and 309 Cr.P.C.	16





## SUPREME COURT CITATIONS CIVIL CASES

2015 -1- L.W. 1

Sri Gangai Vinayagar Temple and another

vs.

Meenakshi Ammal and others

Date of Judgment : 09.10.2014

C.P.C., Section 11/Res judicata, when applies, appeal against common decree, preferring of, need for, suit for Injunction, Title, scope;

Order 14, preliminary issue, framing of, by Court, Order 2, Rule 2 bar of suit, applicability of, when arises,

Evidence Act, Section 116/Estoppel, landlord/tenant relationship, Injunction, suit for, Title, Scope, plea of Res Judicata, applicability.

Reference in 2010-2-L.W.290 answered, Res judicata, when, how arises – 3 suits filed for varying reliefs, they were decided by a common judgment – Two were dismissed, one was partially allowed – common issues had been framed, common trial conducted, common evidence was recorded, a common judgment was rendered.

Whether filing of an appeal against a common Judgment in one case, tantamount to filing an appeal in all the matters.

held: suit in which common issues have been framed and a common trial, conducted, losing party must file appeals in respect of all adverse decrees founded even on partially adverse or contrary speaking judgments – Decree not assailed thereupon metamorphoses into the character of a ‘former suit’ – Where a common judgment has been delivered in cases in which consolidation orders have specifically been passed, filing of a single appeal leads to the entire dispute becoming subjudice once again consolidation orders are passed by virtue of inherent powers on courts by Section 151 of CPC.

Having avoided filing appeals against the decree in 2 suits the cause of the respondents was permanently sealed and foreclosed since res judicata applied against them.

An appeal ought to have been filed by tenant in respect of O.S. 5/78 which was dismissed, for fear of inviting the rigours of res judicata as also for correcting the ‘dismissal’ order – Tenant had been completely non-suited once it was held that no cause of action had arisen in its favour and the suit was dismissed.

2015 -1- L.W. 24

Rathnavathi and another

vs.

Kavita Ganashamdas

Date of Judgment : 29.10.2014

C.P.C., Order 2, Rule 2, bar when applies, cause of action, effect of, pleadings, specific performance, Injunction, suit for, scope,

Specific Relief Act (1963), Section 16 ‘Ready and willing’; suit for specific performance, Injunction, bar of suit, whether applies,

Limitation Act (1963), Article 54, Specific performance, date not fixed for performance, effect of,

Specific Performance/suit for Injunction, specific performance, bar when applies.

Suit for permanent injunction was based on a threat given to dispossess, cause of action for specific performance of agreement was based on non performance of agreement – Suit whether barred – No – Plea of order 2 Rule 2 – Distinction in cause of action – Effect of – when can be raised – Defendant of second suit to show it was also in respect of the same cause of action as that on which the previous suit was based.

Because pleadings of both suits similar, it did not give any right to raise the plea – Cause of action material to determine bar under O.2 R.2 and not pleadings.

Article 54 – Suit for specific performance, Limitation – If date is fixed for performance of the agreement, then non-compliance give a cause of action – when no such date is fixed, limitation would begin when plaintiff has noticed defendant has refused performance of agreement – starting point of refusal to perform agreement, effect of.

No date was fixed in the sale agreement for its performance – Case falls under 2<sup>nd</sup> category of Article 54 – Suit filed within limitation.

Owner of suit house and subsequent purchaser directed to execute sale deed jointly in favour of plaintiff – A direction of this nature is permissible.

2015 -1- L.W. 280

Sameer Singh and another

vs.

Abdul Rab and others

Date of Judgment : 14.10.2014

Constitution of India, Article 227, maintainability, challenge to execution, jurisdiction, exercise of, refusal, effect.

C.P.C., Order 21, Rules 97 to 103.

Challenge to execution – order of Executing Court stating it had no jurisdiction to reopen matter regarding title, as it became functus officio - challenge to said order under Article 227 whether maintainable – High court held it was deemed decree and appeal was maintainable and not revision.

held: If an executing court only expresses its inability to adjudicate by stating that it lacks jurisdiction, then the status of the order has to be different – In the instant case the executing court has expressed an opinion that it has become functus officio, it cannot initiate or launch any enquiry – High Court has fallen into error by opining that the decision rendered by the executing court is a decree and an appeal should have been filed – If a Court declines to adjudicate on the ground that it does not have jurisdiction, the said order cannot earn the status of a decree.

(2015) 1 MLJ 621 (SC)

Sunil

vs.

Sakshi

Date of Judgment : 14.01.2015

Hindu Law – Dissolution of marriage – Setting aside of - Validity of – Hindu Marriage Act, 1955, Section 13(1)(i-a) and (i-b) – Appellant/husband filed petition for dissolution of marriage – Family Court dissolved marriage – In appeal, 1<sup>st</sup> Respondent/wife alleged that husband obtained decree of divorce by playing fraud on Family Court – In view of doubt regarding filing of Vakalatnama, High Court set aside decree – Appeal – Whether High Court justified in setting aside judgment and decree of Family Court – Held, no question whether Appellant/husband played fraud on Family Court and obtained decree of dissolution of marriage framed by High Court – High Court failed to notice that case involves disputed question of fact which cannot be decided without framing proper issue and in absence of evidence – High Court presumed that 1<sup>st</sup> Respondent/wife never appeared before Family Court – High Court failed to notice order of Family Court which recorded presence of 1<sup>st</sup> Respondent/wife – It cannot be presumed that Family Court wrongly noted presence of 1<sup>st</sup> Respondent/wife – Merely because print out of case papers of both parties taken from same computer software, it cannot be presumed that blank Vakalatnama signed by 1<sup>st</sup> Respondent/wife misused by Appellant/husband or he played fraud – Impugned judgment set aside – Appeal allowed.

(2015) 1 MLJ 831 (SC)

Phool patti  
vs.  
Ram Singh

Date of Judgment : 06.01.2015

Registration – Gift Deed – Family Settlement – Compulsory Registration of – Registration Act, 1908 (Act 1908), Sections 17(1)(a) and 17(2)(vi) – First suit by 1<sup>st</sup> Respondent praying for declaration that he was owner of disputed property decreed – Third party individual along with Appellants filed second suit alleging that Appellants' father could not gift disputed property depriving his legal heirs – Trial Court held that consent decree in first suit was collusive, same illegal and void – On appeal, First Appellate Court held that third party individual had no locus standi and Appellants also could not challenge validity of gift, since no pleading and issues raised in that regard – On second appeal, High Court held that Appellants' father gifted disputed property to 1<sup>st</sup> Respondent with his own free will – Appeal – Whether disputed property of Appellants' father gifted to 1<sup>st</sup> Respondent requires compulsory registration under Act 1908 – Held, evidence of Appellants' father shows that entire disputed property was not ancestral, but some portions purchased by him, while others were ancestral – Appellants' father entitled to gift his self-acquired property to 1<sup>st</sup> Respondent – Regarding ancestral property, Appellants' father accepted existence of family settlement and in terms of same, ancestral property came to 1<sup>st</sup> Respondent's share – Statement of Appellants' father explains that he gave both self-acquired and ancestral properties to 1<sup>st</sup> Respondent under his free will – Self-acquired property gifted to 1<sup>st</sup> Respondent requires compulsory registration under Section 17(1)(a) of Act 1908 – 1<sup>st</sup> Respondent's claim over ancestral property acknowledged in consent decree did not require registration under Section 17(2)(vi) of Act 1908 – Too late to question validity of gift by Appellants for first time without foundation – Appeal partly allowed.

\*\*\*\*\*

## SUPREME COURT CITATIONS CRIMINAL CASES

(2015) 1 MLJ (Crl) 224 (SC)

Darga Ram @ Gunga

vs.

State of Rajasthan

Date of Judgment : 08.01.2015

- A. Murder – Rape – Circumstantial evidences – Indian Penal Code, 1860, Sections 302 and 376 – Allegation that Appellant raped and killed deceased by crushing head with stone – Conviction and sentence, affirmed by High Court – Appeal – Whether conviction of Appellant was justified in view of circumstantial evidences – Held, FSL report found trouser and shirt of Appellant to be stained with human blood belonging to group ‘A’ which happened to be blood group of deceased also – Stone used for crushing head of deceased found to be smeared with human blood of group ‘A’ – Appellant suffered multiple injuries on private parts – No explanation offered by Appellant for injuries sustained – Appellant made disclosure statement leading to recovery of blood stained clothes – Circumstances form complete chain and lead to irresistible conclusion that Appellant responsible for offence of rape and murder – Conviction affirmed but sentence set aside since juvenile – Appeal allowed in part.
- B. Criminal Laws – Juvenile delinquent – Benefit of – Juvenile Justice (Care and Protection of Children) Act, 2000 – Juvenile Justice (Care and Protection of Children) Rules, 2007, Rule 12(3) (b) – Whether Appellant was juvenile at relevant time to get benefit under Juvenile Justice (Care and Protection of Children) Act, 2000 – Held, Medical Board opined that Appellant’s age in range of 30 to 36 years and determined age to be “about” 33 years on date of examination – In terms of Rule 12 (3) (b), Appellant entitled to benefit of fixing age on lower side within margin of one year – If estimated age determined by Medical Board taken as correct/true age, Appellant was just about 17 years and 2 months old on date of occurrence – Appellant juvenile as on date of occurrence – Sentence set aside.

(2015) 1 MLJ (Crl) 288 (SC)

Vinod Kumar

vs.

State of Punjab

Date of Judgment : 21.01.2015

- A. Prevention of Corruption – Illegal Gratification – Presumption – Prevention of Corruption Act, 1988, Sections 7, 13(2) and 20 – Appellant/accused charged under Sections 7 and 13(2) – Trial Court convicted Appellant under Sections 7 and 13(2) by applying principle of presumption as engrafted under Section 20 – On appeal, High Court affirmed conviction passed by Trial Court, but reduced sentence – Whether conviction as recorded by Trial Judge and as affirmed by High Court justified – Held, PW-8/raiding party sent report to police station and carried formal investigation and noth-

ing put to him to elicit that he was personally interested to get Appellant convicted – Mere recovery of tainted money not sufficient to record conviction unless evidence to prove that bribe demanded or money paid voluntarily as bribe – PW-6 supported recovery in entirety and remained unshaken in cross-examination and nothing elicited to dislodge his testimony – Testimony of hostile witness can be relied upon by prosecution and defence – Evidence on record shows that evidence of PW-7 cannot be brushed aside, since delay in cross-examination resulted in his prevarication from examination-in-chief – But, examination-in-chief and re-examination of PW-7 can be accepted, as he witnessed about demand and acceptance of money by accused – Evidence of PW-6 and PW-7 got corroboration from PW-8 – Factum of presumption and testimony of PW-6 and 7 show that prosecution proved demand, acceptance and recovery of amount – Trial Judge and High Court appositely concluded that charges against accused duly proven – Appeal dismissed.

- B. Adjourments – Examination of Witnesses – Code of Criminal Procedure, 1973 (Code 1973), Section 309 – Prevention of Corruption Act, 1988 (Act 1988), Sections 7 and 13(2) – Allegation of laxity in granting longer period for cross-examination by Trial Courts in case charged for commission of offence under Sections 7 and 13(2) of Act 1988 – Whether Trial Courts justified in granting longer period for cross-examination in case charged for commission of offence under Sections 7 and 13(2) of Act 1988 – Held, adjourments sought on drop of hat by counsel, though witness present in Court, same contrary to principles of holding trial – Law requires special reasons to be recorded for grant of time but same not taken note of – Facts on record show that after examination-in-chief of witness over, adjournment sought for cross-examination and Trial Courts grant time – Also, show that cross-examination took place after year and 8 month allowing ample time to pressurize witness and to gain over him by adopting tactics – If accused for his benefit takes trial on path of total mockery, it cannot be countenanced – Court has sacred duty to see that trial conducted as per law – If adjourments granted with so much time, same would tantamount to violation of rule of law and eventually turn such trials to farce – If examination-in-chief over, cross-examination should be completed on same day and if examination of witness continues till late hours, trial can be adjourned to next day for cross-examination and cross-examination should not be deferred for such long time.

(2015) 1 MLJ (Crl) 308 (SC)

Sanjaysinh Ramrao Chavan

vs.

Dattatray Gulabrao Phalke

Date of Judgment : 16.01.2015

Criminal Procedure- Rejection of Closure Report – Legality of - Revisional Jurisdiction – Code of Criminal Procedure, 1973, Section 173(2) – Prevention of Corruption Act, 1988, Sections 7, 12, 13(1)(d) read with 13(2) – Appellant is accused no.1 in complaint lodged against receipt of bribe – Investigating Officer submitted closure report, accepted by Magistrate – In revision, High Court set aside order – Appeal – Whether High Court justified in setting aside closure report in revisional jurisdiction merely because another view may be possible, once Magistrate of competent jurisdiction, on proper application of mind, decides to accept closure report – Whether High Court within jurisdiction to direct investigating officer to request for sanction for prosecution – Held, Magistrate went through entire records including report filed by police and passed reasoned order holding not fit case to take cognizance – Unless order passed by Magistrate perverse or unreasonable or non-consideration of any relevant material or palpable misreading of records, revisional court not justified in setting aside order, merely because another view possible – Revisional court not meant to act as appellate court – Once legal requirements to constitute alleged offence qua one of accused lacking, no point in taking cognizance – Once prosecution of view that no case made out to prosecute, unless court finds otherwise, no point in making request for sanction for prosecution – If prosecution simply vexatious, sanction for prosecution not to be granted – High Court exceeded in jurisdiction in substituting its views – Impugned order set aside – Appeal allowed.

**(2015) 1 MLJ (CrI) 339 (SC)**

**Banarsi Dass  
vs.  
State of Haryana**

**Date of Judgment : 18.12.2014**

**Dowry Death – Cruelty – Dying Declaration – Indian Penal Code, 1860 (Code 1860), Sections 304B and 498A – Indian Evidence Act, 1872 (Act 1872), Section 32(1) – Appellants/accused convicted under Section 498A of Code 1860, but acquitted under Section 304B of Code 1860 – On appeal, convicted under Section 304B of Code 1860 also – Whether conviction of Appellants under Sections 304B and 498A of Code 1860 justified – Held, medical evidence shows that death not due to burns, but due to septicemia – Dying declaration does not show cause of death or circumstances of transaction resulted in death of declarant, same does not meet requirements of dying declaration under Section 32(1) of Act 1872 – Evidence also shows that ingredients in Section 304 B of Code 1860 not attracted – Approach of Trial Court proper and reasonable – High Court not justified in reversing acquittal under Section 304B of Code 1860 on mere possibility of another view – Trial Court’s order shows that conviction under Section 498A of Code 1860 was due to incident on particular date, but same compromised and proceedings dropped – No evidence as to cruelty, but harassment of deceased by 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Appellants established – No evidence as to harassment by 4<sup>th</sup> Appellant – 4<sup>th</sup> Appellant liable to be acquitted under Section 498A of code 1860 – Conviction of Appellants under Section 304B of Code 1860 set aside – Conviction of 4<sup>th</sup> Appellant under Section 498A of Code 1860 set aside, but conviction of other Appellants maintained – Appeal against 1<sup>st</sup> and 5<sup>th</sup> Appellants abated, since they are no more – Sentence of 2<sup>nd</sup> and 3<sup>rd</sup> Appellants limited to period already undergone – Appellants liable to pay compensation to parents of deceased for treatment undergone by deceased – Appeals allowed.**

**(2015) 1 MLJ (CrI) 349 (SC)**

**Inder Singh  
vs.  
State of Rajasthan**

**Date of Judgment : 06.01.2015**

**Murder – Attempt to Murder – Unlawful Assembly – Indian Penal Code, 1860, Sections 302, 307 and 149 – Appellants/accused convicted under Sections 302, 307 and 149 – Appeals by accused dismissed leading to confirmation of their conviction and sentence – Appeals – Whether Lower Courts rightly applied Section 149 against accused for convicting them for death of deceased and for murderous assault on PW-15/informant – Held, since accused in large number caused deaths in open field in presence of large number, independent witnesses from village did not prefer to support prosecution, but same will not take away worth of deposition of eye witnesses – Presence of informant critically injured in same occurrence cannot be doubted – Eye version account and medical evidence showing large number of injuries support each other – In absence of counter version and plea of self-defense, hazardous to presume at instance of defence that accused sustained injuries in course of same occurrence and at same place – Facts on record show that unlawful assembly carried out its common object of committing serious offence of murder of four persons and grievous injuries to informant – Lower Courts committed no error in applying Section 149 of Code 1860 and convicting members of unlawful assembly under Sections 302 and 307 – Conviction could be sustained only supported by two or more witnesses giving consistent account of incident in question – Since accused and eye witnesses are co-villagers, at least three witnesses should be in position to name individual accused to sustain his conviction - Since no clear and cogent evidence of three witnesses against accused no.9, accused no.18, accused no.20, accused no.27 and accused no.28, they were granted benefit of doubt and acquitted of charges – Remaining accused shall be taken into custody to serve out remaining sentence – Appeals by accused no.9, accused no.18, accused no.20, accused no.27 and accused no.28 allowed – Appeals by other accused dismissed.**

\*\*\*\*\*

## HIGH COURT CITATIONS CIVIL CASES

(2015) 1 MLJ 298

Madura Coats Pvt. Ltd

vs.

Tirunelveli District Co-op. Milk Producers Union Ltd.

Date of Judgment : 07.11.2014

Cooperative Societies – Principal and Agent Relationship – Barred by limitation – Tamil Nadu Co-operative Societies Act, 1983 (Act 1983), Section 90(9) – Limitation Act, 1963 (Act 1963), Article 15 – Respondent/Plaintiff instituted suit for recovery of balance price of milk supplied to Appellant/Defendant – Defendant resisted suit as barred by time – Trial Court held that Defendant liable to pay suit claim – Also, held that suit not barred by limitation, since dispute between parties as to existence of principal and agent relationship fell under Section 90(9) of Act 1983 – Appeal before First Appellate Court dismissed – Second Appeal – Whether Lower Courts erred in inferring principal and agent relationship between parties in absence of pleading to that effect – Whether Lower Courts erred in not dismissing suit as barred by limitation – Held, when Plaintiff either as principal or as third party sues agent personally, there must be pleading to that effect in plaint – Reading of plaint and exchange of notices between parties would show that business dealings and payment were only between Plaintiff and Defendant – Existence of principal and agent relationship between Plaintiff and Defendant not gauged from plaint pleadings – Consideration of application of Section 90 of Act 1983 would arise only, when case proceeded against Defendant as agent and since Plaintiff did not proceed on that basis, same because academic – In absence of plea for principal and agent relationship in plaint, both Lower Courts proceeded on wrong footing against settled position of law and recorded concurrent finding – Manifest error apparent on face of record, same to be interfered and corrected – Since suit filed beyond three years and fell under Article 15 of Act 1963, same barred by time – Lower Court's order set aside – Appeal allowed.

2015 (1) CTC 353

Ramaswamy Gounder

vs.

Palanichamy Gounder

Date of Judgment : 12.12.2014

Evidence Act, 1872 (1 of 1872), Section 3 – Proved – Appreciation of evidence – Vendor entered into Agreement to Sell with different persons – Suit filed by purchaser under First Agreement decreed and vendor executed Sale Deed and put purchaser in possession – Purchaser under Second Agreement filed Suit for Specific Performance impleading purchaser under First Agreement as 5<sup>th</sup> Defendant – Purchasee under Second Agreement had not produced any material to show that earlier Sale Agreement with 5<sup>th</sup> Defendant was not genuine or ante-dated, whereas 5<sup>th</sup> Defendant had examined Witnesses to prove his Sale Agreement as genuine – Plaintiff failed to prove his case – Judgment of Trial Court is based on possibilities and not on evidence – Suit dismissed – Letters Patent fails.

**2015 (1) CTC 398**

**C.R. Umapathy**

**vs.**

**D. Sathyanarayana Chettiar**

**Date of Judgment : 07.11.2014**

**Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 17 – Suit for Declaration and Permanent Injunction – Relief of Possession, whether to be added as additional relief – Plaintiff at time of filing of Suit aware that Suit property was sold to Defendant vide registered Sale Deed – Nonetheless, no prayer made in Suit for cancellation of Sale Deed or for relief of possession – Challenge to Sale Deeds, executed in 1998, in Suit filed in 2010, barred by limitation – Held, claims that would be barred by limitation, not permissible to be added as amended claims – Not established by Plaintiff that relief of Possession could not be claimed in spite of due diligence, before commencement of trial – Relief of Injunction and Possession, mutually opposite reliefs – In such circumstances, Order of Trial Court rejecting Application for amendment, upheld – Civil Revision Petition dismissed.**

**Jurisprudence – Mutually destructive pleas – Suit for Declaration and Injunction – Plea of Possession sought to be added vide amendment – Held, relief of Injunction and Possession destructive to each other – Plaintiff in same Suit cannot claim both reliefs.**

**2015 (1) CTC 411**

**Christudas**

**vs.**

**Carolin Boby**

**Date of Judgment : 21.11.2014**

**Code of Civil Procedure, 1908 ( 5 of 1908), Order 23, Rule 1 – Application for Withdrawal of Suit filed by pendent lite purchaser without consent of all Plaintiffs - Whether valid – Suit for Partition – P4 impleaded in Suit subsequently as Suit property was sold in his favour – Application filed by P4 for permission to withdraw Suit and file fresh Suit, allowed by Trial Court – Held, Order 23, Rule 1(5) mandating that consent of all parties to Suit to be taken before abandoning/withdrawing of Suit – No such consent taken by P4 in instant case – Alleged omissions in pleadings on part of P1 to P3 and not on part of P4 – P4, a pendent lite purchaser, held, not entitled to file Application for withdrawal of Suit – Order of Trial Court allowing Application, set aside – CRP allowed – Transfer of Property Act, 1882 (4 of 1882), Section 52.**

**Code of Civil Procedure, 1908 (5 of 1908), Order 6 ,rule 17 & Order 23, Rule 1 – Application for Withdrawal of Suit – Validity of – Suit for Partition – Application for Amendment of Plaint filed by P4/pendent lite purchaser to add details of Gift Deed in Plaint – Said Application dismissed by Trial Court – No Revision filed by P4 against said Order - Subsequently, Application for permission to withdraw Suit with liberty to file fresh Suit filed by P4 – Held, P4 not to file fresh Suit on same cause of action when there was no formal defect in Plaint - Dismissal of Application by Trial Court, upheld.**



2015 (1) CTC 429

The Idol of Sri Renganathaswamy, Sriengam  
vs.  
M. Pandian

Date of Judgment : 01.12.2014

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (T.N. Act 22 of 1959), Sections 6(17) & 34 – Indian Trust Act, 1882 (2 of 1882), Sections 1 & 34 – Trust – Nature and object of vis-à-vis validity of sale of Trust Property – Dharmaparipalanam Agreement executed and money provided for purchase of immovable property for purpose of performing charities out of income derived from said property – R1 herein sole surviving trustee of Trust – Sole object of Trust to perform charities in Petitioner-Temples – Right to alienate or encumber Trust Property not given to any person – Application filed by R1 under Section 34 of Indian Trust Act for sale of Trust Property, allowed by District Judge – Held, Religious endowment within the meaning of Section 6(17) created under the Dharmaparipalanam Agreement - Consequently, Indian Trusts Act not to have any application to said Trust by virtue of bar created under Section 1 of said Act – Application filed by R1 under Section 34 for sale of Trust Property, not maintainable and Order of District Judge allowing same, held, without jurisdiction – R1, held, ought to have obtained permission of Commissioner under HR & CE Act for sale of Trust Property – Attempt of R1 to overreach Authorities under HR & CE Act, deprecated - Order of District Judge allowing Application of R1, set aside – R1 directed to repay sale consideration to R2 – Civil Revision Petition allowed.

Law of Trust - Litigation pertaining to Trust – Necessary parties – Held, when Trust created with purpose of performing charities in connection with Temples, said Temples bound to be made party in Application filed by Trustee for sale of Trust property.

(2015) 1 MLJ 443

V. Baby  
vs.  
K. Radhakrishnan

Date of Judgment : 02.12.2014

Civil Procedure – Affidavit – Cross-Examination of Deponent – Power of Court – Code of Civil Procedure, 1908, Order 19, Rules 1 and – 2 – Petitioner/Plaintiff filed suit for permanent injunction restraining Respondents/ Defendants from disturbing his peaceful possession and enjoyment of suit property – Pending suit, Plaintiff filed application for temporary injunction – Defendants filed another application to direct Plaintiff to attend Court for cross-examination with allegation that affidavit filed in support of application for interim injunction to be construed as affidavit filed under Order 19 Rule 2 – Whether affidavit filed in support of application for interim injunction has to be construed as affidavit of deponent as contemplated under Order 19 Rule 2 – Held, affidavit referred to under Order 19 Rule 2 is not affidavit filed in support of application, but means only proof affidavit of witness produced by Plaintiff/Defendant in support of their respective claim – Affidavit filed in support of application is only statement of fact, same is not evidence – Applicant, if he chooses, has to prove such statement of fact by letting in evidence and such evidence may be by proof affidavit as contemplated under Order 19 rule 1 and 2 – Only when such proof affidavit filed, other side can seek for cross-examination of deponent of such proof affidavit and otherwise, it cannot be done – Decision in K. Raja Gopalan v. Gnanapandithan followed – Impugned order cannot be sustained, same set aside – Petition allowed.

(2015) 1 MLJ 448

Mohammed Farook

vs.

Kanniga

Date of Judgment : 06.11.2014

Civil Procedure – Appointment of New Advocate Commissioner – Scrapping of Old Reports – Measurement of Properties – In suit filed for removing staircase put up by Respondent/Defendant on Petitioner/Plaintiff's compound wall, Petitioner filed application for appointment of Advocate Commissioner to measure properties with help of Taluk Surveyor, same allowed – Advocate Commissioner and Taluk Surveyor submitted separate reports along with their plans – Due to conflicts in reports, Petitioner filed applications for scrapping old reports and for appointment of new Advocate Commissioner, same dismissed by District Munsif – Whether District Munsif order dismissing petitions filed for scrapping old reports and appointing new Advocate Commissioner can be sustained – Held, Commissioner's report reveals absence of meeting of mind of Advocate Commissioner and Taluk Surveyor – Advocate commissioner filed separate report treading charges of non-cooperation by Taluk Surveyor – In his separate report, Taluk Surveyor stated that disputed compound wall belongs to Respondent taking upon himself power of Court to decide main issue involved in suit – District Munsif could have scrapped old reports and either re-issued warrant to same Commissioner with specific directions or appointed new Commissioner with assistance of Taluk Surveyor – But, chose to make unnecessary observations – District Munsif order dismissing petition cannot be sustained, same liable to be set aside – Reports of Advocate Commissioners and Taluk Surveyor scrapped – Directions issued – Petitions allowed.

(2015) 1 MLJ 451

M. Gopinathan Pillai

vs.

K. Radhakrishnan

Date of Judgment : 14.10.2014

Civil Procedure – Obstruction Petition by Third Party – Validity of – Code of Civil Procedure, 1908, Order 21, Rule 97 – Petitioner/third party/agreement holder under 5<sup>th</sup> to 9<sup>th</sup> Respondents/judgment debtors challenged dismissal of his obstruction petition filed under Order 21 Rule 97 – Whether claim made by Petitioner rightly dismissed by Executing Court – Held, purchaser of suit property during pendency of litigation has no right to resist or obstruct execution of decree passed by competent Court – When judgment-debtors themselves took up responsibility of challenging decree and when challenge to executability of decree negative, party claiming under same judgment-debtor cannot agitate same issue saying that decree obtained not valid – Petitioner has no perfect right over property and cannot maintain application for obstruction – What cannot be achieved directly by 5<sup>th</sup> to 9<sup>th</sup> Respondents cannot be indirectly achieved by persons, who claimed under 5<sup>th</sup> to 9<sup>th</sup> Respondents – Well-considered order of Executing Court cannot be interfered with – Claim made by Petitioner rightly dismissed by Executing Court – Revision petition dismissed.

2014 -5- L.W. 844

A. Arokyadoss

vs.

V. Radhakrishnan and others

Date of Judgment : 03.12.2014

Hindu Law/Joint family property, Co-parcenary, Kartha, alienation, challenge to.

Father of plaintiffs, as kartha of the joint family property, dealt with the properties settled in his favour as well as the plaintiffs, who were minors – Plaintiffs have knowledge about execution of the sale deed in favour of the defendant – Estopped from filing the suit for declaration and injunction.

Status, character of joint family property, when it ceases to be so – Scope, joint family whether exists.

On partition a share of ancestral property remains in the hands of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the co-parcenary property treating it to be his separate property – Properties were treated as exclusive property of father of plaintiffs, as kartha, he has every right to dispose it.

**2014 (2) TN MAC 865**

**United India Insurance Co.Ltd.**

**vs.**

**N.V. Shyamala**

**Date of Judgment : 30.10.2014**

**MOTOR VEHICLES ACT, 1988 (59 OF 1988), Section 149 – Vehicle driven by person not possessing valid Driving Licence – Breach of terms and conditions of Policy of Insurance on part of owner/insured – Proof – Admittedly Autorickshaw driving by ‘B’, who possessed no valid driving licence – Evidence of Owner/RW1 that he did not entrust vehicle to ‘B’ but entrusted to regular driver ‘P’ and ‘B’ took vehicle even without knowledge of ‘P’ – RW1/Owner though prosecuted under Section 180 r/w Section 5 on charge of having allowed vehicle to be driven by person not possessing Driving Licence, same resulted in acquittal by Criminal Court – Copy of Judgment of Criminal Court produced and marked – Judgment of Criminal Court not relevant in claims proceedings, parties must prove their case independently – Burden of proving violation of Policy condition lies on Insurer – No proof adduced by Insurer that either Owner/RW1/R5 or ‘P’ permitted ‘B’ to drive vehicle – Charge-sheet though filed against ‘B’ for offence under Sections 304-A, IPC & Section 184, MV Act, no evidence to show result of said Criminal case against ‘B’ – Insurer not summoned or examined ‘B’ and ‘P’ to prove that ‘B’ was permitted to drive vehicle either by RW1 or ‘P’ – Finding of Tribunal that there was no breach on part of R-5/Owner and holding Insurer liable, held, neither infirm nor defective warranting interference of High Court.**

\*\*\*\*\*

## HIGH COURT CITATIONS CRIMINAL CASES

(2015) 1 MLJ (Crl) 136

N. Dhamodharan  
vs.  
B. Usha

Date of Judgment : 27.10.2014

Criminal Procedure – Appointment of Commission – Cross-examination of witness – Code of Criminal Procedure, 1973, Sections 285, 286 and 287 – Petitioner/accused moved petition seeking to recall prosecution witness/ PW2 for cross-examination – Since PW2 undergone operation for brain tumour, Petitioner moved Petition informing inability of PW2 to attend Court and sought appointment of Commission and examination by Advocate Commissioner – Trial Court dismissed petition – Revision – Whether Trial Court justified in dismissing petition seeking cross-examination of prosecution witness by Commission – Held, absence of PW2 before Court well-explained – Duty of Magistrate to exercise powers and issue Commission towards carrying out purpose of allowing recall petition to make available evidence of witness in cross-examination – Impugned order set aside – Magistrate to direct Commission to Chief Judicial Magistrate who in turn to appoint Judicial Magistrate to proceed to place of residence of witness and record evidence – Revision allowed.

(2015) 1 MLJ (Crl) 138

Dharani Sugar Mills Unit-II  
vs.  
T.V. Malai Dist. F.P. Sangam

Date of Judgment : 30.10.2014

Complaint – Criminal complaint – Quashing of – Criminal breach of trust – Code of Criminal Procedure, 1973, Section 482 – Indian Penal Code, 1860 (Code 1860), Section 409 – Petitioner/accused is private Sugar Mill, involved in crushing sugarcane from farmers – Allegation that Petitioner/Mill started deducting more tariff than fixed by Government in contravention of tariff schedule – Complaint registered – Whether complaint can be quashed – Whether act of Petitioner/Mill amounts to offence under Section 409 of Code 1860 – Held, sugarcane were supplied by complainants to Petitioner/Mill on trust that Petitioner will pay actual cost of sugarcane after deducting prescribed transport charges – But Petitioner/Mill deducted more than what was prescribed by Director of Sugars – What was entrusted to Petitioner/Mill deducted more than what was prescribed by Director of Sugars – What was entrusted to Petitioner/Mill was sugarcane by farmers - Petitioner/Mill violated direction of Commissioner of Sugars and retained excess amount for benefit causing wrongful gain – Prima facie enough materials to show that Petitioner/Mill committed offence under Section 409 of Code 1860 warranting trial – Petition dismissed.

(2015) 1 MLJ (Crl) 142

M. Selvam  
vs.  
Superintendent of Police, Madurai District

Date of Judgment : 05.11.2014

Warrant – Non-Bailable warrant – Cheque Bounce – Code of Criminal Procedure, 1973, Section 41 – Negotiable Instruments Act, 1881, Section 138 – Cheque issued by 3<sup>rd</sup> Respondent dishonoured due to insufficiency

of funds – Case for Cheque dishonor filed – Judicial Magistrate issued non-bailable warrant, same not executed by police – Complainant filed petition to execute non bailable warrant issued against accused – Whether bailable offence under Section 138 Act 1881, which is made bailable in the Act, could be made non-bailable by issuing non-bailable warrant – Held, no information as to whether proper procedure has been adopted by Magistrate before issuing non bailable warrant – Warrant issued in cheque bouncing case should not become blank cheque in the hands of police – Though under Section 41 Code 1973, Court cannot order direct arrest, it can direct execution of non-bailable warrant – Court must be very careful in issuing non-bailable warrant – Magistrate would recall non-bailable warrant from Police, in turn enforce appearance of accused before Court and strictly follow procedures under Code of Criminal Procedure – Petition disposed of.

(2015) 1 MLJ (Crl) 159

State represented by The Inspector of Police

vs.

Senthil

Date of Judgment : 31.10.2014

Murder – Acquittal – Indian Penal Code, 1860, Sections 302 and 302 r/w 34 – Respondents/Accused persons charged for committing murder of deceased due to previous enmity – Trial Court found Respondents/1<sup>st</sup> to 4<sup>th</sup> accused not guilty and acquitted under Sections 302 and 302 r/w Section 34 of Code 1860 – Appeal against order of acquittal by State – Whether evidence of Prosecution witnesses sufficient to connect Respondents/accused with criminality – Held, testimony of PW/Friend of other PW does not support case as he was not eye witness to occurrence – PW's failed to explain as to what made them go to place of occurrence – At time of occurrence all witnesses alleged to have simply watching incident, neither PW/Brother of deceased nor PW's/Friend of other PW tried to rescue deceased – Conduct of PW's seems to be unusual and their presence in place of occurrence was doubtful – PW's failed to state as to how police people came to place of occurrence before lodging of complaint – No reference available to substantiate fact that PW/Brother of deceased had gone to police station along with other – Arrest of Respondents/1<sup>st</sup> to 4<sup>th</sup> accused not satisfactorily proved – Prosecution failed to prove presence at place and time of occurrence – Evidence of PW/Police stated about previous enmity between deceased and Respondents has not been supported by any other witnesses – Since PW/Police happened to register case, he was not supposed to take up investigation – Trial Court rightly ordered acquittal of Respondents of charges under Sections 302 and 302 r/w 34 Code 1860 – Appeal dismissed.

(2015) 1 MLJ (Crl) 166

R. Dineshkumar

vs.

State

Date of Judgment : 13.11.2014

☞ ☞ ☞ Summon – Summon of prosecution witness as co-accused – Criminal Procedure Code, 1973, Section 319 – Evidence Act, Sections 132, 138, 146, 147 and 148 – Petitioner is 5<sup>th</sup> accused in case where foster son-in-law of former Chief Minister done to death – Petition filed to summon 2<sup>nd</sup> Respondent/PW64 as co-accused, dismissed – Revision – Whether evidence of 2<sup>nd</sup> Respondent/PW64 during trial case be used against him to summon him as additional accused – Whether 2<sup>nd</sup> Respondent/PW64 protected by proviso to Section 132 of Evidence Act – Held, murder of deceased in execution of conspiracy hatched between A2, A3 and rest of accused and not for conspiracy between A2, A3 and 2<sup>nd</sup> Respondent/PW64 – Though conspiracies relate to same subject-matter of killing deceased but do not form part of same transaction – If question relevant to matter in issue, court to compel witness to answer though answer will or may incriminate him – If answer tends to incriminate witness, he shall be protected by proviso to Section 132 of Evidence Act – Witness protected under proviso since statutorily compelled to answer - Evidence of 2<sup>nd</sup> Respondent as PW64 and incriminating answers given amount to compelled testimony falling within sweep of

Section 132 of Evidence Act - Solely on basis of evidence as PW64, Petitioner cannot be prosecuted by summoning as co-accused – Petition dismissed.

👉 Witness – Prosecution witness – Tender of pardon – Accomplice – Criminal Procedure Code, 1973, Section 306 – Whether police got absolute discretion to treat any person either as accused or as prosecution witness – Held, for offences triable exclusively by Court of Sessions, police officer has no discretion at all to treat person who got involvement in crime, as prosecution witness – If prosecution wishes to examine person who got complicity in crime as prosecution witness, necessary to approach Magistrate under Section 306 of Code 1973 – It is for Court to decide whether accused concerned should be given pardon to be examined as prosecution witness.

(2015) 1 MLJ (Crl) 265

T. Sulochana

vs.

Inspector of Police

Date of Judgment : 28.11.2014

Investigation – Re-open of investigation – Negligence – Compensation – Code of Criminal Procedure, 1973, Section 482 – Indian Penal Code, 1860 (Code 1860), Section 304-A – Petitioner/mother of victim taken deceased daughter to Government Hospital complaining diarrhea – Alleged that death of deceased due to gross negligence on part of Doctors – Complaint lodged registering case – FIR closed as action dropped – Petition filed to direct Superintendent of Police to re-open investigation of case – Whether direction can be issued to re-open case, investigate and file final report against Doctors, who were stated to be grossly negligent – Whether Petitioner entitled for compensation – Held, no materials even to infer gross negligence on part of Doctors so as to be prosecuted under Section 304-A of Code 1860 – No directions can be issued for reopening case for further investigation – Deceased hardly 13 years old at time of death – Admittedly, death not due to natural cause – Government to pay sum of Rs.5,00,000/- towards compensation to Petitioner with interest @ 9% per annum – Petition partly allowed.

(2015) 1 MLJ (Crl) 269

MedMeme, LLC

vs.

iHorse BPO Solutions Pvt Ltd.

Date of Judgment : 11.11.2014

- A. Criminal complaint – Quashing of – Code of Criminal Procedure, 1973, Section 482 – Indian Penal Code, 1860, Sections 420, 406, 409 r/w 120(b) – Petitioners/accused and Respondent/complainant entered in to agreements whereby Respondent provided databased service – Evasion of payment by Petitioners – Complaint for acts of cheating, misappropriation and breach of trust – Petition to quash complaint – Whether complaint is liable to be quashed on ground that allegations in complaint do not constitute offence of cheating – Held, Petitioners clandestinely extracted services from Respondent and dragged payments in any pretext – Petitioners changed colour, stopped all transaction with Respondent and switched on to competitors so as to silence voice of Respondent – Prima facie case established in complaint that Petitioners willfully fraudulently and dishonestly misappropriated services amounting to criminal breach of trust – Averments in complaint satisfy ingredients of offences stated and suffice to maintain complaint – No ground to quash complaint – Petition dismissed.
- B. Enquiry – Code of Criminal Procedure, 1973 (Code 1973), Sections 200 and 202 – Whether Magistrate has conducted enquiry under Section 202 of Code 1973 since Petitioners are residing outside jurisdiction of Court – Held, if Magistrate, in addition to sworn statement, travels further by looking

into materials produced by complainant to assess whether there exists sufficient ground to proceed, then it is enquiry conducted under Section 202 of Code 1973 – Degree of care to be taken in proceedings under Section 202 of Code 1973 is higher, when compared to Section 200 of Code 1973 – Section 202 of Code 1973 does not mean that Magistrate has to conduct full dress trial under Section 202 of Code 1973 – Due enquiry conducted by Magistrate as contemplated under Section 202 of Code 1973 before issuance of process – Nature of enquiry conducted show that Magistrate conducted inquiry as contemplated under Section 202 of Code 1973.

- C. Criminal Procedure – Bar on prosecution – arbitration clause – Whether criminal law can be set in motion since agreement comprised provision for arbitration – Held, for enforcement of arbitration clause, there must be dispute – Dispute is only in respect of second agreement and not against first agreement – Presence of arbitration clause in agreement and pendency of civil dispute cannot be bar for criminal prosecution.

(2015) 1 MLJ (Crl) 318

Mohammed Kasim

vs.

K. Rayappan

Date of Judgment : 13.01.2015

Trial – Joint Trial – Dishonour of Cheque – Code of Criminal Procedure, 1973, Sections 219 and 190(1)(a) – Negotiable Instruments Act, Section 138 – Separate complaints preferred for dishonor of three cheques issued, same taken on file by Magistrate – Pending trial, Petitioner filed petition for transferring cases to same Court, but did not press same – Again, Petitioner filed petition to have joint trial on grounds that cases arose out of three cheques issued within specific period – Magistrate dismissed petition holding that petition filed for joint trial is only to procrastinate trial, since complaint and prosecution evidence over – Whether petition filed for joint trial is only to procrastinate trial – Held, facts on record show that separate notice issued for each cheque – Not single complaint, but separate complaint preferred and taken on file in respect of dishonor of cheques issued – If single complaint filed in respect of three cheques issued and dishonoured, there could be case for joinder of charges – Separate charge for every distinct offence of which person accused of and every such charge shall be tried separately and only exception is that there should be single complaint being preferred for several offences – Plea of Petitioner that likelihood of imposing different punishments in each summary trial case and Petitioner would be greatly prejudiced cannot be countenanced – Complaints taken on file – As rightly observed by Lower Court, Petition for joinder of charges is nothing but attempt to protract trial and cases pending on file of same Court – Magistrate directed to post cases on same hearing date and proceed further in accordance with law – Impugned order sustained – Revision disposed of.

(2015) 1 MLJ (Crl) 324

K. Ragupathi

vs.

State

Date of Judgment : 18.12.2014

- A. Outrage of modesty – Indian Penal Code, 1860 (Code 1860), Section 354 – Allegation that Appellant/accused abused PW1 to PW9/complainants by calling caste names and insulted in presence of public and also outraged modesty – Conviction and sentence – Appeal – Whether prosecution proved case of Section 354 of Code 1860 beyond reasonable doubt – Held, offence not made out under Section 354 of Code 1860 as victims not examined to depose evidence – All witnesses gave vague allegations giving no details regarding date, month – Witnesses did not say anything about ill-treatment or abuse of other witnesses by Appellant – Each witness gave independent account of case but none of depositions of victims corroborated by other evidence – Long delay in

giving complaint – Even after victims left organization of Appellant, no complaint lodged – Conviction and sentence set aside – Appeal allowed.

- B. Criminal Procedure – Prosecution – Investigation – Validity of – Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC & ST (PA) Act), Sections 3(1)(x) and 3(1)(xi) – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995 (SC & ST Rules), Rule -7 – allegation that Appellant committed offence punishable under SC & ST (PA) Act – Whether prosecution initiated and investigated by PW15 to PW18/police officers valid – Whether it is necessary that to investigate offence under SC & ST (PA) Act, any officer not below rank of DSP to be specifically appointed under Rule 7 of SC & ST Rules – Held, PW16 to PW18 not specifically appointed under Rule 7 of SC & ST Rules and not competent to conduct investigation against Appellant punishable under SC & ST(PA) Act – Investigation done without jurisdiction as Investigation Officer not properly appointed – Investigation vitiated – Charge under Sections 3(1)(x) & (xi) of SC & ST (PA) Act set aside.
- C. Charge – Vitiating of proceedings – Code of Criminal Procedure, 1973 (Code 1973), Sections 219, 461 and 464 – Whether there is violation of Section 219 of Code 1973 as Appellant was charged with 12 offences allegedly committed within period of one year – Held, though as per Section 219 of Code 1973, more than 3 offences committed in one year can be tried in one case, same will not vitiate trial having regard to Section 464 of Code 1973 – Appellant not pleaded any prejudice by reason of giving all 12 charges – Trial not vitiated by reason of charging person for more than 3 offences committed in year.

(2015) 1 MLJ (Cri) 332

K. Anandan

vs.

K. Manoharan

Date of Judgment : 17.12.2014

- A. Criminal proceeding – Quashing of – Code of Criminal Procedure, 1973, Section 482 – Indian Penal Code, 1860 (Code 1860), Sections 79 and 166 – Petitioner/Superintendent of Prisons did not produce accused before Judicial Magistrate, Valparai on expiry of remand – Show cause notice issued – Petitioner claimed that remand extended by Judicial Magistrate No.II, Coimbatore through video linkage – Alleging act of Petitioner amounts to offence punishable under Section 166 of Code 1860, complaint lodged – Whether proceedings can be quashed – Held, since remand of accused extended by Judicial Magistrate No.II, Coimbatore, Petitioner did not produce accused before Judicial Magistrate, Valparai – Act of Petitioner falls under General Exception under Section 79 of Code 1860 and does not amount to offence under Section 166 of Code 1860 – criminal prosecution quashed – Appeal allowed.
- B. Remand – Power of – Code of Criminal Procedure, 1973, Sections 167 and 309 – Whether Chief Judicial Magistrate, Coimbatore right in nominating Judicial Magistrate No.II, Coimbatore to pass orders of remand of under trial prisoners of various Courts in Coimbatore District in cases where said Magistrate not having jurisdiction to try – Whether Judicial Magistrate No.II, Coimbatore right in remanding accused without having case records in his possession – Held, remand of accused either under Section 167 or 309 of Code 1973 could be made only on production of accused either in person or through medium of electronic video linkage – No Magistrate/Courts shall remand accused to custody without production of accused either in person or through video conferencing – In very extraordinary circumstances, appropriate for jail authority to make written request to Magistrate, who may extend remand through video conferencing – Jails where no video conferencing facility available, jail authorities may escort accused to nearest centre where video conferencing available to enable jurisdictional Magistrate to extend remand – In Courts, where no video conferencing facility available, Magistrate may go to nearest centre where video conferencing facility



available to extend remand – Chief Judicial Magistrate has no power to nominate Magistrate, who has got no jurisdiction over case to extend remand of accused under Section 167 or 309 of Code 1973.

\*\*\*\*\*