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IMPORTANT CASE LAW



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SUPREME COURT – CIVIL CASES

2017 (5) L.W. 421

Jaspal Kaur Cheema and another vs. M/s. Industrial Trade Links and others etc.

Date of Judgment: 03.07.2017

Evidence Act, Section 116, Title denial, Estoppel

C.P.C., Order 8 Rule 5, Specific denial, need for, Written statement, scope

Landlord-tenant relationship/Denial of title, whether permissible.

East Punjab Urban Rent Restriction Act (1949), Section 13, Eviction, personal necessity

Respondents were put in possession of premises by appellants under lease deed - In written statement respondents have not raised a specific plea denying or disputing ownership of appellants.

Written statement must specifically deal with each of the allegations of fact made in the plaint
- Failure to make specific denial amounts to an admission.

Approbate and reprobate - what is - Tenant who was let into possession cannot deny his landlord's title

Principle of estoppels arising from contract of tenancy - scope

2017 (5) L.W. 490

Velayudhan and others vs. Mohammedkutty and ors.

Date of Judgment: 18.04.2017

C.P.C. Section 100, Injunction, Title, deciding of, scope

Pleading/Injunction, Relief claimed, grant of, scope

Injunction/Permanent injunction, Title, Issue of, whether arises

Suit for injunction - Title deciding of - Scope

Plaintiffs have expressed apprehension in relation to their title – It cannot be said suit is only for grant of permanent injunction simpliciter – Issue of title having surfaced in the relief clause, same is of some significance over the rights of the parties while considering the grant of reliefs.

Issue of title is not wholly foreign to the controversy and is relevant while considering the grant of permanent Injunction

2017 (13) Scale 756

Anil Kumar Singh vs. Vijay Pal Singh and Ors.

Date of Judgment: 30.11.2017

Civil Procedure - CPC - Order XXIII Rule 1 - Withdrawal of suit - Grant of permission to withdraw the suit - Liability of plaintiff to pay cost - Appellant - plaintiff filed a civil suit claiming permanent Injunction - Appellant applied for grant of temporary injunction against respondent 1 - Trial Court granted ex parte temporary injunction - Parties claimed to have entered into a compromise wherein respondent 1 agreed not to interfere in appellant's possession - Appellant accordingly filed an application under Order XXIII Rule 1 to withdraw the suit - Respondent 1 opposed the application - Trial Court allowed the application and permitted appellant to withdraw the suit subject to payment of cost of Rs.350/- payable to respondent - defendant - Appellant's Suit was accordingly dismissed as withdrawn - Revision filed by respondent 1 was dismissed - Writ petition - High Court set aside the orders of courts below and directed appellant to place respondent 1 in possession of the suit land - Whether the two courts below were justified in permitting appellant to withdraw the suit - Held, Yes - Allowing the appeal, Held

2017 (9) SCC 700

Pankajbhai Rameshbhai Zalavadiya vs. Jethabhai Kalabhai Zalavadiya

(Deceased) through Legal Representatives and others

Date of Judgment: 03.10.2017

A. Civil Procedure Code, 1908 – S. 11 and Or. 1 R. 10 and Or.22 – Res judicata – Applicability – First application under Or.22 R.4 dismissed without adjudication on merits, subsequent application under Or. 1 R. 10 not barred by res-judicata

B. Civil Procedure Code, 1908 – Or. 1 R. 10(1) – Substitution or addition of any person as plaintiff – Relevant considerations for exercise of power by court – Plaintiff's application under Or.22 R. 4 for impleading LRs of one of deceased defendants (D-7) dismissed by trial court as that defendant had already died before the filing of suit for setting aside sale of land in question – Land was sold in favour of D-7 hence substitution of LRs was necessary for determination of real matter in dispute – Inclusion of deceased D-7 in suit was through a bone fide mistake – In view of these considerations, held, plaintiff's subsequent application under Or.1 R. 10 for substitution of LRs of D-7 deserves to be allowed, subject to law of limitation as contemplated under S.21 of Limitation Act – Limitation Act, 1963, S.21.

C. Civil Procedure Code, 1908 – Or. 1 Rr. 10(2) and Ss. 151 & 153 – Discretionary power of court to order name of any person, whose presence before court is necessary to settle all questions involved, to be added by amending defect/error in application in interest of ends of justice – Discretion has to be exercised according to reason and fair play – Expression “to settle all questions involved” should be interpreted widely and liberally – Hypertechnical approach should be avoided.

D. Practice and Procedure – Generally – Wrong mention of statutory provision in application – Not sufficient to invalidate application.

2017 (2) TN MAC 609 (SC)

National Insurance Co.Ltd., vs. Pranay Sethi and others

Date of Judgment: 31.10.2017

INCOME – FUTURE PROSPECTS – Addition towards – Scope of, in case of self-employed or person with fixed income without provision for annual increment – Whether method of standardization as conceived and applied by Apex Court in *Sarla Verma* in respect of persons with permanent job, also applicable to self-employed persons – Apex Court in *Sarla Verma*, while making it a rule to add Future Prospects in range of 50%-30% in respect of persons in permanent job, ruled that in case of self-employed persons only actual income to be taken into account and departure permissible only in rare and exceptional cases involving special circumstances – Decision in *Sarla Verma* approved by three-Judge Bench in *Reshma Kumari* – Application of Principle of Standardization in order to bring certainty, stability and consistency, held, proper – Principle of standardization approved so that a specific and certain multiplicand can be determined for award of Just Compensation – However, no rationale in not applying principle to self-employed or person on fixed wages – Taking into account actual income without addition towards Future Prospects, held, unjust and inapposite – Future Prospects to be added so as to bring method within ambit and sweep of Just Compensation as contemplated in Section 168, MV Act – Price rise also affects self-employed person and he is bound to garner his resources and raise his income for sustenance – Perception that he is likely to remain static and his income stagnant, held, contrary to fundamental concept of human attitude and not acceptable – There can be some degree of difference in percentage of Future Prospects to be applied in respect of persons with permanent job than person in self-employed/fixed income – Degree test therefore imperative and it has to have inbuilt concept of percentage – Considering cumulative factors viz. escalation of price, rise in price index, human attitude to follow a particular pattern of life, etc., held, addition of 40% of income towards Future Prospects for person aged below 40 yrs. and 25% for persons in age group of 40-50 yrs. would be reasonable -10% addition permitted in case of persons in age group of 50-60 yrs.

SUPREME COURT – CRIMINAL CASES

2017(9) SCC 714

Santhosh s/o. Dwarkadas Fafat vs. State of Maharashtra

Date of Judgment: 10.10.2017

Constitution of India - Arts. 136 and 20 (3) - Bail - Refusal to confess by accused as basis for allegation of non-cooperation by accused in investigation, for cancellation of bail - Relevance of right against self incrimination enshrined under Art.20(3).

Rejection of anticipatory bail by Courts below – Allegation against appellant-accused of receiving misappropriated food grains meant for public distribution - Before Supreme Court, appellant was granted interim arrest stay thereafter he was arrested and released on bail on execution of personal bond of Rs.2,00,000, with two solvent sureties for like amount and with direction to cooperate with investigation -However, view of investigating officer was, that custody of appellant was required for recording his confessional statement - his opinion was, that appellant was not cooperating because he kept reiterating that he had not purchased food grains.

Held, right against self-incrimination is provided for in Art.20(3) Constitution - Art. 20(3) is an essential safeguard in criminal procedure and is also meant to be a vital safeguard against torture and other coercive methods used by investigating authorities - Therefore, merely because appellant did not confess, it cannot be said that appellant was not cooperating with investigation – However, in case there is no cooperation on part of appellant for completion of investigation, it is open for respondent to seek for cancellation of bail - Regarding peculiar facts and circumstances of instant case, liberty as above should be left to jurisdictional Sessions Court - In case there is no cooperation on part of appellant for completion of investigation, it will be open to respondent to approach Sessions Court in which case Sessions Court, having regard to materials already collected by IO, if so satisfied that custodial interrogation of appellant is still required for completion of investigation, will be free to pass appropriate orders - Penal Code, 1860 - S.408 - Essential Commodities Act, 1955 - Ss.3 and 7 - Criminal Procedure Code, 1973, Ss.437 to 439

2017 (3) MWN (Cr.) 332 (SC)

Altab Gharami @ Atlab SK and anr. vs. State of West Bengal

Date of Judgment: 27.07.2017

Appeal against Conviction IPC Ss.326 and 456

VICTIM WHO SUFFERED “GRIEVOUS INJURIES”, MUST BE ADEQUATELY COMPENSATED - REDUCING QUANTUM OF SENTENCE OF IMPRISONMENT, FINE AMOUNT ENHANCED.

INDIAN PENAL CODE, 1860 (45 OF 1860), Sections 320, 326 & 456 - “Grievous Hurt” - “Lurking house trespass during night” - Appellants inflicted blows on head causing crack injury on skull and impaired right index finger using dangerous weapons - Appellant caused “dangerous injury” as contemplated under Section 320 - Victim treated as in-patient for more than 10 days in

various hospitals - High Court justified in upholding conviction - However considering mitigating and aggravating circumstances, quantum of sentence of imprisonment reduced , enhancing Fine amounts under both offences - Victim must be adequately compensated - Sentences directed to run concurrently.

2017 (3) MWN (Cr.) 335 (SC)

Samir Sahay vs. State of U.P. and others

Date of Judgment: 25.8.2017, IPC S.420

INGREDIENTS OF CHEATING - IF, MADE OUT - LEGALITY OF ORDER DISMISSING DISCHARGE PETITION.

INDIAN PENAL CODE, 1860 (45 OF 1860), SECTION 420 - Cheating - Ingredients of - Inducement must be fraudulent and dishonest and depends upon intention of accused at time of inducement - Father of Appellant joined a Finance Company as Branch Manager - Several persons including R2 deposited money in Company allegedly on assurance given by Appellant's father - Money invested in Company not repaid to investors - R2 filed FIR against appellant and his father - Specific ALLEGATION THAT Appellant accompanied his late father, who assured Respondent – 2 that their money will not be lost and it will be his responsibility - Allegation of making assurance not made against Appellant but against his father - No allegation that Appellant fraudulently or dishonestly induced Complainant to deposit money - Ingredients of Section 420 not made out so as to frame charge under Section 420 - Order dismissing Discharge Petition and as affirmed by High Court of Revision, liable to be set aside - Appellant discharged.

2017 (2) TLNJ 619 (Criminal)

Doongar Singh and Ors. vs. State of Rajasthan

Date of Judgment: 28.11.2017

Criminal Procedure Code, 1973, Section 164 & 309 - Murder - nine persons out of 20 convicted - Supreme Court found no infirmity and dismissed the appeal - Further held that After recording examination-in-chief of the star witness, matter adjourned on the request of defence counsel for more than four months - Then, part evidence of the witnesses recorded - again adjourned - four witnesses of the same family become hostile - In a criminal case of this nature, the trial court has to be mindful that for the protection of witness and also in the interest of justice the mandate of Section 309 of the Cr.P.C. has to be complied with and evidence should be recorded on continuous basis - If this is not done, there is every chance of witnesses succumbing to the pressure or threat of the accused - Presiding Officers of the trial courts conducting criminal trials will be mindful of not giving such adjournments after commencement of the evidence in serious criminal cases - eye-witnesses are examined by the prosecution at the earliest and statements of eye-witnesses are got recorded during investigation itself under Section 164 of the Cr.P.C. by audio-video - Appeal dismissed with direction.

2017 (4) MLJ (Cri.) 571 (SC)

Ahsan vs. State of U.P.

Date of Judgment: 29.08.2017

Attempt to Murder - Quantum of Punishment - Indian Penal Code, 1860, Sections 34, 307, 316, 452 and 504 - Complainant saw Appellant/accused firing from country pistol at his cousin, son in law and niece - All of them were injured and in critical state - Trial Court convicted and sentenced Appellant under Sections 34, 307, 316, 452 and 504 - Appellant filed appeal which was dismissed by High Court - Appellant preferred present appeal by special leave with limited prayer in respect of quantum of sentence - Whether order of Trial Court confirmed by High court, to be interfered in respect to quantum of punishment - Held, Section 307 provides three punishments for three classes of nature of cases - One class of cases, in first part prescribes term “which may extend to ten years and fine” - Second class of cases in second part prescribes either “imprisonment for life” or “such punishment which is prescribed in first part” - third class of cases is when any person offending is under sentence of imprisonment for life, causes hurt, be punished with “death” - Lower Courts did not err in exercising their judicial discretion while awarding life imprisonment to Appellant - Facts of case fall in Second part of Section 307, gunshot injury caused by appellant to victim was grievous in nature - Facts that satisfied ingredients of first part of Section 307 are all three accused including Appellant went to house of victim with common intention to kill members of family and in order to accomplish intention, each targeted one member of family resulting in death of stillborn child, who was hit by gunshot in her abdomen and other two members suffered gunshot injuries - Court required to take into account several factors arising in case, such as nature of offence committed, manner in which it was committed, its gravity, motive behind commission of offence, nature of injuries sustained by victim, whether injuries sustained were simple or grievous in nature, weapons used for commission of offence and any other extenuating circumstances - Once these factors considered while imposing sentence, there remains little scope to interfere in quantum of punishment - Appeal Dismissed.

MADRAS HIGH COURT – CIVIL CASES

2017 (5) LW 500

**Lifestyle Equities VV PrinsBenhardplein, 1097Jb, Amsterdam, The Netherlands, rep. by their
Power of Attorney holder Mr.Abhishek Kotnala**

vs.

**QDSeatoman Designs Pvt. Ltd, Nungambakkam, Chennai 600 034. Rep. by their Director and
others**

Date of Judgment: 13.10.2017

**Arbitration and Conciliation Act (1996) Sections 9,16,37, Intellectual property, IPR
disputes, arbitrable, whether, Right in Rem, Right in personem, difference between two, what is**

C.P.C., Order 38 rule 5, security providing of, when, scope

Practice/Arbitration, interim relief maintainability, scope of

Held: whether IPR disputes are arbitrable while a patent right may be arbitrable validity of
underlying patent is not arbitrable

A Judgment in personam refers to a judgment against a person as distinguishable from a
judgment against a thing, right or status - A judgment in rem refers to a judgment against a thing, right
or status or condition of property which operates directly on the property itself

Disputes that have arisen between parties are arbitrable subject to the arbitral tribunal to be
constituted by the Hon'ble supreme court of India ruling on its own jurisdiction inter-alia under section
16

Direction to give security when there is no application under section 9 whether proper - when
a party to a lis takes a stand that section 9 is inapplicable that party cannot be given relief in a section 9
application filed by its adversary.

2017 (5) LW 558

Vishnapriya vs. Ramesh Krishnan

Date of Judgment: 04.10.2017

Guardian and Wards Act (1890), Sections 8(2), 29(2), 31, 47

Hindu minority and guardianship act (1956), Sections 6, 8, Natural guardian, powers of

Evidence act, Sections 68, 71

WILL/Absence of denial, effect of

Minor child - 'Natural guardian' who is - 'Absent' meaning of - Father, deemed to be 'absent' when

Appellant/wife of respondent moved for an order to permit her to sell property to third parties for welfare of minors - Grand-mother of minors during her life time bequeathed her interest over property to her grandchildren through a Will

Held : paramount importance to mother of the minor child for the benefit of minor - Husband of appellant an alcoholic - paternal-grandmother of minor child came forward to bequeath her properties to the grandchildren when her son is alive - As per Section 6 (a), if the father is physically unable to take care of the minor, father can be considered to be absent and the mother being a recognized natural guardian, can act validly on behalf of the minor

2017-5- LW.586

B.M.Kotteswaran and another vs. R.Devasena and others

Date of Judgment: 08.11.2017

Transfer of property act (1882), Section 123, settlement deed, proof of,

C.P.C., Order 2 rule 2, bar of suit, whether applies, Order 8 rule 13 specific denial, need for, absence of, effect

As per recital of settlement deed, only enjoyment of property during life time of M and S (his wife) was retained and same does not affect transfer of ownership in favour of R (their son) - Vesting life interest to donor and his wife will not take away absolute right given to R - Contention that settlement deed would cease to have effect as R predeceased his mother is sans merit

Earlier suit for permanent injunction - present suit filed for declaration of title of plaintiff on basis of settlement deed - No specific denial in earlier suit as to title of the plaintiffs - cause of action in both the suits are not the same and identical - suit not barred and within time.

2017 (8) MLJ 274

S. Pitchai vs. Ponnammal and others

Date of Judgment: 04.08.2017

Civil Procedure - Preliminary Decree in Partition - Impleading Application - Code of Civil Procedure, 1908, Order 1 Rule 10 - 1st Respondent filed suit for partition and Trial Court inspected same for partition by metes and bounds and only then, Petitioner came to know that preliminary decree passed for partition which includes property in his possession - Impleading application filed by petitioner under order 1 Rule 10 dismissed, hence present revision - Whether impleading application under Order 1 Rule 10 of third party to preliminary decree, maintainable during final decree proceedings - Held, order 1 Rule 10 (2) gives jurisdiction to court to implead necessary party at any stage of proceedings - Civil suit for partition is proceedings which would attain finality only after passing final decree - Court is well within its powers to amend preliminary decree or pass second preliminary decree at instance of party who got impleaded in final decree petition - Court is at liberty to entertain application from newly impleaded party to final decree petition for amendment of preliminary decree notwithstanding fact that he was impleaded only in final decree petition - Petition allowed.

2017 (8) MLJ 342

M.Gnanasekaran vs. Mothi Periyakaruppan @ M.Maharajan and another

Date of Judgment: 11.10.2017

Civil Procedure - Rebuttal of Evidence - Entitlement - Code of Civil Procedure, 1908, (Code 1908), Order 18 Rule 3 and Order 47 - Indian Evidence Act, 1872 (Act 1872), Section 68 - 1st Respondent/Plaintiff filed suit for partition and declaration that he was trustee of suit Trust - Application filed by 1st Respondent for reopen, recall P.W.1 and receive additional documents allowed, but prayer for rebutting evidence with regard to execution and attestation of suit Will rejected - In review, said prayer allowed - Aggrieved, Appellant/ 2nd Defendant filed appeal - Whether Plaintiff entitled to adduce rebuttal evidence - Held, Trial Judge not right in holding that other party to suit cannot rebut evidence adduced by propounder of Will on ground that onus lies only on propounder in terms of Section 68 of Act 1872 - Order 18 Rule 3 of Code 1908 applicable in such cases - Parameters laid down in Order 47 of

Code 1908 have to be borne in mind - Even though Plaintiff led evidence first, option to reserve his right to let in rebuttal evidence is available only if he abstained from leading evidence on issue where burden of proof lay only on Defendant - Plaintiff chose to let in positive evidence on issue relating to genuineness of suit Will - If Plaintiff had not let in such evidence in first instance, he would have had right to adduce rebuttal evidence - Plaintiff forfeited his right to lead such rebuttal evidence on account of his own conduct - Appeal allowed.

2017 (8) MLJ 352

R.S.Ponnusamy and others vs. T.S.R.Khannaiyann

Date of Judgment: 11.10.2017

Contract - Specific Performance – Sale Agreement - Suit filed by Plaintiff/Respondent for specific performance in pursuance of sale agreement/ Ex.A1 against Appellants/Defendants decreed, hence present appeal - Whether 1st Defendant and legal heirs of deceased executed suit sale agreement in favour of Plaintiff - Whether Plaintiff was ready and willing to perform his part of contract in pursuance of suit sale agreement - Whether Plaintiff entitled to get discretionary relief of specific performance - Held, legal heirs of deceased executed sale deed in respect of their half share, in favour of plaintiff - Various documents filed to establish that Plaintiff and sufficient means to pay balance of sale consideration - From inception of Ex.A1, Plaintiff was ready and willing to perform his part of contract - No attempt made on side of Defendants by way of adducing either oral or documentary evidence for disproving case of Plaintiff however on side of Plaintiff, quantum sufficit and quantum placit evidence is available for proving genuineness of Ex.A1 - No error or illegality in judgment and decree passed by Trial Court - Appeal dismissed with costs.

2017 (5) L.W. 401

Thiagarajan vs. Raja alias Muniga Naidu alias Munusami Naidu and others

Date of Judgment: 06.11.2017

Evidence Act, Section 112, Marriage - Child born during subsistence of , Legitimacy, proof of Access, Proof of, legitimacy of child, scope marriage between G and first defendant not dissolved till date, Plaintiff having been born to G during continuance of Marriage same would be conclusive proof that he is the legitimate son of first defendant.

Determination of the first appellate court that the latter part of Section 112 had been established by defendants cannot be accepted.

2017-5-L.W.526

K. Gopalsamy Chetty and others vs. Mathiseelan (Deceased) and others

Date Judgment: 20.09.2017

C.P.C., Section 47, Execution, challenge to, maintainability, scope of

When a decree is operating against a person it is his duty to challenge the same - Court granted a decree in favour of revision petitioners - Non-filing of appeal deprive 1st respondent to contest E.P. - petition under Section 47 unsustainable in law

Decree operating against 1st respondent unless and until it is set aside by the higher forum, decree executable

2017-5-L.W.593

Pandarachamy vs. Thirumalai Ammal and another

Date of Judgment: 10.10.2017

C.P.C., ORDER 9 RULE 9 'Bar of fresh suit', 'cause of action', what is

Suit for declaration, injunction - Bar - whether

Disability under rule 9, whether applies to person deriving title - scope

Whether plaintiff precluded from filing present suit when suit filed by his vendors were dismissed for default on same cause of action

Requirement of order 9 rule 9 - Cause of action in subsequent suit must be same as previous suit - Bar under order 9 rule 9 depends on the cause of action

Cause of action must include some act done by defendant

Burden of proving suit is barred is upon defendants - cause of action arose only in 2008, whereas earlier suits have been dismissed for default in 1996 and 2004.

2017- 5- L.W.614

K.Kumaresan and another

vs.

M/s. Suryalakshmi Finance Ltd., by its Managing Director, K.Eswaramoorthy, 63-Akilmedu Street, Erode and others

Date of Judgment: 21.08.2017

Transfer of property Act, Section 53-A/fraudulent transfer, who is, Bona fide purchasers, proof of, fraudulent sale, whether

Execution/Bona fide purchasers, proof of, fraudulent sale, what is

Practice/Direction to Registrars issued when attachment made, not to register documents

Suit for recovery of amount by R1 against R2 and R3 - Pursuant to decree 1st respondent filed an execution petition, order of attachment registered - sale deed by R2 in favour of petitioner after decree - petitioners/3rd party claimants are brother and brother's wife of 2nd respondent

With fraudulent intention to defraud 1st respondent 2nd respondent executed a sale deed after decree and after filing execution petitioner which is hit by section 53

No joint interest in claim by petitioner - hey should filed separate application for claim in the execution petition - They have also not paid separate court fees

Petitioners who alleged to be bonafide purchasers have no legal right to make 3rd party claim

Inspector General of Registration, Santhome, Chennai-4, is hereby directed to issue appropriate orders to their subordinates not to register any documents, if any competent Civil Court ordered attachment in respect of the particular properties in their respective registrar offices

MADRAS HIGH COURT – CRIMINAL CASES

2017 (3) MWN (Cr.) 459

S.Manoharan S/o Samidurai rep. by his power of attorney his father J.Samidurai

vs.

The Station House Officer, Inspector of police, P.E.W. Adayar Wing Police Station Chennai and others

Date of Judgment: 22.9.2017

TN PROHIBITION ACT S.14(4) Order confiscating vehicles - Whether mandatory requirements complied with.

TAMIL NADU PROHIBITION ACT, 1937 (T.N.ACT 10 OF 1937), SECTION 14(4) - Confiscation of vehicle involved in offence under Act - Procedure - Notice to be served on Owner of vehicle or person from whom vehicle seized - Service of Notice to Family member of such person not contemplated under Section 14(4) - Further, a reasonable opportunity to be given to person to whom such Notice served - Requirements mandatory and to be strictly complied with - it is cardinal principle of interpretation that when statute provides that a particular thing should be done in a particular manner, it should be done in manner prescribed and not in any other manner - In instant case, neither Notice served directly to Owner of vehicle nor reasonable opportunity given to him - Non-compliance of mandatory requirements - Impugned order of Confiscation liable to be set aside.

2017 (4) MLJ (Crl) 385

Ganesan and Another

vs.

State by Inspector of Police, Bungalow Pudur Police Station, Erode District

Date of Judgment: 13.10.2017

Murder - Extra Judicial Confession - Indian Penal Code, 1860, Sections 34, 39, 120-B, 302, 349, 392, 397 and 449 - 1st to 4th accused conspired to kill deceased, trespassed into their house, robbed their jewels and murdered them - Trial Court convicted accused under Sections 34, 39, 120-B, 302, 349, 392, 397 and 449 - Aggrieved, Appellants/ 3rd and 4th accused preferred appeals - Whether conviction of Appellants justified - Held, prosecution developed its case only on basis of extra judicial confession alleged to have been given by 3rd accused - As P.W.19 is unknown person, 3rd accused would not have approached P.W.19 for giving such kind of extra judicial confession - Said extra judicial confession utilized only for fixing accused - P.Ws.11 to 13 evidence is that they have seen all accused on different dates in different places and that itself cannot be basis for concluding that accused involved in present crime - No supportive evidence available to connect accused with crime - Extra judicial confession cannot be sole basis for concluding that Appellants committed said offences - Appeal allowed.

2017 (3) MWN (CR.) 477

G.Arun @ Arunkumar

vs.

State, rep. by the Inspector of Police, Crime Branch CID, Namakkal.

Date of Order: 04.10.2017

CRIMINAL PROCEDURE Whether Accused entitled to copies of CD under Section 207 Cr.P.C.

CRIMINAL PROCEDURE CODE, 1973 (2 OF 1974), SECTION 207 - EVIDENCE ACT, 1872 (1 OF 1872), Section 65 (b) - Petition seeking for furnishing of copy of Compact Disc - Dismissal - Legality - Section 207 entitles Accused to copy of document forwarded to Magistrate along with Police Report - As per section 65 (b) information in form of Electronic record deemed to be document - CD being, a document, impugned order rejecting Petition on ground that CD is intended to be marked as Material Object, not justified - Held, copies of CD as sought for by Petitioner cannot be deemed to be MO - Petitioner entitled to copy of CD under Section 207 - Impugned Order set aside.

2017 (2) L.W. (Cri.) 726

N.Chandran

vs.

The Deputy Superintendent of Police, Vigilance and Anti Corruption, Cuddalore.

Date of Judgment: 19.09.2017

Tamil nadu Civil Services (Discipline and Appeal) Rules, Annexure X Rules 8, 12(2), sanction to prosecute, whether valid.

Prevention of Corruption Act Section 13 (1) (d), 13 (2) sanction to prosecute, whether valid.

Issuance of death certificate by VAO Demand of Illegal gratification whether proved - Recovery of tainted money from appellant's shirt pocket, effect of - Trap - Proof of - sanction to prosecute - Challenge to

Appellant was village administrative officer of Vadakkupalayamkottai village and PW-1 was revenue divisional officer at the time of trap - PW-1 accorded sanction Deposition in cross examination that he is not competent authority to accord sanction to prosecute accused is bound to be ignored - Prosecution proved receipt of money as illegal gratification by the accused - presumption has to be drawn against the appellant.

2017 (2) L.W. (Crl.) 739

V.Lakshmanan

vs.

The state rep. by The Inspector of Police, Kovilpatti East Police Station, Thoothukudi District

Date of Judgment: 14.09.2017

I.P.C. Section 300 Exception I, IV, Section 302

Criminal Trial/ child witness, evidence, reliability

Held: accused with metal object caused repeated attack on deceased wife and also attacked PW2, minor child on head and Pw1 (brother of deceased) on shoulder

Child witness evidence - No tutoring Reliability of – scope – Head injuries on child - Effect - Father repeatedly attacked mother and dragged her to next room and caused multiple injuries - child was also attacked and sustained injuries.

Attack on Vital Part - 9 injuries on deceased - Act of accused would not fall within exception 4 of section 300

2017 (2) L.W. (Crl.) 777

State rep. by the Deputy Superintendent of Police, Namakkal vs. Kamaraj and others

Date of Judgment: 25.10.2017

I.P.C., Sections 34, 120-B, 302, (3 counts), 392, 397, 449, Rarest of Rare, whether, Exercise of “parens patriae” jurisdiction scope

Evidence Act Sections 10 conspiracy, Proof of, 25, 27, 30,32, scope, Exercise of ‘parens patriae’ jurisdiction scope

Criminal trial / Triple murder for gain, Extra judicial confession, reliance of, scope, sentencing, ‘rarest of rare’ case whether – Exercise of ‘parens patriae’ jurisdiction scope.

Criminal Procedure Code, Sections 24, 211 (7), 236, 298, Exercise of ‘parens patriae’ jurisdiction scope

Case of triple murder for gain – mother, grand mother, great grand mother were murdered – prosecution proved murder of trio were for gain

Letter - Record of confession to DSP in police station - Inadmissible - Evidence of PW21 that A3 came to the house and confessed as to how he got acquainted with the other two accused and where they had committed robberies and murders.

This is an extra judicial confession not hit by Section 25 as A3 had given oral confession in the house where police were not there - No requirement in law that an extra judicial confession should be written down by listener to make it authentic

Evidence of B that A3 came to his residence and confessed that he, along with A1 and A2, had committed offence - This extra judicial confession is relevant not as substantive evidence but in terms of section 30

Prosecution proved all three accused knew one another well - with aid of section 10 we hold offences could not have been committed without a prior concert amongst accused

Reception of evidence against A1 for proving that he was also a conspirator along with A2 and A3 and also for proving murders for gain were committed pursuant to the conspiracy by all the three cannot be said to be inadmissible - Termination of conspiracy to commit murder for gain cannot end merely with murder and removal of loot from possession of murdered.

Umbrella of conspiracy can be safely expanded and extended upto the time when the loot is disposed of and money gained through its disposal - Until then, conspiracy would subsist - During the subsistence of such a conspiracy, anything said and done by one conspirator is relevant as against the other under Section 10

Expression of “reasonable ground” in section 10 - Scope of - we have more than one reasonable ground to believe accused had conspired together to commit offences - pursuant to conspiracy accused had committed murders for gain resulting in demise of three hapless women.

All three accused together with a common intention and common object had been found guilty of commission of a triple murder for gain in yet another crime.

A2 and A3 should be restrained for a period of thirty years in prison without any remission by the State Government on any account

Court confirms the conviction imposed upon A2 and A3 under Section 302, but sentence of death imposed upon them is modified to one of imprisonment for life.

2017 (2) TLNJ 582 (Criminal)

Jayapaul Mohan

vs.

**State Rep. by the Inspector of Police, Special Investigation Cell, Vigilance and Anti Corruption,
Chennai 600 028.**

Date of Judgment: 16.11.2017

**Constitution of India, 1950 Article 20 (3) - Offence under Prevention of Corruption Act -
Petition to compare the voice of the accused - Allowed - Revision -** taking voice sample of an accused by the police during investigation is not hit by Article 20 (3) - There is no violation of his right under Article 20(3) - Like giving of a finger print impression or specimen writing by the accused for the purposes of investigation, giving of a voice sample for the purpose of investigation cannot be included in the expression to be a witness - By giving voice sample the accused does not convey information based upon his personal knowledge which can incriminate him - By comparing it with tape recorded conversation, the investigator may draw his conclusion but, voice sample by itself is not a testimony at all -- Petition dismissed.

2017 (2) TLNJ 608 (Criminal)

P.Arthi Vs. 1. The State represented by, The Inspector of Police, Kovilpatti West Police Station, Thoothukudi District. (Crime No.59 of 2012)

2. Ramkumar ... Respondents in CrI.O.P.(MD) No.5776 of 2012

1. The State represented by, The Inspector of Police, Kovilpatti West Police Station, Thoothukudi District (Crime No.59 of 2012)

2. Sugumar Respondents in CrI.O.P.(MD) No.5777 of 2012

1. The State represented by, the Inspector of Police, Kovilpatti West Police Station, Thoothukudi District. (Crime No.59 of 2012)

2. Arun ... Respondents in CrI.O.P.(MD) No.5778 of 2012

Dated: 17.11.2017

Criminal Procedure Code, 1973, Section 482 - Bail granted on the rape case challenged - after seven years, the petitioner has not pressed the criminal original petitions - respondents committed such heinous offence against the victim girl, who lost her life - This matter cannot be viewed as leniency - till today, trial not completed - necessary direction issued to the Lower Court to complete the trial.

2017 (4) MLJ (Crl) 562

G.V.Rajagopal Chetty

vs.

State rep. by the Sub Inspector of Police Mathigiri Police Station, Mathigiri, Hosur

Date of Judgment: 23.08.2017

Final Report - Objections by Complainant - Code of Criminal Procedure, 1973, Section 156 (3) - Petitioner gave complaint to Respondent/police to investigate alleged offences of forgery, cheating and impersonation against accused persons - Police investigated complaint and filed final report before Magistrate that matter pertains to civil dispute - On objections filed by petitioner, Magistrate ordered petitioner to file protest petition or private complaint and closed FIR, hence present revision - Whether impugned order of Magistrate justified - Held, certain ingredients specifically given by petitioner in objections were worthy to be investigated as to whether accused committed, especially offence of forgery - In final report, no specific averments made that no such offence committed by accused person as alleged by petitioner - On consideration of final report of police and objections filed by petitioner, Magistrate before taking decision either to accept objections of petitioner or to reject same, must give reasons on which basis he concluded and rejected objections made by Petitioner - Impugned order not in consonance with relevant provisions of Code and thus, set aside - Magistrate directed to take into account both final report filed by police and objections filed by petitioner and after considering same, pass reasoned order.

2017 (4) MLJ (CrI) 606

P.Swamy vs. Nachimuthu and others

Date of Judgment: 11.09.2017

Complaint - Dismissal of - Limitation - Code of Criminal Procedure, 1973, Sections 468 and 473 - Peitioner/Defacto Complainant filed complaint against private Respondents - After investigation, Respondent police sent report stating that no crime made out and reference report sent to Magistrate Court - On direction or present Court, Notice given to petitioner - Protest Petition filed by Petitioner by way of private complaint before Magistrate dismissed on ground of bar under Section 468, hence present revision – Whether Magistrate erred in passing impugned order without invoking Section 473 - Held, once protest petition/private complaint taken on file, by taking sworn statements, Magistrate should have proceeded to consider matter on merits and disposed of same - At time of referring matter to Magistrate Court, no notice sent to petitioner, by pursuant to direction given by present Court, such notice given to petitioner, therefore, Peitioner could not be blamed for approaching Court by filing private complaint belatedly - Only to meet out such eventuality, provision under Section 473 contemplated - Magistrate failed to adhere to - Impugned order set aside - Matter remitted back to Magistrate to proceed further by invoking Section 473, issue summons to Respondents and decide case on merits.
