



TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW



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INDEX

S.No.	IMPORTANT CASE LAW	PAGE No.
1	Supreme Court - Civil Cases	01
2	Supreme Court - Criminal Cases	04
3	High Court - Civil Cases	07
4	High Court - Criminal Cases	13

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

S.No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE No.
1	Aurobindo Ashram Trust vs. R. Ramanathan	(2016) 6 SCC 126	05.01.2016	Public Trust – Suit under Section 92 C.P.C. – Ambit of	01
2	Vishal N. Kalsaria vs. Bank of India and Others	2016-4-L.W. 7	20.01.2016	SARFAESI Act – Sections 13, 14 and 35	01
3	Rishabh Chand Jain vs. Ginesh Chandra Jain	2016 (4) CTC 103	13.04.2016	Decree, appeal, and revision – Distinction	02
4	Muddasani Venkata Narsaiah (D) Th. Lrs. vs. Muddasani Sarojana	(2016) 5 MLJ 73 (SC)	05.05.2016	Property Laws – Possession of Title – Suit for Declaration	02
5	Ajay Gupta vs. Raju @ Rajendra Singh Yadav	2016 (4) CTC 531	05.07.2016	Rejection of Plaint – Order 7 Rule 11 C.P.C – Sections 4 and 5 Limitation Act	03

SUPREME COURT - CRIMINAL CASES

S.No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE No.
1	State of Maharashtra vs. Syed Umar sayed Abbas	(2016) 4 SCC 735	12.02.2016	Murder trial – Improper Conduct of test identification parade	04
2	Gyaneshwar Shyamal vs. State of West Bengal	(2016) 2 MLJ (Crl) 462 (SC)	29.03.2016	Abduction – Common Object	04
3	Ramesh Rajagopal vs. Devi Polymers Private Limited	(2016) 2 MLJ (Crl) 507 (SC)	19.04.2016	Criminal Proceedings – Quashing of – Abuse of Process	05
4	Devinder Singh vs. State of Punjab through CBI	(2016) 2 MLJ (Crl) 682 (SC)	25.04.2016	Criminal Proceedings Against Police Officers – Sanction of Central Government	05
5	A.Sivaprakash vs. State of Kerala	(2016) 3 MLJ (Crl) 97 (SC)	10.05.2016	Criminal Misconduct by Public Servant – Prevention of Corruption Act	06

HIGH COURT - CIVIL CASES

S.No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE No.
1	K.Rajagopalan vs. R.Gnanapandithan	2016 (3) CTC 731	15.03.2016	Eviction – Wilful default	07
2	Dr.Abdul Rahman vs. Mohamed Syed	(2016) 4 MLJ 520	29.03.2016	Rejection of Plaint	07
3	Sukumaran vs. Madhava Shastri (Died)	2016 (4) CTC 58	31.03.2016	Usufructuary Mortgage – Section 60 of T.P. Act	08
4	Pakkiri vs. Saraswathi	(2016) 4 MLJ 500	07.04.2016	Unregistered document – Insufficiently Stamped	08
5	M.Kadirvelu vs. G.Santhalakshmi	(2016) 4 MLJ 562	15.04.2016	Succession Laws – Female Heir – Renouncants	09
6	Irbaz Shoes vs. Bostik India Private Limited	(2016) 4 MLJ 525	22.04.2016	Return of Plaint – Cause of Action	09
7	Elumalai vs. A.G.L.Irudhayaraj	(2016) 4 MLJ 668	28.04.2016	Evidence – Marking of documents	10
8	Karuppa Konar vs. Chinnathayee	(2016) 4 MLJ 628	11.05.2016	Partition – Will	10
9	N.Ganesan vs. Vadivel	(2016) 4 MLJ 765	03.06.2016	Rejection of Plaint – Improper Payment of Court Fee	11
10	M.Johnson vs. E.Pushpavalli	2016 (4) CTC 152	08.06.2016	Suit for Specific Performance – Readiness and Willingness	11

HIGH COURT - CRIMINAL CASES

S.No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE No.
1	Mudikrishnan @ Krishnan vs. State	(2016) 3 MLJ (Crl) 74	08.03.2016	Murder – Motive	13
2	A. Leo Charles and others vs. M.Vijayakumar	2016-2-L.W. (Crl) 94	28.03.2016	Cognizance of Complaint – Taking Oath of Complainant	13
3	Narayanaswamy @ Narayanan vs. State	(2016) 3 MLJ (Crl) 23	30.03.2016	Unlawful Assembly – Test Identification Parade	14
4	Ganapathy vs. Senthilvel	2016-2-L.W. (Crl) 26	05.04.2016	Victim – Complainant – Right of appeal – Sections 372 and 378 Cr.P.C	14
5	Prabhu @ Hamsa @ Abdul Azeez vs. State	(2016) 3 MLJ (Crl) 218	05.04.2016	Witness – Recalling of – For Cross-examination	14
6	Ramasamy vs. State	(2016) 3 MLJ (Crl) 226	05.04.2016	Murder – Former Statement – Sections 145 and 157 Evidence Act	15
7	Prakash vs. Karpagam	(2016) 3 MLJ (Crl) 122	12.04.2016	Evidence – Presumption – Legitimacy of Child	15
8	Masthan vs. State	(2016) 3 MLJ (Crl) 50	13.04.2016	Murder – Circumstantial Evidence	16
9	V.B.Kamalanathan vs. K.Jayasree	(2016) 3 MLJ (Crl) 198	29.04.2016	Maintenance – Non-payment of	16
10	Rajiv Gandhi @ Marimuthu vs. Inspector of Police, Anaimalai Police Station, Coimbatore	2016-2-L.W. (Crl) 108	06.06.2016	Death sentence – Award of – Balance between aggravating and mitigating circumstances	17

SUPREME COURT CITATIONS CIVIL CASES

(2016) 6 SCC 126

Aurobindo Ashram Trust vs. R. Ramanathan

Date of Judgment : 05.01.2016

Civil Procedure Code, 1908 – S. 92 – Public trust – Suit under S. 92 CPC – Ambit of

- Maladministration in respect of public trust – Drawing inference as to – Considerations therein – Exercise of discretion by trustees in administration of trust – Scope of – Disagreement with exercise of discretion by trustees – Significance and effect of – Held, trustees of a trust are entitled to a wide discretion in administration of trust – A disagreement with exercise of discretion by trustees, however passionate said disagreement might be, does not necessarily lead to a conclusion of maladministration in relation to trust, unless the exercise of discretion is perverse

- Suit filed for removal of existing trustees, appointment of new ones and settling a scheme for administration of Trust – Alleged conduct of existing trustees in not taking any action against/facilitating person allegedly defaming person in whose name Trust concerned was created if entitled the plaintiff-applicants to grant of leave to file such suit – Determination – Conduct concerned must touch upon administration of Trust – Said allegations did not touch upon administration of Trust, hence, suit under S.92 CPC, not maintainable

2016-4-L.W. 7

Vishal N. Kalsaria vs. Bank of India and others

Date of Judgment : 20.01.2016

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) (2002), Sections 13, 14, 35 expression ‘any other law for the time being in force’ effect of, tenant, lessee rights, scope of

Maharashtra Rent Control act (1999), Sections 15, 55(2)

Transfer of property act (1882), Section 106 lessee, rights, what is, scope

Landlord-Tenant relationship/Lessee, protected tenant, rights, SARFAESI ACT, effect of

SARFAESI Act whether will override Rent control act – Right of protected tenant where debtor-landlord secures a loan by offering same property as a security interest either to banks or financial institutions, what is – Rights of lessee, what is, scope of

held: SARFAESI Act cannot override Rent Control Act – A tenant cannot be evicted by using SARFAESI Act – Section 35 cannot be used to bulldoze statutory rights vested on tenants under the Rent Control Act

Mere factum of non-registration of deed will not make lease nugatory – If no written lease deed exists, tenants to prove they have been in occupation of premises as tenants by producing such evidence in proceedings under Section 14 – Neither landlord nor banks can be permitted to exploit non registration of tenancy deed against tenant

Expression ‘*any other law for the time being in force*’ in Section 35 SARFAESI Act, extend only to laws operating in the same field

2016 (4) CTC 103

Rishabh Chand Jain vs. Ginesh Chandra Jain

Date of Judgment : 13.04.2016

Code of Civil Procedure, 1908 (5 of 1908), Sections 115, 96 & 2(2) – “Decree” – “Appeal” – “Revision” – Distinction – Suit for declaration – Defendant filed Interim Application to dismiss Suit on ground of *res judicata* and no cause of action – Trial Court dismissed Suit holding that Suit is barred by *res judicata* and lack of cause of action – Whether Appeal would lie or Revision is maintainable – High Court held that Order passed by Trial Court dismissing Suit without even framing issue is revisable and not appealable – Trial Court determined rights of parties with regard to one of matters in controversy in Suit – Order passed by Trial Court is Decree – Adjudication on controversy that Suit is barred by *res judicata* is judicial determination – Revision preferred by Plaintiff will not lie and Appeal alone is maintainable.

(2016) 5 MLJ 73 (SC)

Muddasani Venkata Narsaiah (D) Th. Lrs. vs. Muddasani Sarojana

Date of Judgment : 05.05.2016

Property Laws – Possession of Title – Suit for Declaration – Code of Civil Procedure 1908 (Code 1908), Order 8 Rule 5 – Suit properties were sold to Plaintiff by surviving sister of deceased – Defendant no.3 claimed to be adopted daughter of deceased and disputed sale – Defendants forcibly evicted Plaintiff from property – Plaintiff filed suit which was dismissed – On first appeal being preferred, Court allowed appeal and suit of Plaintiff had been decreed – High Court in second appeal has not disturbed the concurrent findings that adoption of Defendant no.3 by deceased has not been established – High Court held that sale deed has not been proved for want of examination of surviving sister and in circumstances it was necessary for Plaintiff to file suit for declaration of title – High Court observed that the suit for possession and mesne profits thus could not have been filed and allowed second appeal – Whether it was necessary to seek relief or declaration of title – Whether execution of sale deed in favour of Plaintiff has been proved and Plaintiff was in possession – *Held*, no serious cloud on title of Plaintiff so as to force him to seek relief for declaration of title – Instant case based on strength of sale deed executed by surviving sister, who was sole surviving heir as such succeeded to property and had right to execute sale deed in favour of Plaintiff – Execution of sale deed was not specifically denied in written statement – Once execution of sale deed was not disputed it was not necessary to examine surviving sister to prove it – Provisions contained in Order 8 Rule 5 require pleadings to be answered specifically in written statement – Settled law that passing of consideration under sale deed cannot be questioned by third party – Defendant no.3 has not been able to establish her case that she is adopted daughter of deceased – Defendant no.3 being third party, could not have questioned execution of sale deed on ground of passing of consideration – Defendant no.3 was residing with deceased, but she has not claimed any derogatory title nor has claimed adverse possession –

Defendant no.3's claim of adopted daughter has not been found established – Entry of possession in some revenue records simplicitor does not confer any right to Defendant no.3 to retain possession of property – Property on death of deceased had been passed on to surviving sister being class IInd heir, as such she had right to sell property to plaintiff – Even if surviving sister had not placed plaintiff in possession of property on strength of his title conferred by way of sale deed in question he had right to recover possession – First Appellate Court was right in decreeing suit – High Court erred in allowing appeal – Appeal allowed.

2016 (4) CTC 531

Ajay Gupta vs. Raju @ Rajendra Singh Yadav

Date of Judgment : 05.07.2016

Limitation Act, 1963 (36 of 1963), Sections 4 & 5 – Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 – Extension of Limitation on ground of non-working Saturday – Whether justified – Last day for filing of Suit 31.12.2010 – 01.01.2011, a non-working Saturday for Judges – Non-working Saturday not a holiday for Registry – Suit not filed on non-working Saturday on confusion that Registry would also not work on same day – *Held*, confusion cannot save limitation to file a Suit – Extension of Suit under Section 4 permissible only if period comes under Court holiday – Registry not closed even partly on Saturday – Extension of prescribed period under Section 5 only applicable to Appeals and Applications and not to Suits – Extension of Limitation by Trial Court and High Court, *held*, erroneous and in contravention to Law of Limitation – Application for rejection of Plaint, allowed – Appeal allowed.

**SUPREME COURT CITATIONS
CRIMINAL CASES**

(2016) 4 SCC 735

State of Maharashtra vs. Syed Umar Sayed Abbas

Date of Judgment : 12.02.2016

Criminal Trial – Proof – Benefit of doubt – Murder trial – Fatal shootout in crowded place – Insufficient time for eyewitnesses to see accused and observe their distinguishing features, especially when there was a commotion created after firing – Testimonies of witnesses suffering from various infirmities and contradictions – Improper conduct of test identification parade (TIP) and delay in holding of – Fatal to prosecution case, in such circumstances – Identity of accused not clearly established by prosecution – Benefit of doubt – Entitlement to – Acquittal confirmed

(2016) 2 MLJ (Crl) 462 (SC)

Gyaneshwar Shyamal vs. State of West Bengal

Date of Judgment : 29.03.2016

Abduction – Common Object – Indian Penal Code, 1860, Sections 148, 149, 324 and 364 – Appellants/accused Nos.1 to 5, 10 and 25, along with other accused, were tried for alleged offences – sessions Court found Appellants guilty under Sections 148, 324 read with Section 149 and 364 read with Section 149 and not guilty under Section 302 read with Section 149 and acquitted other accused – Appeal preferred by Appellants before High Court, dismissed – Accused Nos.2, 3 and 4 died during pendency of appeal – Present appeals by accused Nos.1, 5, 10 and 25 – Whether prosecution proved its case against Appellants beyond reasonable doubts – *Held*, PW4 stated that he saw deceased and his brother in front of house of deceased and started talking to deceased and at that time, accused attacked them – PWs 2, 3 and 8/family members of deceased stated that PW4 came to their house to meet deceased and when they were talking inside house of deceased at which point of time, accused barged in – Exh.5/Sketch Map prepared by PW-10/Investigation Officer and evidence of PW-10 show that alleged occurrence took place inside house of deceased – Plea that eye-witnesses are only family members and their testimonies are interested ones cannot be appreciated because only they could witness alleged occurrence, since same took place inside house of deceased – PW4 is independent witness and also injured during alleged occurrence and his testimony corroborates testimonies of other eye-witnesses – PWs 2, 4 and 8 testified about participation of accused Nos.10 and 25 in alleged occurrence and identified them – Nothing put in cross-examination of prosecution witnesses either denying their presence or absence of role played by them in assembly – Accused did not deny their presence in alleged occurrence, but their presence in alleged occurrence established by evidence on record – Appellants shared common object of assembly, as they assembled in house of one of the accused till abduction of deceased – Impugned judgment does not suffer from infirmity to warrant interference – Appeals dismissed.

(2016) 2 MLJ (CrI) 507 (SC)

Ramesh Rajagopal vs. Devi Polymers Private Limited

Date of Judgment : 19.04.2016

Criminal Proceedings – Quashing of – Abuse of Process – The Code of Criminal Procedure, 1973 (Code, 1973) – Section 482 – The Indian Penal Code, 1860 (Code, 1860) – Sections 120 (b), 409, 468 and 471 – The Information Technology Act, 2000 (Act, 2000) – Sections 65 and 66 – Respondent filed criminal complaint against Appellant for forgery, misappropriation of funds and breach of trust – Appellant prosecuted under sections 409, 468 and 471 of Code, 1860 read with sections 65 and 66 of Act, 2000 and read with section 120 (b) of Code 1860 – Appellant filed petition under section 482 of Code, 1973 for quashing of criminal proceedings against him – High Court dismissed petition to quash criminal proceedings – Aggrieved, Appellant filed present appeal – Whether High Court was right in dismissing petition filed under section 482 of Code, 1973 by Appellant to quash criminal proceedings initiated against him – *Held*, address of both companies shown as same address – No attempt made by Appellant to project both companies as independent and separate – Not possible to impute any intent to cause damage or injury or to enter into any express or implied contract or any intent to commit fraud in making of website – Appellant has not committed any act which fits description of forgery – Appellant has not received a single rupee or has he entered into any contract in his own name on basis of website – Act in pursuance of website by which Appellant deceived any person fraudulently or dishonestly, induced any one to deliver any property to any person absent – Not possible to attribute any intention of cheating which is a necessary ingredient for offence under section 468 of Code, 1860 – Accused must be relieved from prosecution, even if allegations are taken at face value and accepted in their entirety do not constitute any offence – No offence is made out under section 66 of Act, 2000 – Nothing brought out to show that Appellant, director of company had access to computer system or computer network company – Since there is no allegation that computer source code has been concealed, destroyed or altered, offence under section 66 of Act, 2000 not made out – High Court over looked these circumstances and merely dismissed petition under Section 482 of Code, 1973 on ground that it requires evidence at trial to come to any conclusion – Criminal proceedings initiated by Respondent is an abuse of process of Court – Prosecution quashed – Appeal succeeds.

(2016) 2 MLJ (CrI) 682 (SC)

Devinder Singh vs. State of Punjab through CBI

Date of Judgment : 25.04.2016

Criminal Proceedings – Proceedings Against Police Officers – Sanction of Central Government – Punjab disturbed Areas Act, 1983 (Act 1983), Section 6 – Code of Criminal Procedure, 1973 (Code 1973), Section 197 – Allegation against Police Officers for killing deceased in fake encounter – Based on complaint lodged by father of one of the deceased, CBI obtained sanction from State to prosecute Appellants/accused and on basis of same, filed charge sheet against them – Appellants' application for discharge on ground that they acted in course of their duty and sanction granted by State was without jurisdiction, illegal and void was dismissed – Revision filed by accused also dismissed – Appeals by accused with allegation that prosecution could not have been launched without obtaining sanction of Central Government in view of provisions contained in Section 6 of Act 1983 as amended – Writ petition also filed by father of one of the deceased – Whether in view of provisions contained in Section 6 of Act 1983 as amended, prosecution or other legal proceedings relating to Police Officers can be instituted without prior sanction of Central Government – *Held*, protection of sanction is assurance to honest and sincere officer to perform his duty honestly and to best of his ability to further public duty, but Authority cannot be camouflaged to commit crime – Once act or omission found to be committed by public servant in discharging his duty even exceeding his duty, if there is reasonable

connection, it will not deprive him of protection under Section 197 of Code 1973 – Question of sanction can be raised at time of framing of charge and it can be decided on basis of accusation and open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage – In present case, if version of prosecution found to be correct, no requirement of sanction – Open to accused to adduce evidence and to submit such materials indicating that incident took place in discharge of their duties – Orders passed earlier would not come in way of Trial Court to decide question afresh in light of principles stated from stage to stage or even at time of conclusion of trial – At present stage, it cannot be said which version is correct – Trial Court has *prima facie* to proceed on basis of prosecution version and can re-decide question afresh from evidence adduced by prosecution or by accused or in any other manner – Trial Court shall re-examine question of sanction and take decision in accordance with law – Appeals disposed of – Writ petition disposed of.

(2016) 3 MLJ (Cr) 97 (SC)

A. Sivaprakash vs. State of Kerala

Date of Judgment : 10.05.2016

Criminal Misconduct – Criminal Misconduct by Public Servant – Pecuniary Advantage – Prevention of Corruption Act, 1988 (Act 1988), Sections 13(2) and 13(1)(d) – Indian Penal Code, 1860 (Code 1860), Sections 471, 468 and 34 – Appellant/accused No.5 along with other accused, charged for alleged offences – Trial Court acquitted accused Nos.2 and 3 from all charges and acquitted accused Nos.1, 4 and 5 from charges under Sections 468 and 471 read with Section 34 of Code 1860 but convicted accused Nos.1, 4 and 5 under Section 13(2) read with Section 13(1)(d) of Act 1988 – Accused nos.1, 4 and 5 filed appeals challenging their conviction – Pending appeals, accused Nos.1 and 4 passed away and those appeals abated – Appeal filed by accused No.5 dismissed – Present appeal by accused No.5 – Whether prosecution proved its case against Appellant beyond reasonable doubts – *Held*, facts on record show that works in question awarded to accused No.3 – Commissioner of Village Development issued Circular in question, same mentions about manner in which half advance amount can be released by Panchayat – PW-4/Assistant Executive Engineer admitted that there is provision to give half advance amount of work – Much before issuance of Ex.P/16(a)/letter, accused No.3 gave specific payment – Accused No.3 started work, same resulted in payment – Once work started, Panchayat empowered to release half advance amount – Panchayat could have made further payment even without Ex.P/16(a) – Payment made was within defined limits – High Court wrongly proceeded on basis that advance payment could be given only on installment basis depending upon percentage of work completed – No causal connection between release of payment and Ex.P/16(a) – Attempt of prosecution was to bring case within fold of Section 13(1)(d)(ii) alleging that he misused his official position in issuing certificate fails, as it is not even alleged in charge sheet and not even iota of evidence led as to what kind of pecuniary advantage obtained by Appellant in issuing said letter – Prosecution failed to prove charge beyond reasonable doubt and Lower Courts did not look into matter in proper perspective – Impugned conviction of Appellant set aside – Appeal allowed.

HIGH COURT CITATIONS CIVIL CASES

2016 (3) CTC 731

K. Rajagopalan vs. R. Gnanapandithan

Date of Judgment : 15.03.2016

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (T.N. Act 18 of 1960), Sections 10(2)(1), 11(3) & 11(4) – Wilful default – Whether Landlord has to file repeated Applications under Section 11(3) for every subsequent default committed by Tenant – Whether Rent Controller has to give specific direction for payment of future Rent while passing Orders under Section 11(3) – Ill-health, whether ground for non-payment of Rent – Rent Controller, while passing Order under Section 11(3) has given specific direction to Tenant to pay even future Rent – Even otherwise Tenant is bound to pay Rent under Act, no specific direction is required from Rent Controller for payment of future Rent – Landlord is not expected to file Petition under Section 11(3), for each and every month till Eviction proceedings are over – Though Respondent/Tenant initially complied with Order passed under Section 11(3), he failed to deposit future Rent, hence Rent Controller rightly ordered eviction – Tenant suffering from ill-health can be ground for seeking extension of time for eviction but cannot be ground for escaping eviction – Order of Lower Appellate Court suffers from material irregularity, therefore set aside – Eviction ordered – Revision allowed.

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (T.N. Act 18 of 1960), Sections 10(2)(1), 11(3) & 11(4) – Wilful default – Eviction Order passed on Memo filed by Landlord – Tenability – Whether there is violation of Principles of Natural Justice – *Held*, normally Memo can be filed to record certain facts and for appropriate Orders separate Application has to be filed – *P.T. Lee Chengalvaraya Naicker Trust, rep. by its Chairman, Vepery vs. S. Shanmugam*, 2014 (5) CTC 465 relied on – Landlord has already filed substantive Section 11(3) – Petition and Trial Court already passed conditional Order – Landlord filed Memo only to bring to knowledge of Court that Tenant has not complied with conditional Order – It is not case where main relief itself has been sought by way of Memo – Even on this Memo, Trial Court ordered Notice, received Reply from Tenant and only thereafter Eviction Order was passed – Hence, there is no question of violation of Principles of Natural Justice – Even otherwise Tenant, who has not complied with Orders of Court that resulted in eviction, cannot complain violation of Principles of Natural Justice – *A.C. Abraham Kingsley vs. Shanathi*, 2006 (4) CTC 46 followed – Hence, Order of Lower Appellate Court, *held*, unsustainable – Eviction ordered.

(2016) 4 MLJ 520

Dr. Abdul Rahman vs. Mohamed Syed

Date of Judgment : 29.03.2016

Plaint – Rejection of Plaint – Statutory Provision – Code of Civil Procedure, 1908 (Code 1908), Order VII Rule 11(d) – Wakf Act, 1995 (Act 1995), Sections 83 and 85 – Plaintiff/Respondent filed suit against Defendant/Petitioner for declaration that sale deed executed in favour of Defendant in respect of suit properties, as null and void – Plaintiff sought for delivering vacant possession of suit properties – Defendant filed application for rejection of Plaint on grounds of jurisdiction and that

Plaintiff should have approached competent authority under Act 1995 – Trial Court dismissed application filed by Defendant – Challenging order of Trial Court, Defendant filed present revision petition – Whether Trial Court justified in dismissing application for rejection of plaint on grounds of jurisdiction – *Held*, conjoint reading of Sections 83 and 85 of Act 1995 makes it clear that dispute regarding a Wakf property has to be determined by Wakf Tribunal and jurisdiction of Civil Court, Revenue Court and other authorities in respect of dispute is barred by Section 85 of Act 1995 – Suit filed by Plaintiff in Civil court is one barred by Section 85 of Act 1995 – Suit falls under mischief of Order VII Rule 11(d) of Code 1908 – Trial Court without adverting to provisions of law and without properly considering issue raised in the application, simply dismissed the application – Finding of Trial Court is infirm, erroneous and discrepant, which requires interference by this Court – Impugned order set aside – Plaint rejected as barred by Statutory Provision – Revision allowed.

2016 (4) CTC 58

Sukumaran vs. Madhava Shastri (Died)

Date of Judgment : 31.03.2016

Transfer of Property Act, 1882 (4 of 1882), Section 60 – Mortgage – Usufructuary Mortgage – Right of Mortgagor to redeem Mortgage – How Mortgage should be discharged – Usufructory Mortgage Deed executed by Mortgagor was duly registered – Redemption of such mortgage should also be by registered document or receipt – Mortgagor, though claimed redemption, did not produce any document evidencing such redemption – Discharge of Mortgage alleged by Mortgagor cannot be accepted.

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 – Rejection of Plaint – Suit for Permanent Injunction – Limitation – Mixed question of law and fact – Suit property mortgaged to Defendants deceased father in year 1951 by executing Usufructory Mortgage Deed – Legal Heirs of Mortgagor instituted Suit for bare injunction in year 2007 to restrain Defendant from interfering with their peaceful possession of property – Plaintiff alleged that Mortgage created in favour of Defendants father was redeemed in year 1956 and they are in peaceful possession of Suit property – Contention of Defendant that Suit is barred by limitation – Plaintiff failed to adduce *prima facie* documentary evidence for proof of redemption – Pleadings did not contain any particulars with regard to date of delivery of possession – Mortgage was not redeemed by a registered instrument – Averments made in Plaint would *per se* reveal Suit is liable to be rejected under Order 7, Rule 11(d).

(2016) 4 MLJ 500

Pakkiri vs. Saraswathi

Date of Judgment : 07.04.2016

Registration – Unregistered document – Insufficiently Stamped – Indian Stamp Act, 1899 (Act 1899), Sections 33 and 35 – Revision Petitioner / Plaintiff filed suit for specific performance of agreement for sale alleged to have been incorporated in unregistered sale deed – Said unregistered sale deed was produced along with plaint as document, based on which suit came to be filed – Trial Judge found said document to be not only unregistered, but also insufficiently stamped – Trial Judge impounded said document for collection of stamp duty to make good deficiency and ten times of same as penalty – Whether Trial Judge was right in impounding unregistered document for being insufficiently stamped – *Held*, Supreme Court has held in categorical terms that unregistered document cannot be used even for collateral purpose, if it is not duly stamped or conditions found in Section 35 of Act 1899 are not complied with – What Trial court has done is to impound document to enforce

compliance with requirements of Section 35 of Act, 1899 – This has been done in exercise of power conferred on court by Section 33 r/w Section 35 of Act, 1899 – Court does not find any defect or infirmity, much less exercise of jurisdiction not conferred on it or exercise of jurisdiction with illegality or material irregularity – Impugned order cannot be said to be one which can amount to miscarriage of justice warranting interference by court – No merit in revision and revision does not even merit admission – Revision dismissed.

(2016) 4 MLJ 562

M. Kadirvelu vs. G. Santhanalakshmi

Date of Judgment : 15.04.2016

Succession Laws – Female Heir – Renouncants – Hindu Succession Act, 1956 (Act 1956), Section 2(2A) – Pondicherry Administration Act, 1962 (Act 1962) – Defendants 2, 3, 6 and 7 are Appellants herein – First Respondent/Plaintiff filed suit for partition and separate possession of her 1/6th share in suit properties and for grant of mesne profits – Trial Court found that Plaintiff's father did not relinquish his right over suit properties and that he also enjoyed properties – Trial Court held that Plaintiff was entitled to decree as prayed for with costs – Appellants challenge Plaintiff/female heir's entitlement to succeed – Whether Plaintiff, who is female heir, is entitled to claim partition, in light of Hindu Law that is applicable to Hindus within French Territory – Whether Trial Court was right in decreeing suit as prayed for – *Held*, unless parties pleaded and proved that they were renouncants, they are not entitled to claim benefits of Section 2(2A) of Act, 1956 – Without any pleading to effect that they were renouncants, one cannot claim benefit of Section 2(2A) – There was no pleading by any of parties that either parties or ancestors were renouncants – Parties are not entitled to claim benefits of Section 2(2A) of Act 1956 – Trial Court was right in holding that Plaintiff, who is a female heir, was entitled to seek partition of her 1/3rd share – No evidence to show that Plaintiff or her father was ousted out of properties – Test for establishing adverse possession as between co-sharers is of higher standard – Trial Court rightly rejected plea of adverse possession – Court finds that Trial Court was justified in granting preliminary decree for partition – No reason to interfere with judgment and decree of Trial Court – Appeal dismissed.

(2016) 4 MLJ 525

Irbaz Shoes vs. Bostik India Private Limited

Date of Judgment : 22.04.2016

Plaint – Return of Plaint – Cause of Action – Code of Civil Procedure, 1908, Section 20 and Order VII Rule 10 – Respondent/Plaintiff filed suit against Petitioner/Defendant before Chennai Court for recovery of money for supplies of adhesives – Petitioner preferred application under Order VII Rule 10 praying that plaint be returned to be presented before Bangalore Court in which suit should have been instituted as per Clause 13 of terms and conditions – Chennai Court held that just because head office of Plaintiff is in Bangalore, Petitioner cannot seek for return of plaint – Petitioner filed present revision petition with allegation that Chennai Court failed to appreciate condition prescribed in Clause 13 of terms and conditions and erred in observing that no cause of action arose in Bangalore – Whether Chennai Court has jurisdiction to entertain application filed under Order VII Rule 10 for return of plaint – Whether part of cause of action arose within jurisdiction of Chennai Court – *Held*, section 20 shows that suit shall be filed where Defendant resides or cause of action arose including where Principal Office or Subordinate Office of Corporation situated – Facts on record show that Petitioner's office situated at Chennai, which is within jurisdiction of Chennai Court and also part of transactions took place within its jurisdiction – Petitioner did not make out case for invocation of Order VII Rule 10, since it did not establish that Court in which suit filed has no jurisdiction to entertain

matter – When Petitioner was not able to demonstrate that Court in which suit instituted has no jurisdiction, Trial Court justified in dismissing application filed under Order VII Rule 10 for returning plaint – Petition dismissed.

(2016) 4 MLJ 668

Elumalai vs. A.G.L. Irudhayaraj

Date of Judgment : 28.04.2016

Evidence – Marking of documents – Photo copies – Third Defendant filed memo producing available original documents to be substituted for xerox copies – Proof affidavit was taken on file and documents were marked as exhibits on side of Third Defendant – Trial Court wanted to mark them subject to objection, sustainability of which could be decided at later time – Trial Judge chose to mark originals without any observation that they were marked subject to proof and relevancy, implying that decision regarding their admissibility would be taken at later time – Aggrieved by said procedure, Plaintiffs have come forward with present revision – Whether Trial Judge was right in marking Xerox copies that were submitted – *Held*, in interest of justice to see that litigation is brought to end without unnecessary delay, court directs Trial Court to remove markings of documents on side of First Respondent/Third Defendant through DW1 and re-do marking of documents – In which event, originals, certified copies and carbon copies, originals of which are not available with Third Defendant, shall be marked directly and marking of xerox copies shall be relegated after hearing objections to be raised by Plaintiffs/Revisions Petitioners – Direction issued keeping in mind that removal of marking of xerox copies alone will cause some vacuum in list of exhibits and in order to avoid any discrepancy or difficulty in identifying documents – Revision disposed of.

(2016) 4 MLJ 628

Karuppa Konar vs. Chinnathayee

Date of Judgment: 11.05.2016

Succession Laws – Partition – Will – Original owner/grandmother of Plaintiff/1st Respondent and 1st Defendant/2nd Respondent bequeathed her suit properties in favour of her daughters under her Will – As sister of mother of Plaintiff and 1st Defendant died without issues, her share also went to their mother – Thereafter, suit properties were in possession and enjoyment of Plaintiff and 1st Defendant – Claiming that he was legal heir of sister of Plaintiff's mother, Appellant/2nd Defendant claimed for title to suit property and tried to trespass into it colluding with 3rd Respondent/3rd Defendant and 1st Defendant also supported them – In such situation, 1st Respondent filed suit for partition against 2nd Respondent, Appellant and 3rd Respondent arraying them as 1st to 3rd Defendants claiming ½ share in suit properties – Trial Court decreed suit and granted preliminary decree for partition in respect of items 1 to 3 of suit properties, though parties alleged that item 2 of suit properties was not available for partition, as it was already alienated by original owner – Present appeal – Whether Trial Court justified in granting preliminary decree for partition in respect of items 1 to 3 of suit properties – *Held*, Plaintiff and Defendants admitted that second item sold by original owner to third parties during her life time and same was not available for partition – But, Trial Judge chose to make wrong observation as if said property sold by Plaintiff's mother and erred in not appreciating pleadings of parties and admission of Plaintiff in respect of second item – Prayer for partition in respect of second item could not be sustained – Evidences on record show that Plaintiff and 1st Defendant established their title to first and third items – Though 2nd Defendant claimed to be in possession of third item of suit properties, he failed to prove that he perfected title by adverse possession defeating title of Plaintiff and 1st Defendant – Objections raised by 2nd and 3rd Defendants for partition in respect of third item on ground that possession of suit property was with 2nd Defendant

has no substance in it – Plaintiff entitled to half share in first and third items – Plaintiff cannot be non-suited merely on ground that her title denied by 2nd and 3rd Defendants and she did not choose to seek declaration of title, as prayer for partition incorporates in itself claim of title – Decree granted in relation to second item set aside, but same with regard to first and third items confirmed – Appeal partly allowed.

(2016) 4 MLJ 765

N. Ganesan vs. Vadivel

Date of Judgment: 03.06.2016

Plaint – Rejection of Plaint – Improper Payment of Court Fee – Code of Civil Procedure, 1908, Sections 149 and 151, Order VII Rule 11 – Plaintiff filed suit for specific performance of reconveyance agreement without paying proper Court fees and petition to take leave of Court for payment of deficit Court Fee under Section 149 of Code 1908 – Plaint returned for want of payment of deficit Court fee and again, it was returned for defects to be rectified – After delay, Plaintiff resubmitted plaint along with application to condone delay, same allowed without giving notice to Petitioner and thereafter, suit was numbered – Petitioner filed application under Order VII Rule 11 read with Section 151 for rejection of plaint – Trial Court dismissed application and aggrieved by which, present revision petition filed with allegation that plaint ought to have been rejected on ground of limitation and improper payment of Court Fee – Whether plaint ought to have been rejected on ground of limitation and improper payment of Court Fee – *Held*, facts on record show that suit barred both on question of limitation and payment of Court Fee, as Respondent failed to comply with condition imposed by Court within time prescribed – Though Respondents alleged that delay was condoned, it is unclear why Respondents had to take such long period in representation of plaint, when time was essence of contract – When Plaintiff did not offer acceptable explanation and show sufficient cause for inordinate delay, Court ought not to have numbered suit – Plaint liable to be struck off under Order VII Rule 11 – Payment of Court Fee cannot be made as per whims and fancies of Plaintiff – Section 149 cannot be taken as license to justify inordinate delay on part of Plaintiff – Petitioner made out case for interference in order passed by Trial Court, since Lower Court did not examine issue in right perspective – Impugned order set aside – Petition allowed.

2016 (4) CTC 152

M. Johnson vs. E. Pushpavalli

Date of Judgment : 08.06.2016

Specific Relief Act, 1963 (47 of 1963), Section 16 – Indian Evidence Act, 1872 (1 of 1872), Section 3 – Suit for specific Performance – Readiness and Willingness of Plaintiff – Factors to be considered – Suit for Specific Performance – Agreement entered into between parties on 18.06.2003 – Contention of Plaintiff that Suit property was to be sold for Rs.1 lakh and 50% of sale consideration was paid on date of Agreement – Both parties admitted that six months' time was maximum time in Agreement for both parties to perform their obligations – Plaintiff allegedly sent Draft Sale Deed to Defendant in September 2003 – No proof whatsoever adduced by Plaintiff to prove said contention – Suit Notice sent by Plaintiff only on 06.07.2004 asking Defendant to receive balance sale consideration – Said Notice immediately replied by Defendant on 16.07.2004 denying his liability – Nonetheless, instant Suit filed by Plaintiff only on 15.12.2006, *i.e.* 2 ½ years from date of receipt of said Reply Notice – Conduct of Plaintiff, *held*, establishing that he was not ready and willing to perform his part of Contract within time stipulated in Agreement – *Bona fide* of readiness and willingness to be considered from every action of Plaintiff post Agreement – Filing of Suit immediately after denial by other side, a relevant factor to establish readiness and willingness of Plaintiff – Non-filing of Suit

immediately after denial even though limitation period has not expired, *held*, not fatal if said delay has been convincingly explained – In instant case, delay of one year in issuing Suit Notice and delay of 2½ years in filing Suit, *held*, not explained by Plaintiff – Established that Plaintiff was not ready and willing to perform his part of Contract at all times – Suit of Plaintiff, rightly dismissed by Trial Court – Second Appeal dismissed.

Specific Relief Act, 1963 (47 of 1963), Section 16 – Suit for Specific Performance – Relevant Factors – Four factors necessary to be pleaded and proved by Plaintiff in Suit for Specific Performance – (i) valid Agreement between parties, (ii) readiness and willingness of Plaintiff, (iii) filing of Suit within limitation, (iv) no inordinate delay in filing Suit from date of expiry of time prescribed in Agreement.

**HIGH COURT CITATIONS
CRIMINAL CASES**

(2016) 3 MLJ (Crl) 74

Mudikrishnan @ Krishnan vs. State

Date of Judgment : 08.03.2016

Murder – Motive – Indian Penal Code 1860 (Code 1860), Sections 34, 120B, 148, 326, 341, 302 and 506(2) – Accused were arrested and tried for murder of deceased – Trial Court framed charges and convicted Accused – Accused A1, A5 and A6 under Sections 120B, 148, 326, 341, 302 r/w 34 and 506(2) of Code 1860 – A2 under 120B, 148, 341, 302 and 506(2) of Code 1860 – Appeal against conviction and sentence by all accused – Whether death of deceased was caused by any of Accused, or some or all of Accused persons as projected by prosecution – *Held*, deceased was not the person who participated in auction – Alleged motive for accused persons to kill deceased does not stand substantiated and stands disproved – Finding of Trial court that motive alleged by prosecution was substantiated by prosecution cannot be sustained – Trial Court finding is discrepant, infirm and erroneous and same liable to be reversed – Defects and discrepancies in prosecution case and contradictions pointed out in evidence of prosecution witnesses will at least point to reasonable suspicion that case should have been foisted against Accused – Occurrence itself has not been proved by prosecution by reliable evidence – Proof of alleged conspiracy by circumstances should also be negative – Trial Judge, without properly appreciating evidence adduced on side of prosecution, without giving due weight to evidence adduced on side of accused and forgetting fact that burden of proof cast on prosecution is beyond reasonable doubt whereas proof required of accused is only on preponderance of probabilities, chose to convict accused for offences – Prosecution case that accused formed unlawful assembly and caused death of deceased has not been substantiated by reliable evidence beyond reasonable doubt – Had the trial court appreciated evidence in proper perspective and applied proper principles of law, it ought to have acquitted Appellants/Accused – On re-appreciation of evidence, none of offences for which accused were prosecuted, has been proved by prosecution beyond reasonable doubt by adducing reliable evidence – Involvement of accused in occurrence itself has not been proved by prosecution beyond reasonable doubt – Accused are entitled to be acquitted of all offences for which they were prosecuted – Appeals allowed.

2016-2-L.W. (Crl) 94

A. Leo Charles and others vs. M. Vijayakumar

Date of Judgment : 28.03.2016

Criminal Procedure Code, Section 200

I.P.C., Sections 107, 167, 204, 218

held : magistrate has not taken oath of complainant for taking complaint on file – cognizance liable to be set aside – It is only a procedural irregularity Matter remanded

(2016) 3 MLJ (Crl) 23

Narayanaswamy @ Narayanan vs. State

Date of Judgment: 30.03.2016

Unlawful Assembly – Test Identification Parade – The Indian Penal Code, 1860 (Code, 1860) – Sections 34, 147, 148, 302, 324, 326, 452 and 506(ii) – Accused 1 to 12/A1 to A12 charged with offences punishable under sections 147, 148, 302 read with 34 (two counts), 452 and 506(ii) of Code, 1860 – A8 and A9 charged with offences punishable under sections 326 of Code, 1860 – Trial Court convicted A2 under sections 147, 302 read with 34 (two counts), 452 & 506(ii) of Code, 1860 – A4 to A7 and A9 to A12 convicted under sections 148, 452, 506(ii) and 302 read with 34 of Code, 1860 – Trial Court convicted A3 and A8 under sections 148, 452, 302 read with 34, 324 and 506(ii) of Code, 1860 – Appeals by A2 to A12 against conviction and sentence – Whether Accused were members of unlawful assembly – Whether conviction and sentence of A2 to A12 can be sustained on basis on evidence of P.Ws 1 to 4 – *Held*, evidence of P.W.1, P.W.4 and P.W.7 establishes that A2 was already known to P.Ws.1 and 4 as A2 participated in panchayat along with A1 – P.W.1 and 4 identified A2 in test identification parade as A2 was already known to witnesses – Prosecution based on evidence of P.W.1 and 4, proved that A2 was in unlawful assembly which indulged in rioting – P.W.1 was recalled for cross examination after 5 years – If witness is recalled after five years for cross examination in respect of facts spoken in chief examination, discrepancies are bound to happen – Unwise and imprudent to give weightage to such stray answers that were elicited after five years, during cross examination – Delay in conducting test identification parade not explained – In test identification parade not all accused were identified by witnesses – None of the witnesses gave identifying features of accused during investigation – In absence of mentioning of physical features of Accused during investigation by witnesses, identification made either during test identification parade or during trial cannot carry any weightage – No other evidence against A3 to A12 – Conviction of A3 to A12 cannot be sustained on basis on evidence of P.Ws 1 to 4 alone – Accused A3 to A12 are entitled for acquittal – Conviction and sentence against A2 sustained – Conviction and sentence against A3 to A8 and A10 to A12 set aside – A9 died pending appeal, appeal as against A9 abated – Appeals allowed.

2016-2-L.W. (Crl) 26

Ganapathy vs. N. Senthilvel

Date of Judgment : 05.04.2016

Criminal Procedure Code, Section 372, proviso, 378, Section 2(wa) ‘Victim’

Reference in 2015(1)L.W.(Crl) 553 – answered

Victim’s right to prefer appeal, Scope of

A victim has a statutory right of appeal within limits prescribed in Section 372 – A complainant who is not a victim, can file an appeal in the event of acquittal of accused after obtaining leave to appeal under Section 378(4) – Complainant, who is also a victim, can avail right granted under Section 372

(2016) 3 MLJ (Crl) 218

Prabhu @ Hamsa @ Abdul Azeez vs. State

Date of Judgment: 05.04.2016

Witness – Cross Examination of Witnesses – Recalling of – Code of Criminal Procedure, 1973 (Code 1973)), Sections 309, 311 and 482 – Indian Penal Code, 1860 (Code 1860), Sections 147, 148,

294(b), 341, 342, 307, 153A, 120(b) and 34 – Petitioners/accused faced trial under Sections 147, 148, 294(b), 341, 342, 307, 153A, 120(b) read with Section 34 of Code 1860 – During trial, Petitioners filed petition under Section 311 of Code 1973 to recall PWs.1, 3 and 4 for cross examination, same dismissed – petition – Whether PWs.1, 3 and 4 could be recalled for cross examination – *Held*, when PWs.1, 3 and 4 examined in chief, counsel for co-accused cross examined them extensively and counsel for Petitioners reported “No Cross” – Such practice is normal in Trial Courts, when tail end counsel will choose not to further cross examine witness, who was extensively cross examined by lead counsel – Having adopted that strategy, it is not open to Petitioners to recall PWs.1, 3 and 4 – Trial Court noted that there was threat to life of PWs.1, 3 and 4, which weighted in mind of Trial Court to reject petition under Section 311 of Code 1973 – Petition filed by Petitioners shows that they did not give reasons for recalling witnesses – If witnesses were not cross examined at all, opportunity would have been given to Petitioners to recall them – Petition dismissed.

(2016) 3 MLJ (Crl) 226

Ramasamy vs. State

Date of Judgment: 05.04.2016

Murder – Former Statement – Indian Penal Code (Code 1860), Sections 302, 307, 449 and 34 – Code of Criminal Procedure 1973 (Code 1973), Section 164 – Evidence Act (Act), Sections 145 and 157 – Accused 1 stood charged for offences under Sections 449, 302 and 307 of Code 1860 – Accused 2 to 4 stood charged for offences under Sections 449, 302 and 307 r/w Section 34 of Code 1860 – Trial Court acquitted Accused 3 and 4 but convicted Accused 1 and 2 – Challenging said conviction and sentence, Appellants/accused 1 and 2 are before Court with this appeal – Whether Appellants/Accused 1 and 2 are guilty of offences under Code 1860 and can conviction be sustained on former statement of witness – *Held*, apart from Deceased 1 and 2 only other person in house at time of occurrence was P.W.2 – P.W.2 has sustained injuries in very same occurrence – P.W.2 has turned hostile and she has stated that unknown persons numbering about 5 to 6 trespassed and attacked her and D1 and D2 – When she was called upon to identify accused, she told Court that accused were not assailants – Trial Court convicted these two accused based on statement of P.W.2 recorded under Section 164 of Code 1973 by Judicial Magistrate – Elementary principle of law that statement given by witness under Section 164 of Code 1973 being former statement can be used either to contradict maker of statement as provided under Section 145 of Act, by adverse party or to use same to corroborate evidence of maker of statement as provided in Section 157 of Act – Such former statement can never be treated as substantive evidence – Trial Court has erroneously relied on said statement and convicted accused – No other evidence at all to prove guilt of accused – Appellants are entitled for acquittal – Appeal allowed.

(2016) 3 MLJ (Crl) 122

Prakash vs. Karpagam

Date of Judgment: 12.04.2016

Evidence – Presumption – Legitimacy of Child – Indian Evidence Act 1872 (Act 1872), Sections 12 and 112 – Revision Petitioner/husband filed petition for conducting paternity test of Second Respondent/minor child – Trial Court dismissed petition and concluded that child was born only during subsistence of marriage relationship as per Section 12 of Act, 1872 – Whether presumption of legitimacy about paternity of second Respondent/child born during subsistence of valid marriage is established – *Held*, Section 112 of Act 1872 would apply only when father is able to prove that he has no access to have sexual intercourse with woman and only then man cannot be said to be father – Section 112 of Act 1872 refers to ‘point of time of birth’ as deciding factor and not to time of conc –

Whenever child is born in lawful wedlock, there is question of presumption of legitimacy unless it is proved by very reliable evidence that parties had not or could not have any access – Categorical evidence of First Respondent/wife that it is Revision Petitioner/husband, who is father of minor child – Evidence of First Respondent/wife unerringly points out that marriage had taken place at Temple – There is strong presumption about legitimacy of child born from that wedlock – Presumption could only be rebutted by strong, clear, satisfying and conclusive evidence – Presumption cannot be displaced by mere probabilities or any circumstance creating doubt – Contra-plea taken by Revision Petitioner/husband that at no point of time either before or after marriage, he had not indulged in any sexual intercourse, is not accepted – Conclusive presumption under Section 112 of Act 1872 about paternity of Second Respondent/child born during subsistence of valid marriage resorted to by Trial Court – Revision dismissed.

(2016) 3 MLJ (CrI) 50

Masthan vs. State

Date of Judgment: 13.04.2016

Murder – Circumstantial Evidence – Indian Penal Code, 1860, Sections 302, 201, 120B and 34 – Appellant/accused No.2, along with other accused were charged for alleged offences – Trial Court acquitted accused No.3, 4 and 5 but, convicted accused Nos.1 and 2 under Sections 302, 34 read with Section 302, 120B read with Section 302, 201 read with Section 302 based on circumstantial evidence – Appeal against conviction by accused No.2 – Whether based on circumstantial evidence, prosecution proved its case against Appellant beyond reasonable doubts – *Held*, PWs.1 and 3 stated that both deceased went to carry refrigerator from house of mother in law of accused No.1 to house of accused No.1 and thereafter, deceased did not return – From evidence of PW-4/Doctor, who conducted autopsy, prosecution established that death of deceased was due to injuries found on dead bodies of deceased and injuries would have been caused by violence – Prosecution established that death of both deceased was due to homicidal violence – To prove fact as to who caused death of deceased, prosecution relies on evidence of PW-9/brother of PW-1 – Conduct of PW-9 in not disclosing about vital fact relating to alleged conspiracy to kill his brother's brother-in-law would make his evidence unbelievable – Apart from above, prosecution relies on alleged recovery of weapons/M.O.4 and M.O.5 on alleged confession made by accused Nos.1 and 2 – Prosecution failed to establish link between alleged weapons and crime – Not even blood stain found on alleged weapons – Alleged recovery of weapons would not prove alleged guilt of Appellant – Except above circumstances, prosecution did not project other circumstance against Appellant to establish his guilt – Prosecution did not prove case beyond reasonable doubts – Conviction imposed on Appellant set aside and he is acquitted from charges – Appeal allowed.

(2016) 3 MLJ (CrI) 198

V.B. Kamalanathan vs. K. Jayasree

Date of Judgment: 29.04.2016

Maintenance – Maintenance of wife – Non-payment of – Code of Criminal Procedure, 1973 (Code 1973), Section 125 – Revision Petitioner / Husband was ordered to pay maintenance to 1st Respondent/Wife – Alleging non-payment of maintenance 1st Respondent/Wife approached Trial Court which ordered arrest of Petitioner – Against order of Trial Court, Petitioner has filed Revision – Whether Trial Court was right in ordering arrest of Petitioner/husband for non-payment of maintenance – *Held*, there is no indication in impugned order that Trial Court was satisfied that Revision Petitioner/Husband despite having sufficient means had wilfully evaded payment of arrears of maintenance amount in question – It is for 1st Respondent/Wife to prove means/resources of

Petitioner/Husband and after enquiry, finding has to be recorded by Trial Court – When impugned order was passed ordering arrest of Petitioner/Husband, no such exercises was resorted to – Impugned order of Trial Court bristles with material irregularities and patent illegalities in eye of Law – To prevent aberration of Justice and to promote substantial cause of Justice, said order interfered with and set aside – Revision allowed.

2016-2-L.W. (Crl) 108

Rajiv Gandhi @ Marimuthu

vs.

Inspector of Police, Anaimalai Police Station, Coimbatore

Date of Judgment : 06.06.2016

I.P.C., Sections 34, 109, 302, 307, 506(ii)

Murder, of two women, whether ‘rarest of rare’; death sentence, whether

Motive was due to land dispute – occurrence was preceded by a quarrel – killing of two women is brutal and gruesome – Earlier conviction of accused, effect of

Court obliged to balance between the aggravating and mitigating circumstances and impose appropriate punishment so as to do justice to the parties – “Balance sheet theory”, what is reference to, scope

Imprisonment for life would be the adequate punishment – Accused shall not be entitled for any remission for twenty years – case does not fall within “rarest of rare” cases
