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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

2015 (5) Scale 212

The Gujarat Maritime Board

vs.

G.C. Pandya

Date of Judgment : 13.04.2015

CIVIL PROCEDURE – CPC – ORDER VIII RULE 10; SECTION 100 – Judgment on admission - where written statement is not filed, the civil court has the jurisdiction to proceed under Order VIII Rule 10, CPC – Respondent-plaintiff was Deputy Engineer (Civil) with appellant-Board – He was charge-sheeted for certain irregularities allegedly committed by him during the period 1982-1984 due to which appellant-Board suffered huge losses – In the enquiry plaintiff-respondent was held guilty and awarded punishment of ‘censure’ on 26.6.2002 – He was superannuated on 30.6.2002 from service as Superintending Engineer – Respondent-plaintiff filed civil suit for declaration that the departmental enquiry held against him and punishment awarded were illegal – Plaintiff sought his promotion w.e.f. 1.1.2002 pleading that the departmental enquiry was purposely kept pending with a motive to deny promotion to him – Appellant-defendant was served and represented through its counsel, but it did not file any written statement contradicting the facts alleged in the plaint – Trial Court discussed the pleadings and the evidence led by plaintiff and declared the plaintiff to have been promoted as Chief Engineer w.e.f. 1.1.2002 without considering service record of the plaintiff – First Appellate court decided the appeal concurring with the trial Court – Second appeal – High Court dismissed the Second Appeal after concluding that there was no substantial question of law involved in the appeal – Whether judgment of the High Court was sustainable – Held, Yes – Whether the trial Court had proceeded mechanically in exercise of its jurisdiction under Order VIII Rule 10, CPC – Held, No – Whether the trial Court committed error in declaring the plaintiff to have been promoted as Chief Engineer – Held, Yes – Allowing the appeal in part, Held,

(2015) 3 Supreme Court Cases 461

Sushil Kumar Dey Biswas

vs.

Anil Kumar Dey Biswas

Date of Judgment : 03.12.2014

- A Civil Procedure Code, 1908 – S. 151- Dispossession of appellant-defendants from certain parts of the suit property during pendency of eviction suit against them – Application for restoration of possession, filed by appellants in respect of those parts of the suit property alone, under S. 151 CPC – Dismissal thereof merely on ground of delay of about 7 months in filing that application – Propriety
- Filing of eviction suit against appellants indicated that appellants were in possession of suit property – Thus, delay in filing application for restoration of possession, held, could not be a ground to deny relief to appellants – Without going into merits of rival contentions of both parties, in order to meet the ends of justice, possession of said parts of suit property in question restored to appellants – However, with respect to another room in the same premises, though dispossessed therefrom as well, appellants not having object to the same, possession of the same, held, would have to abide the result of the suit – Specific Relief Act, 1963 – S. 6 – Evidence Act, 1872 – Ss. 17 and 58 – Admission evident from relief claimed
- B Specific Relief Act, 1963 – S. 6 – Restoration of possession under – Need to specifically object to dis-possession from each part of the premises concerned

(2015) 3 Supreme Court Cases 525

Kuldeep Kumar Dubey

vs.

Ramesh Chandra Goyal

Date of Judgment : 21.01.2015

Civil Procedure Code, 1908 – S. 99 and Or. 1 Rr.9 & 10 – Curable irregularity – No prejudice caused to defendant – Misdescription of parties – Maintainability of suit - parties referred to as heirs of deceased original plaintiff when they could prosecute suit in their own right – Effect thereof under S. 99 CPC – Held, decree of trial court not liable to be reversed on said ground

(2015) 3 Supreme Court Cases 590

Neeta

vs.

Maharashtra SRTC

Date of Judgment : 13.01.2015

Motor Vehicles Act, 1988 – Ss. 166, 168 and 173 – Compensation for fatal accident – Computation of – Just and reasonable compensation for deceased victim in private employment or self-employment in absence of documentary evidence on record – Reliance on notified minimum wages

(2015) 2 Supreme Court Cases 682

Rajni Rani

vs.

Khairati Lal

Date of Judgment : 14.10.2015

- A Civil Procedure Code, 1908 – Or. 8 Rr. 6-A and 6-D – Counterclaim – In the nature of cross-suit – Purpose – Principles explained**
- B Civil Procedure Code, 1908 – Or. R. 6-A, Or. 2R. 2 and S.2(2) – Order of dismissal of counterclaim when constitutes decree – Counterclaim when conclusively adjudicated on merits and dismissed by order of court, finality is attached in respect of rights of defendant – Such order of dismissal gets status of decree – Order of dismissal of counterclaim on ground of being barred under Or. R.2 amounts to decree**
- C Civil Procedure Code, 1908 – Or. 8 R. 6-A, Ss. 96 and 115 – Remedy against final order of dismissal of counterclaim on merits – Appeal is the proper remedy – Such order attains status of decree – Hence can be sought to be set aside by filing appeal – Revision petition under S. 115 or petition under Art. 227 of the Constitution against such order, is thus not maintainable – Constitution of India, Art. 227**
- D Civil Procedure Code, 1908 – S. 2(2) – Decree – Essential conditions – When can an order amount to a decree – Conclusive determination of rights of parties resulting in formal expression of adjudication – Words and Phrases – “Decree”**

SUPREME COURT CITATIONS CRIMINAL CASES

(2015) 1 Supreme Court Cases 48

R.N. Agarwal

vs.

R.C. Bansal

Date of Judgment : 14.10.2014

- A Prevention of Corruption Act, 1988 – Ss. 5 and 13(1)(d) – Power of Special Judge to proceed against persons not included as accused in charge sheet – Scope**
- Respondents mentioned as prosecution witnesses by CBI, summoned as accused by Special Judge after taking cognizance of the offence - Held, once cognizance has been taken by Special Judge, he takes cognizance of an offence and not the offenders and once he comes to the conclusion that apart from the persons sent up by police some other persons are involved, it is his duty to proceed against those persons – Summoning of the additional accused is part of the proceedings initiated by Magistrate taking cognizance of an offence – Special Judge on considering all materials brought on record during investigation came to the conclusion that respondents are involved in the commission of offence and consequently summons were issued against them – High Court erred in quashing issuance of summons by Special Judge against respondents – Proceedings restored – Criminal Procedure Code, 1973 – Ss. 190, 193, 319, 207 and 209 – Penal Code, 1860 – Ss. 120-B, 420, 468, 471 and 217 – Public Accountability, Vigilance and Prevention of Corruption – Private parties abusing State Machinery for private gain
- B Prevention of Corruption Act, 1988 – S.5 – Procedure and powers of Special Judge under – Scope of - Special Judge may take cognizance of offence without accused being committed to him for trial and Court of Special Judge shall be deemed to be a Court of Session – Special Judge appointed under the Prevention of Corruption Act, enjoys all powers conferred on court of original jurisdiction functioning under High Court except those specifically conferred under the Act**
- C Constitution of India – Arts. 141 and 227 – High Court following High Court judgment contrary to Supreme Court judgments – Impermissibility – Criminal Procedure Code, 1973, S. 482**

(2015) 2 MLJ (CrI) 89 (SC) LNIND 2015 SC 160

Tukaram Dnyaneshwar Patil

vs.

State of Maharashtra

Date of Judgment : 13.03.2015

Sentence – Alteration of Sentence – Validity of - Indian Penal Code, 1860, Sections 302, 304 Part-II, 324 and 34 – Accused convicted and sentenced under Section 302 read with Section 34 and Section 324 read with Section 34 – On appeal, High Court while altering conviction to Section 304 Part-II, altered sentence to imprisonment for period already undergone and directed to pay compensation to complainant – State and complainant preferred appeals challenging alteration of sentence – Whether alteration of sentence given by High Court to accused justified – Held, ocular witnesses testified about attack made by accused on deceased at time of occurrence and relying on their testimonies, Lower Courts rightly concluded that occurrence proved – Medical evidence proved that deceased died of homicidal violence – After analyzing evidence, High Court held that quarrel led to occurrence

and accused also had injuries and they cannot be held guilty of murder, but liable to be convicted under Section 304 Part-II – No error found in conclusion of High Court – Guilt of accused under Section 304 Part-II proved, same shows despicable aggravated offence warranting punishment proportionate to crime – Sentence awarded by High Court is too meager and not adequate – Though accused directed to pay compensation, no amount of compensation could relieve family of victim from constant agony – Imposition of five years rigorous imprisonment on each of accused for conviction under Section 304 Part-II would meet ends of justice – Other conviction and sentence imposed on accused sustained – Sentence of imprisonment for period already undergone for conviction under Section 304 Part-II set aside – Appeals partly allowed.

(2015) 3 Supreme Court Cases 530

Tarabai

vs.

State of Maharashtra

Date of Judgment : 20.01.2015

Penal Code, 1860 – Ss. 304-B and 498-A – Dowry death – Bride burning – Death within 8 months of marriage – Conviction of mother-in-law confirmed even though acquittal of co-accused sister-in-law confirmed – Given how much appellant had tortured the deceased no sympathy warranted on question of sentence – Held, appellant should feel fortunate to suffer only 7 years' imprisonment because having regard to the nature of commission of the offence and her complicity in the offence, it should have been even more than what has been awarded

(2015) 1 MLJ (Crl) 707 (SC)

Md. Ali

vs.

State of U.P.

Date of Judgment : 10.03.2015

Kidnapping – Conviction and Sentence – Testimony of Prosecution Witness – Indian penal Code, 1860, Sections 363, 366, 368 and 376 – Complaint against Appellants/Accused persons for offence committed under provisions of Code 1860 – Trial Court convicted and sentenced four accused guilty of offence committed under Sections 366, 368 and 376 Code 1860 – On appeal, High Court appreciated evidence by placing reliance on testimony of Prosecution Witnesses (PWs) and opined that findings recorded by Trial Judge flawless – Appeals – Whether Trial Court and High Court came into erroneous conclusion without appreciating acceptability and reliability of testimony of witness – Held, when prosecutrix was missing from home, it was normal expectation that either mother or brother would have lodged complaint, same not done – No explanation offered for delay in filing FIR – Trial Judge adverted to unacceptable principle that prosecutrix suffered from trauma and constraint of social stigma, when prosecutrix at that time nowhere in the scene - Recovery of prosecutrix by brother and friends also creates suspicion – Impugned judgment would indicate an impropriety of approach – Only explanation by victim that she was threatened by accused persons and that she was not confined to one place – Materials on record, that she had travelled from place to place and was ravished number of times - Medical evidence stated no injuries on private parts – Delay in FIR, non-examination of witnesses, testimony of prosecutrix, and medical evidence creates testimony of prosecutrix doubtful - Testimony of victim does not inspire confidence, and circumstantial evidence do not lend any support to same – Trial Judge erroneously convicted Appellants for alleged offences and High Court erred without reappreciating material on record, by giving stamp of approval to same – Conviction and sentence set aside – Appellants discharged – Appeals allowed.

(2015) 1 MLJ (Crl) 722 (SC)

Vijay Pal

vs.

State (GNCT) of Delhi.

Date of Judgment : 10.03.2015

Murder - Plea of alibi – Indian Penal Code, 1860, Section 302 – Allegation that Appellant/accused put deceased wife ablaze by pouring kerosene – Conviction and sentence, affirmed by High Court – Appeal – Whether material brought on record sufficient enough to sustain conviction – Held, doctor denied suggestion that injuries sustained due to falling of kerosene oil from stove on body or due to pinning of stove or by fall of tin of kerosene oil on floor - Presence of kerosene on scalp hair and dust particles in larynx of deceased evince that kerosene oil poured on skull of deceased – Conclusive medical evidence that deceased did not suffer injuries because of accidental fire - Testimony of daughter of ten years that kerosene oil accidentally spilled on body of her mother unbelievable – Oral dying declaration given to brother who rushed to house where deceased told that Appellant poured kerosene on her and set ablaze valid – Evidence adduced to prove plea of alibi sketchy – Nothing on record that it was physical impossibility of presence of accused to be at scene of offence by reason of presence at another place – No reason to disbelieve testimony of father of deceased who stated that Appellant present at scene of occurrence – High Court rightly affirmed conviction – Appeal dismissed.

HIGH COURT CITATIONS CIVIL CASES

2015 -2- L.W. 49

M/s. Rana Sugars Ltd

vs.

M/s Bharat Heavy Electricals Ltd

Date of Judgment : 26.02.2015

C.P.C., Section 20, Order 7, Rule 10/Territorial and pecuniary jurisdiction of Court, Scope of.

Constitution of India, Article 227/ Territorial and pecuniary jurisdiction of Court, Scope of.

Return of Plaint – Suit was filed at district court, Vellore for recovery of money for materials supplied to defendant – Plaintiff's office was at Ranipet, Vellore, while defendant registered company at Chandigarh with a branch office at Amritsar, Punjab – Order placed by defendant from branch office.

Purchase order had a clause stating dispute shall be subject to Chandigarh jurisdiction only – whether district court at Vellore has territorial and pecuniary jurisdiction.

Held: clause is nothing but an attempt to confer jurisdiction on a court, which does not have the jurisdiction to try the issue – It is not a choice between two courts having concurrent jurisdiction – Conferring jurisdiction by choice of parties – what is, Scope of

2015 (2) CTC 139

Thukkaram

vs.

Shanthi Varadharajan

Date of Judgment : 17.12.2014

Easements Act, 1882 (5 of 1882) – Suit Passage – Whether Common Passage or Absolute Passage – Suit for Declaration of Title and Permanent Injunction with regard to Common Passage – Sale Deed executed in favour of Plaintiff containing phrase “right to use Common Passage measuring 2.6’ – Sale Deed executed in favour of wife of Plaintiff/D2 also referring to Common Passage measuring 2.6’ – Established from both Sale Deeds that Passage was to be used as Common Passage and not to be sold as part of property – Nonetheless, subsequent Sale Deed executed by D2 in favour of D1 referring to same Passage with an extended length of 3’ – Held, D2 could not sell Passage measuring 3’ to D1 when she herself only had rights over Common Passage measuring 2.6’ – No vendor can sell in excess of what he has – D2 in instant case, held, cannot confer better title to D1 than what she herself had – Moreover, non-examination of D2, who was the vendor of D1, held fatal to case of D1 that he had absolute right over the Passage – Held, vendor has no duty to communicate defects in title and it is duty of purchaser to make necessary enquires – D1, held, ought to have been diligent while purchasing Suit property – Plea of D1 that Suit Passage was an Absolute Passage and not a Common Passage, unacceptable – Lower Courts erring in analyzing evidence and dismissing Suit of Plaintiff – Findings of both Courts below, set aside - Suit decreed as prayed for – Second Appeal allowed.

Legal Maxims – Caveat emptor, qui ignorare non debuit quod jus alienum omit – Let a purchaser beware; who ought not to be ignorant that he is purchasing the rights of another.

Deeds & Documents – Attesting Witness – Whether bound to know contents of Deed – Signature of Attesting Witness is to prove that executants has signed document in presence of Attesting Witness and also to prove signature of any other witness or party to document – Attesting Witness, held, not bound to know contents of document attested – Decision of Single Judge in case of Pandurang Krishanji v. Markandey Tukaram, 1922(42) MLJ 436, relied upon.

2015 -2- L.W. 147

Venkidusamy
vs.
Karupusamy

Date of Judgment : 13.02.2015

Easements act/Right of prescription, grant of,

C.P.C., Section 100, framing of substantial question of law.

Suit for declaration of cart track – use of – Easement of prescription and grant – Alternative cart-track, existence, whether proved – Suit decreed by trial court, reverted by appellate Court – Inference by appellate court, whether correct.

Second appeal – Substantial question of law – Framing of – How to be done – Absence of plea – Proof of plea – Difference – What is.

2015 -2- L.W. 235

Imayam Trust & others
vs.
Balakumar & others

Date of Judgment : 10.02.2015

C.P.C. Section 92, public trust, leave to sue, granting of, challenge to, order 1, Rule 8, public trust, representative capacity, to sue.

Public trust – Imayam Trust – Leave to sue – Granting of Scheme framing of – challenge to.

Held: Imayam trust is a public trust – Allegations of mismanagement, breach of trust, misappropriation of funds – District court has jurisdiction – Leave granted to sue sustainable – Third respondent has interest in the Trust – To transpose third respondent as third plaintiff – Locus to file – “parents Patriae” jurisdiction of court - scope

2015 (2) CTC 262

Tamil Nadu Small Industries Development Corporation Ltd
vs.
P. Kalavathy Sukumar

Date of Judgment : 10.02.2015

Limitation Act, 1963 (36 of 1963), Article 54 – Suit for Specific Performance – Limitation – Computation thereof – Necessity of pleadings – Defendant raised issue of limitation first time in Second Appeal – Defendant failed to raise plea of limitation in Written Statement – Limitation is a mixed question of Law and Fact – Failure to

raise plea of limitation in pleadings – Issue of limitation was not framed by Trial Court and First Appellate Court – Refusal, either implied or express to perform contract is primarily question of fact which cannot be decided in absence of specific pleadings in Written Statement – Defendant cannot raise plea of limitation for first time in Second Appeal.

Code of Civil Procedure, 1908 (5 of 1908), Order 2, Rule 2 – Bar to maintain Second Suit – Suit to include whole claim – Common cause of action – Same cause of action – Different cause of action – Distinction – Applicability of bar – Plaintiff filed first Suit challenging enhanced Cost fixed for Suit property – First Suit filed by Plaintiff attained finality – Plaintiff filed second Suit for Specific Performance to direct Defendant to execute Sale Deed as per Allotment Order – Contention of Defendant that Plaintiff's second Suit for Specific Performance is barred under Order 2, Rule 2 – Order 2, Rule 2 will apply when Plaintiff failed to sue for comprehensive relief when there is common cause of action for same – When Plaintiff filed First Suit challenging enhanced demand, he has no cause of action to sue for Specific Performance – Second Suit filed by Plaintiff on different cause of action is not barred under Order 2, Rule 2.

Law of Pleadings – Necessity of Pleadings – Plea of bar under Order 2, Rule 2, CPC – Plea not raised in Written Statement – Trial Court not framed any issue – Plea not raised before First Appellate Court – Legal plea of bar under Code is question of fact – Defendant ought to have pleaded in defence and called upon Courts below to decide same by adducing evidence – Defendant cannot raise plea for first time Second Appeal in absence of pleadings.

(2015) 2 MLJ 293

Muthusamy

vs.

K.M. Subramaniam

Date of Judgment : 17.12.2014

- A Succession Laws – Karta – Separate property – Suit filed by Plaintiff/son against 1st Defendant/father and 3rd Defendant/sister claiming half share alleging that suit property purchased out of income from ancestral property – 1st Defendant alleged that properties are self-earned and has every right to settle same in favour of 3rd Defendant – Trial Court decreed Plaintiff's entitlement to half share, confirmed by Appellate Court – Second Appeal – Whether Karta of joint family could possess separate property purchased out of separate income especially when income derived from ancestral properties were meager – Held, Karta of joint family can have independent business and could purchase properties in his name – Burden will always lie on Karta to prove that properties purchased from his individual income – 1st Defendant not proved that he had separate income other than income generated out of joint family business – In absence of proof to contrary by person claiming to have acquired property from his individual income, same to be treated as Joint family property – Appeal partly allowed.
- B Succession Laws – Gifts – Whether property gifted to daughter by Karta of joint family and accepted by her can be included subjecting it to partition on allegation that gift deed was not acted upon, at instance of other family members – Whether gift could be rejected after it becomes complete without praying for declaration of its validity – Held, 1st Defendant as Karta has power to gift small portion – Courts below erred in holding that 3rd Defendant not in possession and property in joint possession of Plaintiff and 1st Defendant even after settlement – Possession flows with title – Once donee claims to have accepted gift, issue ends then and there, though belatedly, mutation of records taken place – Gift cannot be set aside.
- C Succession Laws – Joint Hindu Family Partial partition – Whether properties stand in junior minor male member of Hindu Joint Family can be considered as separate property of him for reason that his mother was shown as guardian to him in sale deed and hence properties stand in his name could be left out in partition suit – Whether suit is maintainable for partial partition – Held, just like

fact that no proof to show contribution from 1st Defendant, there is no proof to evince contribution from maternal grandfather of Plaintiff – Reasons to conclude property in question purchased from and out of contribution from maternal grandfather of Plaintiff not tenable – Common in joint family to purchase properties in names of coparceners and mutation would not create any independent right – Property in question must be part of suit schedule and included in partition suit – Since Plaintiff bonafidely believed property to be his individual property, suit would not be hit by theory of partial partition.

- D Succession Laws – Joint Hindu Family – Partition – Equal share of daughter- Hindu Succession (Amendment) Act 2005, Section 6(5) – Whether 3rd Defendant entitled to 1/5th share in suit property in view of introduction of Hindu Succession (Amendment) Act whereby daughter entitled to equal share along with his son – Held, Section 6(5) of Amended Act reads that nothing contained in section shall apply to partition effected before 20th day of December, 2004, but in present case, succession opened in 1996 – Decree of partition passed by trial Court on 2004 – Amendment to Hindu Succession Act will not enable 3rd Defendant to claim any share in suit property.

(2015) 2 MLJ 305

Lakshmi Automatic Loom Works Ltd

vs.

Vibromech E&S Ltd

Date of Judgment : 23.12.2014

- A Contract – Payment in discharge of claim – Suit for recovery of interest – Maintainability of – Appellant/Plaintiff supplied castings to Respondent/Defendant Company – Since due amount not paid, Appellant filed company petition for winding up, same dismissed with order to deposit amount – After giving credit to all payments, sum remained due towards interest – Suit for recovery of interest, dismissed holding that Appellant could not separately maintain suit for recovery of interest alone – Whether payment made during pendency of company petition was in full discharge of claim of Appellant – Whether Appellant could maintain suit for recovery of interest alone when entire principal amount paid during pendency of proceedings – Held, nowhere in Sale of Goods Act or Indian Contract Act, it is stated that in absence of contract for payment of interest, supplier of goods not entitled to claim interest for delayed payment – When debtor makes payment, creditor shall have option of applying it towards interest at first instance and then balance towards principal – Payments by Respondent during pendency of proceedings not accepted by Appellant in full discharge of claim – Liability towards interest accrued till payment of principal debt shall continue even after payment of principal amount of debt – Appellant proved amount due from respondent as on date of filing of suit – Dispute present regarding amount to be paid as interest – Appellant entitled to decree as prayed for – Appeal allowed.
- B Civil Procedure – Suit for recovery of interest – Maintainability of - Res judicata – Code of Civil Procedure, 1908, Order II Rule 2 – Whether judgment of declining relief of winding up absolved Respondent from making payment of interest on amount due to Appellant – Held, Appellant prayed for winding up against Respondent projecting principal as well as interest components towards liability – Question whether amounts paid by Respondent were in full discharge of claim in respect of price of castings supplied not decided in company petition or appeal arising therefrom – Neither company petition nor judgment pronounced in appeal arising from company petition declining winding up of Respondent company provide bar for present suit.

2015 (2) CTC 420

G.R. Nathan @ G.R. Vaikunthanathan

vs.

P.S. Jagadeesa lyengar (died)

Date of Judgment : 23.03.2015

Tamil Nadu Buildings (Lease and rent Control) Act, 1960 (T.N. Act 18 of 1960), Section 10 – Payment of Rent to person other than Landlord – Whether ‘wilful default’ – Term ‘wilful’ refers to a conscious and deliberate act – Default committed intentionally with knowledge of its legal consequences would amount to ‘wilful default’ – Eviction of Tenant sought for non-payment of Rent from November 1992 for three months – Tenant contending that he had remitted Rent for said period to one ‘S’ - Said ‘S’ not Landlord and he himself denied ownership of tenanted premises – No permission obtained from Landlord for remitting Rent to ‘S’ – In such circumstances, held, Tenant had committed default willfully by denying ownership of Landlord – Order of Eviction granted on account of willful default in payment of rent committed by Tenant, upheld – Civil Revision Petition dismissed.

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (T.N. Act 18 of 1960) Tenant premises, whether required for own use and occupation – Requirement of Landlord to establish a separate Residential premise for family of deceased’s elder brother, established to be genuine by Courts below – Fact that Landlord was living in Joint Family would not mean that separate establishment cannot be set up for his deceased brother’s family – Order of Eviction granted on ground of Landlord’s requirement of tenanted premises for own use and occupation, upheld.

(2015) 2 MLJ 421

Rani

vs.

Rajamani

Date of Judgment : 10.02.2015

- A Succession Laws – Partition – Validity of Will – Necessary parties – Hindu Succession Act, 1956, Section 8 – Respondents 1 to 3/Plaintiffs filed suit for partition by virtue of bequest made by Will dated 1997 – Appellant/4th Defendant disputed validity of Will dated 1997 but claimed Will dated 1992 as last Will – Trial Court held Will dated 1997 as genuine, that 3rd Defendant acquired title by adverse possession of terraced house and granted partition – Appeal – Whether preliminary decree for partition can be sustained – Whether Will dated 1997 propounded by Respondents 1 to 3/Plaintiffs and Will dated 1992 propounded by Appellant/4th Defendant and 3rd Defendant proved – Held, Testator had son, who predeceased him leaving behind widow and daughter – In case where Will propounded by party for establishing right to property, other not-testamentary legal heirs, who would get share in event of failure of wills, are necessary parties – Neither Plaintiffs nor Defendants made widow and daughter of predeceased son of testator as parties to suit – Preliminary decree of partition set aside and remitted back – Question of validity of will not finally decided since necessary parties not impleaded – Appeal allowed.
- B Property Laws – Adverse possession – Whether trial court’s finding that 3rd Defendant perfected title by adverse possession in respect of terraced house is perverse – Held, no concrete evidence adduced to prove that adverse possession was perfected – Possession of 3rd Defendant only permissive possession – Finding that 3rd Defendant perfected title by adverse possession to terraced house cannot be sustained.

2015 (2) CTC 465

B.K. Rangachari

vs.

L.V. Mohan

Date of Judgment : 03.03.2015

Transfer of Property Act, 1882 (4 of 1882), Section 126 – Cancellation of Settlement Deed – Whether valid – Suit for bare Injunction – Relief of recovery of possession added subsequently – Suit property originally purchased by Father/Third Plaintiff in name of his Son/Defendant – Defendant executing Settlement Deed in favour of father on ground that father had made several contributions to him – Subsequent, unilateral revocation of Settlement Deed

by Defendant on ground that Deed was executed without any intention and it was a sham document – Held, revocation of Settlement Deed only possible through Civil Court when either fraud, undue influence or coercion is established – In instant case, Revenue records mutated in name of donee, Third Plaintiff, proving that he had acted upon Settlement Deed – Defendant only claiming that Settlement Deed was sham and not alleging fraud, misrepresentation, undue influence, or coercion – Unilateral revocation of Settlement Deed without intervention of Civil Court, held, unsustainable – Defendant failing to establish that Cancellation Deed was within parameters of Section 126 – Act of Third Plaintiff in ignoring Cancellation Deed and creating third party interest in property, upheld – Suit for injunction and delivery of possession, decreed – Second Appeal allowed.

HIGH COURT CITATIONS CRIMINAL CASES

(2015) 2 MLJ (Crl) 1

Sangeetha
vs.
A. Raja

Date of Judgment : 03.03.2015

Negotiable Instruments – Dishonour of cheque – Time barred debt – Negotiable Instruments Act (NI Act), Section 138 - Limitation Act, Articles 28 and 34 – Respondent borrowed sum from Appellant by loan agreement – Cheque issued but returned as insufficient funds – Trial Court acquitted Respondent/accused for offence under Section 138 of NI Act – Appeal – Whether cheque has been issued for discharging legally subsisting liability – Held, duty of person who pleaded discharge of entire loan amount must prove same – To prove discharge, Respondent neither filed any scrap of paper nor let in any evidence to show that discharged same – In loan agreement dated 2003, it is stated as 11 months for repayment of loan – After 11 months from Loan Agreement, cause of action arose – Cheque issued on 2006 and was well within three years as per Articles 28 and 34 of Limitation Act – Trial Court wrongly acquitted accused on ground that cheque issued for time barred debt – Since Trial Court not properly appreciated legal position and also document, judgment of acquittal set aside – Respondent convicted under Section 138 of NI Act – Appeal allowed.

(2015) 2 MLJ (Crl) 23

A.V. Ravichandran
vs.
Sri Gokulam Chit & Finance Co. Pvt. Ltd.

Date of Judgment : 13.02.2015

Negotiable Instruments – Dishonour of cheque – Expert Opinion – Legal Debt – Negotiable Instruments Act, 1881, Section 138 – Code of Criminal Procedure, 1973, Section 313 – Cheque in favour of Respondent/Complainant returned dishonoured with insufficient funds – Statutory notices issued by Complainant – Since no reply from Petitioner, Respondent/Complainant filed complainant against Petitioner for offence under Section 138 Act 1881 – Petitioner filed petition for direction to send disputed cheques to Forensic Science Department to get expert opinion – Petitioner alleged that cheques were issued for security purpose only – Complainant stated that cheque were issued for legal debt and liability in favour of Respondent/Complainant and not as security – Lower Court found that statutory notices issued prior to filing of complaint in each cases have not been replied – Also stated that there is no scientific method or expert of find out age of ink in disputed document – Whether grounds raised by Petitioner that unless handwriting and age of ink determined by expert, it would amount to denial of opportunity to Petitioner and that cheques issued only for security purpose not for sake of legal liability correct – Held, notice issued to pay cheque amount, Petitioner neither responded by sending any reply nor made any payment – When Petitioner had opportunity to raise dispute over date mentioned in cheque, he had not chosen to do so – When Petitioner was questioned under Section 313 Code 1973 he had not said anything about age of cheque or any misuse of cheques – After long years from date of institution of complaint, without reply, evidence adduced under Section 313 questioning new cause, alleging dates in cheques have been subsequent to closure of chit amount, prayer to send them for expert opinion sought for – Attempt to protract proceedings is per se apparent – None of the reasons assigned by Lower Court for dismissal of Petitions, said to be untenable, warranting any interference – Revision dismissed.

(2015) 2 MLJ (CrI) 36

Pattu

vs.

Maduraiveeran

Date of Judgment : 23.02.2015

Domestic Violence – Compensation - Protection of Women from Domestic Violence Act, 2005(Act 2005), Section 12 – Pending main case for maintenance, Petitioner filed petition under Section 12 of Act 2005 claiming interim reliefs, same dismissed - On appeal, Lower Appellate Court found that there was no proof of domestic violence and no prima facie case also made out – Revision – Whether finding of Lower Appellate Court justified – Held, Lower Court observed that points for interim relief to be gone into only at time taking main case and main petition also ready for final disposal – Lower Appellate Court held that in application for interim relief, no averments to that effect with regard to commission of Act 2005, but concluded that impugned order passed by Lower Court needs no interference – Lower Appellate Court also touched upon merits of matter – Deciding interim application on basis of merits of main matter need to be gone into by Lower Appellate Court and observation made by Lower Appellate Court in that regard need to be expunged and same expunged – Respondents ready and willing to cooperate with Trial Court for expeditious disposal – Additional Mahila Court directed to give preference and dispose of pending main case – Revision case disposed of.

(2015) 2 MLJ (CrI) 39

S. Veeralakshmi

vs.

Superintendent of Police

Date of Judgment : 03.02.2015

Criminal Procedure – Re-test of DNA – Prayer for - Code of Criminal Procedure, 1973, Section 482 – Petitioner made complaint against 4th Respondent alleging sexual intercourse on promise to marry – Petitioner became pregnant and gave birth to male child – Court directed DNA test for knowing paternity of child which opined that 4th Respondent excluded from paternity of male child – Present petition to direct Respondents to conduct re-DNA test – Whether it is appropriate to order re-test of DNA when there is already DNA test report available – Held, when report of DNA test conducted earlier available on file, against which no reasonable defect or allegations of mala fide made out, same cannot be easily brushed – Earlier DNA test cannot be treated as doubtful or set aside merely on bald and vague allegations by party against whom result of test declared negative – When already DNA test report available, no need to order second DNA test unless proved by party who raised objections that same exposed to reasonable degree of suspicion – To avoid unnecessary doubts in minds of parties, necessary that blood samples to be taken in presence of each other and send to lab – Entire process can be recorded by video at expenses of party interested in such video recording – Directions issued – Petition dismissed.

(2015) 2 MLJ (CrI) 52

R. Balasubramaniam

vs.

Inspector of Police

Date of Judgment : 24.02.2015

Discharge – Framing of charge - Indian Penal Code, 1860, Sections 120-B r/w 409, 420, 465 – PC Act 1988, Section 13(2) r/w 13(1)(d) – Indian Evidence Act, Section 47 – Allegation that though Petitioner not authorized signatory of A1/Company in question, in connivance with other accused, signed false purchase orders on behalf of A1 – By issuing false purchase orders, loan issued to A1 and wrongful loss caused to Bank – Petition arrayed as accused – Petition to discharge, same dismissed – Revision – Whether Court can go into admissibility or relevancy of material collected during investigation at time of framing charge – Whether charge can be framed against

Petitioner on basis of statement of witnesses – Held, LW 40 stated that purchase orders signed by Petitioner though not authorized signatory of company in question – LW 42 and LW 45 also deposed about involvement of Petitioner – When witness says that signature was that of accused, no necessity for witness to state during investigation, manner in which he was acquainted with signature – It is for Public Prosecutor to call for explanation or for defence to elicit in cross-examination about same – At time of framing charge, court under no obligation to make elaborate enquiry and need not consider relevancy or admissibility of statement – Court to form common opinion whether any prima facie case made out on basis of materials collected during investigation – Charge rightly framed – Petition dismissed.

2015-1-L.W. (Cr.) 460

S. Prakash
Vs.
A.Palaniappan

Date of Judgment : 24.02.2015

Negotiable Instruments Act (1881), Sections 138, 139,35(d),proviso,

Stamp Act, Section 35, unstamped power of attorney, admissibility,

Practice/power of attorney, unstamped, admissible.

Power of attorney not duly stamped and executed whether can be admitted in evidence – Passing of consideration, whether proved.

Held: As per section 35(d) proviso, instrument not duly stamped, can be received in evidence in criminal cases – Admissibility of a document has to be decided before marking the same – power of attorney admitted by the principal is a admissible in evidence – signing by the power agent in the place earmarked for the principal and the principal signing in the place earmarked for agent will not invalidate the power of attorney – Failure to put the signature in the first two stamp papers will not also invalidate the power of attorney – Trial Court erred in rejecting the power of attorney as inadmissible as it was not duly stamped – Payee's name was written in one ink and the remaining body of the cheque was written in another ink, cannot be presumed cheque is not a valid document.

Passing of consideration – proof of – Cheque issued in favour of one of the members of HUC – Effect of – complainant being a member of the HUC is entitled to receive the cheque drawn in his favour.

2015-1-L.W. (Cr.) 525

Abdul Khader & Ors
Vs
K. Pechiammal Child Marriage Prohibition Officer

03.03.2015

Prohibition of Child Marriage Act (2006), Marriage of minor girl, prevention of,

Shariat Act (1937), Marriage of minor girl.

Respondent, a child marriage prohibition officer sought an injunction against petitioner and another from arranging a child marriage – It was granted – Challenge to that Order restraining solemnizing marriage of a muslim girl until she completes 18 - whether proper – Right to practice that which personal law allows – Scope.

Held: practice would run counter to the social objective of the provisions of the prohibition of child marriage act aimed to prevent the evil practice of solemnization of child marriages in the country towards enhancing the health of child and the status of women.

(2015) 1 MLJ (Crl) 645

R. Balamurugan

vs.

State rep. by the Superintendent

Date of Judgment : 08.01.2015

Search – Seizure of Contraband – Search of Person – Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 8(c), 21(c), 50 and 67 – Based on complaint by Respondent, Trial Court found Appellant/accused guilty under Section 8(c) read with Section 21(c) – Trial Court also found that accused not guilty under Section 8(c) read with Section 25 and Section 8(c) read with Section 29 and further directed period of sentence already undergone to be set off – Appeal with allegation that accused was informed that he can also be searched in presence of PW-8/Gazetted Officer, said information was in violation of Section 50 – Whether accused guilty under Section 8(c) read with Section 21(c) – Whether information by accused that he can also be searched in presence of PW-8 was in violation of Section 50 – Held, testimonies of PW-1, PW-8 and independent witnesses and Section 67 would disclose that apart from accused being informed of his right to be examined and searched in presence of Magistrate and Gazetted Officer, also informed that it can be done in presence of PW-8/Gazetted Officer – Ex.P-1/Special report submitted by PW-1 to PW-8 show that they nabbed accused and effected seizure of contraband – Adoption of procedure in impugned order fatal to facts on record – Conviction and sentence imposed against accused set aside – Accused acquitted – Appeal allowed.

(2015) 1 MLJ (Crl) 685

A. Periyasamy

vs.

State by the Inspector of Police

Date of Judgment : 02.03.2015

Prevention of Corruption – Illegal Gratification – Conviction and Sentence – Prosecution Evidence – Prevention of Corruption Act (P.C.), Sections 7, 20 and 13(2) r/w 13(1) (d) – Indian Penal Code, 1860, Section 201 r/w/ Section 511 – Code of Criminal Procedure, 1973, Section 313 – Prosecution Witness(PW)/Complainant approached Appellant/Accused to obtain death certificate of his father – Appellant alleged to have demanded bribe to make entry in Death Register – PW lodged complaint – Trap initiated, Appellant found guilty in getting bribe amount – Trial Court found Appellant/Accused guilty of offences under Sections 7 and 13(2) r/w 13(1)(d) of P.C. Act and 201 r/w. 511 IPC – Appeal – Whether PW/Defacto complainant who turned hostile can be ground to setting conviction – Whether evidence of Prosecution sufficient to hold Appellant guilty for offence committed – Held, merely because Complainant turned hostile, his evidence cannot be discarded and hostile witness can be considered on the basis of corroboration made by other available witness – Evidence of PW/Complainant during examination stated that PW/Friend of Defacto complainant instigated Complainant to give complaint – PW/Friend in his evidence stated that he was not aware whether amount has been demanded for kist and whether he handed over kist receipt – No evidence to show that Appellant demanded bribe for making entry in Death Register – No evidence to show that Appellant demanded bribe for making entry in Death Register – No evidence to prove Appellant received illegal gratification and Respondent not entitled to invoke presumption under Section 20 P.C. Act - Appellant proved that amount received by him is only for kist land revenue – De-facto complainant not support case of prosecution about second demand and acceptance, except PW/Shadow/Trap witness, and not an independent witness and it needs corroboration – Trial Court failed to consider written statement filed along with Section 313 Code 1973 questioning, also documents filed and evidence of Defence Witness – Mere recovery not sufficient base for conviction – Plausible explanations submitted by Appellant not considered by Trial Court – Prosecution failed to prove that accused is guilty under Sections 7 and 13(2) r/w 13(1)(d) of P.C. Act – Conviction and sentence imposed by Trial Court against Appellant set aside – Appellant acquitted – Appeal allowed.

(2015) 1 MLJ (Crl) 700

Saravanan

vs.

State by the Inspector of Police

Date of Judgment : 10.02.2015

Murder – Circumstantial Evidence – Minor witnesses – Indian Penal Code, 1860, Section 302 – Indian Evidence Act, 1872 (Act 1872), Section 106 – Appellant/accused under guise of giving chocolate, taken deceased to house and had carnal intercourse – Since accused apprehended that overacts would be divulged, deceased was put up in gunny bag and attacked using crowbar causing death – Conviction and sentence – Appeal – Whether prosecution established guilt of accused even without speck of doubt – Held, PWs.3, 4 and 7 given consistent evidence that accused was seen together with deceased for last time – As per Section 106 of Act, 1872 entire burden lies upon accused to show as to what happened to deceased, but accused failed to discharge said burden – Though PWs.3, 4 and 7 are minor witnesses but evidence were consistent – Since PWs.3, 4 and 7 adduced evidence independently without any bias or motive, evidence cannot be eschewed – Since father of deceased identified pant, shirt worn by deceased where dead body was found, needless to say that dead body was of deceased – No incertitude to conclude that dead body subjected to autopsy was body of deceased – Autopsy and superimposition test cannot be discarded in toto – Appellant was real accused who slayed deceased –Appeal dismissed.
