



# TAMIL NADU STATE JUDICIAL ACADEMY

Vol: XI

Part: 4

April, 2016

## IMPORTANT CASE LAW



**OFFICE:** No.30/95, P.S.K.R. Salai, R.A. Puram, Chennai – 600 028  
**Phone Nos.** 044– 24958595 / 96 / 97 / 98  
**Telefax:** (044) 24958595

**Website:** [www.tnsja.tn.nic.in](http://www.tnsja.tn.nic.in)  
**E-Mail:** [tnsja.tn@nic.in](mailto:tnsja.tn@nic.in)/[tnsja.tn@gmail.com](mailto:tnsja.tn@gmail.com)

# INDEX

<b>S.No.</b>	<b>IMPORTANT CASE LAW</b>	<b>PAGE No.</b>
1	Supreme Court - Civil Cases	01
2	Supreme Court - Criminal Cases	04
3	High Court - Civil Cases	07
4	High Court - Criminal Cases	14

# TABLE OF CASES WITH CITATION

## SUPREME COURT - CIVIL CASES

S.No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE No.
1	Damodar Lal vs. Sohan Devi	(2016) 1 MLJ 346 (SC)	05.01.2016	Tenancy Laws – Eviction – Material Alteration	01
2	Satish Kumar vs. Karan Singh	(2016) 2 MLJ 40 (SC)	21.01.2016	Contract Specific Performance – Validity of agreement	01
3	Bharat Aluminium Co.vs. Kaiser Aluminium Technical Services Inc.	(2016) 2 MLJ 139 (SC)	28.01.2016	Arbitration – Foreign awards	02
4	Vijay Prakash Jarath vs. Tej Prakash Jarath	2016 (2) CTC 442	01.03.2016	Counter-claim after framing of issues – Whether acceptable	02
5	Bangalore Development Authority vs. N.Jayamma	(2016) 3 MLJ 31 (SC)	10.03.2016	Property Laws – Land Acquisition – Adverse Possession	03

## ***SUPREME COURT - CRIMINAL CASES***

<b>S.No</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>PAGE No.</b>
1	Nankaunoo vs. State of U.P.	(2016) 1 MLJ (CrI) 525 (SC)	19.01.2016	Murder	04
2	V.L.S.Finance Ltd. Vs. S.P.Gupta	2016 (2) CTC 547	05.02.2016	Withdrawal from Prosecution – Role of Public Prosecutor	04
3	State of Karnataka vs. Dattaraj	(2016) 1 MLJ (CrI) 660 (SC)	15.02.2016	Dowry death – Cruelty to woman	05
4	CBI, Bank Securities and Fraud Cell vs. Ramesh Gilli	2016 (2) CTC 672	23.02.2016	Public Servant – Meaning of – IPC, PC Act, and Banking Regulation Act	05
5	Anant Prakash Sinha @ Anant Sinha vs. State of Haryana	2016 (2) CTC 767	04.03.2016	Alteration of Charge vis-à-vis Power of Magistrate	06

## ***HIGH COURT - CIVIL CASES***

<b>S.No</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>PAGE No.</b>
1	Nainar vs. Chelliah	(2016) 1 MLJ 294	06.11.2015	Partition – Adverse Possession	07
2	N.Ramalingam vs. N.Thanickachalam	(2016) 1 MLJ 756	05.01.2016	Property Laws – Mesne Profits	07
3	Poonaiyan @ Thirupathi vs. Parvath and others	2016 (1) TLNJ 264 (Civil)	05.01.2016	Withdrawal of Suit – Order 23 Rule 1 C.P.C	08
4	Chellammal (Died) vs. Sadhu	(2016) 1 MLJ 784	08.01.2016	Succession Laws – Will – Plea of Ouster	08
5	S.Palani vs. Bharathi Dasan (deceased)	(2016) 2 MLJ 14	12.01.2016	Settlement deed – Cancellation – Validity	09
6	D.Venkatapathy vs. D.Jegapathy	2016-2-L.W.88	19.01.2016	Will – Settlement – Proof of	09
7	Meenambal vs. Shantha	(2016) 2 MLJ 85	02.02.2016	Civil Procedure – Partition – Non-joinder of necessary parties	10
8	Lakshmanan vs. Mani	2016-2-L.W.151	10.02.2016	Amendment of Pleadings – Order 6 Rule 17 C.P.C	10
9	Divisional Manager, Oriental Insurance co.Ltd. vs. Rajesh	2016 (1) TN MAC 433 (DB)	11.03.2016	Motor Accident Claims – Disbursal of Compensation – e-transfer by RTGS/NEFT	11
10	A.Raja Sundari vs. Suresh Kumar	2016 (2) CTC 705	17.03.2016	Ex parte Decree of divorce	12

## ***HIGH COURT - CRIMINAL CASES***

<b>S.No</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>PAGE No.</b>
1	Mayandi vs. State through Inspector of Police	(2016) 1 MLJ (Crl) 710	30.09.2015	Murder – Solitary Witness	14
2	Periyathambi vs. State rep. by the Inspector of Police	(2016) 1 MLJ (Crl) 613	14.10.2015	Murder – Circumstantial evidence	14
3	Poomalai vs. State	(2016) 1 MLJ (Crl) 593	16.11.2015	Cruelty – Dying declaration – Sections 498A and 306 I.P.C.	15
4	Sree Gokulam Chit vs. S.Shanthi	(2016) 1 MLJ (Crl) 570	20.11.2015	Negotiable Instrument – Enforceable Debt	15
5	Nazeer Jalaludeen vs. State	(2016) 1 MLJ (Crl) 604	24.11.2015	Investigation – Extension of time	16
6	Amogaraj vs. Inspector of Police	(2016) 1 MLJ (Crl) 529	11.12.2015	Rape – Prosecutrix deaf and dumb	16
7	M.Murugan vs. State rep. by Vigilance and Anti Corruption	(2016) 1 MLJ (Crl) 626	21.12.2015	Witness – Examination of witness – Permission	16
8	Maharajan vs. State rep by, Assistant Commissioner of Police	(2016) 1 MLJ (Crl) 575	19.01.2016	Suicide – Abetment of Suicide – Cruelty	17
9	Govindaraj vs. State by Deputy Superintendent of Police	(2016) 1 MLJ (Crl) 513	01.02.2016	Murder – Provocation	17
10	B.Raja vs. State by Inspector of Police	(2016) 1 MLJ (Crl) 617	08.02.2016	Suicide – Abetment of Suicide – Sections 498-A and 306 IPC	18

## SUPREME COURT CITATIONS CIVIL CASES

**(2016) 1 MLJ 346 (SC)**

**Damodar Lal vs. Sohan Devi**

**Date of Judgment : 05.01.2016**

Tenancy Laws – Eviction – Material Alteration – Appellant/land owner filed suit for eviction on ground of unauthorized construction/material alteration – Trial Court came to finding that there was structural alteration by Respondent/tenant, same endorsed by First Appellate Court on re-appreciation of evidence – But, High Court held that concurrent finding on structural change, in absence of statement of Appellant before Court, cannot be treated to be trustworthy – Further, held that adverse inference should have been drawn for non-appearance of Appellant in witness box and in such circumstances, finding on material alteration is perverse – Appeal by landlord – Whether High Court justified in interfering with concurrent findings of Trial Court and First Appellate Court – *Held*, there is evidence by Appellant that there was structural alteration in premises rented out to Respondents without his consent – Attempt by Respondents to establish otherwise found to be non-acceptable to Trial Court and First Appellate Court – Material alteration is not fact confined to exclusive/and personal knowledge of owner, but it is matter of evidence – PW-1/vendor of Plaintiff, who is also his power of attorney stated that there was structural alteration in violation of rent agreement – PW-2 also supported case of Plaintiff – Even witnesses of Defendant partially admitted that Defendants effected structural changes – Only Trial Court came to definite finding on structural alteration, same endorsed by First Appellate Court on re-appreciation of evidence – High Court not justified in upsetting finding which is pure question of fact – Approach made by High Court wrong – High Court should not have interfered with concurrent findings of Trial Court and First Appellate Court on pure question of fact – Impugned judgment of High Court set aside – Trial Court order as confirmed by Appellate Court restored – Appeal allowed with costs.

**(2016) 2 MLJ 40 (SC)**

**Satish Kumar vs. Karan Singh**

**Date of Judgment : 21.01.2016**

Contract – Specific Performance – Validity of Agreement – Specific Relief Act – Respondent/Plaintiff filed suit for specific performance – Trial Court held that receipt-cum-agreement is legal and valid agreement to sell and shall be enforced by passing decree for specific performance – On appeal, High Court affirmed decree passed by Trial Court – Whether so called agreement to sell is enforceable in law for passing decree for specific performance of Contract – *Held*, jurisdiction to order specific performance of contract based on existence of valid and enforceable contract – Where valid and enforceable contract not made, Court will not make contract for them – Specific performance will not be ordered, if contract itself suffers from some defect, which makes contract invalid or unenforceable – Discretion of Court will not be there, even though contract is otherwise valid and enforceable – High Court noticed fact in Trial Court judgment that during pendency of lis, Delhi Development Authority allotted plot in question in favour of deceased father of Defendant/original Plaintiff by executing lease deed with condition that it will remain non-transferable for specific period – In spite of fact noticed by High Court that land allotted to Defendant is not transferable for specific period, High Court failed to hold that decree for specific performance cannot be passed – Both Trial Court and High Court failed to consider provisions of Act and principles as to requirement of law for

passing decree for specific performance – Impugned order passed by Trial Court and affirmed by High Court cannot be sustained, as no decree for specific performance can be passed on basis of alleged receipt-cum-agreement – Appellant directed to refund specific sum which was paid by Respondents to Appellant together with interest – Appeal allowed.

**(2016) 2 MLJ 139 (SC)**

**Bharat Aluminium Co. vs. Kaiser Aluminium Technical Services Inc.**

**Date of Judgment : 28.01.2016**

Arbitration – Foreign Awards – Arbitration and Conciliation Act, 1996, Articles 17 and 22 – Agreement executed between Appellant and Respondent with relation to supply of equipment, modernization and up-gradation of production facilities of Appellant – Certain disputes arose between parties, same referred to arbitration – Arbitration proceedings held in foreign country and Arbitral Tribunal made two awards in favour of Respondent – Appellant filed application under Section 34 of Act 1996 before District Judge, same dismissed – Being aggrieved, Appellant filed appeals before High Court, same dismissed – Appeals – Whether parties by agreement, express or implied, excluded wholly or partly, Part I of Act 1996 – *Held*, perusal of terms between parties would show that first part of Article 22 of Act 1996 is on law governing contract and in second part, parties intended to lay down law applicable to arbitration agreement – After already agreeing on procedural law governing arbitration in Article 17.1 of Act 1996, parties intended to state same again in separate Clause within same contract in Article 22 of Act 1996 – Intention of parties to apply English Law to arbitration agreement also and not limit it to conduct of arbitration is clear from Article 22 of Act 1996 – Facts on record show that law applicable to arbitration agreement in present case is English Law – Once it is found that law governing arbitration agreement is English Law, Part I of Act 1996 stands impliedly excluded – Plea of Appellant that arbitration agreement is to be governed by Indian Law cannot be accepted – No error found in view of High Court that applications filed by Appellant under Section 34 of Act 1996 are not maintainable against foreign awards between Appellant and Respondent – Appeals dismissed.

**2016 (2) CTC 442**

**Vijay Prakash Jarath vs. Tej Prakash Jarath**

**Date of Judgment : 01.03.2016**

Code of Civil Procedure, 1908 (5 of 1908), Order 8, Rule 6-A – Counter-claim filed after framing of issues – Whether acceptable – Counter-claim filed by Defendant after framing of issues accepted by Trial Court – High Court holding that said Counter-claim was not acceptable by relying upon decision in *Rohit Singh's case, 2006 (12) SCC 734* – *Held*, decision in *Rohit Singh's case* distinguishable from instant case – Evidence and arguments from both sides were completed and case was reserved for Judgment on one occasion in *Right Singh's case*, whereas, in instant case, Plaintiff's evidence had only commenced and was not concluded and Defendant's evidence was yet to commence – Cause of action for filing of Counter-claim arose much before filing of Written Statement by Defendant as contemplated in Rule 6-A(1) of Order 8 – *Held*, no serious prejudice or irreparable loss to be caused by Plaintiff by adjudication of Counter-claim – Consequently, Order of Trial Court restored and Order of High Court, set aside – Appeal allowed.



**Bangalore Development Authority vs. N. Jayamma**

**Date of Judgment : 10.03.2016**

Property Laws – Land Acquisition – Adverse Possession – Land Acquisition Act, 1894 – Section 4 – Suit property was acquired through land acquisition proceedings by Appellant/BDA – Respondent filed suit claiming title over suit property through adverse possession – All issues were decided in favour of Respondent herein, on basis of which suit was decreed in her favour declaring that she is the owner in possession of suit property having perfected her title by way of adverse possession – Judgment and decree was appealed against by Appellant before High Court – High Court has vide impugned judgment affirmed decree passed by trial court thereby dismissing appeal of Appellant – Whether Appellant/BDA has actual possession over suit property and whether Respondent can sell suit property claiming title through adverse possession – *Held*, findings of court below that only paper possession was taken and actual possession was not taken becomes meaningless – In addition, it is pertinent that Respondent herein had herself admitted that officials of BDA had come to suit property and demolished existing structure – This act of BDA would amply demonstrate that there was no unhindered, peaceful and continuous possession of suit land – Counsel for Respondent raised plea of equity and submitted that when BDA itself is created for purpose of formation of layouts and allotment of sites to members of public, Respondent should not be dispossessed when she is in continuous possession of suit property – These would not be relevant considerations in present case as Court cannot forget that present appeal arises out of civil proceedings filed in form of suit by Respondent and once it is found that Respondent has not been able to prove title by adverse possession, no such aspects, not coming within scope of suit proceedings, can be looked into – Appeal allowed.

\*\*\*\*\*

## SUPREME COURT CITATIONS CRIMINAL CASES

**(2016) 1 MLJ (CrI) 525 (SC)**

**Nankaunoo vs. State of U.P.**

**Date of Judgment : 19.01.2016**

Murder – Conviction – Indian Penal Code, 1860, Sections 302 and 304 Part I – Appellant/accused convicted under Section 302, same confirmed on appeal – Appeal – Whether conviction of Appellant under Section 302 of code 1860 sustainable – *Held*, weapon used and manner in which attack was made and injury inflicted due to premeditation establish that Appellant intended to cause injury on deceased – Once it is established that accused intentionally inflicted injury, offence would be murder, if it is sufficient in ordinary course of nature to cause death – Plea of Appellant that injury was on inner part of left thigh, which is non-vital organ accepted – Having regard to facts and circumstances on record that gunshot injury caused in inner part of left thigh, sufficiency of injury to cause death must be proved and cannot be inferred from fact that death took place – Prosecution did not elicit from doctors that gunshot injury on inner part of left thigh caused rupture of important blood vessel and same sufficient in ordinary course of nature to cause death – In view of sit us and nature of injury and in absence of evidence elicited from doctor that said injury was sufficient in ordinary course of nature to cause death, conviction of Appellant should be modified to Section 304 Part 1 – Conviction of Appellant under Section 302 modified as conviction under Section 304 Part 1 – Appeal partly allowed.

**2016 (2) CTC 547**

**V.L.S.Finance Ltd vs. S.P.Gupta**

**Date of Judgment : 05.02.2016**

Code of Criminal Procedure, 1973 (2 of 1974), Section 321 – Withdrawal from Prosecution – Role of Public Prosecutor – Executive function of Public Prosecutor – Parameters – Public Prosecutor is empowered to withdraw from prosecution of any person at any time before judgment is pronounced – Prosecution should obtain consent of Court for withdrawal of prosecution – Discretion of Court – Duty of Court – Court has to satisfy itself that Executive function of Public Prosecutor has not been improperly exercised or that it is not an attempt to interfere with normal course of justice for illegitimate reasons or purposes – Court bound to consider relevant factors that case is likely to end in acquittal and continuance of case is only causing severe harassment to Accused – Withdrawal of Prosecution can be permitted only when valid reasons are made out for same – Public Prosecutor cannot act like Post Office on behalf of State Government and he is required to act in good faith, peruse material on record and form independent opinion that withdrawal of case would really subserve Public interest.

Code of Criminal Procedure, 1973 (2 of 1974), Sections 321 & 91 – Withdrawal from Prosecution – Role of Public Prosecutor – Public Prosecutor filed Application for withdrawal from prosecution – Application filed averring that facts of case clearly show that it was Commercial transaction between parties and there was no likelihood of conviction – Director of Prosecution sent Report stating that perusal of Charge-sheet would disclose that there is sufficient evidence on record to

establish charges – Lt. Governor accepted Report of Director of Prosecution and directed Public Prosecutor not to press Application filed for withdrawal from prosecution – Whether Public Prosecutor is entitled to file Application for withdrawal of Application preferred under Section 321 of Code and not to press an Application for withdrawal – Whether Magistrate lacks jurisdiction to allow prosecution from preferring Application for withdrawal – Filing of Application cannot be compared with any kind of review of an Order passed by Court – Filing of Application for seeking withdrawal from prosecution and Application not to press Application earlier filed are both within domain of Public Prosecutor – Public Prosecutor can seek withdrawal of Application filed for withdrawal from prosecution by considering material on record – Court cannot say that Public Prosecutor has no Legal Authority to file Application for not pressing earlier Application – Accused persons cannot be allowed to contest such Application – Liberty granted by High Court to Accused person to contest Withdrawal Application under Section 91 of Code is legally unsustainable.

**(2016) 1 MLJ (CrI) 660 (SC)**

**State of Karnataka vs. Dattaraj**

**Date of Judgment : 15.02.2016**

Dowry Death – Cruelty to Woman – Indian Penal Code, 1860, Sections 498A, 304B and 34 – Dowry Prohibition Act, 1961, Sections 3, 4 and 6 – Respondents/accused convicted under Sections 498A and 304B read with Section 34 of Code 1860 and Sections 3, 4 and 6 of Act 1961 – On appeal, Division Bench convicted accused No.1 and acquitted other accused/brother, father and mother of accused No.1 – Appeal by State – Whether High Court justified in acquitting accused Nos.2 to 4 for offences under Sections 498A and 304B read with Section 34 of Code 1860 and Sections 3,4 and 6 of Act 1961 – *Held*, statement of PW-1/mother of deceased shows that monetary gifts given to accused No.1 and his family members were in nature of customary gifts exchanged during different ceremonies – Return gift was also given by family of accused No.1, same was in conformity with customary tradition for such occasions – Regarding demand of specific sum for purchase of agricultural land, said demand allegedly made by accused No.2/father of accused No.1, when he went to leave deceased at her maternal home, when accused No.1 was in abroad – Even if oral allegation is accepted as correct, it was demand made about two years before occurrence, same was too remote to occurrence and would not satisfy requirement of “soon before her death” contemplated under Section 304B(1) of Code 1860 – No further attribution against accused Nos.2 to 4 – Prosecution did not establish either harassment or violence towards deceased against accused Nos.2 to 4 nor of dowry demand – High Court justified in recording that even statements of PW-1 and PW-4 did not attribute overt act to accused Nos.2 to 4 – High Court justified in acquitting accused Nos.2 to 4 for offences under Sections 498A and 304B read with Section 34 of Code 1860 and Sections 3, 4 and 6 of Act 1961 – Impugned order passed by High Court does not justify interference – Appeal dismissed.

**2016 (2) CTC 672**

**CBI, Bank Securities and Fraud Cell vs. Ramesh Gelli**

**Date of Judgment : 23.02.2016**

Banking Regulation Act, 1949 (10 of 1949), Section 46-A – Indian Penal Code, 1860 (45 of 1860), Section 21 – Prevention of Corruption Act, 1988 (49 of 1988), Section 2(c)(viii) – Public Servant – Meaning of – Interpretation of Statutes – Deeming provision – Effect of – Prevention of Corruption Act was amended with object of making Anti-Corruption Law more effective and widen its coverage – Provision in Banking Regulation Act making persons holding certain offices as Public Servants under Indian Penal Code applies to PC Act too – Removal of certain provisions of IPC would

not make provision of Banking Regulation Act redundant – Law, which is not *ultra vires*, must be given proper meaning – Managing Director and Executor Director of a Private Bank are Public Servants under PC Act.

Prevention of Corruption Act, 1988 (49 of 1988), Section 2(c)(viii) – Public Servant – Expression “Public Servant” is to be understood by reference to office and duties performed in connection therewith.

Interpretation of Statutes – Casus omissus – Harmonious Construction – What has not been provided for in Statute cannot be supplied by Courts – Such Rule has exception – Section 46-A of Banking Regulation Act rendering persons holding certain offices in Bank as Public Servants, cannot be allowed to become meaningless merely because said provision refers to only IPC and not Prevention of Corruption Act – Ironing out creases becomes necessary while interpreting such provision and Rule of Harmonious Construction warrants reading of Section 46-A of Banking Regulation Act in Section 2(c)(viii) of PC Act.

**2016 (2) CTC 767**

**Anant Prakash Sinha @ Anant Sinha vs. State of Haryana**

**Date of Judgment : 04.03.2016**

Code of Criminal Procedure, 1973 (2 of 1974), Section 216 – Alteration of Charge *vis-s-vis* Power of Magistrate – Trial Court, *held*, empowered to alter charge if there is material before it in Complaint or there is evidence to justify alteration of charge – Alteration of charge can be done on basis of allegations in Complaint, FIR or in any accompanying material – Adducing of evidence, *held*, not necessary for alteration of charge – Charge can be altered in case of defect or omission – Alteration of charge permissible at any time before pronouncement of Judgment – However, alteration of charge to be necessarily based on material on record and duty of Court to ensure that no prejudice is caused to accused – In instant case, charge altered by Magistrate after referring to material on record and recording his *prima facie* satisfaction – Order of Magistrate upheld – Appeal dismissed.

Code of Criminal Procedure, 1973 (2 of 1974), Section 216 – Indian Penal Code, 1860 (45 of 1860), Section 406 – Criminal proceedings initiated against Husband for offences under Sections 498-A & 323, IPC – Application filed by Wife to add charge under Section 406 as there were allegations against Husband pertaining to Criminal breach of trust – Application allowed by Magistrate after appreciating material on record – Order of Magistrate upheld – Contention of Husband that Application under Section 216 could only be filed by Public Prosecutor and not by Wife, unsustainable – Decision of *Shiv Kumar v. Hukum Chand*, *held*, distinguishable on facts and not applicable to instant case.

\*\*\*\*\*

## HIGH COURT CITATIONS CIVIL CASES

**(2016) 1 MLJ 294**

**Nainar vs. Chelliah**

**Date of Judgment : 06.11.2015**

Succession Laws – Partition – Adverse Possession – Hindu Succession Act, 1956 – Appellants/Plaintiffs filed suit for partition and allotment of 2/3<sup>rd</sup> share of suit property – Trial Court held that Appellants entitled to 2/4<sup>th</sup> share in suit property instead of 2/3<sup>rd</sup> share – 2<sup>nd</sup> to 4<sup>th</sup> Respondents filed appeal and Appellants filed cross-appeal – Lower Appellate Court allowed appeal by 2<sup>nd</sup> to 4<sup>th</sup> Respondents and dismissed cross appeal by Appellants – Present appeal – Whether First Appellate Court right in reversing judgment and decree of Lower Court and in dismissing suit by ignoring erroneous and illegal plea of adverse possession by Respondents against Appellants who are co-owners – Whether First Appellate Court right in reversing finding of Lower Court that no evidence to establish that there were other properties belonging to original owner, when First Appellate Court found that there was only suit property available for partition – Held, pleadings and Ex.A1 show that original owner purchased property by sale deed and after his death, suit property inherited by his legal heirs including Appellants and Respondents and they were in joint possession – 2<sup>nd</sup> to 4<sup>th</sup> Respondents failed to prove family arrangement and division of joint possession and in failure of same, 2<sup>nd</sup> to 4<sup>th</sup> Respondents not entitled to claim adverse possession – Subordinate Judge noted that only suit property available for partition, but erred in holding that Appellants suppressed properties at Village in question – Finding of Trial Court that 2<sup>nd</sup> to 4<sup>th</sup> Respondents failed to prove family arrangement is valid and as per law – Lower Appellate Judge failed to consider issues on merits and also failed to see that 2<sup>nd</sup> to 4<sup>th</sup> Respondents did not plead that necessary parties are not impleaded and suit barred for non-joinder of parties – Further, original owner died after coming into force of Act 1956 – In view of Act 1956, Trial Court rightly held that legal heirs of daughter of original owner have 1/4<sup>th</sup> share in suit property and no infirmity in said finding – Appeal allowed.

**(2016) 1 MLJ 756**

**N. Ramalingam vs. N. Thanickachalam**

**Date of Judgment : 05.01.2016**

Property Laws – Mesne Profits – Second Appeal – Appellants/Plaintiffs filed suit for partition and mesne profits – Trial Court passed preliminary decree granting 5/16<sup>th</sup> share in suit property to Plaintiffs – Plaintiffs filed application to pass final decree for dividing suit property by meets and bounds – Since Advocate Commissioner submitted report to effect that suit property was indivisible, Plaintiffs filed another application to sell suit property and to pay their share – 3<sup>rd</sup> Defendant bought Plaintiff's share through Court, as Plaintiffs expressed no objection regarding that – Regarding mesne profits, Trial Court fixed at specific rate and directed 3<sup>rd</sup> Defendant to pay 5/16<sup>th</sup> share out of same to Plaintiffs – Aggrieved over fixation of market value and mesne profits, 3<sup>rd</sup> Defendant filed first appeals, same dismissed – But, Plaintiffs challenged those impugned judgments by filing present second appeals – Whether second appeals filed by Plaintiffs challenging decree passed by First Appellate Court in relation to fixation of market value and mesne profits sustainable – Held, since Plaintiffs were not aggrieved by market value and mesne profits fixed by Trial Court, they did not file first appeal against same – Challenge was made by way of first appeal only by 3<sup>rd</sup> Defendant and he

also lost it – Plaintiffs who had no grievance in respect of fixation of market value of suit property and mesne profits by Trial Court cannot have grievance against decree and judgment of First Appellate Court in first appeals filed by 3<sup>rd</sup> Defendant – If there is one who is aggrieved by decree and judgment of First Appellate Court, it must be only 3<sup>rd</sup> Defendant – 3<sup>rd</sup> Defendant did not file second appeal – Second appeals filed by Plaintiffs challenging decree and judgment passed in relation to fixation of market value and mesne profits not sustainable – Common decree and judgment of First Appellate Court confirmed – Appeals dismissed.

**2016 (1) TLNJ 264 (Civil)**

**Poonaiyan @ Thirupathi vs. Parvath and others**

**Date of Judgment : 05.01.2016**

Civil Procedure Code 1908 as amended, Order 23, Rule 1 – Suit was filed for declaration with respect to cart track and for permanent injunction – Defendant filed written statement denying the Plaintiff's title to cart track – Plaintiff filed application to amend the plaint for declaration that the sale deed in favour of the Defendant in respect of the suit property is null and void – Petition dismissed – CRP against the same was also dismissed – Hence, filed Application to withdraw the suit with liberty to file fresh suit on same cause of action – Application dismissed – Civil Revision Petition challenging the same – Held, as alleged by the Plaintiff there is a 'formal defect' in the plaint – Civil Revision Petition was allowed granting liberty to withdraw the suit and to file a fresh suit on same cause of action subject to limitation and payment of suit costs by Plaintiff to Defendant.

**(2016) 1 MLJ 784**

**Chellammal (Died) vs. Sadhu**

**Date of Judgment : 08.01.2016**

Succession Laws – Will – Plea of Ouster – Indian Evidence Act, 1872, Section 63 – 4<sup>th</sup> Respondent filed suit for partition and allotment of her 1/5<sup>th</sup> share in suit properties – Respondents 1 to 4 herein are defendants 1 to 4 in suit – During pendency of suit, 5<sup>th</sup> defendant died and in her place Appellants herein were brought on record as legal heirs – Trial court by decree and judgment decreed the suit as prayed for – Against same, defendant 1 to 3 filed appeal which was allowed – Aggrieved by same, legal representatives of 5<sup>th</sup> defendant have filed present second appeal – Whether first appellate court was right in holding that plea of ouster stands proved and whether first appellate court was right in holding that on account of Will, Appellants have got no share in suit properties – Held, trial court without assigning any reason has simply held that plea of ouster has not been proved – First appellate court has found that plea of ouster has been proved – In Court's considered opinion, said finding is perverse inasmuch as there is no discussion on issue – Above all, evidence on question of ouster is also wanted – It is for parties to lead further evidence on issue – Mere fact that plaintiff and 5<sup>th</sup> defendant did not raise any objection in respect of Will at time when it was marked in evidence would not go to automatically prove execution of Will – There is difference between mere marking of document and proving its execution and also contents – When law relating to Will is so clear that execution itself is to be proved by following special procedure, there is no escape for parties from said procedure – Person who wants to take advantage of Will is bound to prove execution of said Will by following procedure – Will has not been proved by following special procedure – Decree and judgment of both courts below set aside – Suit remitted back to trial court for fresh disposal in accordance with law – Appeal allowed.

**(2016) 2 MLJ 14**

**S. Palani vs. S. Bharathi Dasan (deceased)**

**Date of Judgment : 12.01.2016**

Succession Laws – Settlement Deed Cancellation – Validity - Indian Succession Act, 1925, Sections 232 and 276 – Suit property belongs to deceased – Plaintiff and Defendants 1 to 4 are legal heirs of deceased – Deceased settled suit property in favour of her sons, Plaintiff and first defendant and executed Settlement Deed – Deceased subsequently cancelled Settlement Deed by way of registered Document – Deceased while being of sound mind executed Will in favour of Plaintiff disposing of suit property – Plaintiff filed suit for execution of Will – Defendants filed suit for declaring cancellation deed in valid and for decree of partition – Plaintiff contends that Settlement Deed can be construed as Will and its cancellation is valid – Defendants contend deceased had no right to execute Will – Whether Settlement Deed executed by deceased can be construed as valid Will and its cancellation valid and whether Will executed by deceased in presence of attesting witnesses and registered before concerned Sub-Registrar is valid – Held, Court already construed document as Settlement Deed and in pursuance of Settlement Deed, title of property was transferred to settler and settler allowed to transfer patta – Settlor has given consent to transfer patta and permitted settler to pay tax receipt to Government – Right was recognized and first defendant recognized as co-owner to suit property – On date of settlement itself, title of property was transferred – Document cannot be termed as Will – Settlement Deed already came into force and even as per Settlement Deed, deceased has no power to revoke Settlement Deed unilaterally, since right or title to property already conveyed to settler – Once Settlement Deed is executed by settler to settler, if at all party, who has executed document, is aggrieved he could have very well approached Civil Court to set aside same – He could not unilaterally cancel Settlement Deed by getting deed of cancellation registered with Sub-Registrar – Cancellation Deed and registration without jurisdiction liable to be set aside – After execution of Settlement Deed, deceased has no right or interest over suit property except right to enjoy suit property till her life time – Since deceased has no right or interest in suit property, execution of Will by deceased in presence of witnesses and registration of Will, will not give any right to Plaintiff – Plaintiff cannot acquire any right or interest over suit property in pursuance of Will – Plaintiff prayer for grant of Probate and Letters of Administration not acceptable – Plaintiff's evidence not acceptable and defendants' evidence is acceptable – Suit of Plaintiff dismissed – Suit of defendants decreed as prayed for.

**2016-2-L.W.88**

**D. Venkatapathy vs. D. Jegapathy**

**Date of Judgment : 19.01.2016**

Evidence act/ WILL, proof of, sections 68, 69, 'other evidence', person at registrar's office, his evidence, whether other evidence'

Settlement deed/ proof of, cancellation by registered document

Settlement deed, execution, whether acted on – cancellation of it by registered document, effect of

WILL execution, attestation, whether proved – Examination of DW2, a clerk at sub-registrar's office, not an attestor, had no role to play in execution or in its registration whether sufficient, as other evidence

Sub Registrar not examined – D.W.2 speaks of facts contained in document found by way of endorsements made by sub registrar, whether his oral evidence would satisfy section 69

Registrar who made endorsement competent to speak about attestation or signature of attestor and execution of Will, provided he had animo attestandi for purpose of attesting that he has seen executant signing or has received from him a personal acknowledgment of his signature – WILL not proved

Opportunity to prove settlement deed was acted upon given, matter remanded

**(2016) 2 MLJ 85**

**Meenambal vs. Shantha**

**Date of Judgment : 02.02.2016**

Civil Procedure – Partition – Non-Joinder of Necessary Parties – Plaintiff / First Respondent filed suit for claim in suit properties – Trial Court passed preliminary decree, finding that Plaintiff entitled to 1/20<sup>th</sup> share and defendants 7 to 10 are entitled to 1/20<sup>th</sup> share each in entire suit properties – Defendants 1 to 6 in suit are Appellants – Respondents 6 to 9 are legal representatives of deceased Second Respondent, who was seventh defendant in suit – Aggrieved over preliminary decree passed by Trial Court, Defendants 1 to 6 have filed appeal – Appellants contend since half of properties were allotted for charitable purpose, plaintiff cannot claim right in those properties and cannot be partitioned – Whether Defendants have title over suit properties through adverse possession and suit liable to be dismissed on ground of ouster – Whether suit filed by plaintiff is bad for non-joinder of necessary party – Held, Defendants 1, 3 to 5 contend that they have prescribed title by adverse possession and ouster – In absence of any evidence to show that property was released by wife and daughters of original owner in favour of his son, plea of adverse possession and ouster cannot be accepted – Plaintiff has filed suit as co-sharer and therefore, plea of adverse possession and ouster was rightly rejected by Trial Court – Court does not find any error or irregularity in findings of Trial Court with regard to rejection of plea of ouster and adverse possession – It is clear that ½ of suit properties and ½ of income derived from shops belong to Trust – However, Trust has not been made as party in suit, even without making owner of properties as party in suit, plaintiff has filed suit and also obtained decree behind back of said Trust – Trust is interested party and its properties cannot be partitioned, that too, in their absence – Though Trial Court had given finding that ½ of properties belong to Trust and that plaintiff and defendants cannot claim any right in those properties, but erroneously passed preliminary decree in respect of properties, belonging to Trust also – When Defendants raised specific plea that ½ of properties belong to Trust and that plaintiff cannot claim any right in those properties, Trial Court should have at least framed issue with regard to non-joinder of necessary party viz, Trust and decided same on merits – Suit dismissed – Appeal allowed.

**2016-2-L.W.151**

**Lakshmanan vs. Mani**

**Date of Judgment : 10.02.2016**

C.P.C./ Order 6, Rule 17

Amendment of written statement to correct date of discharge of loan – Examination of witnesses was over, defendant had filed a proof affidavit (chief examination) and cross examination was to be conducted – whether can be allowed – held : Typographical error, no new plea – would not cause any prejudice



**2016 (1) TN MAC 433 (DB)**

**Divisional Manager, Oriental Insurance Co. Ltd. vs. Rajesh**

**Date of Judgment : 11.03.2016**

MOTOR VEHICLES ACT, 1988 (59 of 1988), Sections 166,168 & 173 – Award of Compensation – Disbursal of Compensation amount to Claimants – Compensation awarded by Tribunal/Court not reaching hands of Victims/Claimants in full – Claimants/Victims not able to realize fruit of judicial decisions awarding “Just Compensation” – Amounts to failure of justice – Courts cannot be mute spectator to dissipation of Compensation amount to benefits of others – In order to safeguard interest of Victims/Claimants and to ensure that Claimants get full Compensation without any digression as also to avoid delay in disbursal, High Court directed e-Transfer of Compensation amount to Bank Accounts of Claimants by RTGS or NEFT mode – Directions issued to Tribunals to be followed scrupulously – *Procedure to be followed before passing Award* : (i) Tribunals to obtain Bank Account details of Claimants at time of commencement of Trial : (ii) To obtain and mark Pan Card of Claimants, if available : (iii) To advise Claimants to have Pan Card to avoid higher TDS : District/Taluk Legal Services Authorities to provide assistance in obtaining Pan Cards : (iv) To obtain self-attested copy of Adhaar Card : (v) In case of minor Claimants, to obtain Bank Account details specifying name of Guardians – *Procedure after passing of Award* : (1) Tribunals to direct Insurer/Transport Corporation or such entities to deposit Award amount to credit of MACT Bank Account directly by NEFT or RTGS mode : (2) Insurer/Transport Corporation, etc. to instruct their Bank to deposit Award amount by Direct Bank Transfer (DBT) to MACT Bank Account of Tribunal with following information in prescribed format : MCOP No.; Claims Tribunal Name; Date of Award; Compensation amount; TDS; Bank Transaction Reference or UTR No. : (3) MACT Bank to furnish receipt of deposits with said information and Statement of Account on daily basis to Registry of Tribunal : (4) Insurer/Transport Corporation, etc. to submit a Letter to Registry enclosed with Bank Advice in prescribed format to enable Tribunal to keep tab on deposits made : (5) Payment Advice copy also to be sent to Tribunal and Claimants/Claimants’ Counsel : (6) Insurer to provide Form 16-A to Claimants in case of TDS deductions : (7) Tribunals to disburse Compensation amount directly to Bank Accounts of Claimants by NEFT/RTGS mode of e-Transfer : (8) Details of MACT Bank Account of Tribunal as also Bank Account details of Claimants to be stated in Award itself – Matter directed to be placed before Chief Justice for issuance of appropriate Circular to all District Judges and Claims Tribunals for wide publicity – District Judges and Claims Tribunals directed to ensure strict implementation and compliance of Directions/Procedure w.e.f. 1.8.2016.

INCOME-TAX ACT, 1961 (43 of 1961), Section 194-A – MOTOR VEHICLES ACT, 1988 (59 of 1988), Sections 166 & 168 TDS deduction from interest on Compensation by Insurer – 10% deduction for Pan Card Holders and 20% deduction for non-Pan Card holders – Claim Tribunals required to obtain and mark Pan Cards of Claimants – Where Claimants not in possession of Pan Cards, Tribunals to advise such Claimants about importance of having Pan Card to avoid higher TDS for their benefit, before passing of Awards – District/Taluk Legal Services Authorities can facilitate and provide assistance in getting Pan Cards to such Claimants – Insurers required to provide Form 16-A to Claimant, in case of TDS deductions, so as to enable Claimants to seek refund of same.

MOTOR VEHICLES ACT, 1988 (59 of 1988), Sections 166 & 168 – Disbursal of Compensation amount to Claimants – Issuance of crossed Cheques bearing endorsement “& Co.” instead of “A/c Payee” – “& Co.” crossed Cheque can be endorsed in favour of another person, who can deposit same in his own Bank Account and withdraw amount – Such Cheques would deprive Claimants from getting full Compensation as awarded by Tribunal/Court – High Court in *CMA 3384/23.2.2016* strictly directed issuance of crossed Cheques with endorsement “A/c Payee” alone and not “& Co.”.

PERMANENT DISABILITY – LOSS OF EARNING CAPACITY – Assessment – Injured/Claimant, aged 26 yrs., employed, drawing salary of Rs.15,000 p.m. – Suffered grievous injuries and totally bed-ridden in spite of treatment in various hospitals – Injured in vegetative state unable to eat, drink, urinate, pass motion without help of others – Disability Certificate of 90% issued by Medical Board – Another Medical Board assessed disability at 100% - Injured brought before Tribunal for personal viewing of condition – Injured would move only his eye balls in response to any query – Tribunal fixed disability at 100% - *Held*, proper Fixing income at Rs.15,000 p.m. and adding 50% towards Future Prospects, Tribunal fixed income at Rs.22,500 p.m. – *Held*, not proper when income taken by Tribunal also included Rs.7,500 towards allowance – High Court deducting certain allowances taken income at Rs.13,500 p.m. and adding 50% towards Future Prospects, fixed Monthly Income at Rs.20,250 – Applying appropriate Multiplier of 17 as applied by Tribunal, High Court awarded Loss of Earning Capacity at Rs.41,31,000 [Rs.20,250x12x17] as against Rs.45,90,000 awarded by Tribunal.

INCOME – Assessment – Injured/Claimant aged 26 yrs., employed, drawing salary of Rs.15,000 p.m. as per claim – Salary Certificate marked – Employer examined as PW4 – Claimant was paid basic salary of Rs.7,500 and Rs.7,500 as allowance – TDS Statement produced by Employer included name of Claimant – Tribunal taking income at Rs.15,000 and adding 50% towards Future Prospects, fixed monthly income at Rs.22,500 – *Held*, not proper, without deducting any amount towards allowance – Deducting certain allowances, High Court taken income at Rs.13,500 p.m. and adding 50% towards Future Prospects, fixed monthly Income at Rs.20,250.

FUTURE MEDICAL EXPENSES – Injured aged 26 yrs. suffered grievous injuries – 100% disability – Injured in vegetative state – Tribunal after awarding Rs.7,50,370 towards Medical Expenses, awarded Rs.5,00,000 towards Future Medical Expenses – Rs.5,00,000 awarded towards Future Medical Expenses being excessive reduced to Rs.2,00,000.

MOTOR VEHICLES ACT, 1988 (59 of 1988), Sections 173, 166 & 168 – Award of Compensation – Challenge to – 100% disability – Award of Rs.64,86,620 as Total Compensation – High Court fixing monthly Income at Rs.20,250 p.m. as against Rs.22,500, reduced award under Loss of Earning Capacity from Rs.45,90,000 to Rs.41,31,000 – Award under Future Medical Expenses also reduced from Rs.5,00,000 to Rs.2,00,000 – Reducing Total Compensation from Rs.64,86,620 to Rs.57,28,000, High Court directed Insurer to deposit entire Award amount within period of 8 weeks – Tribunal directed to disburse Award amount to Claimants by way of Crossed Account Payee Cheque in favour of Claimant – Appeal allowed partly.

COMPENSATION – Award of – Disbursal of – Mode – Tribunal directed to pay Award to pay Award amount to Claimants in form of Crossed Account Payee Cheque drawn in favour of Claimant alone.

### **2016 (2) CTC 705**

**A.Raja Sundari vs. Suresh Kumar**

**Date of Judgment : 17.03.2016**

Hindu Marriage Act, 1955 (25 of 1955), Section 15 – *Ex parte* Decree of Divorce – Application to set aside *ex parte* Decree pending for four years – Re-marriage of Husband – Validity of – Petition for Divorce filed by Husband in year 2008 – Wife/Revision Petitioner set *ex parte* in year 2010 – Petition to set aside *ex parte* Decree filed with delay of 24 days – Proceedings initiated by Wife

pending for two years due to negligent and lax attitude of Wife and ultimately dismissed on 5.2.2014 – Husband re-married on 6.2.2014 – *Held*, dismissal of Application to condone delay an invited injury by Wife herself – By virtue of re-marriage, interest of Second Wife significant in deciding Application for restoration/setting aside of *ex parte* Decree – *Held*, before Amendment of 1976 as per Proviso to Section 15, parties could remarry only after one year had elapsed from date of Decree of Divorce – Said condition deleted *via* Amendment of 1976 – In such circumstances, *held*, intention of Legislature is to settle rights of parties after divorce permanently at shortest period of time – Uncertainty after divorce permanently at shortest period of time – Uncertainty after divorce only against Public policy and Social interest, rightly eliminated by Amendment of 1976 – Remarriage of Husband not unlawful – Dismissal of Application filed by Wife justified – Civil Revision Petition filed by Wife, dismissed.

Code of Civil Procedure, 1908 (5 of 1908), Order 9, Rule 13 – Limitation Act, 1963 (36 of 1963), Section 5 – Application for setting aside *ex parte* Decree – Dismissal – Whether justified – Divorce proceedings – Wife set *ex parte* – Application to set aside *ex parte* Decree filed with 24 days’ delay – Wife failing to appear in first hearing – Batta not paid for two years – Application for restoration filed by Wife returned and not represented for long – Petition to condone delay filed by Wife dismissed in 2014 – Petitioner, *held*, guilty of exhibiting supine indifference – Wife, *held*, responsible for inordinate delay and lax attitude towards Court proceedings – Dismissal of Application filed by Wife, justified.

\*\*\*\*\*

**HIGH COURT CITATIONS  
CRIMINAL CASES**

**(2016) 1 MLJ (CrI) 710**

**Mayandi vs. State through Inspector of Police**

**Date of Judgment : 30.09.2015**

Murder – Solitary Witness – Indian Penal Code 1860, Section 302 – Accused were charged with murder of deceased – Trial court acquitted second accused but convicted Appellant/first accused under Section 302 of Code 1860 on basis of evidence of solitary witness – Appeal against conviction – Whether Appellant guilty of offence under Section 302 of Code 1860 and conviction can be sustained on evidence of sole witness – *Held*, P.W.1 is admittedly wife of deceased and thus interested witness – She is also inimical towards accused because of earlier occurrence between accused and deceased – Occurrence had not taken place anywhere near her house but near Ration Shop – Presence of P.W.1 at place of occurrence, was, even according to case of prosecution by sheer chance – If witness claims to have been present at place of occurrence by chance, reasons for his being present should be explained to satisfaction of court – Only explanation offered by P.W.1 is that she followed deceased to Ration Shop – Nature of evidence spoken by P.W.1 would go to show that her presence itself is doubtful – Because P.W.1 happens to be solitary witness whose evidence does not draw any corroboration from any independent witness, it is difficult to sustain conviction – Evidence of a solitary witness can be foundation for conviction, provided, it inspires confidence of Court, in which case, Court need not necessarily look for corroboration from any independent source – Evidence of P.W.1 is not free from doubt and there is also no corroboration from any independent source – Court acquits Appellant/first Accused giving benefit of doubt, thereby holding that prosecution has failed to prove case against him – Appeal allowed.

**(2016) 1 MLJ (CrI) 613**

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

**Date of Judgment : 14.10.2015**

Murder – Circumstantial Evidence – Indian Penal Code, 1860, Sections 302, 201, 120(b) and 109 – Charge sheet laid against accused under Section 302 read with Section 109 and Section 120(b) – Trial Court acquitted accused No.2 for offences under Sections 120(b) and 302 read with Section 109, but convicted accused No.1 under Sections 120(b) and 302 read with Section 201 and accused No.3 under Sections 120(b) and 302 read with Section 109 – Appeal by accused Nos.1 and 3 – Whether prosecution established guilt against Appellants beyond reasonable doubt – *Held*, PWs.5 and 6 turned hostile and alleged bottles were not marked, as argued by Appellants – As per evidence of PW-7/sister's son of deceased, A3 and A2 conspired at bus stand to done away with deceased and he told same to his mother, but his mother asked him not to reveal same to anyone – If there was such conspiracy, nothing would have prevented PW-7 to disclose same to others, even prior to occurrence to prevent offence – Version of PW-7 is self-contradictory and also not acceptable – Mahazar witnesses and witnesses for alleged confession statement relating to recovery of material objects were also not supporting prosecution case – As per report of viscera, no poisonous substance found – In cross-examination, Doctor/PW-14 opined that injuries found on body of deceased could have been possible by falling down on mud surface – As case solely based on circumstantial evidence, prosecution could have established each link of circumstances to establish guilt against accused beyond reasonable

doubts – Medical evidence also not supporting prosecution case, which would go to root of matter – Guilt was not established by prosecution beyond reasonable doubt against Appellants – Conviction imposed on Appellants set aside – Appeal allowed.

**(2016) 1 MLJ (CrI) 593**

**Poomalai vs. State**

**Date of Judgment : 16.11.2015**

Cruelty – Dying Declaration – Indian Penal Code, 1860, Sections 498A and 306 – Charges framed against Appellant/accused for offence under Sections 498A and 306 – Trial Court convicted accused under Section 498A, but acquitted him for offence under Section 306 – Against conviction passed by Trial Court under Section 498A, present appeal preferred by Accused – Whether Trial Court justified in convicting accused under Section 498A – *Held*, Trial Court invited conviction only on basis of Ex.P5/dying declaration alleged to have been given by deceased – Except materials in Ex.P5, no other materials available in it to substantiate materials found in first charge regarding demand of dowry – Since first charge is not inconsonance with materials found in Ex.P5, on basis of same, it cannot be concluded that only due to demand of dowry, deceased passed away – Conclusion by Trial Court on basis of Ex.P5 is erroneous – Evidences show that material witnesses became hostile – If such occurrence took place as spoken by prosecution, parents of deceased would not have become hostile – No evidence to invoke Section 498A – Trial Court, without considering lack of evidence on side of prosecution, erroneously found accused guilty under Section 498A – Conviction by Trial Court set aside – Appeal allowed.

**(2016) 1 MLJ (CrI) 570**

**Sree Gokulam Chit vs. S.Shanthi**

**Date of Judgment : 20.11.2015**

Negotiable Instrument – Enforceable Debt – Maintainability of Complaint – Negotiable Instruments Act, 1881 – Section 138 – Accused/Respondent one of the subscribers to chit, became successful bidder and was required to pay chit amount in instalments – In order to discharge liability Accused gave cheque, in question and same returned stating ‘funds insufficient’ – Respondent did not discharge liability even after notice was issued – Appellant filed three complaints under section 138 of Act against Respondent – Trial Court dismissed all three complaints filed against Respondent – Respondent was acquitted by Trial Court – Appeal challenging order of acquittal – Whether complaints are legally maintainable and whether Appellant established that cheques were issued in connection with enforceable debts – *Held*, complaints filed by power of attorney holder representing Managing director and Foreman of Appellant company – Managing director and Foreman are real representatives of Appellant – A delegate cannot make further delegation and thus complaints are not legally maintainable – Since Respondent let in contra-evidence to show discharge, Court can easily conclude that Appellant has not established alleged fact that all cheques have been issued in connection with enforceable debts – If such debts existed, definitely some documents would be available – Respondent has not filed any document for purpose of showing existing liability of Appellant – Even assuming that complaints have been properly filed, Appellant failed to establish that cheques were issued in connection with enforceable debts – Respondent cannot be mulcted with liability under section 138 of Act – Trial Court rightly dismissed all complaints – Orders of Trial Court confirmed – Appeals dismissed.

**(2016) 1 MLJ (CrI) 604**

**Nazeer Jalaludeen vs. State**

**Date of Judgment : 24.11.2015**

Investigation – Extension of Time – Code of Criminal Procedure 1973, Section 167(2) – Constitution of India, 1950, Article 21 – Appellants/accused were arrested and remanded to judicial custody – Appellants contend that they were in custody for 91 days and charge sheet was not filed as per law within stipulated time and Respondent was not entitled to file petition through Public Prosecutor, seeking extension of time – Petition of Respondent was allowed while petition filed by Appellants/accused under Section 167(2) of Code 1973 was dismissed – Whether dismissal of petition under Section 167(2) of Code 1973 filed by Appellants/accused by court below justified – *Held*, it cannot be disputed that as per Article 21 of Constitution 1950 speedy justice is fundamental right – Mandatory requirement to file final report (charge sheet) in any criminal case after completing investigation – When alleged offence is serious in nature, as per procedure stipulated under relevant provision of law, Public Prosecutor should file report for extension of time, stating progress of investigation – Accordingly, Public Prosecutor filed petition, seeking further time of 90 days – Having considered facts and circumstances, extension of time was granted and petition filed under Section 167(2) of Code 1973 was dismissed by court below – Respondent had filed report seeking extension of time through Public Prosecutor by way of report on 90<sup>th</sup> day – Same is filed well within time and therefore, Court could not find any error or infirmity in impugned order passed by Court below, so as to warrant any interference by Court – Appeal dismissed.

**(2016) 1 MLJ (CrI) 529**

**Amogaraj vs. Inspector of Police**

**Date of Judgment : 11.12.2015**

Rape – conviction – Indian Penal Code 1860, Sections 376(2) and 450 – Case of prosecution is that Prosecutrix is deaf and dumb – While Prosecutrix was in her house alone, Accused trespassed and deflowered her – After occurrence, step mother of Prosecutrix as *defacto* complainant filed complaint – Trial court found Accused guilty under Sections 376(2) and 450 of Code 1860 – Appeal – Whether Appellant guilty of offences under Sections 376(2) and 450 of Code 1860 – *Held*, specific evidence given by Prosecutrix (P.W.1) is that immediately after entering into her house, Accused has made her to lay on floor and subsequently raped her – Further, she would say that at time of committing offence, P.W.3 has come to house – Evidence given by P.W.1 has also been clearly corroborated by P.Ws.3 and 4 – It is everlasting principle of law that in case like this, mere penetration itself would be sufficient to constitute offence punishable under section 376 of Code 1860 – It has already been stated that motive suggested on side of Appellant/Accused cannot be accepted – Since no motive has been in existence in between Prosecutrix and Accused, this Court is of view that Prosecutrix would not have given such kind of evidence – Contentions put forth on side of Appellant/Accused are not having merits – Trial court, after considering believable evidence available on side of prosecution, has rightly found Accused guilty – Appeal dismissed.

**(2016) 1 MLJ (CrI) 626**

**M.Murugan vs. State rep. by Vigilance and Anti Corruption**

**Date of Judgment : 21.12.2015**

Witness – Examination of Witness – Permission – Code of Criminal Procedure, 1973, Section 243(2) – Petitioner/accused made request before Trial Court to permit him to examine defence witness

in question, same turned down – Being aggrieved, Petitioner filed revision against impugned order turning down his request – Whether request/plea made on behalf of accused to examine witnesses on his side as defence witnesses is vexatious or frivolous – *Held*, if Court feels that ‘list of witnesses’ provided by accused is only to protract proceedings, it is well within its power to dis-allow even whole relief sought for – Trial Court, while negating request of accused to permit him to examine Village Administrative Officer, opined that it was not necessary to enquire him for proving the documents as public documents and allowed plea of accused by permitting him to examine other two witnesses for reasons assigned in impugned order – In view of fact that Respondent/Complainant, even though cited said Village Administrative Officer as one of the prosecution witnesses in ‘List of Witnesses’ to be examined before Trial Court, it dispensed with examination of said witness – In instant case, accused exercised his right specified in Section 243(2) by filing petition well within time – Impugned order is not valid, as it negative request of accused to permit him to examine Village Administrative Officer as his defence witness – Impugned order passed by Special Judge set aside – Petition allowed.

**(2016) 1 MLJ (Crl) 575**

**Maharajan vs. State rep by, Assistant Commissioner of Police**

**Date of Judgment : 19.01.2016**

Suicide – Abetment of Suicide – Cruelty – Indian Penal Code, 1860, Sections 306 and 498-A – Accused No.1, son of Accused No.2 and Accused No.2 alleged to have tortured deceased – Due to importunity of Accused, deceased driven to commit suicide leaving behind her young children – Trial Court on appreciation of evidence convicted and sentenced both Accused under Sections 306 and 498-A of Code 1860 – Appeal against conviction – Whether occurrence taken place would be sufficient to come to conclusion that Accused Nos.1 and 2 have abetted deceased to commit suicide – *Held*, as per charges court can easily come to conclusion that, Accused No.1 attacked deceased as to why deceased took child to her parents without his consent and broke her ear stud – Deceased doused kerosene on her person and set herself on fire – Prosecution adduced abundant evidence for purpose of proving cruelty alleged to have been caused by Accused Nos.1 and 2 – From conjoint reading of evidence given by P.Ws.2 and 3, coupled with complaint, court can come to conclusion that after some time from date of marriage, Accused Nos.1 and 2 have tortured deceased and only due to their torture she has been driven to commit suicide – Court can very well come to conclusion that occurrence taken place, sufficient to drive deceased to commit suicide – After lapse of few months from date of marriage, deceased has met miseries and ordeals at hands of Accused Nos.1 and 2 – Accused have attacked and driven her out from marital abode – Under said circumstances complaint has been given by deceased – Clear that Accused Nos.1 and 2 have committed offences punishable under Sections 498-A and 306 of Code 1860 – Appeal dismissed.

**(2016) 1 MLJ (Crl) 513**

**Govindaraj vs. State by Deputy Superintendent of Police**

**Date of Judgment : 01.02.2016**

Murder – Provocation – Indian Penal Code, 1860 (IPC) – Sections 300, 302 and 304 (Part-I) – Scheduled Caste and Scheduled Tribe (prevention of Atrocities) Act, 1989 – Sections 3(1)(x) and 3(2)(v) – Indian Evidence Act, 1972 (Act) – Section 114 – Appellant/accused gave complaint against deceased in relation to some quarrel and deceased was summoned by Police – due to quarrel between Appellant and deceased, Appellant cut deceased in his neck with ‘Aruval’ – Trial court convicted Appellant along with another accused under sections 302 IPC read with section 3(2)(v) of Act, 1989 –

Appeal – Whether conviction of Appellant under sections 302 IPC read with section 3(2)(v) of Act, 1989 justified – *Held*, no delay in registration of complaint by Police – Evidences PW 1 to PW 5 inspire confidence of this Court – PW3, PW4 & PW5 explained probabilities of their presence at time of occurrence and same is cogent and convincing – Clear from evidence of PW 1 to PW 5 that Appellant caused cut injury on neck of deceased – Deceased was taken to hospital by PW1, so statement of DW 1 that relatives of Deceased came to place of occurrence on his information not believable – According to doctor, PW 15, death of deceased caused due to injury on neck – Ocular evidence corroborated by medical evidence – Meeting of Appellant and deceased purely accidental and it can be presumed under section 114 of Act that deceased provoked accused and out of grave and sudden provocation, accused cut deceased – Act of Appellant falls within third limb of section 300 IPC and also within Exception-I to section 300 IPC – Appellant liable to be convicted under section 304 (Part-I) IPC – Deceased was not attacked because he belonged to Scheduled Caste – No evidence that Appellant has uttered a word stating that Deceased belonged to Scheduled Caste – Prosecution failed to prove offence under section 3(1)(x) of Act, 1989 and hence acquitted under said Act – Appellant had no bad antecedent and there are chances of reformation – Sentence reduced to ten years of imprisonment with fine – Period of Sentence already undergone set off – Appeal partly allowed.

**(2016) 1 MLJ (Crl) 617**

**B.Raja vs. State by Inspector of Police**

**Date of Judgment : 08.02.2016**

Suicide – Abetment to Suicide – No evidence – Indian Penal Code (IPC) – Sections 306 and 498-A – Tamil Nadu Women Harassment Act (Act) – Section 4 – Deceased self-immolated herself – Appellant/accused/husband was charged with offence under section 4 of Act and sections 306 and 498-A IPC – Additional Sessions Judge (Mahila court) convicted Appellant under sections 306 and 498-A IPC but acquitted under section 4 of Act – Appeal against conviction – Whether Additional Sessions Judge justified in convicting Appellant under sections 306 and 498-A of IPC – *Held*, though PW 1, mother-in-law of accused stated that accused harassed deceased, PW1 has not witnessed any such occurrence – Complete variance in evidence rendered by PW2, sister of deceased before police and before court and same does not disclose any incriminating evidence against accused – Statement recorded before PW9 (Revenue Divisional Officer) is same as statement recorded before Police and are not recorded in presence of accused – Since Statements made by PW1 and PW2 before PW9 are not subject to cross-examination and was recorded outside court, they cannot be substantive evidence – Statements before PW9 cannot be used to record conviction – Evidence of PW3 and PW4 complete hearsay hence not useful to case of Prosecution – Evidence of PW5 is vague and does not pin accused to charge under section 306 IPC – PW8, doctor deposed that deceased told him that when she had self-immolated, accused tried to save her – Evidence of PW8 remains unchallenged – Prosecution evidence did not establish charges framed against accused – Suspicion and Surmises, however strong may not take place of legal proof – No acceptable evidence to record conviction against accused – Conviction and sentence of accused set aside – Appeal allowed.

\*\*\*\*\*