TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW

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SUPREME COURT CITATIONS
CIVIL CASES

(2016) 5 MLJ 253 (SC)

Mukul Sharma vs. Orion India (P) Ltd.

Date of Judgment : 10.05.2016

Contract – Specific Performance – Built up Area – Inclusion of Common Area – Indian Contract Act, 1872, Section 5 – Dispute arose between parties as to what was built up area – Appellant/Plaintiff filed suit against Respondent/Defendant for specific performance of instrument between them, same decreed – On appeal, High Court held that Plaintiff accepted proposition that built up area would include common areas and if he accepts that, he cannot resile subsequently in view of bar under Section 5 – Present appeal – Whether Plaintiff entitled to specific performance as claimed – Whether 'built up area' as mentioned in Ext.1/agreement includes common area – *Held*, expression 'built up area' is not defined in sale deed and it is to be deciphered from conduct of parties – As per letter/Ex.'H', Appellant understood built up area as including common area – Subsequently, Appellant disputed position and it was Respondent who accepted and agreed to position that built up area does not include common area – Plaintiff initially understood concept in particular manner, same does not prevent him from raising dispute – On raising such dispute, nothing prevented Defendant from insisting Plaintiff to stick to his original stand – But, it was Defendant who changed his stand as per Ex.3 and Ex.4 and accepted position as raised by Plaintiff – Under true spirit of Section 5, Defendant cannot resile from mutually agreed position – Impugned judgment of High Court with regard to finding on 'built-up area' set aside and that of Trial Court restored – Appeal allowed.

(2016) 5 MLJ 504 (SC)

Union of India vs. K.V. Lakshman

Date of Judgment : 29.06.2016

Civil Procedure – Dismissal of Appeal – Additional Evidence – Code of Civil Procedure 1908 (Code 1908), Section 96 and Order 41 Rule 27 – Appellant / Union of India (Divisional Railway Manager) is Plaintiff whereas Respondents are the Defendants in suit – Dispute arose between parties regarding ownership of plot of land near railway station – Trial Court vide judgment/decree dismissed suit – Appellant filed first appeal before High Court – In appeal, Appellant filed application under Order 41 Rule 27 of Code 1908 seeking permission to adduce additional evidence – High Court dismissed appeal – Whether High Court was right in dismissing appeal of Appellant in *limine* – Whether High Court was right in rejecting application under Order 41 Rule 27 filed by Appellant – *Held*, High Court should not have dismissed appeal in *limine* – In first instance, High Court should have admitted appeal and then decided finally after serving notice of appeal on Respondents – Court also finds from record that on one hand, Judge observed that appeal has "absolutely no arguable point" – On other hand to support these observations, Judge devoted 50 pages – This indicated appeal involved arguable points – Settled principle of law that right to file first appeal against decree under Section 96 of Code 1908 is valuable legal right of litigant – Jurisdiction of first appellate Court while hearing first appeal is very wide like that of Trial Court – It is open to Appellant to attack all findings of fact or/and of law in first appeal – Duty of first appellate Court is to appreciate entire evidence and may come to conclusion different from that of Trial Court – Powers of first appellate Court while deciding first appeal are well defined by various judicial pronouncements of this Court and are no

more *res integra* – High Court committed error when it rejected application filed under Order 41 Rule 27 of Code 1908 – There was no one to oppose application – Respondents were neither served with notice of appeal nor served with application and they did not oppose application – Appellant averred in application as to why they could not file additional evidence earlier in civil suit and why there was delay on their part in filing such evidence at appellate stage – Averments in application were supported with affidavit which remained un-rebutted – Application also contained necessary averment as to why additional evidence was necessary to decide real controversy involved in appeal – Additional evidence being in nature of public documents and pertained to suit land, same should have been taken on record – Appellant being Union of India was entitled to legitimately claim more indulgence in such procedural matters due to their peculiar set up and way of working – Application filed by Appellant under Order 41 Rule 27 of Code 1908 deserved to be allowed – Once additional evidence is allowed to be taken on record, appellate Court is under obligation to give opportunity to other side to file additional evidence by way of rebuttal – Court allow application made by Appellant under Order 41 Rule 27 of Code 1908 – Impugned order has to be set aside – Respondents granted opportunity to file additional evidence in rebuttal – Civil suit restored to its file – Trial Court directed to retry civil suit on merits – Appeal allowed.

(2016) 5 MLJ 535 (SC)

Sundaram Finance Limited vs. Noorjahan Beevi

Date of Judgment : 29.06.2016

Limitation – Agreement – Bar of Limitation – Limitation Act, 1963 (Act 1963), Articles 55 and 113 – Appellant/Plaintiff/Finance company and First Defendant had entered into agreement – First Defendant/hirer was to clear off entire amount due in monthly instalments – First Defendant committed default in payment of instalments – Plaintiff filed Original Suit praying for decree of sum along with interest – Trial court after considering facts held that suit is barred by limitation – High Court also affirmed judgment of trial court and held that suit is barred by limitation – Whether suit filed by Plaintiff was barred by limitation – *Held*, rights of parties have to be determined as per terms and conditions of agreement – Terms of agreement clearly indicate that on committing breach of terms and conditions of agreement rights shall accrue to Plaintiff to sue for balance instalments and damages for breach of contract – Right to sue shall not stand differed till either sale or till the last date of payment of instalment – Both courts below have rightly taken view that limitation shall start running from the date hirer defaulted in making payment – Suit filed beyond three years from date was clearly barred by time – Appeal dismissed.

2016 (2) TN MAC 162 (SC)

Rakesh Kumar vs. United India Insurance Co. Ltd.

Date of Judgment : 23.07.2016

MOTOR VEHICLES ACT, 1988 (59 of 1988), Sections 147, 149(2) & 173 – LIABILITY OF INSURER – Order exonerating Insurer from its liability – Legality – Possession of valid and effective Driving Licence – Proof – Driver produced photocopy of Driving Licence – Same proved and marked without any objection of Insurer – Tribunal, holding that Insurer failed to adduce any contra-evidence, held Insurer liable to pay Compensation – Finding of Tribunal reversed in Appeal for non-production of original Driving Licence, holding that since Driving Licence not properly proved, it cannot be said that Driver possessed a valid Driving Licence – Exonerating Insurer from its liability, High Court directed Insurer to pay and recover – Order reversing finding of Tribunal, *held*, not proper, when Driver proved his Driving Licence in his evidence – No objection raised by Insurer about its admissibility or manner of proving – Moreover, since original licence was produced before Criminal

Court, Driver produced photo copy before Tribunal – Licence once proved and marked in evidence without objection of Insurer, Insurer cannot raise objection about same at a later stage – No evidence putforth by Insurer to prove that licence was fake or invalid – Factors germane for deciding issue in question not considered by High Court – Setting aside Order impugned to extent of liability, Insurer held to be liable to pay Compensation.

2016 (5) CTC 434

Sasan Power Limited vs. North American Coal Corporation India Pvt. Ltd.

Date of Judgment : 24.08.2016

Indian Contract Act, 1872 (9 of 1872), Section 37 – "Assignment" – Meaning of – Assignment is transfer of existing right or interest in intangible property owned by Assignor – Such transfer may be whole or part of such right – Assignment does not extinguish right or interest – Assessment of rights is possible but assignment of burden of Contract is not contemplated and it is possible only by consent of all parties.

Words and Phrases – "Assignment" – What is – Assignment, *held*, a transfer from one person to another, whole or part of an existing right or interest in intangible property presently owned by Assignor – Assignment does not extinguish right and interest of Assignee – Assignment of rights under Contract permissible but not of burden of Contract.

Indian Contract Act, 1872 (9 of 1872), Section 62 – Novation and Assignment – Interpretation of Contract – Agreement entered into by Plaintiff with American Company – Second Agreement entered into between Plaintiff, American Company and Defendant by which Defendant assumed certain obligations and same time American Company was not discharged of its obligations to Plaintiff – Mutual obligations under original Agreement remain to be performed – Novation involves three steps *viz*. – (a) Contract is in existence; (b) Such contract is substituted by new Contract either between same parties or different parties with mutual consideration of discharge of old Contract – Mere variation of certain terms of Contract is not Novation.

Indian Evidence Act, 1872 (1 of 1872), Sections 3, 63, 64 & 91 – Issue whether Contract is Tripartite or Bipartite is fact in issue – No oral evidence can be adduced on matters reduced to writing except by producing said document or Secondary Evidence of that document – Oral evidence is Secondary Evidence but documents are to be proved by Primary Evidence – Exception to Rule that document should be proved by primary evidence, one carved out in Section itself – Concession by Counsel on such fact in issue is adducing oral evidence not coming under any such exception – Uninformed concession cannot change character of document.

Practice & Procedure – Concession given by Advocate contrary to written document in case relating to interpretation of document will not bind parties.

Indian Contract Act, 1872 (9 of 1872), Section 28(b) – Ouster of jurisdiction of Court – Arbitration and Conciliation Act, 1996 (26 of 1996), Sections 2(f) & 7 – One Indian Company entered into Agreement with American Company – Subsequently both Indian Company and American Company entered into another Agreement with another Indian Company whereby such other Indian Company agreed to discharge obligations under original Agreement without discharging American Company of its obligation under original Agreement – Foreign element present in such Agreement – Parties entitled to choose governing law in such cases – Section 28(1)(b) not bar.

Arbitration and Conciliation Act, 1996 (26 of 1996), Section 45 – Indian Contract Act, 1872 (9 of 1872), Section 23 – Applicability of Section 45 – Validity of Arbitration Agreement – Scope of Enquiry – Suit for Declaration of certain Articles in Agreement as null and void and for connected reliefs – Objection of Respondent that Suit is under Section 45 – Contention of Appellant that 'Agreement' between parties is in contravention to Public Policy and hit by Section 23 of Contract Act as Suit Agreement between two Indian Parties was to be governed by Foreign law – *Held*, under Section 45, Court can only conduct an Enquiry to determine whether Arbitration Agreement is 'null and void, inoperative, incapable of being performed' – Court in exercise of power under Section 45, cannot delve into legality and validity of Substantive Contract – Arbitration Agreement is a separate and independent Agreement – Arbitration Agreement/Clause not to govern rights and obligations arising out of Substantive Contract, but it only governs way of settling disputes between parties – Examination of Articles of Substantive Agreement, *held*, beyond scope of Enquiry while adjudicating validity of Arbitration Agreement under Section 45 – As Arbitration Agreement between parties valid and legal, Court by virtue of mandate of Section 45, duty bound to refer parties to Arbitration – Order of District Court dismissing Suit as being barred by Section 45, upheld – Order however, requiring modification as parties not referred to Arbitration, *held*, in conformity with Section 45. The Appellant's case as evidenced by the Plaint in its Suit is that parts of the AGREEMENT-I though created valid rights and obligations between the (original) parties thereto ceased to be valid subsequent to the assignment under AGREEMENT-II. Because (according to the Appellant's understanding) the parties to AGREEMENT-II are only two companies incorporated in India. They could not have agreed that the governing law of the Agreement should be the law of the United Kingdom. According to the Appellant, such a stipulation in the Agreement would be contrary to the public policy and hit by sections 23 of the Indian Contract Act, 1872. Therefore, the Arbitration Agreement initiated by the Respondent cannot be proceeded with.

Arbitration and Conciliation Act, 1996 (26 of 1996), Section 2(f) – International Commercial Arbitrations – Applicability of Part I & Part II - - Decisions of Apex Court – Dictum in *Bhatia International v. Bulk Trading*, 2002 (4) SCC 104, that Part I to apply to all Arbitrations and proceedings – Provisions of Part I to completely apply to Arbitrations held in India and parties to deviate only as permissible by Part I – In case of International Commercial Arbitrations, provisions of Part I to apply unless parties choose laws or Rules over application of Part I – In said cases, any provision in Part I contrary to, excluded by Rules or laws chosen by parties, would not apply – However, by subsequent Judgment of Apex Court in *BALCO case*, 2012 (5) CTC 615 (SC), decision in *Bhatia case* overruled – Decision of Full Bench in *BALCO* that provisions of Part I to be applicable only to Arbitrations taking place in India and would have no application to International Commercial Arbitrations held outside India – Decision in *BALCO case* delivered with prospective effect, having no effect on Arbitrations entered into before *BALCO* – In instant case, Agreement-II entered into between two Indian Companies, to which a Foreign Company is also a party, held to be an 'International Commercial Arbitration' as contemplated under Section 2(f) – Said Agreement to be governed by principles enunciated in *Bhatia case* as same was entered into before decision in *BALCO case* – Articles in Agreement providing that Agreement shall be governed by laws of UK and disputes shall be resolved by ICC in London as per ICC Rules and that provisions of Part I would not apply, *held*, in conformity with law laid down in *Bhatia case*.

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SUPREME COURT CITATIONS
CRIMINAL CASES

2016 (4) CTC 314

Kunapareddy @ Nookala Shanka Balaji vs. Kunapareddy Swarna Kumari

Date of Judgment : 18.04.2016

Protection of Women from Domestic Violence Act, 2005 (43 of 2005), Sections 9-B & 37(2)(c) – Domestic Violence Complaint – Amendment of Complaint – Power of Court to amend Complaints – Nature of jurisdiction – Reliefs can be granted by Magistrate under Domestic Violence Act and are of Civil Nature – Object of enacting Domestic Violence Act is to provide for remedy which is amalgamation of Civil rights of Complainant – Courts dealing with Domestic Violence Complaints had power to allow Amendment Application – No complete bar under Criminal Procedure Code to allow amendment of Complaints by Criminal Courts.

(2016) 3 MLJ (Crl) 116 (SC)

R. Rachaiah vs. Home Secretary, Bangalore

Date of Judgment : 05.05.2016

Charge – Alteration of Charge – Recall of Witnesses – Code of Criminal Procedure, 1973 (Code 1973), Sections 216 and 217 – Indian Penal Code, 1860 (Code 1860), Sections 302, 306, 364, 365 and 34 – Appellants/accused charged under Sections 306 and 365 read with Section 34 of Code 1860 – Trial Court convicted accused under Sections 302 and 364 read with Section 34 of Code 1860 – Accused filed appeal alleging that since alternative charge under Section 302 of Code 1860 wrongly framed without following procedure under Sections 216 and 217 of Code 1973, trial in relation to conviction under Section 302 of Code 1860 vitiated – Accused alleged that there could not be conviction under Section 364 of Code 1860 as well in absence of specific charge under said Section – High Court dismissed appeal – Present appeals – Whether trial against accused vitiated, as alternative charge under Section 302 of Code 1860 wrongly framed without following procedure under Sections 216 and 217 of Code 1973 – *Held*, when Appellants charged with offence under Section 306 of Code 1860, focus and stress in cross-examination shall be on that charge alone – At fag end of trial, charge altered with "Alternative Charge" with framing of charge under Section 302 of Code 1860, same gives altogether different complexion and dimension to prosecution case – In order to take care of said prejudice, it was incumbent upon prosecution to re-call witnesses, but nothing of that sort happened – Only one official witness/Deputy Superintendent of Police examined on same date when alternative charge framed – Case was not even adjourned as mandatorily required under Sub-Section (4) of Section 216 of Code 1973 – Provisions of Sections 216 and 217 are mandatory in nature as they not only sub-serve requirement of principles of natural justice but guarantee right which is given to accused to defend themselves – Cross-examination of witnesses is important facet, but there is no cross-examination of these witnesses with regard to charge under Section 302 of Code 1860 – Trial stands vitiated and no conviction under Section 302 of Code 1860 – Charge under Section 302 of Code 1860 was in substitution of earlier charge under Section 306 of Code 1860 as both charges cannot stand together – Appeals allowed.

(2016) 3 MLJ (Crl) 271 (SC)

State of Himachal Pradesh vs. Rajiv Jassi

Date of Judgment : 06.05.2016

Murder – Appeal against Acquittal – Indian Penal Code 1860 (Code 1860), Sections 302 – Respondent/husband was accused of administering poison to deceased/wife and causing her death – Trial Court convicted Respondent – High Court on appeal, acquitted Respondent – State is in appeal as against order acquitting Respondent for commission of offence under Section 302 of Code 1860 – Whether High Court was right in reversing judgment of Trial Court convicting Respondent for commission of offence under Section 302 of Code 1860 by committing murder of his wife by way of administering poison – *Held*, administering of poison forcibly is supported by medical evidence in the form of injuries which were found on the front side shows sign of struggle by deceased to save herself in process – Injuries could not have been caused by convulsions – Overall conduct of accused and gesture of deceased in pointing her hand towards her husband as person responsible for her condition, delay caused by accused in taking victim to hospital knowing fully well kind of deadly poison, points towards his guilt – Chain of circumstances is complete – Four circumstances are to be examined before recording conviction – There was clear motive for accused to administer poison to deceased – Deceased died of poison said to have been administered – Accused had poison in his possession – Accused had opportunity to administer poison to deceased – Tests stand satisfied in instant case – Prosecution has proved case beyond periphery of doubt – Conduct of accused and gesture of victim at crucial time as projected in the case, medical evidence, evidence as to purchase of poison unerringly point towards guilt of accused – Impugned judgment and order passed by High Court set aside – Judgment of Trial court restore – Appeal allowed.

(2016) 3 MLJ (Crl) 235

Balveer Singh vs. State of Rajasthan

Date of Judgment : 10.05.2016

Cognizance – Cognizance of Offence – Suicide – Code of Criminal Procedure 1973 (Code 1973), Sections 173(8) and 190 – Indian Penal Code 1860 (Code 1860), Sections 304-B, 306 and 498-A – Appellants are parents of son who was married to deceased – Respondent no.2/Complainant/father of deceased filed complaint – Matter was investigated which resulted into filing of charge sheet against son of Appellants only for abetting suicide committed by deceased – Respondent No.2 filed application before Magistrate First Class (JMFC) for taking cognizance against Appellants and son under Sections 304-B and 498-A of Code 1860 – Application was dismissed by Magistrate – Magistrate committed case before Sessions Court as offence under Section 306 of Code 1860 is triable by Sessions Court – Before Sessions Court, Respondent No.2 preferred similar application once again – Session Courts accepted application and issued warrants – Appellants challenged order by filing revision petition before High Court which has been dismissed – Order is impugned in present proceedings – Whether Court of Sessions was empowered to take cognizance of offence under Sections 304-B and 498-A of Code 1860 when similar application was rejected by JMFC while committing case to Sessions Court, taking cognizance of offence only under Section 306 IPC and specifically refusing to take cognizance of offence under Sections 304-B and 498-A Code 1860 – *Held*, it cannot be said that Magistrate had played 'passive role' role while committing case to Court of Sessions – Magistrate had taken cognizance after due application of mind and playing "active role" in process – Position would have been different if Magistrate had simply forwarded application of complainant to Court of Sessions while committing case – Court is of opinion that it would be case where Magistrate had taken cognizance of offence – Sessions Court on similar application made by

complainant before it, took cognizance thereupon – Notwithstanding the same, the Sessions Court on similar application made by complainant before it, took cognizance thereupon – Order of Magistrate refusing to take cognizance against Appellants is revisable – Power of revision can be exercised by superior Court – In present case it will be Court of Sessions itself, either on revision petition that can be filed by aggrieved party or even *suo moto* by revisional Court itself – Court of Sessions was not powerless to pass order in his revisionary jurisdiction – Things would have been different had Court of Sessions passed impugned order taking cognizance of offence against Appellants without affording any opportunity to them – With order that was passed by Magistrate valuable right had accrued in favour of Appellants – Court finds that proper opportunity was given to Appellants herein who had filed reply to application of complainant and Sessions Court had also heard their arguments – Court not inclined to interfere with impugned order – Appeal dismissed.

(2016) 3 MLJ (Crl) 366 (SC)

Bhagwan Sahai vs. State of Rajasthan

Date of Judgment : 03.06.2016

Culpable Homicide – Attempt to Commit Culpable Homicide – Right of Private Defence – Indian Penal Code, 1860, Sections 307, 308, 323, 324, 326 and 34 – Appellants/accused conviction under Section 307 and Section 307 read with Section 34, Section 326 and Section 326 read with Section 34 and Sections 323 and 324, same challenged – High Court set aside conviction of Appellants under Sections 307, 307 read with Section 34, 326, 326 read with Section 34, but found them guilty under Section 308 read with Section 34 – High Court maintained Appellants' conviction under Sections 323 and 324 – Challenging their conviction, accused filed present appeal alleging that even if allegations against them were to be true, they are entitled to acquittal on plea of right of private defence – Appellants alleged that injuries on 1st Appellant and his parents, including his father who received serious injuries that proved fatal and prosecution did not offer explanation for injuries on side of accused – Whether impugned order of conviction passed against Appellants sustainable – Whether Appellants entitled to right of private defence – *Held*, once High Court came to finding that prosecution suppressed genesis and origin of alleged occurrence and also failed to explain injuries on person of accused including death of father of Appellants, only possible and probable course left open was to grant benefit of doubt to Appellants – Appellants can claim right to use force, once they saw their parents being assaulted and when it was shown that due to such assault and injury, their father subsequently died – Adverse inference must be drawn against prosecution for not offering explanation – Drawing of such inference is given go-bye in case of free fight mainly because alleged occurrence in that case may take place at different spots and witness may not be expected to see and explain injuries sustained by defence party, same was not factual situation in present case – Appellants acquitted – Appeal allowed.

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2016-3-L.W. 932

Karuppannan vs. Bharat Sanchar Nigam Limited and another

Date of Judgment : 11.05.2016

C.P.C., Section 11, Res judicata, Order 41, rule 22, cross objection, rules 27, 28

Suit to declare erection of transmission towers as nuisance and permanent injunction restraining construction of tower till disposal of suit, was decreed in respect of injunction but dismissed for declaration

First respondent preferred a cross appeal challenging relief of injunction, appellant's first appeal was dismissed, learned judge took up cross-appeal separately, allowed, resulting in dismissal of suit in entirety – Second appeal was preferred only against decree passed in cross appeal

Cross objection, preferring of, how to be dealt with, non-preferring of, effect of, Appellate Judge, while disposing did not advert to challenge to decree of trial Court in respect of prayer for permanent injunction – There was no bar for consideration of that in cross-appeal, appellate Judge ought to have numbered the same as a separate appeal rather than cross-objection – learned Judge ought to have heard both jointly as they arose from one and the same case and judgment

By pronouncing two separate judgments, one in appeal by appellant and other in cross-appeal whether conflicting decisions were rendered

Contention of res judicata, whether applies

Held: Both operate on different fields regarding different reliefs and they do not overlap – Court can grant a lesser relief than the one sought for – Court cannot grant a larger relief than what has been prayed for in the plaint

Procedure followed for recording additional evidence is not in accordance with Order 41 rule 28

2016 (4) CTC 750

Devendran vs. P.V. Palani

Date of Judgment : 11.05.2016

Code of Civil Procedure 1908, (5 of 1908), Order 8, Rule 9 – Additional Written Statement – Filing of Additional Written Statement after commencement of trial – Belatedness – Permissibility – Suit for Declaration and Permanent Injunction – Trial Court dismissed Application on ground of belatedness – General principle of amendment of Plaint will not apply to amendment of Written statement – Liberal approach – Plaintiff and Defendant have taken similar pleas – Plaintiff has taken plea that though vendor of his father had not included Suit properties in Sale Deed but got possession of Suit properties by Adverse Possession – Defendant contended oral sale of property and continued to be in possession of property – Additional Written Statement filed to include plea of perfection of title by Adverse Possession – Inadvertent mistake committed by counsel while drafting Written Statement – No attempt was made to plead new facts – Order of Trial Court set aside.

(2016) 5 MLJ 559

M. Manoharan vs. G. Ganapathy

Date of Judgment : 11.05.2016

Contract – Specific Performance – Non-joinder of Necessary Party – Respondent/Plaintiff filed suit for specific performance directing Appellant/Defendant to execute sale deed as per Ex.A1/suit sale agreement – Appellant resisted that he already entered into sale agreement with third party and story of prior agreement with third party was not imaginary – Also, resisted that as third party did not come forward to complete transaction, he wanted to sell property – Further, resisted that after coming to know that Appellant entered into sale agreement with Plaintiff, third party filed suit against both of them – But, Trial Court decreed suit as prayed for – Present appeal – Whether Plaintiff entitled to specific performance and other reliefs as sought for – Whether suit is bad for non-joinder of necessary parties, as alleged prior agreement holder was not made as party – *held*, alleged prior agreement with third party to be given burial in view of admissions of DW-1 regarding execution of sale agreement and also fact that alleged prior agreement holder did not make payment of balance amount as per prior sale agreement – Also, evidence shows that third party filed suit for specific performance in which Appellant and Respondent made party Defendants, but same dismissed and no appeal preferred by third party against that decree – Plea of non-joinder of necessary parties to be rejected – Though there were discrepancies in evidence adduced by Plaintiff regarding genuineness of suit sale agreement and passing of consideration under it, same rectified by admission of Appellant – No scope to go into question of genuineness of suit sale agreement – Principle 'admitted facts need not be proved' shall apply – Regarding readiness and willingness of Plaintiff to complete transaction, it is admitted that Plaintiff deposited balance amount into Court to credit of suit – Various exchange of notices also show that Plaintiff was ready and willing to perform his part of obligations under suit sale agreement, but Appellant wanted to wriggle out of contract – Findings of Trial Court regarding readiness and willingness by Plaintiff and Plaintiff entitled to specific performance as prayed for in plaint correct, same does not deserve interference, but to be confirmed – Appeal dismissed.

(2016) 5 MLJ 289

Thomas vs. Thiyagarajan

Date of Judgment : 03.06.2016

Property Laws – Frontage Right – Joint Hindu Family Property – Code of Civil Procedure, 1908, Section 11 – Suit filed by Respondent/Plaintiff against Appellants/Defendants for declaration that he was entitled to have frontage right from 'A' 'B' and 'C' schedule properties through 'D' schedule property and for injunction directing Appellants/Defendants to remove superstructure in 'D' schedule property – Trial Court held that Plaintiff entitled to pathway as prayed for and obstruction made by Defendants in pathway should also be removed – On appeal, First Appellate Court held that no ground made out to interfere in finding and conclusion of Trial Court – Challenging impugned order, Defendants filed second appeal alleging that suit was bad for non-joinder of necessary parties, as brother and sister of Plaintiff/owners of 'B' and 'C' schedule properties were not added as parties – Defendants also alleged that both Lower Courts decided matter on merits based on incomplete evidence – Whether Lower Courts correct in not dismissing suit on non-joinder of necessary parties as Plaintiffs, when Plaintiff is neither authorized by owners of 'B' and 'C' schedule properties and they were not made as P – Whether Lower Courts correct in passing decree of declaration and mandatory injunction on merit based on incomplete evidence, when DW-1 was not subject to cross-examination and complete her evidence – *Held*, sufficient opportunity given to 2nd Defendant/DW-1 to subject herself for cross-examination, but she failed to subject her for cross-examination – When Defendants

admitted that encroachment was made in cart-track, there cannot be improvement, even if she subjected herself for cross-examination – Member of joint Hindu family or person claiming right in common for himself and others, persons interested in such right shall be deemed to claim under person, so litigating, under Explanation (6) to Section 11 – Suit filed by Plaintiff on his behalf and on behalf of his brother and sister against trespasser in pathway property binds on all members of family – Objection on ground of non-joinder of necessary parties shall be taken at earliest possible opportunity, but such plea was not raised in written statement – Plea of Appellants about non-joinder of necessary party is to be brushed aside – Appeal dismissed.

2016 (4) CTC 496

G. Janobai vs. V.M. Devadoss

Date of Judgment : 14.06.2016

Code of Civil Procedure, 1908 (5 of 1908), Sections 11 & 47 – Dismissal of Execution Petition – Whether warranted – Suit for Specific Performance of Agreement of Sale – Decree passed in Suit attained finality when same was upheld by Apex Court – Execution proceedings attempted to be stalled by Judgment-debtors by filing Application under Section 47 – Contention of Judgment-debtors that Decree-holder not entitled to get Sale Deed in respect of entire extent of Suit property – Said issue not raised in Written Statement – Judgment-debtors silent for more than a decade – Sale Deeds executed by Judgment-debtors subsequent to execution of Suit Agreement sham and nominal and only created for purpose of circumventing Ceiling Law – Intention of Judgment-debtors only to prevent Decree-holder from executing Decree – Decree having attained finality not to be modified under Section 47 – Order of Execution Court dismissing Application filed by Judgment-debtors, upheld – Civil Revision Petition dismissed.

(2016) 5 MLJ 710

T.S.M. Thummuni (died) vs. Doulat Nisha

Date of Judgment : 22.06.2016

Property Laws – Possession of Title – Estoppel of Tenant – Indian Evidence Act, 1872, Section 116 – After knowing that 1st to 3rd Respondents/1st to 3rd Defendants wanted to demolish thatches and put up new one, Appellants/Plaintiffs filed suit for injunction restraining 1st to 3rd Defendants not to demolish it or make new construction and alteration in suit properties – Trial Court held that Plaintiffs were not entitled to relief sought for, as Defendants proved properties to be Government Poramboke lands, they were in possession and enjoyment of same and "B" memos issued to them – On appeal, Lower Appellate Court confirmed decree and judgment passed by Trial Court – Plaintiffs filed second appeal alleging that as 1st to 3rd Defendants admitted their tenancy under Plaintiffs and were therefore estopped from disputing title in light of Section 116 – Whether 1st to 3rd Respondents estopped under Section 116, once they accepted title of Appellants under lease agreement – *Held*, documents marked as Exs. A.17 to A.19 would show that Plaintiffs wrongly informed that they were owners of suit properties and meagre sum paid by Defendants as monthly rent and they enjoyed suit properties – When Defendants intended to remove and modify thatches, present suit filed – In view of change in subsequent events that suit properties were Government poramboke lands, Defendants entitled to deny title of Plaintiffs, who inducted them into tenancy and same will not cover principle of estoppel – First Appellate Court rightly held that as suit properties were Government poramboke, same admitted by Plaintiffs and they were neither owners nor in possession of suit properties, they were not entitled to relief as sought for – Since suit properties belonged to Government and Defendants were in possession and enjoyment of same, Plaintiffs not entitled to relief as sought for – Appeal dismissed.

(2016) 5 MLJ 689

M. Pattammal vs. G. Parthasarathy

Date of Judgment : 24.06.2016

Succession Laws – Will – Suspicious Circumstances – Plaintiffs/Respondents and defendant/Appellant are sons and daughter of deceased – After deceased's demise, Will has come into effect – Suit has been instituted praying to grant relief sought therein – Single Judge decreed suit as prayed for – Against judgment and decree passed by Single Judge, present appeal has been preferred at instance of Defendant/Appellant – Whether deceased has executed Will in favour of Plaintiffs/Respondents – *Held*, settled principle of law that even though suspicious circumstances have not been taken as defence on side of contesting party, court can very well consider same on basis of available evidence – Unnatural to depose evidence by P.W.1 that he has come to know existence of Will/Ex-P1 after five years from date of demise of his father, since concerned stamp paper stands in his name – If really Will/Ex-P1 has been executed by deceased, since one of attesting witnesses has attended sixteenth day ceremony of deceased, definitely, he would have stated existence of Will/Ex-P1 to all the family members of Plaintiff but attesting witness has not done it – As per evidence of P.W.3, if Will/Ex-P1 has been written in Sub-Registrar's Office and in presence of Sub-Registrar, some endorsements would have found place in Will/Ex-P1 – Plaintiffs have failed to remove suspicious circumstances created on side of Appellant/Defendant with regard to execution of Will/Ex-P1 – Since Plaintiffs have not discharged their burden, it is needless to say that they are not entitled to get relief sought in plaint – Single Judge without considering rickety and fragile evidence available on side of Plaintiffs, has erroneously decreed suit as prayed for – Judgment and decree passed by Single Judge are not factually and legally sustainable and same liable to be set aside – Appeal allowed.

2016-3-L.W. 843

Chemplast Sanmar Limited vs. Senthamizhselvi and another

Date of Judgment: 30.06.2016

C.P.C., Order 7, Rule 1, order 2 rule 2

First suit filed for bare injunction not to interfere with possession – Right reserved to filed suit for specific performance later based on agreement to sell – During pending of agreement first defendant executed sale deed in favour of second defendant – Relief of specific performance and setting aside that sale deed sought – Plaint in subsequent suit whether can be rejected

Held: No – Cause of action for both suits different

2016 (4) CTC 643

S. Mallika vs. R. Saravanan

Date of Judgment: 18.07.2016

Specific Relief Act, 1963 (47 of 1963), Sections 16(c) & 19 – Agreement – Time limit in Agreement – Construction of – Nature of Agreement *vis-a-vis* conduct of party – Suit for Specific Performance of Agreement of Sale – Sale consideration as per Agreement was Rs.4,05,000 – Rs.4 lakhs paid by Plaintiff on date of Agreement – Three years' time limit stipulated for performance of Contract – Contention of Plaintiff that he waited for three years for paying balance sale consideration of a mere amount of Rs.5,000 and asked vendor to execute Sale Deed only at end of third year, unsustainable – *Held*, time limit shown in Contract is upper limit for execution and not real time for execution – Considering escalation of real estate market every year, a party intending to effect sale

would not wait for a long period of three years to pay a sum of Rs.5,000 – Established from conduct of parties that entire transaction was a Loan transaction – Order of Trial Court directing Defendant to repay sum of Rs.4 lakhs received and referred under Agreement, upheld – Second Appeal dismissed.

2016 (4) CTC 470

Kadali Venu Sankar vs. Pydikondala Lakshmi

Date of Judgment : 20.07.2016

Specific Relief Act, 1963 (47 of 1963), Section 16(c) – Suit for Specific Performance – Readiness and Willingness of Plaintiff – Whether established – Agreement to Sell entered into between parties in 2002 – One year fixed as time for performance in Agreement – Suit Notice issued by Plaintiff in 2005, *i.e.* three years after date of Agreement – Mere averment in Plaint by Plaintiff that he was ready and willing to perform his Contract – However, conduct of Plaintiff in not issuing Notice for nearly three years without any plausible reason, establishing that Plaintiff was not ready and willing to perform his part of Contract at all times – Order of Appellate Court, decreeing Suit of Plaintiff, set aside – Order of Trial Court, dismissing Suit of Plaintiff, restored – Second Appeal allowed.

Specific Relief Act, 1963 (47 of 1963), Section 16(c) – "Readiness and Willingness" of Plaintiff – Implication of phrase – 'Readiness', *held*, indicates financial capacity of Agreement holder to fulfil his obligation under Contract – Readiness of Plaintiff not enough for grant of relief of Specific Performance – Plaintiff in addition to establishing his financial capacity also to establish that he is willing to put readiness into action to complete transaction within stipulated time – Plaintiff, not only to be ready to fulfil his part of Contract but also willing to perform same – 'Readiness' and 'Willingness' of Plaintiff, *held*, to co-exist and survive from date of Agreement till date of Decree.

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2016-2-L.W. (Crl) 185

C. Guhamani and another

vs.

**State rep. by Deputy Superintendent of Police,
Crime Branch CID, Coimbatore and others**

Date of Judgment : 11.02.2016

Indian Penal Code, Sections 120-B r/w, 147, 148, 447, 448, 451, 452, 365, 354, 379, 380, 386, 506(ii)

Tamil Nadu Public Property (Prevention of Damage and loss) Act (1992), Section 3(i), 8

Criminal Procedure Code, Section 8, 9, 193, 194

Held: Except Sessions Court, no other Court can try the offence punishable under Section 3 of the TNPPD Act – Assistant Sessions Judge is not having jurisdiction to try offence relating to TNPPD Act

2016-2-L.W. (Crl) 150

Thennarasu

vs.

**State Rep. by Inspector of Police,
Thiruppathur Town Police Station, Vellore District**

Date of Judgment : 02.03.2016

I.P.C., Sections 299, 300, 302, 304(ii)

Murder – culpable homicide or not – Determination of

Accused kicked deceased which resulted in cause of death – Whether culpable homicide or not

Accused can be attributed with knowledge that kicking by force on the abdomen would result in the death of the deceased – Act fall within fourth limb of Section 300

(2016) 3 MLJ (Crl) 442

Uma Maheswari vs. State

Date of Judgment: 30.03.2016

Murder – Suspicion – Indian Penal Code 1860 (Code 1860), Sections 120(b), 302 and 201 – Constitution of India (Constitution), Article 21 – Appellants / Accused 1 to 4 stood charged for offences under Sections 120(b), 302 and 201 of Code 1860 – Trial Court acquitted all accused from

charge under Section 120(b) and convicted them under Sections 302 and 201 Code 1860 – Appeal against said conviction and sentence – Whether Appellants are guilty of offences under Sections 302 and 201 of Code 1860 – *Held*, prosecution has succeeded only in creating suspicion against Accused 1 – On mere suspicion, Accused 1 cannot be convicted – As it has been guaranteed under Article 21 of Constitution, life and liberty of individual cannot be deprived of without following procedure established by law – Courts of law, cannot convict accused on mere surmises and conjectures – Suspicion, however strong it may be, shall not take place of proof – Prosecution has succeeded only in establishing suspicion, but not establishing guilt of Accused – In case based on circumstantial evidence, prosecution has to prove circumstances projected by it beyond reasonable doubts and all such proved circumstances, should form complete chain without any break, so as to unerringly point to the guilt of accused – There should not be any other hypothesis, which is inconsistent with guilt of accused – Prosecution has failed to prove guilt of Accused beyond reasonable doubts – Hypothesis that deceased would have been killed by somebody else and body would have been laid outside house cannot be ruled out – Court finds it difficult to sustain conviction – Prosecution has failed to prove case beyond all reasonable doubts – Appeals allowed.

(2016) 3 MLJ (Crl) 479

Murugan vs. State

Date of Judgment : 21.04.2016

Murder – Eyewitness Account – Indian Penal Code, 1860 (Code 1860), Sections 148, 149, 324 and 302 – Tamil Nadu Prevention of Properties (Damages and Loss) Act 1992 (Act 1992), Section 3(1) – Trial Court framed charges against Appellants/Accused 1 to 6 under provisions of Code 1860 and Act 1992 – Trial Court convicted all Accused – A1 to A6 under Section 148 of Code 1860 – A2 under Section 324 of Code 1860 – A1 under Section 302 of Code 1860 and Section 3(1) of Act 1992 – A2 to A6 under Section 302 r/w 149 of Code 1860 – Whether Appellants are guilty of offences under Code 1860 and Act 1992 – *Held*, Court finds no reason to doubt veracity of eyewitnesses – Eyewitnesses have further stated that A2 attacked P.W.7, in which, he sustained only simple hurt and weapon used was wooden reaper – Eyewitnesses have also stated that motorcycle of deceased was heavily damaged by First Accused – From these eyewitness account, which is duly corroborated by other evidences, more particularly, medical evidence, prosecution has clearly established guilt of six Accused – Quite natural, when number of people were attacking with similar wooden reapers, then it would be really difficult for anyone to particularly say about identity of wooden reaper used by each Accused – In very general manner they have stated that all Accused, baring one, used wooden reapers and attacked deceased – No discrepancy at all in eye of law – Court does not find any merit at all in appeal – Court holds that prosecution has proved case beyond reasonable doubt – Appeals dismissed.

(2016) 3 MLJ (Crl) 355

S. Kannan vs. State

Date of Judgment: 27.04.2016

Evidence – Production of Documents – Effective Defence – Code of Criminal Procedure, 1973 (Code 1973), Sections 91 and 303 – Constitution of India (Constitution), Articles 21 and 22(1) – Petitioners/accused are being prosecuted for their alleged commission of certain white collar offences – Charges were framed and trial set to commence – Petitioner filed petition under Section 91 of Code 1973 seeking production of documents for his effective defence – Trial Court concluded that production of said documents are not necessary and dismissed petition filed under Section 91 of Code 1973 – Whether production of documents as prayed for by Petitioner is necessary for his effective defence – *Held*, documents which are in Electricity Department, which according to defence have so

much of information to put-forth to probablise defence version cannot be negatived on ground that it is not necessary to do so – To do so will be clearly in violation of Articles 21, 22(1) of Constitution and Section 303 of Code 1973 – No trial can be conducted by asking accused to defend his case by his hands tied and asking him defend his case without necessary documents, which according to him are essential for putting up an effective defence – Order of Trial Court set aside – Documents listed in order to be send from concerned Department – Petition disposed of.

(2016) 3 MLJ (Crl) 375

Anand vs. State

Date of Judgment: 01.06.2016

Murder – Sole Eye-witness – Indian Penal Code 1860 (Code 1860), Section 302 – Appellants/Accused 1 and 2 stood charged for offence punishable under Section 302 of Code 1860 – Trial Court found both Appellants guilty under Section 302 Code 1860 and sentenced them to undergo life imprisonment – Appeal against said conviction and sentence – Whether Appellants are guilty of offence under Section 302 of Code 1860 – *Held*, P.W.1 is sole eye-witness to occurrence – Conduct of P.W.1 is quite unnatural and would create doubt regarding his presence at scene of occurrence – P.W.1 did not take any steps to inform police immediately, but, only at 07.00 a.m. on next morning, he filed complaint before police – No explanation for delay in filing complaint, which also creates doubt regarding presence of P.W.1 at scene of occurrence – None of other persons said to have been present at place of occurrence was examined by prosecution, which also creates doubt in prosecution case – Highly unsafe to convict accused based on evidence of P.W.1 alone – Except P.W.1, there is no other credible evidence placed by prosecution to support case – Conviction and sentence imposed by trial Court based on evidence of P.W.1 cannot be sustained, in absence of any other corroborative evidence to establish guilt of accused – Conviction and sentence set aside – Appeals allowed.

(2016) 3 MLJ (Crl) 385

Poovarasi vs. State

Date of Judgment: 08.06.2016

Murder – Circumstantial Evidence – Indian Penal Code, 1860 (Code 1860), Sections 364, 302 and 201 – Appellant, sole accused, stands convicted for offences under Sections 364 and 302 r/w Section 201 of Code 1860 – Trial Court convicted Appellant for murder based on circumstantial evidence – Appeal against said conviction and sentence – Whether conviction of Appellant can be sustained on basis of circumstantial evidence – *Held*, circumstances proved by prosecution as dealt with, form a complete chain which unerringly prove guilt of accused – Alternative hypothesis propounded by accused has been found to be totally false – There is no other alternative hypothesis which is inconsistent with guilt of accused – There are lapses in investigation done and also conduct of trial of case by prosecutor – If these lapses had not occurred, prosecution would have certainly further strengthened the case against accused – Notwithstanding these lapses, prosecution has proved guilt of accused – Trial Court was right in convicting accused – Records reveal that trial Court framed charges against accused under sections 364, 302 and 201 of Code 1860 but had convicted under Section 364 and Section 302 r/w Section 201 – Trial Court ought to have convicted accused under all three charges – Conviction of accused under Section 302 r/w 201 of Code 1860 is obviously not correct – Court modifies same as conviction under Sections 302 and confirms sentence – Accused goes scot free without any punishment for offence under Section 201 – Appeal partly allowed.

2016 (4) CTC 243

S. Sankara Varman vs. State

Date of Judgment: 30.06.2016

Code of Criminal Procedure, 1973 (2 of 1974), Sections 273, 309, 311, 313 & 317 – Protection of Children from Sexual Offences Act, 2012 (32 of 2012) [*POCSO Act*], Sections 36(1) & 33(5) – Indian Penal Code, 1860 (45 of 1860), Sections 341, 342, 323, 354, 294, 376, 511 & 506(II) – Application for Cross-examination of Victim – Rejection of – Whether justified – Rape of minor girl – Criminal Trial – Victim examined by Accused on 05.02.2014 – Victim not cross-examined on same day – Application for cross-examination of victim and other Witnesses filed in 2016 – Application allowed – On scheduled day, victim present for cross-examination but not cross-examined on ground that Accused was not present in Court – Another Application filed by Accused to recall Witness for cross-examination, dismissed – *Held*, on date when victim was present in Court for cross-examination, Counsel of Accused chose not to examine victim under pretext of Section 36(1) of POCSO Act – As per Section 309, Cr.P.C., a Witness present ought to be examined, unless special reasons in writing are recorded to permit contrary – Accused arrested and released on bail, executes a bond to satisfaction of Court that he will appear and participate in Court proceedings till end – In instant case, on concerned date, Application under Section 317 for dispensing with personal appearance of Accused and permitting him to be represented by Counsel, allowed by Trial Court – Section 36(1) of 2012 Act postulates that child should not be exposed to Accused at time of deposition and Accused should be in a place from where he can hear statement of child – Provision does permit Accused to be absent on date when child is present for cross-examination and then seek adjournment under Section 36(1) – Provision does not put a blanket bar on examination of child in absence of Accused – If plea of Accused is accepted, every Accused will absent themselves on date of examination of child and seek shelter under Section 369(1) – Child already having suffered sexual abuse, should not be made to suffer at hands of Accused during trial – Petition filed by Accused, rightly dismissed by Trial Court – Accused failing to cross-examine victim twice when she came to Court, *held*, ought to suffer consequences of his own conscious actions – Petition dismissed.

Code of Criminal Procedure, 1973 (2 of 1974), Section 311 – Protection of Children from Sexual Offences Act, 2012 (32 of 20120 [*POCSO Act*], Section 33(5) – Recalling of Witness – Although Court under Section 311 of Code has power to recall Witness for serving cause of justice, said power, *held*, is subject to Section 33(5) of POCSO Act under which Court has to ensure that child is not called repeatedly to testify before Court – *Generalia specialibus non derogant*.

2016-2-L.W. (Crl) 196

Laborate Pharmaceuticals India Ltd. Unit-2 and others

vs.

State rep by the Drugs Inspector, Tondiarpet, Chennai

Date of Judgment : 06.07.2016

Drugs and Cosmetic act (1940), Sections 18, 18-A, 22, 23, 25(3), 34(2)

Complaint against directors of company, petition to quash proceedings – Show cause notice issued with analyst report and reply was sent

Evidence adducing of, controverting government analyst report, not filed, when to be filed

As per Section 25(3) a request should be made within 28 days from the date of receipt of the show cause notice – A belated request beyond 28 days made cannot be entertained

8 complaints filed against pharmaceutical companies but no action was taken – No material to show as to when the complaint was received by the XV Metropolitan Magistrate, George Town, Chennai – G.O.Ms. No.2937, Home Department dated 30.10.1971, role of, scope – Assistant Public Prosecutors who are borne in the cadre and who are regular Government servants attached to various Courts are required to maintain certain registers – One such register is Charge Sheet Register effect of, what is

Affidavits filed by assistant public prosecutor and Drugs Inspector – Complaint prepared and filed by Assistant public prosecutor, whether within time – Delay whether

Case one among 8 cases, in which same judicial officer was inactive

Held: Date of presentation of complaint is relevant for deciding period of limitation and not date of taking cognizance of offence disclosed in the complaint

Assertion of drugs Inspector and learned Assistant Public Prosecutor, that complaint was presented on 28.11.2012 to 'R' then XV Metropolitan Magistrate, George Town, Chennai, was taken cognizance on 04.03.2015 by one who succeeded 'R' – If the Magistrate merely receives the complaint and stacks it in the shelf without even putting his initials and date thereon, party cannot be made to suffer

Complaint filed before expiry of the shelf life of the drug, Prosecution cannot be quashed

2016-2-L.W. (Crl) 181

Dharmaraj, Thiruthangal, Virudhunagar District
vs.
The Inspector of Police, Alangulam Police station

Date of Judgment : 07.03.2016

Indian Penal Code, Section 306

Criminal Procedure Code, Sections 209, 309

Committal Proceedings – Remand of accused, not more than 15 days effect of

Petitioner arrested on execution of NBW – Committal Proceedings was initiated, date not mentioned by magistrate when petitioner to be produced before assistant sessions court – Effect

It has been taught to Magistrates that they have no power to remand an accused beyond 15 days at one stretch

Held: A magistrate who commits a case to court of sessions should direct accused in custody to be produced before sessions court on a date, not beyond 15 days – Such an endorsement should be made in the committal warrant.

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