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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

(2015) 4 Supreme Court Cases 71

Oshiar Prasad

vs.

Sudamdih Coal Washery

Date of Judgment : 02.02.2015

- A. Labour Law – Regularisation – Entitlement to – Subsistence of contract of employment – Mandatory requirement – Held, it is a settled principle of law that absorption and regularisation in service can be claimed or/and granted only when the contract of employment subsists and is in force inter se employee and the employer – Once it comes to an end either by efflux of time or as per the terms of the contract of employment or by its termination by the employer, then in such event, the relationship of employee and employer comes to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination
- B. Labour Law – Industrial Disputes Act, 1947 – S.10 – Powers of appropriate Government to make reference – Jurisdiction of Tribunal while answering reference – Scope – Reference pertaining to absorption/regularisation of appellants and others whose services were terminated long back – Validity – Held, appropriate Government is empowered to make reference only when “industrial dispute exists” or “is apprehended between the parties” – Further held, Tribunal while answering reference has to confine its enquiry to question(s) referred and has no jurisdiction to travel beyond or/and terms of reference
- In instant case, services of appellants and those at whose instance reference was made were terminated long back prior to making reference - Thus, they were not in service either of contractor or/and respondent BCCL – Consequently, question of their absorption or regularisation did not arise nor could have been gone into on merits since it is not possible to direct absorption/regularisation of employees not in service – Absorption/ Regularisation can be claimed and/or granted only when contract of employment subsists – Hence, only dispute which existed for being referred to Tribunal was in relation to appellants’ employment and its legality/validity – Reference made to examine issue of absorption, was thus, misconceived and was incapable of being answered in favour of appellants
- C. Labour Law – Regularisation – Non-Entitlement – Claim for parity – Unsustainability – Absorption of 39 workers by respondent pursuant to direction by Industrial Tribunal – Claim for parity by appellants and others whose service were terminated long back for regularisation, on grounds of parity – Held, relief in earlier reference could be granted because workers were still in service which is not so in instant case – Absorption and regularisation can be claimed and/or granted only when contract of employment subsists – Besides, merely because workers in both reference were working in one project by itself would not entitle them to claim parity with others – So long as parity was not proved on all relevant issues, no worker either individually or collectively was entitled to claim relief only on basis of similarity in status qua employer
- D. Constitution of India – Art. 136 – Scope of interference under Art. 136 – Service matters – Concurrent findings of fact – Three courts below finding that appellants were not entitled to claim absorption qua respondent BCCL which was justified – Hence held, there is no ground to go into factual issues de novo in exercise of appellate jurisdiction

- E. Labour Law – Industrial Disputes Act, 1947 – S. 25-F – Retrenchment compensation – Entitlement – Services of appellants terminated long back after completion of contractual work – Held, appellants entitled to retrenchment compensation firstly because respondents have offered to do so in accordance with S. 25-F, secondly no such compensation was paid till date, and lastly because more than three decades had passed but issues of absorption, and/or payment of compensation had not attained finality – Tribunal directed to verify cases of each appellant (150 or so) for deciding payment of retrenchment compensation

(2015) 2 MLJ 345 (SC)

Raveesh Chand Jain

vs.

Raj Rani Jain

Date of Judgment : 12.02.2015

Civil Procedure – Judgment on Admissions – Suit for Possession – Code of Civil Procedure, 1908, Order XII Rule 6 – Respondent/Plaintiff filed suit for recovery of possession and damages – On application by Plaintiff seeking judgment in suit, Trial Court dismissed same stating that no unequivocal admission to pass judgment in suit – In revision, High Court held that considering earlier judgment decided ownership of suit property in favour of Plaintiff, suit for possession ought to have been decreed by Trial Court – High Court decreed suit – Appeal by Defendant/ son – Whether High Court justified in decreeing suit in favour of Plaintiff under order XII Rule 6 – Held, Order XII Rule 6 confers discretion on Court to pass judgment either at stage of suit on basis of admission of fact made in pleadings or otherwise, but Court shall later on decide other questions that arise for consideration in suit – Provision of Order XII Rule 6 not mandatory rather discretionary – View taken by High Court agreed having regard to question of ownership already decided in earlier suit, said issue need not have to be decided afresh – Suit to be decreed with regard to recovery of possession on basis of finding of ownership decided in favour of Plaintiff – Question with regard to recovery of specific sum and future damages not decided either in earlier suit or in present suit – Decreeing suit on basis of ownership of Plaintiff already decided in earlier suit, decree for recovery of damages ought not to have been passed by High Court – Matter not remanded to Trial Court for deciding issue as to quantum of damages on consideration of relationship of Appellant and Respondent being mother and son – Certain amount just and proper – High Court order not interfered – Directions issued – Appeal dismissed.

(2015) 4 Supreme Court Cases 371

Om Aggarwal

vs.

Haryana Financial Corporation

Date of Judgment : 23.02.2015

Civil Procedure Code, 1908 – Or. 7 R. 11(d) and S.9 – Rejection of plaint on ground that suit is barred by a law – Adjudication on question relating to – Governing principles – Reiterated, said question can be raised at any time by defendant – Adjudication in respect of that question would depend upon facts and circumstances of each case – For deciding that question, only averments made in plaint are relevant – Dismissal of civil suit in present case in view of the law concerned which excluded the jurisdiction of civil court in the matter concerned, held, proper

2015 (2) CTC 559

P.R. Yelumalai

vs.

N.M. Ravi

Date of Judgment : 27.03.2015

Code of Civil Procedure, 1908 (5 of 1908), Section 151 – Specific Relief Act, 1963 (47 of 1963), Section 28(1)
– Delay of one day in depositing Decree amount – Dismissal of Suit – Validity of – Suit for Specific Performance of Agreement of Sale decreed on 27.2.2007 with direction to Buyer to deposit balance consideration vide Demand Draft within one month, failing which Suit would be deemed to be dismissed – Extension of two months’ time was granted on account of Memo being filed by Buyer – Consequently, last date of depositing money was 26.5.2007 – As 26.5.2007 was a non-working day for Court and 27.5.2007 was a Sunday, Buyer, held, ought to have deposited amount in Court last by 28.5.2007 – Deposit was made by Buyer in cash only on 29.5.2007 – Mode of payment was also not complied by Buyer as amount was deposited in cash when same ought to have been deposited by way of Demand Draft – Buyer, held, failed to comply with Decree of Court and Suit automatically stood dismissed – Order of Remand passed by High Court, unwarranted – Dismissal of Suit by Trial Court, upheld – Appeal filed by Seller allowed – Appeal filed by Buyer, dismissed.

(2015) 4 Supreme Court Cases 601

Om Prakash

vs.

Shanti devi

Date of Judgment : 05.01.2015

- A Evidence Act, 1872 – S. 90 – Proof of document thirty-years old or more – Invocation of presumption under S. 90 – Date from which thirty-years to be reckoned (backwards) – Held, thirty-year period is to be reckoned backwards not from the date upon which the deed is filed in court but from the date on which, it having been tendered in evidence/exhibited, its genuineness or otherwise becomes the province of proof for the first time – Further held, the document should be produced at the earliest so that it is not looked upon askance and with suspicion so far as its authenticity is concerned, since even if the document is purported or is proved to be thirty-years old, person claiming benefit of S. 90 would not axiomatically receive a favourable presumption, S. 90 presumption being a discretionary one – Lastly held, date of judgment of trial court cannot possibly be the date from which thirty-year period could be reckoned
- B Evidence Act, 1872 – S. 90 – Proof of document thirty-years old or more – Invocation of presumption under S. 90 – Thirty year period – Relaxation of, even by a few months, held, not permissible – Plea for relaxation cannot be granted as the antiquity of the document is the very reason for it to be bestowed with the curial presumption that the signature and every other part of such document which purports to be the handwriting of any particular person, is in that person’s handwriting, and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested – The court could not have relaxed or discounted the shortfall of seven months in the present case, and rightly did not do so
- C Evidence Act, 1872 – S. 902 r/w S. 47, Registration Act, 1908 – Date from which thirty-year period commences for registered document – Effect of S. 47, Registration Act which provides that registered document will take effect from the date of its execution – Registration Act, 1908 S. 47
- D Evidence Act, 1872 – Ss. 61 to 73 – Proof of registered document – Effect of registration – Held, registration of document does not per se, ipso facto, render it impervious to challenge or and make its reception automatic in curial proceedings – In present case, though Clerk of Sub-Registrar’s office was examined as a witness, he could only have proved date on which the gift deed was presented for registration i.e. 18-5-1970 – This witness could not possibly have proved genuineness of document itself – Registration Act, 1908 – Ss. 34 to 37, 17 and 47 to 50 – Transfer of Property Act, 1882, Ss. 54, 59, 107, 118 and 123
- E Evidence Act, 1872 – S. 90 – Presumption regarding old document – Discretionary nature of presumption – Words “court may presume” in S. 90 – Importance of - Emphasised – Held, even if the document is purported or is proved to be thirty-years old, person seeking to rely on S. 90 would

not axiomatically receive a favourable presumption, the S. 90 presumption being a discretionary one

- F Property Law –Transfer of Property Act, 1882 – S. 123 – Proof of gift of immovable property – Gift deed not being thirty-years old sought to be proved by invoking S. 90, Evidence Act, 1872 without any attempt to prove it in compliance with S. 68 or S. 69, Evidence Act, 1872 or in any other manner known to law – Inefficacy of – Proof of registration of document even if successful, further held, not by itself proof of its genuineness – Registration Act, 1908 – Ss. 17, 34 and 47 to 50 – Specific Relief Act, 1963 – Ss. 39 and 5 – Property Law – Easements Act, 1882, Ss. 60 and 63
- G Evidence Act, 1872 – Ss. 68, 69 and 90 – Document required by law to be registered and attested – Proof of – Benefit of presumption under S. 90 when may become available – Scheme of Ss. 68, 69 & 90, Evidence Act, 1872 r/w Ss. 34, 17 & 47 to 50, Registration Act, 1908, explained in detail - Registration Act, 1908, Ss. 34, 17 and 47 to 50 – Property Law – Transfer of Property Act, 1882, Ss. 54, 59, 107, 118 and 123
- H Specific Relief Act, 1963 – Ss. 39 and 5 – Mandatory injunction for delivery of vacant possession based on title/ownership of plaintiff – Suit for – Decreed by courts below, and Supreme Court affirming the same
- I Registration Act, 1908 – Ss. 34 to 37 – Witnesses to registration of a document, held, need not necessarily be witnesses/attesting witnesses to the execution of document being registered – Evidence, Act, 1872 – S. 68 – Transfer of Property Act, 1882, Ss. 123, 3 “attestation” and 59

SUPREME COURT CITATIONS CRIMINAL CASES

(2015) 2 MLJ (CrI) 188 (SC)

R. Dineshkumar
vs.
State

Date of Judgment : 16.03.2015

Summon – Power to summon – Additional Accused – Conspiracy – Code of Criminal Procedure, Sections 319 – and 223(d) – Indian Penal Code, 1860, Section 120B – 2nd Respondent/PW 64(Prosecution Witness) stated that on his own admission he agreed to kill deceased for price and accepted money from 2nd Accused towards party payment of price, also drafted 3rd Accused in conspiracy – High Court held that PW64 cannot be prosecuted by summoning him as an additional accused under Section 319 Code of 1973 – Whether on facts, Sessions Court is obliged to summon PW64 as an additional accused exercising power under Section 319 Code of 1973 – Whether person appearing to have committed an offence be tried together with accused already facing trial – Held, High Court rightly stated that under Section 223(d) persons accused of different offences committed in the course of same transaction could be charged and tried together – Except evidence of PW64 and his statement under Section 164 Code of 1973, no other evidence on record of Sessions Court to indicate that PW64 has committed any offence – PW64 gave evidence as to genesis of conspiracy to kill deceased of which various accused and also PW64 are parties at different points of time – It is the case of accused that by not trying PW64 along with them would cause prejudice to their defense – Appeal disposed of.

Evidence – Summon – statutory Immunity – Self-incrimination – Code of Criminal Procedure, Section 319 – Evidence Act, Section 132 – Whether the other requirements of Section 319 of 1973 are satisfied warranting the summoning of PW64 under Section 319 Code of 1973 is still required to be examined – Held, proviso to Section 132 of Evidence Act is facet of rule against self-incrimination and same is statutory immunity against self-incrimination which deserves most liberal construction – High Court rightly refused to summon PW64 as an accused to be tried along with Appellant and others.

Criminal Procedure - Pardon – Examination of Prosecution Witness – Code of Criminal Procedure, 1973, Section 306 and 307 – High Court recorded conclusion that examination of PW64 as prosecution witness without securing pardon under Section 306 Code of 1973 is illegal if PW64 is party to conspiracy along with 2nd and 3rd accused without assigning any reason in support of such conclusion – Whether High Court correct in holding that examination of PW without securing pardon under Section 306 Code of 1973 illegal – Held, whether prosecution has liberty to examine any person as witness in criminal prosecution not with-standing that there is some material available to prosecuting agency to indicate that such person also involved in commission of crime for which other accused are being tried required deeper examination – No clear submission to examine proposition – Since Court is authorized under Section 307 Code of 1973 in conducting trial to tender pardon to such person, Trial Court directed to grant pardon infavour of PW64 after following appropriate procedure of law and record his evidence afresh.

(2015) 2 MLJ (CrI) 323 (SC)

Vinay
vs.
State of Karnataka

Date of Judgment : 16.04.2015

Grievous Hurt – Conviction and Sentence – Reduction of Sentence – Indian Penal Code, 1860, Sections 307, 326 read with Section 34, 357(1) and Section 427 – Long standing disputes between Appellants and Complainant/Real Brothers – 1st Appellant hit Complainant when he came to remove almirah and his other personal belongings – FIR filed – Upon investigation, Appellants charged for offence committed and arrested – Trial Court convicted all Appellants under Sections 307 and 427 Code 1860 and ordered sentence of imprisonment – Appeal against conviction and sentence – High Court partly allowed appeal modifying conviction of Appellants from Section 307 read with Section 34 to Section 326 read with Section 34 IPC and reduced sentence of imprisonment – Appeal – Whether Lower Courts erred in convicting Appellants for offence committed without considering allegation of Appellants that they acted in their right of self defence in protection of their property – Whether Sentence against Appellants be reduced – Held, Appellants armed with deadly weapons attacked complainant and his associates – Testimony of injured witnesses is also supported by medical evidence – Wound certificate shows that Complainant and Prosecution witnesses suffered one grievous injury and other simple injury – Appellants and Complainant in sudden quarrel and heat of passion attacked each other and Appellants seem to have exceeded right of private defence – Considering totality of facts and circumstances of case, relationship between parties and long years of litigation sentence of imprisonment and imposition of fine reduced – Lower Courts rightly convicted Appellants under Section 326 read with Section 34 and under Section 427 read with Section 34 – Conviction of the appellants under Section 326 IPC read with Section 34 IPC and Section 427 IPC read with Section 34 IPC is confirmed – Sentence reduced and compensation paid to injured victims – Appeal partly allowed.

(2015) 2 MLJ (Crl) 347 (SC)

Ms. S

vs.

Sunil Kumar

Date of Judgment : 10.04.2015

Rape – Prior Test Identification Parade – Testimony – Indian Penal Code, 1860, Sections 376, 376(1) and 376(2)(f) – Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989, Section 3(2)(V) – 1st Respondent/Accused arrested for commission of rape against Appellant/Victim – Trial Court observed that in absence of any prior test identification parade, such identification in court for first time was not good enough to hold 1st Respondent guilty of offence – On Revision, High Court affirmed order of Trial Court acquitting of charges under Section 376(2)(f) Code 1860 and Section 3(2)(V) Act of 1989 – Appeal – Whether identification of 1st Respondent in Court for first time in absence of prior identification parade sufficient – Held, in absence of test identification parade, identification in court can in given circumstances be relied upon, if witness is trustworthy and reliable – Appellant was subjected to sexual intercourse during broad day light and the manner stated by her stands proved – Witnesses had come to the scene of occurrence and found victim being raped – Immediate reporting and medical examination further support victim’s testimony – By very nature of offence, close proximity with offender would have certainly afforded sufficient time to imprint upon Appellant’s mind identity of offender – Appellant stated in her first reporting that she would be in a position to identify offender and had given particulars regarding his identity – Clothes worn by offender were identified by Appellant – Nothing wrong or exceptional in identification by her of accused in Court – Testimony of Appellant trustworthy and reliable – Offence against 1st Respondent proved under Section 376(1) Code 1860 and fine imposed – Acquittal of 1st Respondent for offence under Section 3(2)(V) Act of 1989 – High Court erred in dismissing revision – Appeal allowed.

(2015) 4 Supreme Court Cases 380

Gurjit Singh

vs.

State of Haryana

Date of Judgment : 10.03.2015

- A. Penal Code, 1860 – S. 302 or S. 304 Pt. II r/w S. 34 – Murder trial – Intention to murder evidence from nature and location of injuries on deceased – Reappreciation of evidence by High Court – Trial court completely misinterpreting evidence in acquitting one accused completely and convicting other only under S. 304 Pt. II – Clear evidence that both accused intentionally caused injuries to vi-

tal parts of deceased (head and face) with their weapons causing death – Eyewitnesses' account regarding the same is trustworthy – Plea of self-defence is concocted – Conviction of both appellant-accused by High Court under Ss.302/34, confirmed

- B. Criminal Trial – Witnesses – Related witness – Evidence of – Admissibility – Murder trial – Reiterated, statement of a relative of deceased cannot be discarded merely on ground that he or she is an interested party – In instant case, High Court rightly disagreed with trial court and held that there is no reason to disbelieve statement of brother and widow of deceased victim only because they were near relations of deceased – Penal Code, 1860 Ss. 302/34

(2015) 4 Supreme Court Cases 452(SC)

Amrutlal Liladharbhai Kotak

vs.

State of Gujarat

Date of Judgment : 26.02.2015

Penal Code, 1860 – Ss.304-B, 306 & 498-A r/w S. 114 – Dowry death – Death of bride, by hanging within four years of her marriage – Testimonies of relatives and friends of deceased – Reliability – Invocation of presumption under S. 113-B, Evidence Act, 1872 – Conviction of appellant parents-in-law and husband confirmed on basis of evidence given by relatives and friends of deceased – Presumption under S. 113-B, Evidence Act, 1872, held, rightly invoked

HIGH COURT CITATIONS CIVIL CASES

2015 (3) CTC 1

Ranganathan
vs.
Narayanan

Date of Judgment : 09.03.2015

Limitation Act, 1963 (36 of 1963), Section 3 – Bar of Limitation – Plea of limitation was not raised by Defendant either in Written Statement before Trial Court or in Appeal Memorandum before Lower Appellate Court – Lower Appellate Court has gone into issue of limitation in absence of pleadings – Tenability – Duty of Court is to verify as to whether Suit has been filed within period of limitation irrespective of fact as to whether limitation has been set up as defence or not – Court can adjudicate issue of limitation even in absence of defence raised by Defendant.

Limitation Act, 1963 (36 of 1963), article 113 – Suit for Damages – Plaintiff pleaded that Defendant had attacked Plaintiff and caused serious injuries on 6.10.1997 – Plaintiff laid Suit for Damages on cause of action that Defendant had assaulted him and caused injuries – Plaintiff had given Criminal Complaint against Defendant and Criminal Court convicted Defendant and on Appeal conviction of Defendant was upheld – Revision filed by Defendant before High Court was disposed on 16.9.2003 confirming conviction of Defendant but modifying sentence alone – Plaintiff filed Suit for Damages in year 2004 – Whether Suit is barred by limitation – Plaintiff's right to Suit accrues on date when injuries sustained by Plaintiff i.e. 6.10.1997 – Suit should have been filed on or before 5.10.2000 – suit filed by Plaintiff in year 2004 is barred by limitation.

Limitation Act, 1963 (36 of 1963), Section 14 - Exclusion of period spent before Criminal Court – Whether period spent before Criminal Court can be excluded, while computing period of limitation – Plaintiff filed Suit for Damages against Defendant for injuries caused by him in year 1997 – Criminal proceedings initiated against Defendant attained finality in year 2003 – Plaintiff filed Suit in year 2004 – Contention of Plaintiff that period spent in Criminal proceedings should be excluded for computation of limitation – In cases, where Plaintiff has been prosecuting with due diligence in another Civil proceedings, in Court of first instance or Appeal or Revision, then period so spent in said proceedings can be excluded – Criminal case cannot be equated to Civil proceedings for purpose of Section 14.

2015 -2- L.W. 323

A. Kamal Batcha
vs.
Gokulam Ammal & others

Date of Judgment : 03.03.2015

C.P.C., Order 21, Rules 92, 94, 95, Section 47,

Limitation Act, Article 134.

Court auction sale when becomes absolute – Application for issuance of sale certificate – Limitation of one year when commences – Effect of final decree and pending first appeal.

Once the sale is confirmed, it becomes absolute and the certificate is only a evidence of the sale – Limitation will start running from the date of confirmation under Order 21 Rule 92 – Auction purchaser, who has parted with his money in purchasing the property ought to have been diligent enough to take the sale certificate within the time prescribed by law – On the date of final decree, the sale was confirmed – Revision petitioner ought to have applied for issuance of sale certificate within the period one year.

(2015) 3 MLJ 436

Commissioner, Corporation of Chennai

vs.

Meera SV Kumar

Date of Judgment : 12.02.2015

Title of Property – Transfer – Public Purpose

- A. Local Government – Title of Property – Transfer – Public Purpose – Partnership firm owned lands and laid plots for sale – When partnership firm was declared insolvent, suit property owned by them sold through Official Assignee of High Court – Suit property/Vacant land purchased by Plaintiff from previous owner through Official Assignee – Plaintiff appointed power agent to develop suit property – Chennai Metropolitan Development Authority(CMDA) granted permission for construction – Power agent approached Defendant/Corporation for further permission to start construction – Defendant informed that suit property belong to corporation and Plaintiff should hand over vacant possession – Suit filed – Trial Court decreed suit – Appeal-Whether title for suit property would have been transferred to Appellant/Corporation in absence of sale deed executed by owner of land and in absence of any acquisition in favour of corporation according to law – Held, though particular space would have been earmarked for public purpose in approved lay out, same would not automatically vest title for space in favour of Defendant – Transfer of title required to be in favour of Appellant either by means of sale deed or by means of gift deed or by means of acquisition – Entire triangular portion situated on immediate sought of Plot, title remained with partnership firm – Defendant/Corporation failed to prove that suit property was earmarked for public purpose – Appeal dismissed.**
- B. Property Laws – Sale – Official Assignee – Transfer of Title – Whether sale made by official assignee in favour of previous owner and sale made by previous owner in favour of Plaintiff in turn would confer title of Plaintiff – Held, Title of property vested with partnership firm, same transferred to previous owner from whom Plaintiff subsequently purchased suit property – Plaintiff has become absolute owner of suit property and patta for same has also been transferred – Never in past there was any transfer of title either by partnership firm or previous owner or subsequently by Plaintiff in favour of Defendant/Corporation – Defendant was not in a position to substantiate that they acquired title for suit property – Trial Court was right in declaring title for suit property in favour of plaintiff.**
- C. Injunction – Grant of – Consequential Relief – Entitlement – Whether Trial Court was right in granting relief of injunction as a consequential relief – Held, nowhere in written statement Defendant has stated that possession was ever in the hands of Defendant Corporation – Appellant is not custodian of suit property and has got no other right over same – Suit property has been duly described by means of survey number and four boundaries – Property identifiable and there is no dispute regarding identity of property also- Trial Court was right in granting relief of injunction of favour of Plaintiff.**
- D. Local Government – Earmarking of Space – Vestiture of Property – Public Purpose – Whether earmarking of space in the approved lay out as a space for public purpose would automatically amount to vestiture of the property in favour of Appellant corporation and would it tantamount to handing over of vacant possession to Appellant/Corporation – Held, Plaintiff has described property by means of four boundaries, which coincides with sale deed – Sale made by Official Assignee on orders of Court – It cannot be construed that before ordering vestiture of the suit property with the Of-**

Official Assignee, court was not aware of the title for the property – Sale made by Official Assignee cannot be stated to be invalid or void, neither could be said that title for suit property was even transferred to Corporation – Plaintiff is innocent purchaser from previous owner.

- E. Evidence – Presumption – Approval – Appropriate Authority – The evidence Act, Section 114 – Whether allegation of Appellant there was no subsequent approval by carving out Plot made by CMDA or DTCP(Deputy Director, Town Planning) correct – Held, Appellant Corporation, who claims that there was no such plot carved out as plot, has not let in any evidence to rebut presumption under Section 114 – Neither any official document has been proved to show that plot was never carved out and approved – Presumption arising out of judicial act of court remains unrebutted and reasonable to hold that Plot came into being and same was approved by appropriate authority – Court presumed that Plot would have been carved out subsequently and same would have been approved.

2015 -2- L.W. 460

G. Venkatesan
vs.
Balu

Date of Judgment : 12.03.2015

Civil Rules of Practice, Rules 74, 75, 76/production of document,

Practice/production of document, summoning of Income tax return of petitioner – Challenge to,

Constitution of India, Article 227, production of document, challenge to.

Production of document, prayer how to be made – Difference between rule 74 and 75 – Prayer ought to have been made under rule 76 – when certified copies can be obtained, prayer should be made only under Rule 76 for the issuance of a certificate to enable him to get the certified copy – Only under exceptional circumstance summons under Rule 75 can be issued – To produce document, send for documents, difference between, what is.

Held: Court does not find any material defect in the conclusion of the trial Court – order should have been for the issuance of a certificate to the respondent to enable him to get a certified copy of the Income Tax return of the revision petitioner/plaintiff pertaining to the financial year.

2015 (1) TN MAC 485 (DB)

Royal Sundaram Alliance Insurance Co. Ltd
vs.
S. Mageshwari

Date of Judgment : 06.03.2015

NEGLIGENCE – Finding of – Challenge to – Deceased driving Motorcycle dashed against Lorry when Lorry Driver applied back suddenly – Deceased suffered fatal injuries and died on same day – Tribunal considering oral and documentary evidence concluded that accident occurred due to rash and negligent driving of Lorry Driver – Appellant/Insurer contending that deceased hit against parked Lorry and caused accident – Evidence of PW2/eyewitness corroborated version of Claimants – Tribunal gave credence to evidence of PW2 and Rough Sketch-Ex.P2, FIR.Ex.P1 to conclude negligence aspect – Appellant/Insurer though attempted to prove through RW1/Lorry Driver that Motorcycle hit parked vehicle/Lorry, oral and documentary evidence adduced by Claimant show clearly that accident took place due to rash and negligent driving of Lorry Driver – In absence of any contra evidence, finding of Tribunal called for no interference and same confirmed.

INCOME – Fixation of – Deceased aged 26 years, a Driver, earning Rs.15,000 p.m. as per claim – PW3, Employer of deceased examined to speak that deceased was employed as driver of Transport Vehicle and was paid Rs.15,000 – Driving Licence of deceased, Ex.P6 and RC Book/Ex.P8 marked – Tribunal on basis of oral and documentary evidence fixed income at Rs.12,000 p.m. – If, proper, in absence of proof of income – Considering occupation of deceased and oral evidence of PW3 though not reliable in entirety, held, income of deceased can be fixed as Rs.11,000 as against Rs.12,000.

LOSS OF DEPENDENCY – Assessment – Deceased aged 26 yrs., a Driver earning Rs.15,000 p.m. as per claim – Claimants : Wife, minor son and parents of deceased – Tribunal fixing income at Rs.12,000 p.m. deducting 1/4th as Personal Expenses and applying Multiplier of 17 awarded Rs.18,36,000 [Rs.12,000 – ¼ x 12 x 17] – Not proper – High Court fixing income at Rs.11,000 awarded Rs.16,83,000 [Rs.11,000 – ¼ = 8,250 x 12 x 17].

LOSS OF CONSORTIUM – Award of Rs.1,00,000 to wife of deceased, confirmed in Appeal.

LOSS OF LOVE & AFFECTION – Deceased aged 26 yrs. – Award of Rs.50,000 to minor son and Rs.25,000 each to parent – Just & proper – No scope for interference with award of Rs.1,00,000 towards Loss of Love & Affection.

(2015) 2 MLJ 518

Indrani Ammal

vs.

M. Ravi

Date of Judgment : 13.01.2015

Contract – Sale Agreement – Validity of – Respondent/Plaintiff filed suit for specific performance based on suit sale agreement – Also, prayed to direct Appellants/Defendants to execute sale deed and to deliver possession of suit property and also for permanent injunction not to encumber or alienate suit property – Further, prayed for damages and for refund of advance amount with interest – Trial Judge held the Plaintiff entitled to decree of specific performance, Court has to execute sale deed to Plaintiff and Plaintiff entitled to delivery of possession of suit properties and also to permanent injunction – But, Trial Judge negated prayer for damages and for refund of advance amount in view of grant of main relief of specific performance – Whether suit sale agreement obtained by using threat and coercion and invalid – Whether suit sale agreement was sham and nominal transaction – Held, interested testimony of DW-1 does not instill confidence and make defence case of Appellants probable – When execution of agreement admitted by Appellants, burden to prove that same executed as security for repayment of loan or there was understanding that document would not be acted upon shall stand cast upon them – Evidence adduced in form of testimony of DW-1 and documentary evidence adduced in form of Exs.B1 to B7 not sufficient to discharge said burden and said evidence not enough to probablise defence case of Appellants – Findings of Trial Court that suit sale agreement proved to be genuine and same not proved to be either obtained using coercion or threat or sham and nominal confirmed – appeal dismissed with costs.

Contract – Specific Performance – Delivery of Possession – Permanent Injunction – Specific Relief Act, 1963, Section 16(c) – Whether Respondent pleaded and proved his readiness and willingness in accordance with Section 16(c) – Whether Respondent entitled to relief of specific performance directing Appellants to execute sale deed in accordance with suit sale agreement and deliver possession of suit property to Respondent – Whether Respondent entitled to relief of injunction as prayed for – Held readiness and willingness should be pleaded and proved in accordance with Section 16(c) – Respondent made clear and categorical plea that he paid major portion of sale consideration as advance and he was ever ready and willing to perform his part and get sale deed executed and registered in his name – As against clear and categorical pleading made by Respondent and evidence adduced on behalf of Respondent in that regard, no contrary evidence adduced by Appellants capable of disproving plea of Respondent – Trial Judge rightly concluded that Respondent pleaded and proved his readiness and willingness in accordance with Section 16(c) and he was entitled to relief of specific performance – But, Appellants not ready and willing to perform their part of contract – No reason found to interfere with finding of Trail Court – No appeal filed and no cross-objection taken by Respondent against prayer for damages being negative by Trial Court – Not

necessary to consider alternative prayer for refund of advance amount in view of grant of main relief of specific performance.

2015 -2- L.W. 531

N. Natarajan

vs.

The Executive Officer, Chitlapakkam

Date of Judgment : 30.03.2015

C.P.C., Section 100, second appeal, 'substantial question of law', what is, section 103, power to determine issues of fact, section 151, inherent power, in civil cases, to direct complaint to police, order 41, Rule 27, additional evidence, appellate court's power, High Court's power, suo motu, to receive evidence, oral documentary,

Injunction/suit for, based on possession, title, scope of,

Criminal Procedure Code, Section 340, patta, forged, proceedings initiation of,

I.P.C., Section 195, patta, forged, proceedings, initiation of.

Suit was filed for injunction against 3rd party – Title sought to be proved based on patta, Ex A2 – whether it is issued by tahsildar or forged – Trial court decreed, while appellate court reversed it – on second appeal, Suo motu power of High Court to examine witness – scope of – Order 41 Rule 27, when can be invoked – Examination of witness, receiving oral, documental evidence, in High Court, scope of – Tahsildar, examined in Court – Prima facie, documents doubted.

'to enable it to pronounce judgment', 'any other substantial cause', justifiable cause', effect of – True test, what is, in such cases – held: under Order 41 Rule 27(1)(b) the appellate Court has suo motu power to receive additional evidence, either oral or documentary, provided any one or more of the contingencies enumerated in the said rule exists – Not necessary for party to make an application – satisfaction of appellate court that additional evidence is required for 'pronouncing judgment' satisfactorily, or for substantial clause.

Power under sections 103, 151 – scope of.

Instant case, patta is a forged document - To pronounce on that oral and documentary evidence needed – Court cannot pronounce a satisfactory judgment without it.

Section 103 – Power of High Court to go into issues of fact, can be exercised, when findings of the Courts below were vitiated by non-consideration of relevant evidence or by showing erroneous approach to matter and findings recorded by the Court below are perverse.

Plaintiff's plea based on forged document – whether court can direct initiation of proceedings under section 340 Cr.P.C. – No, as section 195 Cr.P.C. not satisfied.

Power of civil court under section 151 to issue direction to register a complaint in cases of forgery committed outside court – Scope of - civil court has power to issue a direction to a party or to a witness to forward a complaint to police.

(2015) 3 MLJ 558

Vellore Institute of Technology

vs.

G.V. Sampath

Date of Judgment : 20.02.2015

- A. **Civil Procedure – Caveator – Non-serving of Notice – Revocation of Leave – Code of Civil Procedure, 1908, Sections 92 and 148A – Order XIV Rule 8 of Original side Rules under Clause XII of Letters patent Act read with Order III Rule 1 of Code 1908 – 2nd Defendant obtained an ex parte order granting leave under Clause 12 of Letters Patent and under Section 92 Code of 1908 – 2nd defendant filed applications seeking to revoke leave granted – Whether caveator has to be served with notice before granting leave under Clause 12 of Letters Patent and Section 92 of Code 1908 – Held, application under Clause 12 Letter Patent or under Section 92 Code of 1908 cannot be termed as interlocutory application – Serving of notice at the stage of obtaining leave not mandatory – Application for leave is only a procedure for instituting suit and granting leave is purely a matter between Court and Plaintiff in initial stage – Order granting leave to sue is only an administrative order – If Court is prima facie satisfied, it can straight away allow application for leave to sue under Clause 12 of Letters Patent or under Section 92 Code of 1908, without issuing any notice to Defendant – If Defendant obstructs application for granting leave at initial stage it would prolong matter and cause irreparable hardship to Plaintiff – Defendant can always file application for revocation of leave if court has no jurisdiction to try suit – Non-serving of notice to caveator in application for leave under Clause 12 of Letters Patent or leave to file suit against public Trust under Section 92 of Code of 1908 would not serve as a ground to revoke leave – Prima facie case has been made out to grant leave under Section 92 Code of 1908 and leave cannot be revoked – Applications dismissed.**
- B. **Civil Procedure – Subject matter of suit – Cause of Action – Territorial Jurisdiction – 2nd Defendant/Applicant alleged that neither plaint averments nor documents filed along with plaint disclose any part of cause of action or residence of Defendants within jurisdiction of this court – Whether Original Side of this Court has territorial jurisdiction to try present suit – Held, though 2nd Respondent disputed that no subject-matter or part of subject-matter of suit is within jurisdiction of this Court – Also only for the purpose of filing suit, Plaintiffs stated as if administrative office of 2nd defendant is within jurisdiction of this Court, same may be defence of 2nd Defendant in suit – For granting leave to sue, averments in plaint alone can be taken into consideration – Application filed under Section 92 Code of 1908 is maintainable within jurisdiction of Court – Issues as to whether premises at address of 2nd Defendant in plaint is only godown or not and whether Bank Account is maintained by Trust or not cannot be tried at this stage**
- C. **Civil Procedure – Plaint – Breach of Trust – Leave to sue – Code of Civil Procedure, 1908, Section 92 – Whether plaint does not contain averments to make out case under Section 92 of Code 1908 – Held, 2nd Respondent stated allegation in plaint are only pertaining to statutory violations and Plaintiff stated that allegations to be breach of trust – If prima facie Court finds that there is allegation with regard to breach of trust and direction of Court is necessary, same would suffice to grant leave to sue at initial stage – There is allegation of breach of trust and direction of Court is necessary to set right administration of Trust – two clauses considered for grant of leave to sue under Section 92 that part of subject-matter of is within jurisdiction of Court and allegations made in plaint show that direction of Court is necessary to set right administration of Trust – Contentions made by 2nd Defendant are his defence which could be considerate at the time of trial.**

2015 (2) CTC 598

Anthiyur Town Panchayat

vs.

G. Arumugam (Deceased)

Date of Judgment : 02.02.2015

Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rule 26 – Stay of execution of Decree – Grant of – Suit for recovery of possession, dismissed by Trial Court – First Appeal was allowed and Decree issued in favour of Plaintiff granting possession – Defendant filed Second Appeal with delay and Petition to excuse delay dismissed – SLP preferred by Defendant – Meanwhile, execution levied – Defendant seeking stay of further proceedings in Executing Petition, till disposal of SLP before Supreme Court – Application dismissed – Revision against that Order – Execution Petition was filed in 2004 – Defendant had ample opportunity to approach Appellate Court and obtain stay of execution of Decree – High Court had dismissed condone Delay Petition as early as on 17.4.2006 – Even nine years after dismissal of Condone Delay Petition, Defendant is not able to secure stay of further proceedings in Execution Petition – It is settled law that mere filing of Appeal would not amount to stay of operation of Decree of Lower Court – Decree-holder is entitled to execute Decree unless it is stayed by superior Court – Defendant has filed Application for stay in SLP – But Supreme Court has refused to stay Execution proceedings – Since Defendant has already approached Appellate Court, power under Rule 26 of Order 21, cannot be exercised – Executing Court rightly dismissed Application seeking stay – Civil Revision Petition dismissed.

2015 -2- L.W. 613

N. Ravi & others

vs.

S.K. Thirunavukkarasu (died) & others

Date of Judgment : 26.03.2015

Constitution of India, Article 227,

C.P.C., Order 26, Rule 9, Order 41, Rule 27.

Application for advocate commissioner at appellate stage, when, how to be ordered, scope of – Issuance of warrant, Printed form format, filling up, mistake, effect of, commissioner appointed for taking disputed document for opinion of hand writing expert – Printed matter should have been deleted as inapplicable but was not done – It was interpreted wrongly regarding scope of commission – Effect of – only to collect evidence – Additional evidence, application for – Hearing of – how to be done.

Requirement of hearing application for additional evidence with appeal on merits –Need for – Recording reasons, in Order, scope of – Allowing or dismissing application, Order how to be passed – scope of.

HIGH COURT CITATIONS CRIMINAL CASES

(2015) 2 MLJ (CrI) 129

Ganesan

vs.

State by Inspector of Police

Date of Judgment : 04.03.2015

Suicide – Abetment of suicide – Indian Penal Code, 1860, Section 306 – PW1 is father of deceased and father-in-law of Appellant/ accused – FIR lodged on allegation that on account of physical abuse and torture inflicted by Appellant/accused, deceased committed suicide – Conviction and sentence - Appeal – Whether Trial Court justified in convicting Appellant/accused – Held, PWs 1 and 3 and other witnesses made many improvements regarding demand of cash and jewels by Appellant/accused contrary to statements recorded during investigation – Though witnesses examined after two years from date of occurrence but PWs 1 and 3 being parents of deceased, ought to have remembered torture and ill-treatment by Appellant/accused to deceased daughter – In light of improvements during testimonies, version about commission of offence on part of Appellant/accused cannot be believed – Testimonies of Pws 1, 3 and 5 do not establish that ingredients of abetment of suicide made out against Appellant/accused – Prosecution failed to establish commission of offence by Appellant/accused and entitled to benefit of doubt – Conviction and sentence set aside – Appeal allowed.

(2015) 2 MLJ (CrI) 219

Chellappa

vs.

State rep. by the Inspector of Police

Date of Judgment : 04.03.2015

Narcotics – Illegal Possession – Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 8(c), 20(b)(i), 42(2) and 50 – Appellant/accused convicted under Section 8(c) read with Section 20(b)(i), same challenged – Whether trial Court justified in convicting accused under Section 8(c) read with Section 20(b)(i) – Held, though testimonies of witnesses and materials prove that Respondent complied with Sections 42(2) and 50, discrepancies occurred while drawing and sealing sample contraband and non-marking of balance contraband – Testimonies of official witnesses would indicate that corrections made with regard to father of accused and crime number – PW-5 admitted that it was not clearly indicated as to samples drawn from respective accused – In Ex.P-7/chemical analysis report also, seal number not mentioned – Chemical analysis report is also of no use for prosecution for reason that unless particular sample with seal number is relatable to concerned accused, it cannot be said that contraband carried by accused was ‘ganja’ – Balance of seized contraband not marked as material object, though Form 95 marked as Ex.P-16 – No plausible explanation offered by prosecution as to non-marking of material object – These infirmities would vitiate case of prosecution – Accused entitled to benefit of doubt – Trial Court did not properly appreciate materials placed before it and same warrants interference – Judgment passed against accused set aside – Appellant acquitted of charges framed against him – Appeal allowed.

(2015) 2 MLJ (CrI) 257

K.K.S.S. Ramachandran

vs.

State rep. by the Inspector of Police

Date of Judgment : 19.02.2015

Investigation – Reinvestigation – Power of Magistrate – Code of Criminal Procedure, 1973, Section 173(8) – Village Administrative Officer gave complaint to Inspector – Final report filed as crime in complaint not detected –

Magistrate recorded same as 'undetected' – After 2 years, Inspector submitted requisition of Magistrate to conduct reinvestigation, permission granted – After investigation, final report taken on file – Petition to quash proceedings – Reference by Single Judge – Whether concerned Magistrate has power to give necessary permission for conducting reinvestigation or de novo investigation after receipt of final report as 'undetected' and also recorded same – Held, order passed by Magistrate on basis of referred charge sheet (negative final report) is nothing but judicial order and same to be challenged before superior forum – Further investigation cannot be sought for under Section 173(8) of Code of Criminal Procedure in case of referred charge sheet – Permission to conduct 'reinvestigation' or 'de novo' investigation can be sought for before appropriate forum and not before Magistrate, since Magistrate has no power to give necessary permission for conducting 'reinvestigation' or 'de novo' investigation – Permission to conduct reinvestigation on basis of requisition after 2 years by Magistrate void ab initio since passed without jurisdiction – Reference answered.

(2015) 2 MLJ (Crl) 272

N. Sridhar

vs.

State rep. by the Inspector of Police

Date of Judgment : 04.03.2015

- A. Forgery – Indian Penal Code, 1860 (Code 1860), Sections 477A, 467, 471 and 420 – Prevention of Corruption Act, 1988 (Act 1988), Sections 13(2) and 13(1)(d) – Appellant/accused convicted under Sections 477A and 467 read with Sections 471 and 420 of Code 1860 and Section 13(2) read with Section 13(1)(d) of Act 1988, same challenged – Whether prosecution proved accused to be guilty under Sections 477A and 467 read with Sections 471 and 420 of Code 1860 and Section 13(2) read with Section 13(1)(d) of Act 1988 – Held, though sanction order valid and two charge sheets filed on basis of single FIR, but as per Exs.P29 to P32, statement given by accused not voluntary – Non-seizure of housing and vehicle loan registers and audit report on which basis FIR registered is fatal to case of prosecution – On basis of evidence of PW-7/System Manager, if officer is on leave or on duty, his User ID deactivated – Staff provided with User ID and password and directed to change their passwords once in fifteen days – No one permitted to share User ID and password to other officer on his absence and if officer disclosed his User ID and password to other officer, he is responsible for action – Facts show that PW-14 cited as accused in FIR and subsequently, charge sheet not levied against him – Except ipse dixit of PW-14, no evidence available to corroborate that User ID and password of PW-14 used by accused – Evidence of PW-5 to Pw-7 proved that once Officer was on leave or on duty, his User ID deactivated and no person permitted to use his User ID – On particular dates, whether PW-14 was on leave or on duty not proved – Prosecution failed to prove that accused guilty under Sections 477A and 467 read with Section 471 and 420 of Code 1860 and Section 13(2) read with Section 13(1)(d) of Act 1988 beyond reasonable doubt – Special Court erred in convicting accused – Judgment of conviction passed by Special Court set aside – Appellant acquitted from charges leveled against him – Appeal allowed.
- B. Prosecution – Sanction Order – Validity of – Appellant challenged Ex.P1/sanction order issued by PW-1/Sanctioning Authority alleging that same not maintainable, since draft charge sheet not furnished to him, while seeking sanction for prosecution – Whether sanction order accorded by Sanctioning Authority valid – Held, in cross-examination of Sanctioning Authority, no suggestion posed to him that as to why charge sheet not furnished to him – Sanction order shows that charge sheet not mentioned – But, plea of Appellant that non-furnishing draft charge sheet to Sanctioning Authority is fatal to case of prosecution does not merit acceptance, since PW-1 is competent authority to accord sanction for prosecuting accused – Sanctioning Authority accorded sanction after perusing entire materials and satisfying that prima facie case made out – Sanction order valid.
- C. Evidence – Extra-Judicial Confession – Indian Evidence Act, 1872, Sections 24 and 25 – Appellant alleged that extra judicial confession of accused under Exs.P29 to P32 not satisfied ingredients of Section 24 and it was obtained by force – Whether extra judicial confession of accused under Exs.P29 to P32 admissible evidence – Whether letters under Exs.P29 to P32 can be used as extra

judicial confession – Held, extra-judicial confession means that person deposed confidence on another person to disclose commission of offence and it should be made to known person to whom accused would go for confidence may be believed – Evidence of Pw-2 to Pw-4 and PW-13 proved that Exs.P29 to P32 given by accused in presence of officers in room of PW-13, who are superiors of accused – Evidence of PW-4 shows that in presence of four persons, accused allegedly given statements under Exs.P29 to P32 – Accused stated that he was forced to write letters under Exs.P29 to P32 and in such circumstances, prosecution failed to prove letters under Exs.P29 to P32 given by accused voluntarily.

- D. Charge Sheet – First Information Report – Code of Criminal Procedure, 1973, Section 219 – Appellant alleged that on single FIR, two charge sheets filed and same is unsustainable – Whether two charge sheets based on single Fir is fatal to case of prosecution – Held, while Appellant was functioning as Assistant Manager, he dealt with three pay orders/Ex.P4, Ex.P11 and Ex.P18 and occurrence said to have taken place in three difference days – As per Section 219, three offences of same kind within one year may be charged together – As far as first pay order, it was occurred on different period and so separate charge sheet filed – As far as second and third pay orders, they said to have taken place on same period, so charge sheet separately filed – Plea advanced by Appellant that filing of two charge sheets on single FIR is fatal to case of prosecution does not merit acceptance.

(2015) 2 MLJ (Crl) 304

Soorya Weavers

vs.

J.P. Anthony Raj

Date of Judgment : 23.02.2015

Negotiable Instruments – Dishonour of cheques – Legally enforceable debt – Negotiable Instruments Act 1881 (NI Act), Sections 138, 139 and 142 – Appellant/complainant/Soorya Weaves and Sun Apparels are sister concerns doing same business – Respondent/accused had business dealing with Sun Apparels and issued cheques in question in favour of Soorya Weaves for debt towards Sun Apparels, same dishonored – Complaint under Sections 138 and 142 of Ni Act – Trial Court acquitted accused holding that liability was only towards ‘Sun Apparels’ and not towards ‘Soorya Weaves’ and as such, no legally enforceable debt – Appeal – Whether Trial Court right in acquitting accused giving benefit of doubt – Held, evidence of complainant disclose that complainant/Soorya Weaves as well as Sun Apparels are sister concerns – Partners of both firms are one and same and both of them are engaging same line of business – Respondent/accused failed to dislodge burden cast upon him for reason that no material produced to prove discharge in respect of debts due and payable to Sun Apparels – Cheques in question given by accused towards legally enforceable debt – Impugned order of acquittal set aside – Accused to pay compensation – Appeal allowed.

(2015) 2 MLJ (Crl) 352

Gnanaprakasam

vs.

State rep. by the Assistant S.P

Date of Judgment : 12.02.2015

Confession – Death and grievous injury – Confessional Statement – Quashing of Proceedings – Indian Penal Code, 1860, Sections 285, 286, 304(A) – Explosives Act, Sections 9(b) (1) (a) – Factories Act, Section 41 r/w 61 (f) and Rule 61(g) – Indian Evidence Act, 1872, Section 25 – Fire broke in 2nd Accused factory resulting in death of women and causing grievous injury to other women – Charge sheet against accused persons for offence committed under Sections 285, 286, 304(A) Code 1860 and Section 9(B) (1) (a) Explosives Act – 2nd to 4th Petitioners alleged that they are cousins of 2nd Accused and are no way related to factory – Confessional statement of 2nd accused informed that petitioners are partners of firm – Petition to quash proceedings – Whether based on confessional state-

ment given by 2nd Accused that Petitioners as partners of concern liable to be tried with accused persons – Held, no material other than confession of 2nd Accused to link Petitioners with affairs of concern – Confession of 2nd Accused of these Petitioners being partners, amounts to nothing – Petitioners have nothing to do with concern is strengthened by fact that 1st and 2nd Accused persons have been shown as Manager and owner/occupier of concern in connected prosecution for offences under Factories Act and Petitioners have not been arrayed as accused in such case – Proceedings against Petitioners quashed – Petition allowed.

2015 -1- L.W. (Cri.) 553

S. Ganapathy

vs.

N. Senthilvel

Date of Judgment : 27.04.2015

Criminal Procedure Code, Section 372, Proviso 378(4), Section 2(wa) victim, Right of appeal for victim, complainant, against order of acquittal, scope of.

Challenge to order of acquittal of an accused in a case instituted on a Private complaint – Who can prefer appeal whether victim or complainant – Appeal or leave to file appeal – Effect of section 372, 378(4), what is.

Difference in private complainant case, police report case – What is.

When Complainant is a victim in private complaint case, he can exercise right under Section 372 proviso – No need to seek leave under section 378(4) – If complaint is not a victim, no right of appeal under section 372 he has to seek only leave under Section 378(4) – Some sessions judge entertain appeals against acquittals in private complaint cases under proviso to section 372, some do not – Questions referred to Larger Bench

2015 -1- L.W. (Cri.) 585

Geetha Devi

vs.

D.I. Nathan

Date of Judgment : 24.03.2015

Criminal Procedure Code, Section 397, 482, 377, 386

I.P.C. Sections 323, 34 r/w 34

If punishment is to be enhanced in revision filed by defacto-complainant, sufficient opportunity should be given to accused to show cause against such enhancement – No opportunity given – once revisional provision is invoked by a party before the Sessions Court, cannot again invoke Section 482 of Cr.P.C.

2015 -1- L.W. (Cri.) 592

T.N.P. Muthoo Natarajan

vs.

P.V. Ravi

Date of Judgment: 22.04.2015

Criminal Procedure Code, Section 203.

Revision against dismissal of Private complaint – Allegations of wrongful lease of property, misappropriation of trust funds – Not open to Magistrate to consider the truth of allegations – It is for petitioner complainant to establish.

2015 -1- L.W. (Cri.) 634

State rep. by Deputy Superintendent of Police

vs.

S. Kannan and others

Date of Judgment: 02.02.2015

Criminal Procedure Code, Section 482 Section 167(2) police custody, challenge to

Criminal Rules of Practice Rule 76, Police custody granting of, ingredients, what are, to be stated in affidavit

C.P.C., Order 19, rule 3, Affidavit, filing of, before magistrate, how to be done, sworn statement, effect of, police custody, grant of, scope.

I.P.C. Sections 120B, 409, 420

Prevention of corruption act (1988), Sections 13(2)r/w(1)(c),13(1)(d).

Practice/Police custody, grant of, affidavit, filing of, how to be done

Challenge to order of dismissal of application for police custody of respondents A4 to A6

Held: name of accused does not find place in FIR – They were subjected to interrogation and remanded to Judicial custody – CBI has not given particulars and reasons for need of police custody Ingredients of Rule 76 not satisfied – Affidavit not filed as per Order 19 rule 3 CPC by the investigations officer – Defective in nature – Effect of section 297 Cr.P.C. Scope of

In Sworn statement CBI has not mentioned about purpose for which they require custodial interrogation – To cull out criminal conspiracy, custodial interrogation cannot be entertained – Affidavit does not contain prior history of investigation – Affidavit must adhere to Order 19 Rule 3 C.P.C., section 297 Cr.P.C while entertaining petition under rule 76.
