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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

2012 (2) CTC 435

Mohan Soni
Vs
Ram Avtar Tomar & Ors

Motor Vehicles Act, 1988 (59 of 1988), Section 166 – Compensation – Physical Disability – Loss of Future Earnings – Mode of determination of - In context of loss of future earning, physical disability resulting from an accident to be judged with reference to nature of work being performed by person suffering disability – Same injury or loss may affect two different persons differently – Workmen’s Compensation Act, 1923, Schedule I.

Motor Vehicles Act, 1988 (59 of 1988), Section 166 – Compensation – Loss of Future Earnings – Hypothetical conjectures to be avoided – Amputation of left leg of Cart Puller aged 55 years – Loss of earning capacity determined at 50% by Tribunal and High Court – Determination based on account that injured could change job – Finding of another job at his age, held, impossible – Any scaling down of compensation should require something more tangible than a hypothetical conjecture that notwithstanding disability, victim could make up for loss of income by changing his vocation or by adopting other means of livelihood – Party advocating for lower amount of compensation must plead and show that victim enjoyed some legal protection or that victim had in fact changed his vocation or means of livelihood and by virtue of such change was deriving some income – Loss of earning capacity of Cart Puller, held, would not be less than 90% - Thus, Compensation for loss of future earnings determined at Rs.3,56,400 instead of Rs.2,58,000 as awarded by Courts below – Total compensation awarded at Rs.4,01,400/- along with interest at 9% p.a. from dated of filing Claim Petition till date of payment – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

2012 (1) CIJ 694

Bangalore Development Authority
Vs
The Air Craft Employees Cooperative Society Ltd, and Ors

Bangalore Development Authority Act, 1976(12 of 1976)-Sec.32(5A)-Constitution of India-Art.13, 265-Local authority-Civic amenity-Road development-Water supply scheme-Cauvery scheme-Lay out-Sanction-Charges-Fee-Tax-Interpretation-Objects-While granting respondent, the appellant directed the respondent to pay ₹ 2,00,000/- per acre towards Cauvery scheme and ₹ 1,00,000/- per acre for formation of outer ring road which was challenged by the respondent – when the respondent contended that the charges amounted to tax and violative of Art.265 of the Constitution of India, the High Court accepted the plea and struck down the provision against which the appellant

preferred appeal-amount demanded was only fee and not tax and the appellant was entitled to collect the same as the respondents scheme, respondent resisted it and contended that there was an excessive delegation of power- Held, the provisions of the Act had to be interpreted by considering the objects and all the legal provisions and when they were considered, the policy underlying them were evident and thus there was no excessive delegation of power to the executive- The charges demanded were only fees and the respondents would be beneficiaries of the schemes being implemented –Writ petition filed by the respondent was dismissed with a direction to the State Government to reconsider the quantum of certain charges levied and decide whether it was excessive-Appeal was ordered accordingly.

Constitution of India-Art.13, 14-Act-Constitutionality-Equality-Discrimination-Presumption-Burden-When a statutory provision is challenged as unconstitutional on the ground of discrimination, the burden lies upon the person who alleges such discrimination to lay strong factual foundation to prove that the provision offends the equality clause enshrined in the Constitution.

Constitution of India-Art.13, 265-Act-Constitutionality – Delegation-Interpretation-Objects-Preamble-Scheme-While examining the challenge to the constitutionality of a statutory provision on the ground of excessive delegation, the Court must look into the policy underlying the particular legislation by making a reference to the Preamble, the objects sought to be achieved by the particular legislation and the scheme thereof etc.

Ratios:

- a. When a statutory provision is challenged as unconstitutional on the ground of discrimination, the burden lies upon the person who alleges such discrimination to lay strong factual foundation to prove that the provision offends the equality clause enshrined in the Constitution.
- b. While examining the challenge to the constitutionality of a statutory provision on the ground of excessive delegation, the Court must look into the policy underlying the particular legislation by making a reference to the Preamble, the objects sought to be achieved by the particular legislation and the scheme thereof etc.

SUPREME COURT CITATIONS CRIMINAL CASES

2012 (1) LW (Crl.) 225

Dr. Subramanian Swamy
Vs
Dr. Manmohan Singh and Anr

Prevention of Corruption Act (1988), Section 19/Sanction for prosecution of Public Servant, Private complaint by a Citizen against a public servant, if maintainable, Prayer for issue of a mandamus to respondent No.1 (Prime Minister of India) to pass an order for grant of sanction for prosecution of respondent no.2 (Minister of Union Cabinet).

Criminal Procedure Code (1973), Section 173 (8)/Cognizance, Sanction for Prosecution, Necessity, Private complaint by a citizen against a public servant, if maintainable.

Per G.S.Singhvi. J.:

There is no provision either in the 1988 Act or Cr.P.C. which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence.

Before issuing the process, it is open to the Court to record the evidence, and on consideration of the averments made in the complaint and the evidence thus adduced, find out whether an offence has been made out.

Grant or refusal of sanction is not a quasi judicial function – Person for whose prosecution the sanction is sought is not required to be heard by the Competent Authority before it takes a decision in the matter.

Appellant (Dr. Subramanian Swamy) had the right to file a complaint for prosecuting respondent No.2 (Minister of the Union Cabinet) – Every Competent Authority (Prime Minister / respondent 1, in this case) shall take appropriate action on the representation made by a citizen for sanction of the prosecution of a public servant strictly in accordance with the direction contained in *Vineet Narain v. Union of India* (1998) 1 SCC 226 and the Guidelines framed by the CVC – Appeal from Judgment of Delhi High Court allowed.

Per A.K.Ganguly, J: All proposals for sanction placed before any Sanctioning Authority, empowered to grant sanction for the prosecution of a public servant under Section 19 of PC Act must be decided within a period of three months of the receipt of the proposal by the concerned authority; At the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution – Directions given.

2012 (1) CIJ 421

V.D. Bhanot
Vs
Savita Bhanot

Protection of Women from Domestic Violence Act, 2005(43 of 2005)-Sec.12,18,19-Constitution of India-Art.21, 31 33-Domestic violence-Protection-Residence-Act-Operation-Applicability- On the petitioner husband deserting the respondent wife, she had sought for protection order from the magistrate regarding the shared residence- Later, on the instruction of the military authorities, the wife was forced to vacate the residence because of which she had again applied for alternative accommodation-Magistrate had directed the husband to permit the wife to live in the house in which the husband was living and in the alternative to pay the wife ₹ 10,000/- per month-In an appeal, the Sessions Judge reversed the order by holding that the wife was living separately on the date of coming into force of the Act and thus she could not invoke the provisions of Protection of Women from Domestic Violence Act, 2005 which order was reversed by the High Court against which the husband filed SLP-While the husband contended that the Act could not be applied when the wife had been living separately on the date when the Act came into force, the wife resisted the plea-Held, the protection of Women from Domestic Violence Act, 2005 would be applicable even if the wife had been living separately on the date when the Act came into force-Order of the High Court was upheld and the SLP was dismissed.

(B) Protection of Women from Domestic Violence Act, 2005(43 of 2005) – Sec.12,18,19-Constitution of India-Art.21, 31, 33-Domestic violence-Protection-Residence-Act-Operation-Applicability-Protection of Women from Domestic Violence Act, 2005 would be applicable even if the wife had been living separately on the date when the Act came into force.

Ratio: Protection of Women from Domestic Violence Act, 2005 would be applicable even if the wife had been living separately on the date when the Act came into force.

2012 (1) CIJ 443

Mano Dutt & Anr
Vs
State of U.P.

Indian Penal Code, 1860(45 of 1860)-Sec.100-Indian Evidence Act, 1872(1 of 1872)-Sec.3, 102-Criminal trial-Appreciation of evidence-Relative-Injured witness-Accused-Relative-Injured witness-Accused-Injury-Private defence-Burden of proof-Investigating officer-Non examination-Appellants and others were prosecuted for an offence of murder of a person and causing injuries to few others and were convicted for all the charges against which they preferred appeal-When the High Court had confirmed the conviction on a murder charge, they preferred SLP-While the appellants contended that they were exercising their right of private defence, the prosecution witnesses were relatives of the deceased, injuries on one of them were not explained by the prosecution and the investigating offi-

cer was not examined, the State resisted the same-Held, in criminal trial, mere non examination of an investigating officer would not be fatal to the prosecution if the prosecution was able to prove its case with the help of other witnesses – Right of self-defence had to be exercise directly in proportion to the extent of aggression- If reliable, the evidence of the relatives could be acted upon to convict the accused-Where the evidence was clear, cogent and creditworthy and where the court could distinguish the truth from falsehood, the mere fact that the injuries on the person of the accused were not explained by the prosecution could not, by itself, be a sole basis to reject the testimony of the prosecution witnesses – Appeal was dismissed and the conviction and sentence was confirmed.

Indian Penal Code, 1860(45 of 1860) – Sec.100-Indian Evidence Act, 1872(1 of 1872)-Sec.102-Criminal trial-Appreciation of evidence-Private defence-Burden of proof-The right of self-defence has to be exercised directly in proportion to the extent of aggression-When a person claims exercise of private self-defence, the onus lies on him to show that there were circumstances and occasions for exercising such a right.

Indian Evidence Act, 1872(1 of 1872) – Sec.3, 102-Criminal trial-Appreciation of evidence-Burden of proof-Investigating officer-Examination-In criminal trial, it is not always mandatory for the prosecution to examine the Investigating Officer, provided it can establish its case beyond reasonable doubt even in his absence.

Indian Evidence Act, 1872(1 of 1872)-Sec.3 – Criminal trial-Appreciation of evidence-Relative-Interested witness – In criminal trial, when the statement of witnesses, who are relatives, or are parties known to the affected party, is credible, reliable, trustworthy admissible in accordance with the law and corroborated by other witnesses or documentary evidence, their evidence could be relied on for convicting the accused.

Indian Evidence Act, 1872(1 of 1872)-Sec.3-Criminal trial-Appreciation of evidence-Relative-Sole witness-Number-Corroboation-The Court can convict an accused on the statement of a sole witness, even if he was a relative of the deceased and thus, an interested party provided it is trustworthy, cogent and corroborated by other evidence.

Indian Evidence Act, 1872(1 of 1872)-Sec.3-Criminal trial-Appreciation of evidence-Injured witness-Accused-Injury-Defence-The non-explanation of the injuries on the person of the accused, by the prosecution witnesses, may be held to affect the prosecution case only if the injuries on the person of the accused were also of a serious nature and such injuries had been caused at the time of the occurrence in question.

Ratios:

- a. The right of self-defence has to be exercised directly in proportion to the extent of aggression.
- b. When a person claims exercise of private self-defence, the onus lies on him to show that there were circumstance and occasions for exercising such a right.
- c. In criminal trial, it is not always mandatory for the prosecution to examine the investigating Officer, provided it can establish its case beyond reasonable doubt even in his absence.

- d. In criminal trial, when the statement of witnesses, who are relatives, or are parties known to the affected party, is credible, reliable, trustworthy, admissible in accordance with the law and corroborated by other witnesses or documentary evidence, their evidence could be relied on for convicting the accused.
- e. The Court can convict an accused on the statement of a sole witness, even if he was a relative of the deceased and thus, an interested party provided it is trustworthy, cogent and corroborated by other evidence.
- f. The non-explanation of the injuries on the person of the accused, by the prosecution witnesses, may be held to affect the prosecution case only if the injuries on the person of the accused were also of a serious nature and such injuries had been caused at the time of the occurrence in question.

HIGH COURT CITATIONS CIVIL CASES

2012 -1-TLNJ 1 (Civil)

Maria Margarida Sequeria Fernandes and Ors
Vs
Erasmio Jack De SEqueria (Dead) Through L.Rs.

Civil procedure code 1908 as amended – Pleadings – proof explained – party who claims possession must give all such details as issue, and the Court can reject the claim or pass a decree on admission – Principles of law explained and crystallized – even by long possession of years or decades such person would not acquire any right or interest in the said property – suit dismissed.

Civil procedure code 1908 as amended Order 39, Rule 1 – Suit for injunction against the true owner – was not maintainable – See Section 6 of Specific Relief Act 1963.

Specific Relief Act, 1963, Section 6 – Possession by Caretaker, Servant, Watchmen or Gratuitous stay – suit for injunction a caretaker's possession can never be a possession on individual's right and no such suit for injunction under Section 6 of the Specific Relief Act was maintainable – held that No one acquires title to the property if her or she was allowed to stay in the premises gratuitously – even by long possession of years or decades such person would not acquire any right or interest in the said property it further held that Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession – the caretaker or servant has to give (up) possession (of the property) forthwith on demand – Apex Court also laid fresh guidelines that caretakers, watchman or servants do not acquire any title to a property merely because of its possession by them for several years – Court further observed that Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount – which happens because of the enormous delay in adjudication of cases in our courts? If pragmatic approach is adopted, then this problem can be minimized to a large extent.

2012 -1-TLNJ 30 (Civil)

V. Dharani
Vs
Dhanalakshmi and Anr

Civil Procedure Code 1908 as amended – Taking into consideration the position of the plaintiff being the widow, it could rightly be held that due to misconception of fact she could not instruct her advocate, which resulted in occurrence of certain factual mistakes and which resulted in misapplication of law and wrong adjudication of the lis – the Court cannot be so draconian and harsh and hold that under all circumstances there should be no excuse for a litigant to plead ignorance of some complicate provisions of law – As such some amount of indulgence can

rightly be shown towards the plaintiff for improving upon her pleadings and also in adducing evidence, in the interest of justice – As disposed a accordingly.

2012 -1-TLNJ 48 (Civil)

Ramasami Pillai
Vs
Amarajothi
And
Palaniya Pillai and Anr
Vs
Amarajothi

Registration Act 1908, Section 17 – A document even though not registered but was cured by the payment of stamp duty and penalty and marked could be looked into if it is a genuine document and proves any collateral purpose – SA dismissed.

2012 (2) CTC 76

S.M.M. Mohamed Mydeen
Vs
S.N. Peer Mohamed (Respondent No. 1 in both S.As.) Ors

Mohammedan Law – Validity of Hiba – Essentials for validity of – (i) declaration of gift by donor, (ii) an acceptance of gift, express or implied by or on behalf of donee, (iii) delivery of possession of subject of gift by donor or donee – In instant case, gift of immovable property made by husband in favour of wife – Clear declaration of gift by donor in favour of donee – However, formal delivery of possession not necessary as husband and wife were both jointly residing in said property at time of declaration and creation of gift – Recitals manifesting definite intention of donor that he had divested himself of all control over subject matter – No intention of donor not to transfer possession of subject matter of gift – Gift not invalidated by mere fact of husband continuing to live in same property – Gift not repudiated by wife during lifetime of husband – All conditions of valid gift, established – Transfer of said property by wife, thus, valid – Principles of Mohammedan Law by Mulla, Sections 149, 150 & 153.

Mohammedan Law – Gift made by husband in favour of wife – Delivery of possession not necessary, when both husband and wife were jointly residing in house at time of declaration and creation of gift – Principles of Mohammedan Law by Mulla, Sections 152(2) & 153.

Mohammedan Law – Recitals in Gift Deed – Recital in Gift Deed that possession is delivered to donee – Said recital an admission binding on donor and those claiming under him – Principles of Mohammedan Law by Mulla, Sections 149 & 150.

2012 -1-TLNJ 80 (Civil)

D. Janaki
Vs
S. Jayalakshmi

Indian Evidence Act 1872, Section 73 – The trial court has power to verify the signatures, since no clear finding has been given, there appears to be no bar in the appellate court exercising its power to send the documents for expert's opinion – CRP (NPD) dismissed.

2012 -1-TLNJ 105 (Civil)

M/s. Vasu Agarbathi rep. by its Deputy Manager (Finance)
Vs
M/s. Aarumugaa Industries, rep. by its Partner, Sudarsan

Limitation Act 1963, Section 18 – Trite the proposition of law is that any payment made in acknowledgment of the debt supinely and without any demur would ensure to the benefit of the plaintiff to claim that the suit was not barred by limitation if the suit is filed within three years from the last date of such payment – awarding interest on interest, which is not contemplated under the law – As allowed.

2012 (2) CTC 189

John Thangadurai and Anr
Vs
Arul Azir

Negotiable Instruments Act 1881 (26 of 1881), Section 87 – “Material alteration” – What is – Every alteration in a negotiable instrument will not be material alteration – Any alteration, having effect of extending or diminishing liability thereof or extending its period of limitation or of ink will be material alteration – Instrument, so materially altered, becomes, a void instrument – No claim can be enforced in Court of law, based upon such instrument.

Code of Civil Procedure, 1908 (5 of 1908), Order 8, Rules 3,4,5 & Order 14, Rules 1,3 – Non-framing of issues with regard to allegations made in Written Statement – Validity of – Defendants to state their case in Written Statement clearly, furnishing required details thereof – There shall not be any evasive or vague plea – In instant case, Suit filed for recovery of money based on promissory Note – General denial in Written Statement that Suit is barred by limitation and Promissory Note is subject to alteration – No details about nature of alteration mentioned in Written Statement – In such circumstances, held, lower Courts were correct in not framing any issue with regard to alleged material alteration.

2012 (1) CTC 238

P. Leelarathinam and Ors
Vs
P.E. Srinivasan and Ors

Code of Civil Procedure, 1908 (5 of 1908), Order 2, Rule 2, Order 7, Rule 11 & Order 23, Rule 1 – Res Judicata – Rejection of Plaint – Abuse of process of law – Suit for permanent injunction restraining Defendants from alienating or encumbering suit property in any manner in 2010 – Suit was filed for very same reliefs and same cause of action in 2007 – Earlier Suit dismissed as withdrawn with liberty to file a fresh Suit, if Plaintiffs have rights to do so – Held, no reasons stated as to why earlier Suit was withdrawn – Suit could be withdrawn if there are some formal defects and if Court is satisfied that sufficient grounds exist for allowing Plaintiff to institute a fresh Suit – In instant case, no Application filed under Order 23, rule 1 – Held, when no reason stated to withdraw earlier Suit seeking liberty to file fresh Suit, another Suit for very same relief, giving same particulars as was set out in earlier Suit cannot be permitted – Moreover, final compromise entered into between parties in relation to suit property – Held, parties to a compromise decree cannot maintain a Suit for bare injunction – Held, present Suit barred by law and a clear abuse of process of law – Same matter should not be allowed to be re-agitated again and again.

2012 (1) CTC 377

A. Manickavasagar
Vs
S.P. Ravichandran 2. R. Sivakami

Registration Act, 1908 (16 of 1908), Sections 17 & 49 – Unregistered Usufructuary Mortgage Deed – Evidence in relation to – Admissibility of – Suit by Plaintiffs/Respondents for recovery of possession of suit property – Contention of Defendant/Appellant that their possession based on basis of Usufructuary Mortgage Deed and counter claimed injunction until payment of mortgage amount with interest made by Plaintiffs – Said Mortgage Deed unregistered – Contention of Plaintiffs that said document, a concocted document – Application filed by Defendants for directing Plaintiffs to produce any registered or public document containing signature of First Respondent to compare with signature in Mortgage Deed – Held, unregistered Usufructuary Mortgage Deed not admissible in evidence – Said document admissible in evidence only after it is impounded by paying necessary deficit stamp duty – Application preferred by Defendants, in such circumstances, only to drag proceedings and not maintainable – Order of Munsif Court dismissing said Application upheld.

2012 (1) CTC 381

Matrix Laboratories Ltd
Vs
F. Hoffman – La Roche Ltd., and Ors

Patents Act, 1970 (39 of 1970), Section 48 – Code of Civil Procedure, 1908 (5 of 1908), Section 20 – Suit for infringement of Patent filed in Madras High Court – Cause of action in said Suit said to be derived from Revocation

Petition filed by Defendant before Intellectual Property Appellate Board (IPAB) Chennai – Suit whether maintainable? – Held, mere filing of Revocation Petition before IPA Board would not ipso facto give rise to a cause of action in Madras High Court – Moreover, mere fact that clinical tests were conducted by Defendants in 2005 in laboratory in Chennai, would not give rise to cause of action to invoke jurisdiction of Madras High Court in 2011.

Trade Marks Act, 1999 (47 of 1999), Section 134(2) – Copyright Act, 1957 (14 of 1957), Section 62(2) – Patents Act, 1970 (39 of 1970), Section 104 – Code of Civil Procedure, 1908 (5 of 1908), Section 20 – Jurisdiction of Court – Non-obstante clause in Section – Application of – Held, expression in non-obstante clause in Section 134(2) of Trade Marks Act and Section 62(2) of Copyright Act using phrase ‘notwithstanding anything contained in Code of Civil Procedure, 1908’, makes a clear departure from Section 20 of Civil Procedure Code – However, as per Section 104 of Patents Act, infringement of a patent and other infringement actions i.e, actions under Sections 105 & 106 may be brought before District Court as per definition of Code of Civil Procedure or High court – Madras High Court being a Chartered High Court, its Ordinary/Original Civil jurisdiction is governed by Clause 12 of Letters Patent – Clause 12 of Letters Patent deals with filing of Suits on Original Side of Madras High Court – Clause 12 empowers High Court to deal with disputes ‘... If the defendant at the time of commencement of Suit shall dwell or carry on business or personally work for gain, within such limits’ – In instant case, 1st and 2nd Respondents have their registered office at Switzerland and U.S.A. respectively, whereas Appellant has its registered office at Secunderabad, Andhra Pradesh – Suit for infringement filed in Madras High Court by Respondents mainly on ground that Revocation Petition was filed by Appellants in IPAB Chennai – Held, merely on basis of averments made in Revocation Petition before IPAB Chennai, jurisdiction of Madras High Court cannot be invoked.

Boards & Forums – Intellectual Property Appellate Board (IPAB) – IPA Board constituted by a Gazette Notification of Central Government in Ministry of Commerce and Industry on 15.9.2003 to hear Appeals – IPA has its headquarters at Chennai and shall have sittings at Chennai, Delhi, Mumbai, Kolkata and Ahmedabad – Filing of Revocation Petition in Chennai is by statutory compulsion – Mere filing of an Application for revocation in IPA Board, Chennai cannot give rise to a cause of action – After filing of Revocation Petition before IPA Board at Chennai and after scrutinizing Application, IPA Board may have hearing either at Chennai or where parties opt to have hearing – Once Respondent appeared and filed their response, by and large proceedings would be heard in situs that patent was granted, unless parties choose otherwise – Thus, mere filing of Revocation Petition before IPA Board in Chennai cannot amount to giving rise cause of action and can only be stated as a transitory one.

Patents Act, 1970 (39 of 1970), Sections 47, 48, 49, 64 & 107 – Infringement – What is – Statements made in Revocation Petition whether amount to cause of action? – Where subject matter of Patent is a product or where subject matter of Patent is a process it confers exclusive right on Patentee to prevent others from doing certain acts – Any intrusion into monopoly rights of Patentee would amount to infringement – Patent granted subject to conditions detailed in Section 47 – Any action within purview of Section 47 would not amount to infringement – Sections 49 & 107-A exclude certain acts from being considered as an infringement – Under Section 107, person against whom an infringement action is instituted may take up as a defence any ground on which patent may be

revoked under Section 64 – Whether averments made in Revocation Petition would fall within scope of infringement – In instant case, averments in Revocation Petition filed by Appellants herein before IPA Board Chennai amount to threat to infringement and therefore, Respondents are entitled to file a quia timet action – Held, if such statements made in Revocation Petition would give rise to cause of action to invoke jurisdiction of Madras High Court, all Revocation Petitions filed before IPA Chennai, which has its registry at Chennai would invariably contain such statements and in all such cases if jurisdiction of Madras High Court is to be invoked, Madras High Court would be flooded with Suits for infringement of a Patent – Held, statements made in Revocation Petition without anything more cannot give rise to a cause of action to invoke jurisdiction of Madras High Court.

Words and Phrases – “Cause of action” – Meaning of – Expression acquired a judicially settled meaning – Cause of action consists of bundle of facts, which Plaintiff must prove in order to get a judgment in his favour – Whether any part of cause of action has occurred within jurisdiction of Court would depend upon facts and circumstances of case.

2012 (1) CTC 407

Sri Humbi Hema Gooda and Ors
Vs

Tamil Nadu State Transport Corporation (CBE) Ltd., and Ors

Code of Civil Procedure, 1908 (5 of 1908), Order 38, Rules 5,6 & 11 – Order of Attachment – Before passing an order of attachment, it is duty of Court to satisfy from particulars made available that Defendant is about to dispose of whole or any part of his or her property, with a view to delay or defeat execution of any decree that may be passed against him or her – Order of attachment directly passed – Stipulations contained in Order 38 not allowed – Order of attachment is void – Further order of attachment not communicated to Registering Officer – Appellant is a bona fide purchaser – Order of attachment was communicated 12 years from date of purchase by Appellant – In absence of communication to Registering Officer, order of attachment has no force.

2012 (2) CTC 410

D. Janaki

Vs

S. Jayalakshmi

Evidence Act, 1872 (1 of 1872), Sections 45 & 73 – Suit for recovery of money lent on Promissory Note dismissed on account of denial of signature by Defendant – In Appeal, Application filed by Plaintiff for referring document to Expert for comparison and verification of signature, allowed – Revision filed thereagainst – Held, primary duty of Court to decide as to whether disputed signature and admitted signature were signed by one and same person – Allowing of said Application would not amount to letting in of additional evidence in terms of Order 41, Rule 27 of Civil Procedure Code – Appellate Court, held, rightly exercised power under Section 45 of Act –

Appellate Court directed to follow procedure prescribed in K.R. Chinnasamy v. K.R. Chinnasamy, 2011 (2) MWN (Civil) 637 – Code of Civil Procedure, 1908 (5 of 1908), Order 41, Rule 27.

2012 (2) CTC 531

Ammanpalayam Sree Mariamman Devasthanam Trust, rep. by its President, A.E. Shanmugam
Vs
Arulmigu Sree Mariamman Thirukoil, Ammanpalayam, Paruvachi, rep. by its Hereditary Trustees and Ors

Code of Civil Procedure, 1908 (5 of 1908), Section 9 & Order 7, Rule 11 – Plaintiff disclosing dispute relating to private parties alone – Temple is also a Private Temple – Plaintiff cannot be driven to agitate matter before authorities under HR & CE Act – Party having a grievance of a Civil nature has a right to institute a Suit in Civil Court as long as it is not expressly or impliedly barred.

2012 (2) CTC 536

R. Syed Mahbool
Vs
Parveen Sultana

Mohammedan Law – Guardians and Wards Act, 1890 (8 of 1890) – Mother entitled to custody of minor boy until age of 7 and until attaining puberty in case of minor girl – Right of mother continues even if she is divorced by her husband so long as she does not choose to remarry – Paramount consideration is welfare of child – Welfare does not mean physical comfort alone or financial position – Merely because under law father is natural guardian it does not mean that he is entitled to custody – Appointment of guardian not necessary when father is natural guardian – No interference with order of Family Court declining custody to father and ordering visitation rights alone.

2012 -1-TLNJ 578 (Civil)

M.S. Hohammed Jahabar Kadiri (Deceased) and Ors
Vs
G. Govindaraju and Ors

Tamil Nadu Buildings (Lease & Rent Control) Act 1960, Section 10(2) (a) & 10(3)(a)(ii) – Eviction petition on the ground of subletting and own use – dismissed by rent controller – appellate authority confirmed finding – on revision High Court held that parting with possession of tenancy or part of it by tenant in favour of third party with exclusive right of possession without consent of landlord in lieu of compensation or rent amounts to sub tenancy – further expressed that inducting partner in business by tenant itself not amount to subletting – initial burden of subletting or third party in exclusive possession without his consent is on landlord and thereafter onus shifts on tenant to prove nature of occupation of such third party – held on facts that reconstitution of partnership is a transaction to conceal subletting – eviction ordered and revision allowed.

2012 -1-TLNJ 587 (Civil)

Babu S/o. Murugesan
Vs
Sumitha, D/o. Baskaran

Limitation Act 1963, Section 6 – Suit for specific performance – Vendor died after execution of sale deed and suit filed against legal heirs of deceased vendor – one of the legal heirs was a minor at the time of suit – minor represented by father guardian and opposed specific performance by several prior legal proceedings but failed – In the suit for specific performance ex parte decree was allowed to be passed – filed petition to set aside ex parte decree after becoming major as her disqualification was only removed after she become major – petition was allowed – on revision High Court held that having several proceedings initiated by father guardian earlier to stall execution of decree and failed it would not be proper for the minor to plead that earlier proceedings could not be initiated by her own and disqualification was removed only recently – CRP allowed.

2012 (2) CTC 607

P. Abirami
Vs
D.E. Tamilarasan

Hindu Marriage Act, 1955 (25 of 1955), Section 13 – Mental Cruelty – Decree of divorce – Grant of - Validity of – Decree of divorce granted in favour of husband by Trial Court on account of mental cruelty – However, no specific acts, which amounted to mental cruelty, have been pleaded with material particulars – Only general allegations made in petition for divorce – Allegation that wife did not behave as a dutiful wife also not substantiated – Moreover, allegations that husband was not informed about pregnancy of wife also proved to be false – Acquittal of mother and sister in Criminal case filed by wife would not prove that Complaint being false – Thus, allegation of mental cruelty not established – Decree of divorce granted on ground of mental cruelty, set aside.

2012 -1-TLNJ 612 (Civil)

Sambandam (died) and Ors
Vs
Nataraja Chettiar and Anr

Civil Procedure Code 1908 as amended, Order 31, Rule 1 and City Tenants Protection Act 1921, Section 9 – Scope – Suit filed for recovery of possession of a property belonging to the trust – Suit filed by the trustee in his individual capacity with discloser of fact that property belongs to the trust – Dependent pleading Protection under the Madras City tenants Protection Act held under Order XXXI, Rule 1, is only an enabling provision and it does not disentitle a person who happens to be a trustee from suing in his individual capacity at his option – although he has not described himself as a trustee of the trust in the long cause title – instituting the suit in his capacity as a trustee and conceding that the suit property is of the trust is not a material defects – building should be put up

before the applicability or extension by notification of the city tenants Protection Act in order to claim benefit under Section 9 of the Act however the appeal filed by the defendant was allowed for want of proper notice recovery of possession of the plaintiff denied – SA allowed.

2012 -1-TLNJ 640 (Civil)

Basile Irou, Rep. by his powr agent Joseph Basile
Vs
International Ayurvedic Health Centre, rep. by its Chief Physical Dr. L.N. Rao

Pondicherry Building (Lease and Rent Control) (Act 5 of 1969), Sections 10(iii)(a)(iii) and 14(1)(b) – Petition filed for eviction on the ground of own use and occupation and demolition and reconstruction – rent controller ordered eviction with direction to landlord to file affidavit of undertaking as required u/s 14(1)(b) of the act – on appeal by tenant the appellate authority dismissed eviction on both grounds and allowed appeal – on revision under section 25 of the act, the High Court evinced that once controller satisfied that claim is bonafide eviction has to be ordered as land lord is entitled to alter the structure as he likes – no inconsistency between two provisions and cannot be stated that eviction under section 14(1)(b) cannot go along with plea of own occupation – further held that it would be sufficient if the landlord gives evidence of undertaking in his proof affidavit to comply with the stipulation under section 14(1)(b) –no need to give statutory undertaking at the time of filing eviction petition – eviction ordered – CRP allowed.

2012 -1-TLNJ 675 (Civil)

Rasipuram Municipality represented by its Commissioner
Vs
Soosaimary

District Municipalities Act 1920, Section 350(1), 350(2) – When the suit is not rested on any statutory duty on the part of the Corporation and failure or negligence in performing such duty – but relied on tortuous liability the limitation for launching the suit would be two years from the date of accident as per Article 82 of the Limitation Act - SA dismissed.

Limitation Act 1963, Article 82 – See District Municipalities Act 1920, Section 350(1), 350(2).

2012 (2) CTC 698

Rajamani Gurukkal
Vs
Rama and Anr

Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rules 11(2) & 16 – Persons competent to file Execution Petitions – Signing and verification of Execution Petition – Suit for recovery of arrears of rent and

damages was filed by One “R”, Managing Trustee of trust, subsequently EP was filed by one “V”, Managing Trustee after expiry of term of “M” – Judgment-debtor filed Application contending that Execution Application was not filed by proper persons and same is not maintainable – Held, it is not necessary that Execution petition must be signed and verified by decree holder and it is sufficient if same is signed by some other person or prove to satisfaction of Court about acquaintance of facts and such person is entitled to sign and verify Execution Petition – When there is no change in name of parties provision of Order 21, Rule 11(2) of CPC will not apply.

Practice and Procedure – Execution Petition filed by decree holder pending Appeal before Supreme Court – Supreme Court has not stayed decree passed by Court below – There is no impediment for decree holder to execute decree pending Appeal before Supreme Court – In event of any order being passed by Supreme Court in favour of judgment-debtor he can apply for restitution.

HIGH COURT CITATIONS CRIMINAL CASES

2012 (1) CTC 269

Vigneshkumar

Vs

The State, rep by the Sub-Inspector of Police, Sankarankoil Town Police Station, Tirunelveli District

Indian Penal Code, 1860 (45 of 1860), Section 353 – Code of Criminal Procedure, 1973, First Schedule – Code of Criminal procedure (Amendment) Act, 2005 – Indian penal Code & Code of Criminal Procedure (Tamil Nadu Amendment) Act 2006 – Constitution of India, Seventh Schedule, Article 254 – Amendment of Central Act by State legislature – Assent of President – Mandatory – Offence punishable under Section 353, IPC bailable as per First Schedule to the Code of Criminal Procedure prior to the introduction of the Code of Criminal Procedure (Amendment) Act, 2005 – Said offence classified as non-bailable after introduction of Code of Criminal Procedure (Amendment) Act, 2005 – However, after the introduction of the Central Act 25 of 2005, representations made by various Advocates' Associations and general public of State of Tamil Nadu to Government of Tamil Nadu to restore the earlier position prior to the coming into force of Central Act 25 of 2005 – Bill passed in Tamil Nadu Legislative Assembly for restoring Sections 332, 333 & 353 as bailable offences - Bill passed in Assembly as an Act on same day, i.e. on 2.9.2006 – Held, although Cr.P.C. falls in Concurrent List of Seventh Schedule to shall come into force only when Amending Act receives assent of President of India – In instant case, Indian Penal Code and Code of Criminal Procedure (Tamil Nadu Amendment) Act, 2006 not received assent of President of India and thus, said amendment, held, would not prevail in State of Tamil Nadu – Thus, offences punishable under Sections 274, 332, 333 & 353 of IPC would be non-bailable offences in State of Tamil Nadu also.

2012 (1) LW (Crl.) 311

Rajagopal

Vs

Forest Range Officer, Jamunamarathur

Criminal Procedure Code, Sections 325, 482.

Section 325 CrPC enables the Magistrate to refer the case to his superior officer, namely, the Chief Judicial Magistrate – Next, the Magistrate must form an opinion that the accused deserve a different kind of punishment or more severe punishment than that which he is empowered to inflict upon him.

A mere finding of a criminal court is no judgment – it is one part of the decision of the Court – It transforms into a judgment only when sentence or order, as the case may be, is passed.

Once a case is referred by the Magistrate to the Chief Judicial Magistrate he alone has to take further action as per the procedure prescribed and the power conferred upon him under section 325 (3) CrPC – He cannot disown it nor delegate it unless it is a case falling under section 323 CrPC.

Order of Chief Judicial Magistrate, Vellore remanding back the calendar case to the referral Judicial Magistrate, Tirupattur is manifestly erroneous.

2012 (1) LW (Crl.) 325

Abizar N.Rangwala and Ors
Vs
Ms. Sakina W/o. Mr.Abizar N. Rangwala

Protection of Women from Domestic Violence Act (2005), Sections 12, 18, 19, 20 and 21,

Criminal Trial / Marking of documents, examination of witnesses

CrI.O.P. is filed for a direction to the learned VII Metropolitan Magistrate to take up the proceedings as per Section 28(a)(b) and evidence be let in giving sufficient opportunity to examine the respondent and cross-examine and opportunity to the petitioners to let in evidence.

Apprehension in the mind of the first petitioner / husband is that he was not given opportunity to cross-examine with regard to the marketing of the documents.

It is a summary trial procedure where the parties are entitled to cross-examine those witnesses as per the Act – as per section 28 of the Act all proceedings under Sections 12, 18 to 22 and 23 and offences under Section 31 shall be governed by the provisions of the CrI.P.C.

Documents produced by the respondent has not been allowed to be cross-examination of the witness is allowed on the documents produced by the witness, the sanctity of the documents produced by the witness, the sanctity of the documents could not be considered – Act grants only interim protection and for clothing and maintenance such as guarding of their wards.

Petitioner is at liberty to cross-examine the respondent's evidence with relevant questions.

2012 (2) CTC 369

Sengol & Ors
Vs
State rep. by the Inspector of Police, R.S. Mangalam Police Station & Ors

Constitution of India, Article 20(2) – General Clauses Act, 1897 (10 of 1897), Section 26 – 'Same Offence' – Interpretation thereof – In case of act of accused constitution offences falling under two different enactments, prosecution can be launched under both enactments – However, punishment can be imposed only under one penal statute in case of 'same offence' – Nonetheless, in case of act of accused constituting two offences under different enactments which are 'not the same', no legal bar for punishment under both enactments – Prohibition under Section 26 of Act and under Article 20(2) of Constitution attracted in case of same offence under more than one

enactment – Prohibition not applicable in case of two distinct and separate offences with different ingredients under two different enactments – Punishment, in such circumstances, under both enactments, not barred.

Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), Section 21 – Indian Penal Code, 1860 (45 of 1860), Sections 378 & 379 – Comparison of provisions – Simultaneous prosecution whether barred – Held, ingredients of both provisions totally different – Contravention of terms and conditions of mining lease, constitutes an offence under Section 21 of the Act – Whereas dishonestly taking any movable property out of possession of a person without his consent constitutes theft – Thus, ingredients of theft as defined in Section 378 of Code totally different from ingredients of offence punishable under Section 21 r/w Sections 4(1) & 4(1-A) of Act – Thus, simultaneous prosecution under both provisions not barred and Principle of Double Jeopardy will not be applicable – Constitution of India, Article 20(2).

Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), Section 21 – Indian Penal Code, 1860 (45 of 1860), Sections 378 & 379 – Code of Criminal Procedure, 1973 (2 of 1974), Sections 154 & 173 – Theft of Sand – Quashing of FIR – Offences under Section 378 of IPC and Section 21 of Act not same – Thus, in instant case, provisions of Act no to exclude provisions of IPC – Lawful for Police to register case under relevant provisions of Cr.P.C. and to lay final report under Section 173 of Cr.P.C., upon which it will be within competence of jurisdictional Magistrate to take cognizance – Thus, such FIR, where case has been registered under provisions of IPC, shall not be liable to be quashed.

Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), Section 21 – Indian Penal Code, 1860 (45 of 1860), Sections 378 – Final Report – In case of offences committed under both enactments, registration of case under both enactments and conduct of investigation not barred – However, Police to file report only in respect of offences punishable under IPC – In case of offence under Section 22 of Act, Police may file separate Complaint, provided he has been so authorized – However, in case Police files report in respect of both offences, Magistrate may take cognizance of offences under IPC alone and proceed with trial – Held, in cases of offence under Act, Court shall take cognizance only on Complaint filed by person authorized in that behalf by Central Government or State Government and not on Police Report – Thus, in State of Tamil Nadu as Inspector of Police is authorized vide G.O.M.s. No.114 dated 18.9.2006 to file a Complaint under Section 22 of Act, Jurisdictional Magistrate before whom such Complaint is filed may, thus, take cognizance of such offence.

Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), Section 22 – Code of Criminal Procedure, 1973 (2 of 1974), Section 190 – Conflict between – Special law to prevail over general law in case of conflict between both – Thus, Section 22 of Act to override Section 190 of Code, and thus, in respect of offences under Act, cognizance can be taken only on Private Complaint as provided in Section 22 of Act and not on a Police Report.

2012 (1) CIJ 441

P. Ponnaiyan
Vs
State

Code of Criminal Procedure, 1973(2 of 1974)-Sec.321-Criminal trial-Prosecution-Withdrawal-Police-Public Prosecutor-Locus standi-When the Magistrate had not passed any order on the memo filed by the inspector of police to withdraw the prosecution against the petitioner, the petitioner approached the High Court seeking direction to the Magistrate to pass orders –The petitioner contended that when the police had sought to withdraw the prosecution initiated by it, the Magistrate should have passed order granting such permission-Held, petition to withdraw the criminal prosecution could be filed only by the public prosecutor and not by the police-On receiving such application, the Court had the jurisdiction to decide the availability of sufficient ground and grant or deny the permission for such withdrawal-Permitting the withdrawal of prosecution mechanically on the filing of petition in that regard was not contemplated under Cr.P.C. – As the inspector of police had no such authority to seek withdrawal of prosecution, direction sought for by the petitioner was refused-Petition was dismissed.

Code of Criminal Procedure, 1973(2 of 1974)-Sec.321-Criminal trial-Prosecution-Withdrawal-Police-Public prosecutor-Locus standi-Petition to withdraw the criminal prosecution could be filed only by the public prosecutor and not by the police-On receiving such application, the Court has the jurisdiction to decide the availability of sufficient ground and grant or deny the permission for such withdrawal-Permitting the withdrawal of prosecution mechanically on the filing of petition in that regard is not contemplated under Cr.P.C.

Ratios:

- a. Petition to withdraw the criminal prosecution could be filed only by the public prosecutor and not by the police.
- b. On receiving application for withdrawal of prosecution, the Court has the jurisdiction to decide the availability of sufficient ground and grant or deny the permission for such withdrawal.
- c. Permitting the withdrawal of prosecution mechanically on the filing of petition in that regard is not contemplated under Cr.P.C.

2012 (2) CTC 549

Selvam and Anr
Vs
State by Inspector of Police, Theevatipetti Police Station, Salem District and Anr

Code of Criminal Procedure, 1973 (2 of 1974), Sections 451 & 452 – Release of vehicles involved in crimes – Accused filed petition to release Lorry involved in crime pending trial – Judicial Magistrate dismissed petition on ground that Lorry was materially needed during course of trial and investigation – Whether principle laid down by

Supreme Court in Sunderbhai case for release of vehicles can be extended in respect of Petitions filed by Accused persons seeking custody of vehicles – Whether secondary evidence can be permitted to lead in lieu of production and marking of vehicles – Held, power of confiscation provided under Criminal Procedure Code is not meant to be used as exercise of penal power – Confiscation cannot be ordered as measure of punishment – In absence of any specific provision of law providing for confiscation of vehicle order confiscating vehicles would amount to imposing a second punishment not having sanction of law – Routinely ordering confiscation of property involved in crime by Trial Court without any enquiry is not proper – Vehicles should be returned to its owner even if such persons are accused – Power of confiscation provided in Section 452, Cr.P.C. is only residual – Release of vehicles pending trial will not trample upon power of Trial Court enshrined under Section 452 of Cr.P.C. – Trial Court should make all dispose of Petition seeking return of vehicles forthwith – Trial Courts shall take best efforts to return vehicles involved in crimes to owners of Directions issued to all Sessions/Metropolitan/Judicial Magistrates to adhere procedure laid in judgment.

2012 (1) CIJ 687

Raju @ Arokia Jesuraj
Vs
Mrs. V. Victoria

Divorce Act, 1869 (4 of 1869)-Sec. 10(x)-Marriage and divorce-Christian-Divorce-Cruelty-Criminal case-Police –FIR-Referral-Acquittal-Appellant husband had sought for divorce by alleging that the wife had lodged a false police complaint against him and failed to inform her pregnancy to him and also insisted him to reside in her parent’s house which was resisted by the respondent wife-When the Family Court disbelieved the version of the husband and dismissed the petition, he preferred appeal-Parties stood by their stands-Held, mere closure of the police complaint or the acquittal in a criminal case would not be a conclusive proof of cruelty by lodging false complaint-A party relying upon such closure or acquittal as proof of cruelty had to produce the relevant judgment or examine the investigating officer to prove the reason for such acquittal or closure-As the appellant had failed to do the same, he had failed to prove this form of cruelty alleged-Other grounds alleged by him were also not proved by the husband-Appeal was dismissed and the decree and judgment passed by the Family Court was confirmed.

Divorce Act, 1869 (4 of 1869) – Sec. 10(x)-Marriage and divorce-Christian-Divorce-Cruelty-Criminal case-Police-FIR-Referral-Acquittal-Mere act of preferring complaint by one spouse against the other spouse cannot be construed to be an act of cruelty committed by the complainant spouse unless it is further proved that the complaint so preferred was deliberately false.

Divorce Act, 1869 (4 of 1869)-Sec.10(x)-Marriage and divorce-Christian-Divorce-Cruelty-Criminal case-Acquittal-Mere acquittal of a spouse in a criminal case initiated by the other spouse would not raise an automatic conclusion that the criminal case was a false one and thus it was an act of cruelty.

Divorce Act, 1869(4 of 1869) – Sec.10(x)-Marriage and divorce-Christian-Divorce-Cruelty-Police-FIR-Referral-Investigating officer-Evidence-A spouse relying upon the referral of an FIR by the police, in order to take it as an instance of cruelty, has to examine the concerned investigating officer to further prove that the complaint was false and deliberate.

Ratios:

- a. Mere act of preferring complaint by one spouse against the other spouse cannot be construed to be an act of cruelty committed by the complainant spouse unless it is further proved that the complaint so preferred was deliberately false.**
- b. Mere acquittal of a spouse in a criminal case initiated by the other spouse would not raise an automatic conclusion that the criminal case was a false one and thus it was an act of cruelty.**
- c. A spouse relying upon the referral of an FIR by the police, in order to take it as an instance of cruelty, has to examine the concerned investigating officer to further prove that the complaint was false and deliberate.**
