



TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW



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MADRAS HIGH COURT – CIVIL CASES

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MADRAS HIGH COURT – CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	V.S. Gunaseelan vs. The Forest Range Officer Pollachi Forest Range, Anaimalai Tiger Reserve Forest, Pollachi Taluk, Coimbatore District	2017-1-L.W. (Crl.) 532	05.12.2016	Wild Life Protection Act, 1972, Section 55 & Cr.P.C., Section 482 – Contended that though search was conducted, complaint was not filed and therefore prosecution is barred by limitation. Held: A forest ranger is empowered by Notification issued under Section 53(b) to lay a complaint before the competent Court and his powers are not circumscribed by Section 55(c).	11
2	V. Shobana vs. State, Rep by The Inspector of Police, Nambiur Police Station, Erode District	2017 (2) MLJ (Crl) 572 :: LNIND 2017 MAD 1289	10.01.2017	Murder – Extra Judicial Confession – IPC, 1860 – Section 302 – Observation of trial court that there was no need to wait for arguments of both counsels and pronounced judgment – Held: Such act of court in blindly rushing to finish case is unwarranted and unfortunate. Trial Court did not even care to have regard that accused got right to be defended by competent lawyer and though there were several hearings, there is no indication that Court offered legal assistance through legal aid to accused. – Extra judicial confession made by accused does not inspire confidence – Appeal allowed – accused acquitted.	11
3	Sambu @ Tamilnilavu vs. State, rep by Inspector of Police, Kolathur Police Station, Salem District	2017 (2) MLJ (Crl) 632:: LNIND 2017 MAD 1588	18.01.2017	Murder – Solitary Witness – Indian Penal code, 1860 – Sections 302 and 447 – Solitary Witness – Whether conviction can be sustained on basis of testimony by solitary witness – Supreme Court held that if solitary witness is fully believable, even in absence of corroboration from other independent source, said evidence can be sole foundation for conviction - If evidence of solitary witness is partly believable, in absence of corroboration from other independent source, on material particulars, not safe to act upon said evidence of solitary witness – In this case, Evidence of P.W.1, solitary witness is doubtful and no corroboration – charge not proved beyond reasonable doubt – appeal allowed – accused acquitted.	11

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
4	M/s. India Cements Investments, Services Limited vs. T.P.Nallusamy	2017 (1) TLNJ 193 (Criminal): CDJ 2017 MHC 62:: 2017 (1) MWN (Cr) DCC 49	23.01.2017	Negotiable Instrument Act, 1881, Section 142 – Entire transaction arises under a ‘Derivative Contract’ for the purchase of share – Cheques issued to the appellant to cushion the deficit which may arise due to the fall in prices of the shares – Whether cheques given as security and there was a legally enforceable debt? – non-obstante clause in Section 142 of N.I.Act clearly spell out that the three matters mentioned in Section have an overriding effect on the ingredients of Criminal Procedure Code – Appellate Court has to act according to equity, good conscience, and Justice.	12
5	A. Kavitha vs. State, Rep. by Inspector of Police, Namakkal Police Station, Namakkal District (Crime No.2018 of 2010)	2017 (2) MLJ (CrI) 626 :: LNIND 2017 MAD 1565	15.02.2017	Murder – Extra Judicial Confession – IPC, 1860 – Section 302 – Extra Judicial Confession by itself could be sole foundation for conviction provided it inspires fullest confidence of Court : Held – In this Case, Village Administrative Officer was not previously known to accused and she had no acquaintance at all – Doubtful as to whether accused would have chosen total stranger to make confession and no evidence to corroborate extra judicial confession - further held, had it been true that assailant was already known, not understandable as to why sniffer dog was brought to place of occurrence - Charges not proved beyond reasonable doubt – appeal allowed – accused acquitted.	12
6	Sivaraj vs. B.Devaraj	2017 (2) MLJ (CrI) 530:: LNIND 2017 MAD 954	06.03.2017	Negotiable Instruments – dishonor of Cheque – Dismissal of Complaint – Trial Court dismissed the complaint under Section 256 of Cr.P.C.1973 – Whether order of dismissal by trial court justified? Held: In respect of case under Section 138 of Act, 1881, complaint ought not be dismissed for absence of complainant either for one or two occasions, to prevent aberration of justice – Trial Court cannot brush aside that order of acquittal so passed is final one and it may even bar fresh trial as per Section 300 of Code, 1973 – Court of Law is to see whether presence of complainant on given date of hearing is very much essential for purpose of prosecuting case.	13

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7	G.S.Gunasekar vs. Vinayaga Trading Company, No.16-C, Dharapuram Road, Udumalpet and others	2017 (2) MLJ (CrI) 608:: LNINDORD 2017 MAD 187	23.03.2017	Negotiable Instruments – dishonor of Cheque – acquittal – trial court held that charge leveled against respondents in respect of offence under Section 138 of Act 1881 was not proved beyond reasonable doubt and acquitted respondents - petition filed by complainant to grant leave to prefer appeal against judgment acquitting accused – Held: complainant failed to establish subjective satisfaction of Court that on date of purported loan, he had requisite financial capacity/wherewithal to lend such hefty sum and also failed to prove the respondent committed offence under Section 138 of Act, 1881 – request of the complainant for grant of special leave is not acceded – petition dismissed.	13
8	Rajmohan vs. Seetha Vedhanayagam and others	2017 (2) MLJ (CrI) 582 :: LNINDORD 2017 MAD 261	04.04.2017	Defamation – Appeal against Acquittal – Grant of Leave – IPC, 1860 – Section 499 – Code of Criminal Procedure, 1973 – In prosecution for defamation, complainant ought to establish that he was defamed and identity must be established – spirit of offence of defamation lies in dissemination of harmful imputation – imputation without intention to harm or without knowing or having reason to believe that it would harm reputation of such person would not constitute offence of defamation – In criminal case, standard of proof is beyond all shadow of doubt – If imputation is made in good faith for protection of interest of concerned persons making it or for public good then publication may not amount to defamation – order of trial court is free from flaw – petition dismissed.	14

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
9	Pandiyam Finance, Partnership Firm, Power Agent/Manager, P.Selvaraj vs. K.Periyasamy	2017 (2) MLJ (CrI) 598:: LNIND 2017 MAD 1415	04.04.2017	Negotiable Instruments – dishonor of Cheque – complainant/firm filed complaint under Section 138 of Act, 1881 before Trial Court through its power agent/manager – complaint dismissed - appeal against acquittal – Filing of complaint in respect of offence under Section 138 of Act, 1881 is permissible through holder of power of attorney – rider is that power of attorney holder should have witnessed transaction as agent of payee/holder in due course should possess requisite knowledge about transaction in question – If transaction was witnessed by complainant and attorney, statement as witness may be made by either – If at least one of the partners of complainant’s firm is examined, they may throw light before the trial court whether respondent owes certain sum – matter remanded to trial court.	14
10	In-Re The Registrar (Judicial), High Court, Madras.	2017-1- L. W. (CrI.) 813	28.4.2017	Protection of Children from Sexual Offences (POCSO) Act, 2012, Sections, 28, 33, 42-A – Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sections 2(d), 14, 20, - Criminal Procedure Code, Sections 6, 7, 9, 156, 157, 167, 190, 193, 366, 395, 439 – Scheduled Tribes (Prevention of Atrocities) (Amendment) Act, 2015 – Power of Judicial Magistrates to remand an accused involved in cases relating to offences under POCSO Act, SC & ST Act – Scope of .	15

SUPREME COURT – CIVIL CASES

CDJ 2017 SC 236:: 2017 (3) SCC 194

Richard Lee vs. Girish Soni and another

Date of Judgment: 02.02.2017

A. Code of Civil Procedure, 1908 – OR.1 Rr.10,3,9 and 13 - Impleadment of necessary /proper party – Suit for eviction from shop concerned in which a partnership firm was carrying on business – Firm initially comprising of three brother namely Q, S and A – issue whether tenancy of shop was created in favour of Q individually or in favour of the firm – **Held**, for proper adjudication of the issue in the eviction petition, both the firm and all its partners, though not necessary parties from the point of view of the eviction petitioners, should be on the array of parties as proper parties so as to facilitate the complete determination of the matter in dispute – Hence, their impleadment as proper parties to suit concerned ordered accordingly – Rent Control and Eviction – Eviction Suit/Trial – proper parties – suit for eviction from shop concerned in which a partnership firm was carrying on business.

B. Civil Procedure Code, 1908 – Or.1R.10 – Impleadment of parties – Suo motu invocation of power of court with respect to, as provided for under Or.1 R.10 CPC – filing of impleadment application by parties concerned – requirement of, in such a case.

C. Rent Control and Eviction - Res judicata – issue whether tenancy of shop in question was created in favour of partnership firm concerned had already been adjudicated upon in earlier proceedings – finding as to that issue recorded in earlier proceedings if conclusive as far as present proceedings were concerned – Question left open to be decided by Rent Controller concerned – Civil Procedure Code, 1908, S.11.

CDJ 2017 SC 122:: 2017 (2) MLJ 199 (SC):: LNIND 2017 SC 59

Durga Prasad vs. Narayan Ramchandaani (D), through LR's

Date of Judgment: 07.02.2017

Tenancy Laws – Eviction – Family of Tenant – U.P.Urban Buildings(Regulation of Letting, Rent and Eviction)Act, 1972(Act 1972), Sections 3(a), 3(g), 12 and 21(1) – Hindu Succession Act(Act), Section 15(2)(b) – Eviction Petition filed by Respondent/landlord for release of property from tenant on ground of bonafide need was dismissed – Respondent filed appeal and during pendency of same, tenant passed away – Substitution application that Appellant/brother of deceased tenant be substituted in her place was allowed – Appellate Court held that Appellant was not member of 'family' and was not able to prove that he previously resided with his sister in said premises – Appellant preferred writ petition – High Court held that appellant does not come within definition of 'family' as per Section 3(g) or 'heir' under Section 3(a) of Act 1972 and that vacancy was liable to be declared on demised premises on death of sole tenant – Review application filed by Appellant also dismissed – Both orders impugned in present appeals – Whether Appellant included in definition of 'family' under Section 3(g) or 'heir' under Section 3(a) of Act 1972, - **Held**, suit property taken on rent by father-in-law of deceased tenant and after his death, his son/husband of deceased tenant became tenant – upon his death, deceased tenant became tenant – upon her death, in absence of son or daughter of deceased tenant, tenancy would devolve upon heirs of her husband in terms of Section 15(2)(b) of Act – As Appellant does not fall under category of 'heir' of husband of deceased tenant, tenancy of suit property will not devolve on him nor called as 'heir' under Section 3(A) of Act 1972 – Being brother of deceased tenant, Appellant had no reason to reside with his married sister – merely because Appellant substituted in place of tenant, he cannot become

‘ heir’ who normally resided with tenant – Appellant directed to hand over vacant possession of suit premises to Respondent – Appeals dismissed.

CDJ 2017 SC 168:: 2017 (3) SCALE 21:: 2017 (2) MLJ 349 (SC):: LNIND 2017 SC 76

Mehmooda Gulshan vs. Javid Hussain Mungloo

Date of Judgment: 07.02.2017

Rent Control – Jammu and Kashmir Houses and Shop Rent Control Act, 1966 - Section 11(1)(h) – Eviction petition – Requirement of landlord for business of her son – Genuine need – Mere non-examination of the family member who intends to do the business cannot be taken as ground for repelling the reasonable requirement of the landlord – Plaintiff appellant having two sons has been deserted by her husband who had contracted second marriage – Appellant herself was unemployed with no source of income – Appellant filed suit for eviction alleging that she required the rental premises for her son for starting his business as he was unemployed – Trial Court decreed the suit – On appeal, High Court held that the appellant landlady had failed to prove that the premises was required for her own occupation and that son of appellant had not been examined to prove his requirement for rental premises – Evidence on record that elder son of appellant was unemployed – Trial court had analyzed and appreciated the reasonable requirement of the premises for business to be managed by son of appellant considering her family requirement – Whether judgment of the High Court was sustainable – **Held**, No – Whether mere non-examination of son of appellant who intended to do the business could be taken as a ground for repelling the reasonable requirement of the landlord – Held, No.

CDJ 2017 SC 181:: 2017 (3) SCALE 53

Satish Kumar Gupta and others vs. State of Haryana and others

Date of Judgment: 21.02.2017

LAND ACQUISITION – LAND ACQUISITION ACT, 1894 – Section 50, Part VII – CPC – Order 1 Rule 10(2); Order XLI Rule 27 – Acquisition of land for public purpose – post acquisition allottee of land has no locus to be heard in the matter of determination of compensation and is neither a necessary nor a proper party – land was acquired for the public purpose of setting up Industrial Model Township by the Haryana State Industrial Development Corporation(HSIDC) – substantial part of the acquired land was allotted by HSIDC to Maruti Suzuki India Ltd.,(MSIL) – One of the clauses in the Conveyance Deed executed in favour of the allottee provided that if compensation was enhanced, the allottee shall be liable to pay additional price on that basis – reference court determined compensation – on appeal High Court assessed the compensation – on challenge this court remanded the matter to the High Court for fresh disposal – High Court held that the allottee had a right to be impleaded as a party – permitting the allottee to be impleaded as a party, High Court also allowed application to lead additional evidence on the ground that the acquiring authority did not defend the case properly – application file by HSIDC to lead additional evidence was also allowed – it was also considered necessary to give an opportunity to MSIL – Whether the post acquisition allottee of land is necessary or proper party or has any locus to be heard in the matter of determination of compensation – Held, No – allowing the appeals, held.

A. To determine the question whether the post-acquisition allottee of land is necessary or proper party or has any locus to be heard in the matter of determination of compensation, we may refer to the scheme of the Act. The acquisition may either be for a “public purpose” as defined under Section 3(f) or for a company under Part –VII of the Act. If the acquisition is for a public purpose (as the present case) the land vests in the state after the Collector makes an award and the possession is taken. Till the award is made, no person other than state comes into the picture. Once the land vests in the State, the acquisition is complete. Any transferee from the State is not concerned with the process of acquisition. The State may transfer the land by public auction or by allotment at any price with which the person whose land is acquired has no concern. The mere fact that the Government chooses to determine the allotment price with reference to compensation price

determined by the Court does not provide any locus to an allottee to contest the claim for enhancement of compensation.

2017 0 Supreme (SC) 334:: 2017 (4) SCALE 502

Bhagwati @ Reena vs. Anil Choubey

Date of Judgment: 01.03.2017

HINDU LAW – HINDU MARRIAGE ACT, 1955 – SECTION 12(1)(c) – CPC – Order 41 Rule 27 – Respondent –husband filed civil suit seeking declaration of the marriage between the parties as null and void – case of the husband that he was forced to marry appellant – wife under threat of registering a false case and marriage was not consummated willfully – Husband also state that his wife was less than 18 years of age – case of appellant-wife that marriage was not performed by exerting pressure and was consummated - Appellant –wife submitted that respondent –husband had contracted a second marriage with another girl and that she was a major at the time of marriage – Trial court held that appellant –wife was less than 18 years of age at the time of marriage in violation of Section 5(ii) of Hindu Marriage Act, 1955 – Trial Court, therefore, annulled marriage – Appellant –wife filed birth certificate under Order 41 Rule 27 as additional evidence before High Court – High Court refused to receive birth certificate but recorded finding that the age of wife was less than 18 years when marriage was fixed but on the date of marriage, she was 18 years old – whether High Court rightly affirmed the trial court’s order annulling the marriage – Held, No – Disposing the appeal, Held.

It is an admitted position of both the parties that the husband was major at the time of marriage and he only sought annulment of marriage.

It is no more res integra that child marriages are voidable at the option of the minor spouse at the time of marriage. Therefore it is clear from the reading of the said Section that only minor spouse has a right to seek annulment of marriage.

SUPREME COURT – CRIMINAL CASES

CDJ 2016 SC 1069:: 2017 Cri. LJ 529 (SC)

Anjan Das Gupta vs. State of West Bengal and others

Date of Judgment: 25.11.2016

(A) **Criminal P.C.(2 of 1974), S.154** – FIR – Recording of - Receipt and recording of FIR is not a condition precedent for setting in motion of a criminal investigation – Mention of time as 17.35 hours in FIR can be treated as time of receipt of information of offence – FIR not ante-timed.

(B) **Criminal P.C.(2 of 1974), S.157** – FIR – Delay in dispatch to Court of Magistrate – Prompt investigation – No questions were put to I.O. in his cross-examination regarding delay in dispatch - FIR was genuine – Mere dispatch of FIR after six days from its recording from police station to Magistrates' Court – is not fatal to draw any adverse presumption .

CDJ 2016 SC 1087: 2017 (1) LW (Crl) 610: 2017 (2) SCC 210

Mukarrab and others vs. State of U.P.

Date of Judgment: 30.11.2016

Juvenile Justice (Care and Protection of Children) Act 2000, Sections 7A, 49(1) Juvenile Justice Rules (2007) , Rule 12 - Whether appellants were juveniles on date of occurrence – Admissibility and reliability of medical opinion in age determination under the Act, scope of. Held- ossification test cannot be regarded as conclusive when ascertaining age of a person – opinion of medical board in determining age of appellants cannot be relied to give benefit under the Act – Plea of juvenility rejected.

2017 (3) SCALE 277

Iqbal and another vs. State of Uttar Pradesh

Date of Judgment: 07.02.2017

Criminal Law – IPC – Section 148, 302, 302/149 & 307/149 – Murderous assault – Unlawful Assembly – Vicarious Liability – Enmity between parties – Prosecution case that at about 12.30 a.m. six accused came armed with rifles and katta, they woke up complainant's father and asked him where is his son 'C' was and started hurling filthy abuses – hearing noise of those people, deceased along with uncle woke up from sleep and came out of the room where they were sleeping – On seeing deceased, accused 'G' shouted loudly and upon his exhortation, accused 'G' fired at him and other members, who were carrying rifles, also started firing – deceased succumbed to the injuries suffered by him – trial court convicted all six accused for offences u/s 148, 302/149, IPC, 307/149, IPC – On appeal, High Court confirmed their convictions – whether there was a common object to kill deceased – **Held**, Yes – whether judgments of the courts below convicting all six accused persons were sustainable – **Held**, Yes – Dismissing the appeal, **Held**,

A. After going through the records and considering the arguments of the counsel on either side, we are of the opinion that there is no error in the judgment of the Courts below convicting all the six accused persons, including the appellants, for the aforesaid offences. In the first instance, it may be mentioned that in so far as Virendra is concerned, some of the witnesses have specifically attributed role to him as well, i.e., he also fired from the rifle which he was carrying. Presence of Iqbal also stands established.

B. In the instant case, where the moot question is as to whether there was common objective, if that is proved, then in any case, the separate roles played by all the accused persons need not be examined as all the members of unlawful assembly would be vicariously liable for the acts done by the said assembly. There is clinching evidence produced by the prosecution to show that all the six persons had come to the place of occurrence armed with deadly weapons. The moment they reached the house of the complainant and found the complainant along with his father Sonpal(P.W.3) sleeping there, they woke them up and first asked as to where Chandrapal was. When they were told that Chandrapal was away to Delhi, they immediately asked for the whereabouts of Bhoop Singh. The moment Bhoop Singh appeared on the scene, Ganpat pointed out at him and told other members of the assembly that he was the person who could be finished. Immediately upon the exhortation of Ganpat in the aforesaid manner, Genda Lal fired at Bhoop Singh and other members who were carrying rifles also started firing.

C. Applying the ratio of Lalji's case as stated above, it could safely be inferred that there was a common object to kill Chandrapal, Bhoop Singh and even others. As already mentioned above, insofar as the occurrence and the presence of the six accused persons are concerned, it may not be doubted at all and have been proved to the hilt.

2017 (2) MWN (CrI) 229 (SC)

Unnikrishnan and Unnikuttan vs. State of Kerala

Date of Judgment: 01.03.2017

Criminal Procedure Code, 1973 (2 of 1974) Section 320 – IPC, 1860 (45 of 1860), Section 394 – Constitution of India, Article 142 – Compounding non-compoundable offence – Permissibility – Petitioner convicted under Section 394, a non-compoundable offence under Section 320, Cr.P.C – sentenced to 2 years RI – Matter settled between parties pending SLP and Compromise entered into – Joint Application for permission to compound offence filed – offence though non-compoundable considering settlement arrived between parties, compounding of offence permitted.

What emerges from the above is that even if an offence is not compoundable within the scope of Section 320 of Code of Criminal Procedure the Court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction.

CDJ 2017 SC 334:: AIR 2017 SC 1681 (Criminal):: 2017 (4) CTC 107:: 2017 (2) MWN (Cr.) DCC 65 (SC):: 2017 (5) SCC 737

Parameswaran Unni vs. G. Kannan and another

Date of Judgment: 01.03.2017

Negotiable Instruments Act, 1881 (26 of 1881), Section 138(b) – Statutory notice of demand – second notice – relevancy of - second notice can be construed as reminder notice – no bar under Act to sent such reminder notice – However, such reminder notice not to be construed as admission to non-service of first notice.

Negotiable Instruments Act, 1881 (26 of 1881), Section 138(b) – General Clause Act, 1897 (10 of 1897), Section 27 – Evidence Act, 1872 (1 of 1872), Section 114 Statutory Notice of demand – service of – Deemed service – presumption of – Notice sent by registered post to correct address of drawer of cheque – service of – can be deemed to have been effected as per Section 27, GC Act & Section 114, NI Act – requirement of due service under Section 138(b) stands complied with, if notice is sent in such manner – notice sent by registered post returned with postal endorsement “refused” or “not available” or “house locked/shop locked” – due service can be presumed - however, presumption as to deemed service of notice a rebuttable presumption.

Negotiable Instruments Act, 1881(26 of 1881), Sections 138(b) & 138 r/w 142 – dismissal of complaint on ground of issuance of second notice beyond period limitation – legality – cheques returned unpaid on 05.04.1991 – dishonor intimation of bank received in 08.04.1991 – legal notice issued on 12.04.1991 to drawer returned with postal endorsement “Intimation served, addressee absent” on 20.04.1991 and received on 25.04.1991 – second notice issued on 04.05.1991 by registered post also returned with post endorsement “refund, returned to sender” – complaint filed on 23.05.1991. Service of 1st notice not taken into consideration – when 1st notice sent by registered post to correct address returned unserved with postal intimation, same can be deemed to have been duly served as per Section 27, GC Act – First notice being effective notice, second notice has no relevance at all.

MADRAS HIGH COURT – CIVIL CASES

2017 (1) CTC 374

Maria Francis (Died) vs. M. Varghese @ Maria Varghese

Date of Judgment: 02.11.2016

Code of Civil Procedure, 1908 (5 of 1908), Order 9, Rule 9 – Suit dismissed for default – Bar to maintain subsequent Suit – Suit for partition dismissed for default – Maintainability of Second Suit for Partition – Applicability – Bar under Order 9, Rule 9 is not applicable in Suit for Partition – Suit for Partition brings about severance of status and cause of action continuous until actual Partition – Subsequent Suit for Partition by same party is maintainable.

Benami Transaction (Prohibition) Act, 1988 (45 of 1988) – Suit for Partition – Transaction takes place prior to commencement of Act – Applicability – Contention of Defendant that Suit properties were purchased out of his earnings and Plaintiff is only Benami – Courts below held that transactions were hit by Benami Transaction (Prohibition) Act – Provisions of Act are not applicable to transactions prior to commencement of Act – Law laid down in C. Gangacharan case followed and applied.

2017 (1) CTC 279

Agnes Bellarmina vs. M. Anbunathan

Date of Judgment: 10.11.2016

Family courts Act, 1984 (66 of 1984), Sections 3 & 7 – Code of Civil Procedure, 1908 (5 of 1908), Sections 9 & 24 – Transfer of Matrimonial cases – Husband filed Divorce Petition before District Court, Pudukottai – Wife filed Petition for Restitution of Conjugal Rights before District Court, Madurai – Wife filed Transfer Petition – Husband and Wife agreed to transfer Matrimonial cases to Principal Sub-Court – Parties seek transfers to Civil Court in order to avoid personal appearances – Family Court established in Madurai – Jurisdiction of Civil Courts impliedly barred – Transfer cannot be ordered for convenience of parties regarding their appearance – Family Courts constituted to promote conciliation and secure speedy settlement of disputes – Cases transferred to Family Court.

2017 (1) TLNJ 607 (Civil)

**Tamil Nadu State Transport Corporation Ltd., Tirunelveli through its Managing Director
vs.
Murugan**

Date of Judgment 09.12.2016

Civil Procedure Code 1908, Order 41 Rule 33 – Claimant had filed a Petition in M.C.O.P.No.1282 of 2014 against the Appellant/Respondent, claiming compensation for injuries sustained by him due to rash and negligent driving of the Appellant/Respondent and by which he sustained 70% disability and the Tribunal Confirmed that due to rash and negligent act of the Appellant/Respondent the accident had taken place – Awarded Rs.6,47,800/- to the Claimant against which the Appellant/Respondent had preferred this Appeal – Where this Court on re-appreciating the evidence and applying the current proposition of law, Suomotu enhanced the compensation to Rs.9,00,000/- and reduced the rate of interest from 9% to 7.5% per annum – Civil miscellaneous Appeal disposed of.

2017 (1) CTC 307

Elumalai vs. Kanthamani Ammal

Date of Judgment: 21.12.2016

Code of Civil Procedure, 1908 (5 of 1908), Order 14(2) – Preliminary Issue and Preliminary Point – Both are different concepts – Suit is decided on Preliminary Point if Suit (a) is not decided on all issues; (b) is decided by ignoring that which pleadings warrant it to be decided; (c) is one where burden of proof is wrongly fixed; (d) is one where case of one of parties not considered.

Code of Civil Procedure, 1908 (5 of 1908), Order 41, Rules 23, 23-A, 24 & 25 – Remand – Appellate Court – Power of – Even if Suit is decided on Preliminary Point, Appellate court to decide all issues if evidence is available on all issues – Appellate Court to decide where all issues are not framed but evidence adduced on all such issues provided parties thereto understood such issues – Remand is exception to Rule 24 – Appellate Court to invoke Rule 24 and if not possible on facts invoke Rule 25 – Rule 23 or 23-A to be invoked sparingly and as last alternative – Remand not to be made to reconstruct case – Change of substantive law or advent of new law affecting original cause of action no ground for remand.

2017 (3) MLJ 593:: 2017 (3) CTC 793

Gayathiri vs. Thirumaran

Date of Judgment: 09.03.2017

Family Courts Act, 1984 (66 of 1984), Sections 9 & 10(3) – Code of Civil Procedure, 1908 (5 of 1908), Order 3, Rules 1 & 2 – Divorce Petition – Recognized Agents – Husband filed Divorce Application – Mother of Husband sought permission to represent as Power Agent – Jurisdiction of Court – Duty of Family Courts – Tendency of parties not participating in proceedings after obtaining permission from Court for representation of Power Agents – Personal appearance of parties not required at initial stage of proceedings – Appearance of parties is necessary and imperative for all subsequent hearings – Parties to Matrimonial *lis* cannot seek dispensation of personal appearance without any valid cause – plea of parties to conduct hearings through Video Conferencing and Skype technology cannot be allowed as routine manner – Order of Family Court granting permission to recognized Agent in absence of sufficient reasons is illegal.

CDJ 2017 MHC 1205:: 2017 (2) LW 939

Ramasamy vs. Subramaniya Kounder

Date of Judgment: 08.03.2017

C.P.C., Order 26, appointment of Advocate Commissioner - Suit for injunction – Advocate Commissioner, appoint of - **Held**, Court need not wait till filing of the written statement by defendant to appoint an advocate commissioner. If the situation is such that which enables a party to destroy the subject matter of the subject, make it non-est or even make the very filing of the suit a futile exercise or even make the suit a straw. In certain circumstances, ascertainment of actual physical structure/features of the suit property as on date of the filing of the suit may be very important. In such circumstances, the Court need not wait till the filing of the written statement by the defendant to appoint an Advocate Commissioner.

2017-2-L.W. 792

DRS Logistics Private Limited vs. Blue Star Limited

Date of Judgment 17.03.2017

C.P.C., Section 20 - cause of action, determination of, letter subrogation between parties effect of Contract/Subrogation, assignment, difference, what is suit instituted for recovery against appellant – carrier of goods damaged City Civil Court, Chennai, whether has jurisdiction – First plaintiff having office at Mumbai, second plaintiff having its office at New Delhi – consignment was transported between Himachal Pradesh and Secunderabad – second plaintiff indemnified first plaintiff, followed by execution of letter of subrogation and a special power of attorney at Chennai – suit laid based upon Ex.A7 being a letter of subrogation and a special power of attorney. **Held:** entire occurrence outside the jurisdiction of this Court – Ex.A7 is subsequent to the alleged damage caused.

Appellant is residing outside territorial jurisdiction of this Court – Ex.A7 being a document executed between plaintiffs can never give cause of action on its own. A subsequent agreement entered into between plaintiffs on a cause of action between one of them and defendant cannot clothe a court with jurisdiction – suit laid on letter of subrogation and special power of attorney is not maintainable – difference between subrogation and assignment, what is, stated.

2017 (1) CTC 287

Dr. Balamugunthan vs. Suganthi

Date of Judgment: 02.01.2017

Code of Civil Procedure, 1908 (5 of 1908), Order 41, Rule 33 – Appellate Court – Power of – Plaintiff suffering injuries and Permanent Disability as a result of negligence and wrong treatment given in Government Hospital – Suit claiming Compensation of ₹10,00,000 - Suit decreed against 2nd Defendant-Doctor – Appeal by 2nd Defendant – Even simple lack of care would incur Civil liability like damages – But it cannot amount to Criminal negligence – 2nd Defendant was negligent in treating Plaintiff and said negligence enough to create Civil liability for damages – Though prayer in Plaintiff is only against the 2nd Defendant, 1st Defendant is vicariously liable for action of 2nd Defendant – Question whether Decree could be granted against 1st Defendant also in absence of prayer – 1st Defendant is Welfare State and is bound to protect its Employee and citizen like Plaintiff – Appellate Court’s power are of widest amplitude and object is to do complete justice between parties – Power under Order 41, Rule 33 exercised to modify Decree of Trial Court – 1st Defendant made vicariously liable for negligence on part of its Employee – Impugned Judgment modified making 1st Defendant also liable for Suit claim – Appeal partly allowed.

2017(4) MLJ 456:: 2017 (2) MWN (Civil) 457

Ramasamy vs. Pushpa

Date of Judgment: 13.03.2017

C.P.C., Section 51, Order 21, Rule 37 - Civil arrest – challenge to – means to pay – proof of – **Held,** evidence by decree holder does not establish judgment debtor has means, but failed, refused and neglect to satisfy decree debt – Execution Court fell into error ordering arrest and detention of petitioner in civil prison.

2017 (2) TLNJ 292 (Civil)

Royal Sundaram Insurance Co. Ltd., vs. Pachiammal & 5 others

Date of Judgment : 27.02.2017

Motor Vehicles Act, 1988, Section 173 – Appeal by Insurance Company on quantum - Rs.10,06,472/- - awarded by Tribunal for the death of 48 year old Contract labour earning Rs.5,600 per month – Contention of Insurer that fixation of monthly income at Rs.5,600/- and addition of future prospects by Tribunal is erroneous – Relying on decision of Supreme Court in Syed Sadiq Vs. United India(2014 (1) TNMAC 459); and Madras High Court in Royal Sundaram Alliance Insurance Co.Ltd., Vs. Tmt Vennila, (C.M.A.No.3273 of 2014) – held – fixing of monthly income at Rs.5,600/- and addition of 30% of income towards future prospects is not excessive - Award of Tribunal confirmed – CMA is dismissed.

MADRAS HIGH COURT – CRIMINAL CASES

2017 (1) L.W. (Crl.) 532

V.S.Gunaseelan vs. The Forest Range Officer Pollachi Forest Range, Anaimalai Tiger Reserve Forest, Pollachi Taluk, Coimbatore District.

Date of Judgment: 05.12.2016

Wild Life Protection Act(1972), Section 55, Criminal Procedure Code, Section 482 - Seizure of animal articles, trophies etc., - Prosecution challenged – contended that search was conducted, till date no complaint was filed by the officials before the competent court prosecution barred by limitation - search and seizure conducted by Forest Ranger, Pollachi Forest Range Paras 4,7 Notification in G.O.Ms.No.63, environment and Forests(FR 5) department dated 05.07.2006 – effect of – what is – empowering Forest Rangers to lay a complaint. Held : a forest ranger is now empowered by notification issued under Section 55(b) to lay a complaint before the competent Court and his powers are not circumscribed by Section 55(c).

2017 (2) MLJ (Crl) 572:: LNIND 2017 MAD 1289

V. Shobana vs State, rep by The Inspector of Police Nambiar Police

Date of Judgment: 10.01.2017

Murder – Extra Judicial Confession – Indian Penal Code, 1860, Section 302 – Deceased was child of P.W.1/husband and Appellant/accused/wife – alleged that since P.W.1 and accused had domestic quarrels, accused desired for second marriage and under impression that deceased would be hindrance to second marriage, accused killed deceased by feeding her food mixed with pesticide – Trial Court convicted accused under Section 302 – Appeal by accused – whether conviction of Appellant for murder of child, justified – **Held:** Trial court did not even care to have regard that accused got right to be defended by competent lawyer – though there were several hearings, there is no indication that Court offered legal assistance through legal aid to accused – Court recorded that there was no need to wait for arguments of both counsels and pronounced judgment - such act of court in blindly rushing to finish case is unwarranted and unfortunate – conduct of accused in rushing child to hospital is consistent with her innocence – if this is seen in light of conduct of accused in going to inform P.W.2 and rushing to hospital would show that she would not have fed poisonous substance mixed with food to child – No evidence that she fed poisonous substance alone – Extra judicial confession made by accused does not inspire confidence – No evidence that death of deceased was homicide – Appeal allowed.

2017 (2) MLJ (Crl) 632:: LNIND 2017 MAD 1588

Sambu @ Tamilnilavu (A2) vs State, rep by Inspector of Police, Kolathur Police Station, Salem District, (Cr. No. 11 of 2011)

Date of Judgment: 18.01.2017

Murder – Solitary witness – Indian Penal Code, 1860 (Code 1860), Sections 302 and 447 - Accused No. 1 died during pendency of trial – Accused No. 3 found to be juvenile and same is now dealt with by Juvenile Justice Board – Accused Nos. 4 and 5 were tried with Appellant/accused No.2 alone under Sections 447 and 302 – Appeal against conviction and sentence – Whether Appellant is guilty of offences under provisions of Code 1860 – Whether conviction can be sustained on basis of testimony by solitary witness – Held, contradictions and improbabilities raises strong doubt about very presence of P.W.1/solitary witness at place of

occurrence – Supreme Court held that if solitary witness is fully believable, even in absence of corroboration from other independent source, said evidence can be sole foundation for conviction – If evidence of solitary evidence is partly believable, in absence of corroboration from other independent source, on material particulars, not safe to act upon said evidence of solitary witness – Case projected by prosecution as against accused Nos. 4 and 5 rejected by Trial Court – Evidence of P.W.1 is doubtful and in absence of corroboration from other source on material particulars, not safe to rely on evidence of P.W.1 and sustain conviction – Prosecution failed to prove case against Appellant beyond reasonable doubt – Appellant entitled for acquittal – Appeal allowed.

2017 (1) TLNJ 193 (Criminal): CDJ 2017 MHC 62:: 2017 (1) MWN (Cr) DCC 49

M/s. India Cements Investments, Services Limited vs. T.P. Nallusamy

Date of Judgment: 23.01.2017

Negotiable Instrument Act, 1881, Section 142 – Entire transaction arises under a ‘Derivative Contract’ for the purchase of share – Cheques issued to the appellant to cushion the deficit which may arise due to the fall in prices of the shares – Whether cheques given as security and there was a legally enforceable debt – non-obstante clause in Section 142 of N.I.Act clearly spell out that the three matters mentioned in Section have an overriding effect on the ingredients of Criminal Procedure Code – Appellate Court has to act according to equity, good conscience, and Justice – Appellate court hastily come to the conclusion in setting aside the conviction of respondent without proper appreciation of oral and documentary evidence – Appeal against order of Sessions court which reversed conviction of respondent ordered by trial court allowed – case remanded back to trial court with directions.

2017 (2) MLJ (Cr) 626 :: LNIND 2017 MAD 1565

A. Kavitha vs State, Rep. by Inspector of Police, Namakkal Police Station, Namakkal District, (Crime No. 2018 of 2010)

Date of Judgment: 15.02.2017

Murder – Extra judicial Confession – Indian Penal Code, 1860, Section 302 – Trial Court convicted Appellant/accused for offence under Section 302 and sentenced her to undergo imprisonment for life and to pay fine – Appeal against conviction and sentence – Whether conviction of Appellant for murder under Section 302 justified – Held, prosecutor not in position to explain as to why in Ex.P. 7, the date and time of receipt of requisition and date and time of arrival of sniffer dog at scene of occurrence omitted – Had it been true that assailant was already known, not understandable as to why sniffer dog was brought to place of occurrence – Village Administrative Officer was not previously known to accused and she had no acquaintance at all – Doubtful as to whether accused would have been chosen total stranger to make confession – Extra judicial confession by itself could be sole foundation for conviction, provided if inspires fullest confidence of Court – No evidence to corroborate extra judicial confession – Son of deceased turned hostile and no evidence on record to show that accused was in house on crucial night – Accused cannot be expected to explain as to how deceased sustained injuries and died – Prosecution failed to prove case against accused beyond reasonable doubt – Suspicion however strong it may be, cannot take place of proof – Accused entitled for acquittal – Appeal allowed.

2017 (2) MLJ (CrI) 530:: LNIND 2017 MAD 954

Sivaraj vs B. Devaraj

Date of Judgment: 06.03.2017

Negotiable Instruments – Dishonour of Cheque – Dismissal of Complainant – Negotiable Instruments Act, 1881 (Act 1881), Sections 138 – Criminal Procedure Code, 1973 (Code 1973), Sections 256 and 300 – Appellant/complainant filed complainant under Section 138 of Act 1881 against accused – Non bailable warrant was pending against accused – Complainant was absent no date of hearing and no representation made on his behalf by Counsel – Trial Court dismissed complainant under Section 256 of Code 1973 – Complainant preferred present appeal – Whether order of dismissal passed by Trial Court, justified – Held, in respect of case under Section 138 of Act 1881, complaint ought not be dismissed for absence of Complainant either for one or two occasions, to prevent aberration of justice – If order of acquittal is passed by Trial Court owing to non-appearance of Complainant on given date of hearing or there was no representation on his behalf even through his Counsel – Trial Court cannot brush aside that order of acquittal so passed is final one and it may even bar fresh trial as per Section 300 Code 1973 – Jurisdiction of Appellate Court is coextensive with that of Trial Court in matter of assessment, appraisal and re appreciation of evidence – Appeal from acquittal is allowed only in exceptional circumstance – High Court has necessary powers to upset order/judgment of acquittal only when it finds substance reasons – It is to be pointed out that if date is determined for appearance of accused, acquittal of accused for non-appearance of Complainant is manifest error of justice – Court of Law is to see whether presence of Complainant on given date of hearing is very much essential for purpose of prosecuting case – Appeal allowed.

2017 (2) MLJ (CrI) 608:: LNINDORD 2017 MAD 187

G.S. Gunasekar vs. Vinayaga Trading Company, No. 16-C, Dharapuram Road, Udumalpet and others

Date of Judgment: 23.03.2017

Negotiable Instruments – Dishonour of Cheque – Acquittal – Negotiable Instruments Act, 1881 (Act 1881), Section 138 – Code of Criminal Procedure, 1973 (Code 1973), Section 91 – Petitioner / Appellant / complainant alleged that 2nd and 3rd Respondents / accused Nos. 2 and 3 borrowed sum from complainant and in discharge of loan, issued cheque which returned from bank as ‘stop payment’ – On petition filed by complainant, Trial Court held that charge leveled against Respondents in respect of offence under Section 138 of Act 1881 was not proved beyond reasonable doubt and acquitted Respondents – Petition filed by complainant to grant leave to prefer appeal against judgment acquitting accused – Whether Trial court justified in acquitting accused of charge under Section 138 of Act 1881 – Held, complainant failed to establish subjective satisfaction of Court that on date of purported loan, he had requisite financial capacity/wherewithal to lend such hefty sum – Evidence of P.W. 1/ Petitioner before Trial Court is contra to averment made by him in complaint – Petitioner did not come out with true version – Appellant did not establish his case to subjective satisfaction of Court to effect that Respondents committed offence under Section 138 of Act 1881 – On perusal of judgment of acquittal, no material irregularities or patent illegalities found – Judgment of Trial Court is free from legal flaw – ‘Grant of Special Leave’ sought for by complainant is not acceded – Petition dismissed.

2017 (2) MLJ (CrI) 582 :: LNINDORD 2017 MAD 261

Rajmohan vs. Seetha Vedhanayagam and others

Date of Judgment: 04.04.2017

Defamation – Appeal against Acquittal – Grant of Leave – Indian Penal Code, 1860(Code 1860), Sections 499, 500 – Code of Criminal Procedure, 1973(Code 1973), Sections 248 – Petitioner/ Complainant/Appellant filed Complaint before Trial Court stating that paper publication notice was made by Respondents/accused with false information to bring disrepute to reputation of Complainant – trial court acquitted accused under Section 248(1) of Code 1973 – Complainant filed appeal against acquittal order and also filed petition for grant of leave to prefer appeal – whether order of acquittal passed by Trial Court, justified – whether petition filed for grant of leave sustainable - Held, first exception to Section 499 of Code 1860 speaks of ‘Imputation of truth which public good requires be making or publishing – to carve out defamation out of printed material or written matter, entire material must be considered avoiding importance being given to isolated portions – In prosecution for defamation, complainant ought to establish that he was defamed and identity must be established – Ingredients of Section 499 of Code 1860 brings individual who publishes as well as who makes defamatory imputation, to come within ambit of criminal law – Spirit of offence of defamation lies in dissemination of harmful imputation – Imputation without intention to harm or without knowing or having reason to believe that it would harm reputation of such person would not constitute offence of defamation – In criminal case, standard of proof is beyond all shadow of doubt – if imputation is made in good faith for protection of interest of concerned persons making it or for public good then publication may not amount to defamation – Judgment of acquittal passed by Trial Court does not suffer from serious material irregularities or patent illegalities same is free from flaw – Petition dismissed.

2017 (2) MLJ (CrI) 598:: LNIND 2017 MAD 1415

Pandiyan Finance, Partnership Firm, Power Agent/Mager, P.Selvaraj vs. K.Periyasamy

Date of Judgement: 04.04.2017

Negotiable Instruments - Dishonour of Cheque – Appeal against Acquittal – Negotiable Instruments Act, 1881(Act 1881), Section 138 – Code of Criminal Procedure, 1973(Code 1973), Sections 200 and 255 – Respondent /accused issued postdated cheque in favour of Appellant/Complainant, towards discharge of liability – Complainant/Firm filed complaint under Section 138 of Act 1881 before Trial Court through its power agent/manager – trial court acquitted accused by holding that complainant did not establish beyond reasonable doubt its case against accused - Appeal by complainant – whether judgment of trial court acquitting Respondent, sustainable – Held, perusal of Power of Attorney executed by partners of complainant’s firm indicates that they appointed their manager as their Power Agent to engage acts or things in connection with said cheque and Power Agent can file complaint on behalf of complainant – Non examination of complainant under Section 200 of code 1973, cognizance taken by Judicial Magistrate on certain complaint cannot be termed as illegal or without jurisdiction – filing of complaint in respect of offence under Section 138 of Act 1881 is permissible through holder of Power of Attorney – Rider is that Power of Attorney holder should have witnessed transaction as agent of payee/holder in due course should possess requisite knowledge about transaction in question – If complainant alone was witness of transaction, complainant alone can make statement as required under Section 200 of Code 1973 in support of complaint – If transaction was witnessed by Complainant and Attorney, statement as witness may be made by either – based on materials available on record, it is not possible for present court to deliver judgment – remand of matter is just, fair and necessary, otherwise there would be failure and miscarriage of Justice – If atleast one of the partners of complainant’s firm is examined, they may throw light before Trial Court whether Respondent owes certain sum – account book of complainant’s firm can be marked as exhibit through relevant competent witness and entries showing money advanced by accused can be proved – even accountant of complainant’s firm can be examined before Court and loan transaction

of accused can be established in accordance with Law – Judgment of Trial Court set aside – matter remanded back to Trial Court for fresh disposal – Appeal allowed.

2017-1-L.W. (CrI) 813

In-Re The Registrar (Judicial), High Court, Madras

Date of Judgment: 28.04.2017

Protection of Children form Sexual Offences, POCSO Act(2012), Sections 28, 33, 42-A, Scheduled Castes and the Scheduled Tribes(Prevention of Atrocities) Act(1989), Sections 2(d), 14, 20, Criminal Procedure Code, Sections 6,7,9,156,157, 167,190,193,366,395,439, General Clauses Act(1897) Section 24, Schedule Tribes(Prevention of Atrocities)Amendment Act(2015), Act 1 of 2016. Power of Judicial Magistrates to remand an accused involved in cases relating to offences under POCSO Act, SC & ST Act, - scope of – High Court circular issued regarding, whether correct, cases arising under POCSO Act, SC & ST Act how to be dealt with stated – Whether an additional sessions judge exercises all powers of a sessions judge presiding a court of session.

A court of session is established and a sessions judge presides over the said court and an additional sessions judge exercises jurisdiction in the said sessions court – term “a court of Session” as employed in Section 28 of the POCSO Act, would mean either the presiding sessions judge of a court of a session or an additional sessions judge exercising jurisdiction in the said sessions court. **Held:** orders specifying additional sessions judges (Fast Track Mahila Sessions Judges) as special courts are perfectly in tune with Section 28 of the POCSO Act. Power of the Special court to take cognizance of any offence under the POCSO Act – what is – scope – when special court exclusive power not only to try case under the POCSO Act but also to take cognizance of offences under the Act without the case being committed to the said court – though special court under the POCSO Act is a Court of session, said court has the power to remand an accused during investigation as provided in Section 167 as the court having jurisdiction to try the case “Magistrate” in Section 156(3) of the Code should be read as “the special court” in the context of the POCSO Act – “Magistrate” in Sections 156, 157 of the Code includes a Special court under the POCSO Act also – term “Magistrate” employed in section 167 should be read to include the special court under the POCSO Act – No magistrate can take cognizance or try any offence under the POCSO Act - special court under the POCSO Act exercises original jurisdiction exclusively to take cognizance of any offence under the act not being hundred by Section 193 – Special court has power to pass initial remand of an accused for a period not exceeding 15 days as provided in Section 167(2) Cr.P.C., - Power of the nearest magistrate before whom the accused is produced to remand the accused for a period not exceeding 15 days has not been excluded – whether notifications specifying additional sessions judges as special courts under SC & ST Act are valid – Additional sessions judge exercising jurisdiction in a Court of Session may also be notified as a Special court under Section 14 of the SC & ST Act as it stood before the amendment – Sessions Judge presiding over a court of session may also be notified as a special court under section 14 of the Act – notifications specifying these courts as special courts are valid – Section 24 of the General Clauses Act, effect – Intention of the Legislature to give overriding effect to the POCSO Act over the SC & ST Act.
