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IMPORTANT CASE LAW



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TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Pawan Kumar vs. Gupta B.R.Gupta	2017 (6) Scale 304 :: 2017 (14) SCC 541:: 2017 (4) Supreme 446 :: 2017 (0) Supreme (SC) 466:: CDJ 2017 SC 631	09.05.2017	<u>Rent Control – Delhi Rent Control Act, 1958 – Section 14(1)(a) & 15(1) -</u> No Condonation Of Delay In Payment Of Rent For Wilful Defaulters. Tenant should plead with justifiable reasons which would show that he was prevented from compliance by circumstances beyond his control. Eviction order passed against the tenant u/s.14(1)(a) of the Act – upheld.	01
2	Nithya Anand Raghavan vs. State of NCT of Delhi and another	2017 (6) CTC 637 :: 2017 (8) SCC 454 :: :: AIR (SC) 3137 :: 2017 (7) Scale 183 :: 2017 (7) MLJ 54 :: CDJ 2017 SC 744	03.07.2017	<u>Guardians and wards Act, 1890(8 of 1890), Section 7 – Hindu Minority and Guardianship Act, 1956 (32 of 1956), Section 13</u> – Welfare of minor is paramount consideration – minor girl child brought to India from Foreign Country by her mother – Foreign Court ordered return of minor – effect of Foreign Court order – Indian court of competent jurisdiction must “ordinarily” decide issue merits – Pre-existing order of foreign Court only one of factors to be considered – Order of Foreign court must yield to welfare of child – Indian Court can decline return of Child if : (i) child now settled in its new environment ; or(ii) return would expose child to physical or psychological harm, or otherwise place child in intolerable position; or (iii) child quite mature and objects to its return – <i>Forum conveniens</i> not a factor in Wardship jurisdiction.	01
3	Mukund Dewangan vs. Oriental Insurance Company Limited	CDJ 2017 SC 976 :: 2017 (7) Scale 731:: 2017 AIR (SC) 3668 :: 2017 ACJ 2011 :: :: 2017 (6) MLJ 341 :: 2017 (2) TNMAC 145	03.07.2017	<u>Motor Vehicles Act, 1988 (59 of 1988)</u> - Driver holding License to drive Light Motor Vehicle can drive transport vehicle of such class without any endorsement. The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the categories which were substituted	02

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				in the year 1994 and the procedure to obtain driving license for transport vehicle of class of “light motor vehicle” continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle.	
4	Vithal Rao and Another vs. Special Land Acquisition Officer	2017 (6) MLJ 227 (SC) :: LNIND 2017 SC 310 :: 2017 (4) LW 648:: 2017 AIR (SC) 3330 :: 2017 (7) Scale 582	07.07.2017	<u>Property Laws</u> – Land acquired was large chunk of land, thirty acres approximately – purpose of acquisition was “Establishment of Rehabilitation Centre” and situated within municipal limits – some buildings came up in its near proximity - Appellants did not file exemplar’s sale deeds relating to large piece of land sold in acres to prove market value of acquired land – All sale deeds relied on by Appellants pertain to very small piece of land and those plots sold prior to date acquisition – small parcel of lands sold under those sale deed situated in near proximity of acquired land and some were part of acquired land – all sale deeds held bona fide and proper –those sale deeds could be relied on for determining proper market value of acquired land – it would be just, fair and proper to take out average value of those plots – acquired land not fully developed – it would be just, fair and proper to deduct 40% of amount towards development charges out of average price worked out – such deduction permissible in law – after deducting 40% towards development charges, market value arrived at.	03
5	Punjab State Civil Supplies Corporation Ltd. and another vs. Atwal Rice and General Mills, Rep by its Partners	2017 (6) CTC 628 :: 2017 (4) LW 658 :: 2017 (8) SCC 116 :: 2017 (7) Scale 691:: 2017 (6) MLJ 326 :: 2017 AIR (SC) 3756	11.07.2017	<u>Arbitration and Conciliation act, 1996 – S.34 r/w Or.21, Rr.1 & 2 CPC</u> – Arbitral award enforced like decree of Civil Court by applying provisions of Order 21 of Code 1908 and other provisions, which deal with execution of decree of Civil Court - Objections were not capable of being tried in execution proceedings to challenge award – They were on facts and	03

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				pertained to merits of controversy, which decided by Arbitrator resulting in passing of award – none of the objections were in relation to jurisdiction of court affecting root of passing of decree – Inquiry into facts, which ought to have been done in suit or in appeal arising out of suit or in proceedings under Section 34 of 1996, cannot be held in execution proceedings in relation to such award/decreed.	

SUPREME COURT - CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	State of Himachal Pradesh vs. Nirmala Devi	2017 0 Supreme (SC) 331:: AIR 2017 SC 1981 :: 2017 (2) MWN (Cr) 161 :: 2017 (3) MLJ (CrI) 70 :: 2017 (7) SCC 262 :: 2017 (3) SCC (Cr) 380	10.04.2017	<p><u>A. Criminal Procedure Code, 1973 – Ss.386 & 374</u> – Powers of appellate court to alter sentence – scope – statutory provision concerned (in IPC) providing for punishment of imprisonment and that person convicted “and shall also be liable to fine” in respect of offences concerned – substituting statutory punishment of imprisonment and fine, with fine alone – impermissibility – appellate court cannot alter punishment/sentence under S.386 Cr.P.C contrary to law.</p> <p><u>B. Criminal Trial – Sentence</u> – Principles for sentencing – Gender of accused – if and extent to which can be considered a mitigating factor – Held, though in many countries gender is not mitigating factor but in India it is taken as relevant circumstances while fixing quantum of sentence would depend on facts of each case and no hard-and-fast rule can be laid down.</p> <p><u>C. Criminal trial – Sentence</u> – Principles for sentencing – discretion of court – exercise of, in cases where statute concerned specifies only maximum sentence, but no minimum sentence – parameters for.</p> <p><u>D. Criminal Procedure Code, 1973 – Ss.386(b)(i) & (iii)</u> – “Reverse the finding and sentence” and “alter nature or extent, or nature and extent of sentence” – difference between, explained – substituting statutorily mandated punishment with punishment not contemplated by statute concerned – impermissibility.</p>	05

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
2	Charandas Swami vs. State of Gujarat and another	2017 0 Supreme (SC) 324:: 2017 (4) SCALE 403:: 2017 (2) MLJ (CrI) 444::2017 CrLJ 2904:: 2017 (7) SCC 177:: 2017 (3) SCC (Cr) 343	10.04.2017	<u>Indian Penal Code, 1860(Code 1860), Sections 302, 120-B, 364 and 201</u> – Sessions court convicted all five accused for offence sentenced them to death – Accused were also convicted for sec 364 r/w 120-BIPC - sentenced to rigorous imprisonment for life – on appeals filed, High Court acquitted accused No.4 of said offences – Appeals file by accused Nos.1 and 2 and 5 – Whether High Court justified in upholding conviction of accused Nos.1, 2 and 5 –conduct of accused No.3 in misleading investigating agencies - Appeals dismissed.	05
3	Lovely Salhotra And another vs. State NCT of Delhi and another	CDJ 2017 SC 562:: 2017 AIR (SC) 2595 :: 2017 0 Supreme (SC) 862	10.04.2017	<u>Criminal Procedure Code (2 of 1974), Ss.482, 154</u> – Quashing of FIR – informant alleging commission of offences under Ss.420, 494, 506 and 34 of Penal Code as counterblast to criminal complaint filed against him under S.138 of Negotiable Instruments Act – to pressurize complainant not to prosecute criminal complaint filed by him – FIR liable to be quashed in part.	06
4	State of Rajasthan vs. Ramanand	2017 (5) SCC 695:: 2017 (2) SCC (CrI) 632:: 2017 AIR 2100 (SC) :: 2017 3 Supreme 770:: 2017 0 Supreme (SC) 327	11.04.2017	<u>Penal Code, 1860 – Ss.302 & 201 or S.306</u> — Circumstantial evidence – death by strangulation or by burning - the deaths could never be termed as a case of suicide and consequently the conviction of the respondent under Section 306 by lower court was wholly unjustified. At the same time there is nothing on record to conclusively establish that the respondent was the author of the crime. The circumstances on record do not rule out every other hypothesis except the guilt of the accused. However strong the suspicion be, in our view, the respondent is entitled to benefit of doubt and cannot be convicted under Section 302 IPC.	06

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
5	Sudha Renukaiah and others vs. State of Andhra Pradesh	CDJ 2017 SC 432 :: 2017 (4) Scale 624 :: 2017 AIR (SC) 2124	13.04.2017	<p><u>Criminal Law – IPC – Section 302/149 – Cr.P.C. – Section 386 -</u></p> <p>Murderous assault – acquittal by trial Court reversed in appeal, by the High Court – sustainability of judgment of conviction – enmity between parties – injured eye-witnessess who fully supported the prosecution case and proved roles of different accused – Prosecution case cannot be negated on the ground that it was a case of group rivalry – The High Court, thus, in our opinion did not commit any error in reversing the order of acquittal and convicted the accused. From the eye-witnesses account, as noticed above and for the reasons given by the High Court in its judgment, we are of the view that High Court is correct in setting aside the order of acquittal and convicting the accused.</p>	07

MADRAS HIGH COURT – CIVIL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Alupro Building Systems Pvt. Ltd. vs. Ozone Overseas Pvt. Ltd.	CDJ 2017 DHC 077	28.02.2017	<u>Arbitration and Conciliation Act, 1996 – Section 34 – Arbitration clause – Setting aside of arbitration award</u> – The running theme of the Act is the consent or agreement between the parties at every stage, Section 21 performs an important function of forging such consensus on several aspects viz. the scope of the disputes, the determination of which disputes remain unresolved; of which disputes are time-barred; of identification of the claims and counter-claims and most importantly, on the choice of arbitrator. Thus, the inescapable conclusion on a proper interpretation of Section 21 of the Act is that in the absence of an agreement to the contrary, the notice under Section 21 of the Act by the claimant invoking the arbitration clause, preceding the reference of disputes to arbitration, is mandatory. In other words, without such notice, the arbitration proceedings that are commenced would be unsustainable in law.	09
2	Comorin Match Industries Pvt. Ltd., vs. Alagarsamy and other	2017 (3) CTC 722 :: 2017 (4) MLJ 530 :: 2017 0 Supreme (Mad) 608	07.04.2017	<u>Trade Mark</u> – Infringement of Registered Mark – suit for injunction – trial court dismissed suit – plaintiff and defendants are manufactures of Match Boxes – plaintiff's mark is registered – Defendants' mark is unregistered – Defendants have adopted marks, similar to that of Plaintiff – Concept as whole has been copied – Defendants could have conceived different image – they attempted to trample goodwill created by Appellant – Plaintiff entitled to protection. A Trade Mark involves picturisation of a particular label and such picturisation normally is very closely related to the product. There are	09

				<p>examples in any health drink or a food product and the label has a direct connection between the product and the mark. There is a connection between the product and the label. In such case, if a competitor adopts a similar label, a claim can be taken that the said label is related to the very same product and therefore, the Courts have adopted the procedure of comparing the two labels to find out the similarities and dissimilarities.</p> <p>Held, that the protection of Registration cannot be narrowed down to protect only the design and colour of the trade Mark but it should be extended to protect the concept or the idea behind such an image.</p>	
3	S.Vivekanandan vs. Tahsildhar	CDJ 2017 MHC 2988	10.04.2017	<p><u>The Tamil Nadu Land Encroachment Act, 1905</u> Petitioner encroached and put up Samadhi, later claimed assignment of land in his favour - assignment only for landless farmers.</p>	10
4	Deputy Director of Medical Services, Dharmapuri vs. Velvizhi and other	CDJ 2017 MHC 3736	18.04.2017	<p><u>The Motor Vehicles Act, 1988</u> - The Criminal Courts judgments are neither binding on the Civil Court/Motor Accident Claims Tribunal nor relevant in a Civil case or a claim for compensation under the Motor Vehicles Act, except for the limited purpose of showing that there was a criminal prosecution which ended in conviction or acquittal. But there is an exception to the general rule. When an accused pleads guilty and is convicted based on his admission, the judgment of the Criminal Court becomes admissible and relevant in Civil proceedings and proceedings before the Motor Accident Claims Tribunal, not because it is a judgment of the Criminal Court, but as a document containing an admission. Of course, admissions are not conclusive proof of the facts admitted therein unless and until they are proved to be incorrect or false by the person</p>	10

				against whom the admissions are sought to be used as evidence.	
5	MD, Metropolitan Sate Transport Corporation vs. P.L.Rajeswari and another	CDJ 2017 MHC 3089	19.04.2017	<p><u>Motor vehicle Act, 1988 – Section 173 – Compensation – Enhancement</u> – Income tax, Professional tax which are deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, L.I.C., Contribution are amounts paid specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason - the compensation payable under the Motor vehicles Act is statutory and that the deferred payments made to the employee are contractual. There cannot be any deductions in the statutory compensation, if the Legal Representatives are entitled to lumpsum payment under the contractual liability. If the contributions made by the employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing. The dependency compensation, then the Legal Representatives of the victim would less considerable portion of income. Any contribution made by the employee during his life time, form part of the salary and they should be included in the monthly income, while computing the dependency compensation.</p>	10
6	G.Venkatachalam vs. A.P.Kuppuraj and Others	CDJ 2017 MHC 2657 :: 2017 (3) LW 68 :: 2017 (4) CTC 32 :: 2017 0 Supreme (Mad) 820	21.04.2017	<p><u>Code of Civil Procedure, 1908 (5 of 1908), Order 41, Rule 27</u> — Application for accepting ‘Settlement Deed’ as additional evidence filed at Appellate stage – Application considered independently and allowed by Trial Court – need of documents for deciding issue in case only to be determined at time of hearing of final appeal – In instant case, approach adopted by Appellate</p>	11

				Court in deciding application independently, without hearing main Appeal, held, not in consonance with principles governing Order 41, Rule 27 – Order of Appellate Judge, set aside – Application remanded and directed to be considered in accordance with Principles laid down by Apex Court in union of India vs. Ibrahim – Appeal allowed.	
7	Y.Mariya Selvam vs. E.Yesuraj and 4 others	2017 (6) CTC 579 :: 2017 (6) MLJ 68	07.06.2017	<u>Contract – Specific Performance</u> – Unexplained delay in approaching Court would show that Plaintiff was not willing to perform his part of contract in terms of agreement.	11
8	Mohamed Diwan and others A.Venkaesh and another	2017(3) MWN (Civil) 565 :: 2017 (5) MLJ 119	07.06.2017	<u>Tamil Nadu Buildings(Lease and Rent Control) Act, 1960,(T.N. Act 18 of 1960) – Code of Civil Procedure, 1908(5 of1908), Order 1, Rule 10</u> – Landlord of property sought fixation of fair rent and order passed therein was subjected to appeal – during appeal, such landlord sold said property to present landlord – present landlord sought eviction of tenant on ground of willful default of rent payable under order for fixation of fair rent – tenant sought to implead original landlord – present landlord secured all interest in decree obtained by earlier landlord – earlier landlord not necessary party.	12
9	Idol of Sri Renganathaswamy vs. Charitable and Religious Trust	2017 (6) MLJ 157 :: CDJ 2017 MHC 7524	20.06.2017	<u>Trust and Charities – Sale of Properties – Permission of Court – Charitable and Religious Trusts Act, 1920(Act 1920), Section 7 – Code of Civil Procedure, 1908(Code 1908), Section 92(1)(f) and Order 7 Rule 1</u> – Plaintiff Trust represented by its hereditary trustees/1 st to 6 th Respondents filed suit against 7 th Respondent/Defendant for permission to sell suit properties to 8 th Respondent and for direction to purchaser to deposit sale proceeds into Court – Trial Court granted permission to sell items 1 to 6 of suit properties and dismissed the suit in respect of items 7 and 8 – aggrieved, appeal filed by appellant/ third	12

				<p>party/idol represented by its executive officer – whether judgment and decree of trial court to be set aside – held, Plaintiff was not proceeding under section 92(1)(f) – Defendant said no objection to sell property – Judgment without jurisdiction void – there was no direction as to surplus income from properties and further evidence was necessary in present case – appellant filed a petition to receive document as additional evidence – oral evidence was necessary to connect such documents to suit properties – no direction in judgment to sell property by public auction – court not fixed reserve price – judgment of trial court suffers from infirmities – matter require fresh consideration – judgment and decree of trial court set aside – suit remanded to trial court for fresh disposal in accordance with law.</p>	
10	<p>S.Thiagarajan vs. Supreme Pipe Syndicate through its partners, Sajarath Thaiyaba and S.Rahmathullah</p>	<p>(2017) 3 LW 953 :: 2017 (6) CTC 723 :: CDJ 2017 MHC 5479</p>	05.07.2017	<p><u>Constitution of India, Article 227 – Partnership Act, 1932(9 of 1932), Section 69(2)</u> – Strike off Plaintiff – Abuse of process of law – frivolous and vexatious suit – suppression of material facts – Tenancy dispute – tenant filed RCOP for deposit of rent - suit for permanent injunction not to interfere with their peaceful possession except by due process of law against landlord – Civil Court granted ex parte injunction – landlord has no privity of contract with unregistered firm which instituted suit – suit instituted by unregistered firm against third party is not maintainable.</p>	13

MADRAS HIGH COURT – CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Rabindra Kumar Bhalotia and Others vs. State rep. by Inspector of Police, Central Bureau of Investigation, Anti-Corruption Branch, Chennai and Others	CDJ 2017 MHC 7308	28.11.2017	<u>Constitution of India - Article 20(3) - Criminal Procedure Code, 1973 - Section 53, Section 53A,, Section 54, Section 311(A), Section 397, Section 401</u> - Voice of accused can be sent for forensic analysis, and it does not come within purview of Art.20(3). The three Bench Judges in Selvi case, it is amply clear that drawing voice sample fall within the meaning of physical evidence of non-testimonial character and not within the meaning of testimonial compulsion. Any methodology which does not have the trappings of invasiveness is permissible in law. Therefore, this Court finds no merit in these Revision Petitions. Hence all these Criminal Revision Petitions are liable to be dismissed.	14
2	A.N.Chandru vs. K.Jayasankar	2018 (1) MWN (Cr.) DCC 100 :: 2017 (2) LW (CrI) 842	30.11.2017	<u>Negotiable Instruments Act, 1881 (26 of 1881), Sections 138 & 139 – Dishonor of Cheque</u> – Case of Complainant that accused borrowed Rs.50,000/- by executing Pro-note/ex.P1 and issuing cheque for Rs.60,000/- accused in questioning under Section 313, Cr.P.C. denied having issued any Cheque - during examination as DW1, accused state that Cheque was issued by him only as Security – stand taken by accused that same issued as security without obtaining any loan, held not acceptable, when accused is not an ordinary rustic/illiterate villager but a practicing advocate. Secondary Evidence – admissibility – photocopy of promissory note marked as Ex.P1 – no objection taken by accused at	14

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				time of marking – objection must be taken at earliest so as to afford opportunity to party to rectify deficiency – statutory notice of demand – service of – proper service – accused, a practicing advocate, and junior under another Advocate “S” - notice sent by complainant received by “S” – another notice sent to village address of accused by certificate of Posting – accused admitted in cross-examination that he was junior of “S” – no reply notice sent by “S” stating that accused was not his junior – order acquitting accused on ground of improper service of Notice, held not sustainable.	
3	Sangili @ Sangilimadasamy vs. State, Rep by The Inspector of Police Sankarankoil Taluk Circle, Kuruvikulam Police Station, Tirunelveli District	2018 (1) TLNJ 1 (Criminal) :: 2018 (2) MLJ (Cri) 23	21.12.2017	<u>Indian Penal Code, 1860, Section 302</u> – Murder – Appeal against conviction and sentence – all eye witnesses turned hostile – prosecution case thereby clings on the sole testimony of P.W.1 – Though house of PW1 is away from the scene of occurrence no explanation given by P.W.1 for his presence at the scene of occurrence – all the witnesses have testified that they know P.W.1, deceased and accused – but not supported the prosecution with regard to the incident – P.W.1 stand that his son/deceased went to the place of occurrence to take back his two wheeler left for repairing at the workshop of P.W.2 – But, P.W.2 deposed that the day of occurrence being Sunday his shop was closed – contradiction with regard to the registration of the case – P.W.1 stated that he had taken the complaint written by an unknown boy and on later stated that complaint was written by Police Constable – self contradictory – evidence of V.A.O	15

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				and IO regard to the arrest of the accused and recovery of M.Os., contradictory in nature – no evidence produced to prove the motive – Even occurrence happened in a busy locality no other witness supported the prosecution case – delay in sending inquest report, confession statement witness statement etc., sent to court – not explained – also delay in sending material object to forensic science lab – possibility of exaggeration and concoction – criminal appeal allowed.	
4	Premkumar Thangadurai and another vs. State by The Inspector of Police, Central Crime Branch, Team II, Vepery, Chennai	2018 (1) TLNJ (Criminal) 99	11.01.2018	<u>Criminal Procedure Code 1973, Section 397 & 401</u> – Permission to travel and stay at abroad and further to permit to appear before Court below on receipt of summons – petition – refused by trial court – Revision – on considering the affidavit of the petitioner, High Court modified the order of the court below and permitted petitioners to travel abroad – further directed court below to cause service of summons on petitioners by addressing the same to the e-mail address given by the petitioner – revision allowed.	15
5	V.Pechi vs. State by Deputy Superintendent of Police, Vigilance and Anti-Corruption, Special Cell, Coimbatore	2018 (2) MLJ (Crl) 67	31.01.2018	<u>Illegal Gratification – Recovery of tainted money – Prevention of Corruption Act, 1988, Section 7 and 13</u> – mere recovery of tainted money not sufficient to hold accused person guilty unless demand and acceptance was proved.	16
6	Ramachandran and another vs. Rajendran and others	2018 (2) MLJ (Crl) 71	31.01.2018	<u>Illegal Gratification – Demand and acceptance – Prevention of corruption Act, Sections 7 and 13</u> – Defacto Complainant/PW1's mother illegally felled tree in Government Poramboku land – 1 st accused/village Administrative	16

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				officer and 2 nd accused/village assistant demanded illegal gratification for not indicting PW1's mother – trap was arranged on complaint of PW1 – PW1 gave money to 3 rd accused/revenue inspector – 1 st to 3 rd accused/revenue inspector – 1 st to 3 rd accused charged for alleged offences under Section 7, 13(2) and 13(1)(d) – trial court acquitted 1 st and 2 nd accused however, convicted by 3 rd accused – appeal against conviction by 3 rd accused and revision Petition by PW1 against acquittal of 1 st and 2 nd accused – when there is no evidence to infer that money recovered from 3 rd accused was obtained by him as pecuniary advantage, abusing his official position and when money voluntarily given to him by PW1 under false protest – accused liable to be acquitted.	
7	Kannan vs. State, Rep. by The Inspector of Police, B-12, Ukkadam Police Station, (L&O), Coimbatore District.	2018 (2) MLJ (Crl) 76	07.02.2018	<u>Criminal Procedure Code - Section 374(2) – Indian Penal Code, 1860 – Section 302</u> –Extra-judicial confession, if voluntary and true and made in fit state of mind, same can be relied upon by Court – Confession will have to be proved like any other evidence – Value of evidence as to confession depends upon veracity of witness to whom it is made – It is not open to start with presumption that extra-judicial confession is weak type of evidence – It would depend upon nature of circumstances, time when confession was made and the credibility of witnesses who speak to such confession – Prosecution, through evidence of witnesses, had proved guilt of accused beyond all reasonable doubt – no infirmity is found in judgment of Trial Court –	17

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				Appeal dismissed.	
8	Govinda vs. State, rep by the Inspector of Police, Bagalur Police Station, Hosur, Dharmapuri District and 3 others	2018 (1) TLNJ (Criminal) 352	12.02.2018	<u>Code of Criminal Procedure – Section 325, Section 372, Section 378(4) – Indian Penal Code – Section 447, Section 506(i) – Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 – Section 3(1) – Jurisdiction – Maintainability of appeal – Court held – In view of proviso to Section 372 of CrPC, appeal against acquittal or lesser punishment or lesser compensation, preferred by victim or complainant, will lie before Principal Sessions or Additional Sessions – If this principle is applied in present case of acquittal, this appeal shall only lie before Principal Sessions or Additional Sessions of respective jurisdiction and not before High Court, even though leave is granted by High Court under Section 378(4) of CrPC – Appellant case is transfer to concerned Principal Sessions Court – Appeal disposed of.</u>	17
9	Pillappan @ Ravikumar vs. State, Represented by the Inspector of Police, Thanjavur District	CDJ 2018 MHC 2898	18.04.2018	<u>Section 446-A, 436(2), 437(5) of Criminal Procedure Code – Accused – jumped bail – powers of Magistrate to issue Non-Bailable Warrant – forfeit bond and remand accused to judicial custody under Section 309 of Cr.P.C. If an accused on bail, be it in a case involving a bailable or non-bailable offence, (whether granted by the superior Court or by the Magistrate), does not appear on a hearing date and no petition is filed for dispensing with his presence, non-bailable warrant can be issued under Sec. 89 of the Code. On the appearance of the accused or on his production by the police, what is required to be given is, an opportunity to him to explain as to why he did not appear from that</u>	18

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				particular date onwards. If he gives a satisfactory explanation, he can be let off by recalling the warrant. If his explanation is not satisfactory, the Magistrate/Court is required to record the reasons and give a finding that the bond has been forfeited. On such finding, the bail bond gets automatically cancelled. Thereafter, the Magistrate/Court cannot release him on his own bond in view of the bar under Sec.446-A(b). He may be released under the proviso to Sec.446-A(b) on his executing a bond with fresh sureties, or, he may be remanded to custody under Sec. 309 of the Code. If he is so remanded to judicial custody, he should apply for fresh bail. Thereafter, the Magistrate/Court can issue notice under Sec. 446 of the Code to the sureties separately for payment of penalty. In the bail application filed afresh by the accused either under Sec.436 or 437 or 439 of the Code, the Court will have to consider not only the usual parameters for grant of bail but also the additional factor, viz., his abscondence.	
10	T.Ravikrishnan vs. The Commissioner, Officer of the Commissioner of Police and 3 others	2018 (1) MWN(Cr)447	14.02.2018	<u>Criminal Procedure Code, 1973(2 of 1974), Section 482</u> – Petition seeking Police protection based on complaint – Petitioner’s right over property protected by Civil Court Judgment and Decree – and same confirmed in appeal – obstruction to peaceful enjoyment of property by R4 in spite of said Civil Court Judgment – No action taken on representation given by Petitioner – when there is threat of peaceful possession, Police bound to extend necessary protection for effectual implementation of Civil Court Judgment and Decree – Petition allowed issuing direction to Police/R3.	18

SUPREME COURT – CIVIL CASES

2017 (6) Scale 304 :: 2017 (14) SCC 541:: 2017 (4) Supreme 446 :: 2017 (0) Supreme(SC) 466:: CDJ 2017 SC 631

Pawan Kumar Gupta vs. B.R.Gupta

Date of Judgment: 09.05.2017

Rent Control – Delhi Rent Control Act, 1958 – Section 14(1)(a) & 15(1) – Eviction Petition – Non-payment of rent – Long delay in deposit of rent, not explained – Order of eviction – premises in question was let out by the landlord to the tenant for residential purposes and the last paid rent was @ Rs.500/- p.m. – landlord issued a demand notice u/s 14(1) (a) of the Act, demanding rent @ Rs.500/- p.m. w.e.f. 01.04.2001 – since the tenant failed to pay the rent, petition for eviction of tenant was filed – Rent controller passed an order dated 07.02.2005 directing the tenant to pay or deposit a sum of Rs.500/- p.m as rent w.e.f. 01.10.2004 – rent controller allowed the petition u/s 14(1)(a) of the Act, as the tenant was held guilty of non-payment of rent – on appeal, Tribunal remanded the matter back to the Rent Controller – Rent Controller allowed the petition by order dated 05.07.2011 while holding that the tenant failed to pay the rent despite service of demand notice – rent controller directed the tenant to deposit arrears of rent from 01.04.2001 @ Rs.500/- p.m. along with interest @ 15% p.a – earlier order dated 07.02.2005 passed u/s 15(1) of the Act was modified by order dated 05.07.2011 – direction was issued to the tenant to deposit arrears of rent within one month – rent controller held that the tenant had failed to provide any explanation regarding delay in depositing of rent month by month in terms of order dated 07.02.2005 – Eviction order was passed against the tenant u/s14(1)(a) of the Act – Appeal filed by tenant was allowed – on challenge, High Court restored the order passed by the Rent Controller – Whether the Rent Controller was justified in passing the order of eviction u/s 14(1)(a) of the Act. No Condonation of Delay In Payment Of Rent For Wilful Defaulters. Tenant should plead with justifiable reasons which would show that he was prevented from compliance by circumstances beyond his control. Eviction order passed against the tenant u/s.14(1)(a) of the Act – upheld.

2017 (6) CTC 637 :: 2017 (8) SCC 454 :: :: AIR(SC) 3137 :: 2017 (7) Scale 183 :: 2017 (7) MLJ 54 :: CDJ 2017 SC 744

Nithya Anand Raghavan vs. State of NCT of Delhi and another

Date of Judgment: 03.07.2017

Hindu Law – Custody – Jurisdiction of Foreign Court – High Court directed Appellant/mother to produce her daughter and comply with order passed by UK Court to handover custody of daughter to 2nd Respondent/father – Appellant assailed aforesaid order on ground of paramount interests and welfare of daughter – Whether principle of comity of courts applied by High Court, justified – Held, concept of forum convenience has no place in ward ship jurisdiction – Court in country to which child removed must consider question on merits bearing welfare of child as of paramount importance – courts are free to decline relief of return of child brought within its jurisdiction, if it is satisfied that child is now settled in its new environment or if it would expose child to physical or psychological harm or otherwise place child in intolerable position or if child is quite mature and objects to its return – In

summary inquiry, open to Court to decline relief of return of child to country from where he/she removed irrespective of pre-existing order of return of child by Foreign Court – In elaborate inquiry, Court obliged to examine merits as to where paramount interests and welfare of child lay and reckon fact of pre-existing order of Foreign Court for return of child as only one of the circumstances – Principle of comity of Courts cannot be given primacy or more weightage for deciding matter of custody or for return of child to native state – remedy of writ habeas corpus cannot be used for mere enforcement of directions given by Foreign Court against person within its jurisdiction and convert that jurisdiction into that of Executing Court – on reading of Foreign Court order, it is not possible to hold that custody of minor with her mother declared to be unlawful – custody of girl child who is around seven years of age must be with her mother unless there are circumstances to indicate that it would be harmful to girl child to remain in custody of her mother – appellant produced materials that during her stay with 2nd respondent, she was subjected to physical violence and mental torture – In deserving cases, Courts are not denuded from declining relief to return child to native state merely because of pre-existing order of Foreign Court of competent jurisdiction – Appeal allowed.

**CDJ 2017 SC 976 :: 2017 (7) Scale 731:: 2017 AIR(SC) 3668 :: 2017 ACJ 2011::
2017 (6) MLJ 341 :: 2017 (2) TNMAC 145**

Mukund Dewangan vs. Oriental Insurance Company Limited

Date of judgment: 03.07.2017

Motor vehicles –Driving License – Light Motor vehicle – Motor Vehicles Act, 1988 (Act 1988), Sections 3, 10 (2)(d) and 10(2)(e) to (h) – Central Motor Vehicles Rules, 1989 (Rules1989), Rule 14 - Conflict with respect to legal position as to pre-amended and post – amendment legal position of amendment made in forms for driving license referred in present appeal – Whether driver who has license to drive ‘light motor vehicle’ and drives ‘transport vehicle’ of that class required additionally to obtain endorsement to drive transport vehicle – Held, person holding license to drive light motor vehicle registered for private use, who drives similar vehicle which is registered or insured, for carrying passengers for hire or reward, would not require endorsement as to drive transport vehicle, as same is not contemplated by provisions of Act 1988 – Section 10 of Act 1988 requires driver to hold license with respect to class of vehicles and not with respect to type of vehicles – in one class of vehicles, there may be different kinds of vehicles – if they fall in same class of vehicles, no separate endorsement required to drive such vehicles – as light motor vehicle includes transport vehicle also holder of light motor vehicle can drive all vehicles of class including transport vehicles – forms never intended to exclude transport vehicles from category of ‘light motor vehicles’ and for light motor vehicle, validity period of such license hold good and apply for transport vehicle of such class also – expression in Section 10(2)(e) of act 1988 ‘transport vehicle’ would include medium good vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in Section 10(2)(e) to (h) of Act, 1988.

**2017 (6) MLJ 227 (SC):: LNIND 2017 SC 310:: 2017 (4) LW 648:: 2017 AIR (SC) 3330::
2017 (7) Scale 582**

Vithal Rao and Another vs. Special Land Acquisition Officer

Date of Judgment: 07.07.2017

Property Laws – Land Acquisition – Determination of Market Value –

Respondent acquired lands belonging to Appellants – By awards, Land Acquisition Officer determined market value of acquired lands – on reference by appellants, reference court fixed market value of acquired lands and awarded enhanced compensation – land owners filed appeals – High Court allowed appeals in part and re-determined compensation – aggrieved, appellants filed present appeal for further enhancement in compensation – whether market value of acquired land determined by High Court require modification – Held, land acquired was large chunk of land, thirty acres approximately – purpose of acquisition was “Establishment of Rehabilitation Centre” and situated within municipal limits – some buildings came up in its near proximity – Appellants did not file exemplar’s sale deeds relating to large piece of land sold in acres to prove market value of acquired land – all sale deeds relied on by Appellants pertain to very small piece of land and those plots sold prior to date acquisition – small parcel of lands sold under those sale deeds situated in near proximity of acquired land and some were part of acquired land – all sale deeds held bona fide and proper – those sale deeds could be relied on for determining proper market value of acquired land – it would be just, fair and proper to take out average value of those plots – acquired land not fully developed – it would be just, fair and proper to deduct 40 % of amount towards development charges out of average price worked out – such deduction permissible in law – after deducting 40% towards development charges, market value arrived at – impugned order modified – appeal partly allowed.

**2017 (6) CTC 628 :: 2017 (4) LW 658 :: 2017 (8) SCC 116 :: 2017 (7) Scale 691::
2017 (6) MLJ 326 :: 2017 AIR (SC) 3756**

Punjab State Civil Supplies Corporation Ltd and another vs. Atwal Rice and General Mills, Rep by its Partners

Date of Judgment: 11.07.2017

Alternative Dispute Resolution – Arbitration – Enforcement of Arbitral Award – Arbitration and Conciliation Act, 1996 (Act 1996), Section 34 – Code of Civil Procedure, 1908(Code 1908), Order 21 Rules 1 and 2

– Appellant is State owned Corporation engaged in supply of civil commodities in State – 1st respondent is partnership firm whose partners are 2nd to 4th respondents – appellant and 1st respondent entered into agreement wherein respondents had to process paddy in their rice mill given by Appellant and rice produced after processing paddy to be delivered to Food Corporation of India – Respondents could process and deliver less quantity than agreed quantity – on reference of dispute, arbitrator allowed appellants’ claim in part and passed money award – execution petition filed by appellant for enforcement of award against respondents dismissed – Revision filed by Appellant also dismissed and High Court upheld Execution Court order – whether execution court justified in dismissing application of Appellant for enforcement of award – Held, arbitral award enforced like decree of Civil Court by applying provisions of Order 21 of Code 1908 and other provisions which deal with execution of decree of Civil Court – Executing court and

High court failed to decide same in accordance with law – Both Courts neither set out facts much less property nor dealt issues arising in case nor applied principle of law which governs controversy – objections were not capable of being tried in execution proceedings to challenge award – they were on facts and pertained to merits of controversy, which decided by arbitrator resulting in passing of award – none of the objections were in relation to jurisdiction of Court affecting root of passing of decree – Inquiry into facts, which ought to have been done in suit or in appeal arising out of suit or in proceedings under Section 34 of Act 1996, cannot be held in execution proceedings in relation to such award/decreed – impugned order and order of execution court set aside – appeal allowed with cost.

SUPREME COURT – CRIMINAL CASES

**2017 0 Supreme (SC) 331 :: AIR 2017 SC 1981 :: 2017 (2) MWN (Cr) 161 ::
2017 (3) MLJ (Cr) 70 :: 2017 (7) SCC 262 :: 2017 (3) SCC (Cr) 380**

State of Himachal Pradesh vs. Nirmala Devi

Date of Judgment: 10.04.2017

A. Criminal Procedure Code, 1973 – Ss.386 & 374 – Powers of appellate court to alter sentence – scope – statutory provision concerned (in IPC) providing for punishment of imprisonment and that person convicted “and shall also be liable to fine” in respect of offences concerned – substituting statutory punishment of imprisonment and fine, with fine alone – impermissibility – appellate court cannot alter punishment/sentence under S.386 Cr.P.C contrary to law.

B. Criminal Trial – Sentence – Principles for sentencing – Gender of accused – if and extent to which can be considered a mitigating factor – Held, though in many countries gender is not mitigating factor but in India it is taken as relevant circumstances while fixing quantum of sentence would depend on facts of each case and no hard-and-fast rule can be laid down.

C. Criminal trial – Sentence – Principles for sentencing – discretion of court – exercise of, in cases where statute concerned specifies only maximum sentence, but no minimum sentence – parameters for.

D. Criminal Procedure Code, 1973 – Ss.386(b)(i) & (iii) – “Reverse the finding and sentence” and “alter nature or extent, or nature and extent of sentence” – difference between, explained – substituting statutorily mandated punishment with punishment not contemplated by statute concerned – impermissibility.

**2017 0 Supreme (SC) 324:: 2017 (4) SCALE 403:: 2017 (2) MLJ(Cr) 444::2017 CrLJ
2904:: 2017 (7) SCC 177:: 2017 (3) SCC(Cr) 343**

Charandas Swami vs. State of Gujarat and another

Date of Judgment: 10.04.2017

Murder – Circumstantial Evidence – Indian Penal Code, 1860 (Code 1860), Sections 302, 120-B, 364 and 201 – Sessions court convicted all five accused for offence under Section 302 read with Section 120-B of Code 1860 and sentenced them to death – Accused were also convicted under Section 364 read with Section 120-B of Code 1860 and sentenced to rigorous imprisonment for life – accused Nos.2 and 5 were further convicted under Section 201 read with Section 120-B and sentenced to 5 years imprisonment – on appeals filed, High Court upheld decision of Sessions Court, however, acquitted accused No.4 of said offences – Appeals file by accused Nos.1 and 2 and 5 – Whether High Court justified in upholding conviction of accused Nos.1, 2 and 5 – Held, presence of deceased at temple complex on day of incident and evidence that deceased was last seen together with accused No.3 going from Temple complex in car, recovery of dead body in village in

neighbouring state on the next day of disappearance of deceased – disclosure made by accused No.3 about location as to where dead body of deceased was dumped by him in village – discovery of fact after subsequent medical examination that dead body so recovered was of none other than that of deceased – disclosure made by accused No.5 of location where deceased was strangled at temple complex – conduct of accused No.3 in misleading investigating agencies - burning of vehicle used in commission of crime and then filing of false insurance claim which was rejected by insurance company – strong motive for committing murder of deceased and criminal conspiracy hatched in that behalf and executed, leave no manner of doubt about involvement of Appellants in commission of crime – finding of guilt against appellants is inescapable – no legal evidence to give benefit of doubt to appellants and no tangible reason to interfere with final conclusion reached by courts – Appeals dismissed.

CDJ 2017 SC 562:: 2017 AIR (SC) 2595 :: 2017 0 Supreme (SC) 862

Lovely Salhotra and another vs. State NCT of Delhi and another

Date of Judgment: 10.04.2017

Criminal Procedure Code (2 of 1974), Ss.482, 154 – Quashing of FIR – informant alleging commission of offences under Ss.420, 494, 506 and 34 of Penal Code as counterblast to criminal complaint filed against him under S.138 of Negotiable Instruments Act – to pressurize complainant not to prosecute criminal complaint filed by him – FIR liable to be quashed in part.

**2017 (5) SCC 695:: 2017 (2) SCC (CrI) 632:: 2017 AIR 2100 (SC) ::
2017 3 Supreme 770:: 2017 0 Supreme (SC) 327**

State of Rajasthan vs. Ramanand

Date of Judgment: 11.04.2017

Penal Code, 1860 – Ss.302 & 201 or S.306 – Circumstantial evidence – death by strangulation(homicide) or by burning (defence plea of suicide in present case) – woman and her daughter found dead in their house, having burn injuries – respondent- accused (husband of victim woman) lodged written report regarding incident to the police – trial court convicted respondent husband under Ss.302 and 201 – but High Court converted conviction to S.306 – validity of - Held, medical evidence clearly shows that deaths were as a result of strangulation and not from burn injuries – their bodies were set a fire in order to create an impression as if they had died of burn injuries – finding by trial court was therefore completely correct, as it is impossible to assume how wife of respondent could have strangled herself and then attempted to set herself a fire – view taken by High Court is, therefore, wholly unjustified and there could not have been conviction of respondent under S.306 IPC – Moreover, there is nothing on record to conclusively establish that respondent was author of crime – circumstances do not rule out every other hypothesis except guilt of respondent – However strong the suspicion be, held, respondent is entitled to benefit of doubt and also cannot be convicted under S.302 IPC – Hence, the respondent stands acquitted.

Sudha Renukaiah and others vs. State of Andhra Pradesh

Date of Judgment: 13.04.2017

A. Criminal Law – IPC – Section 302/149 – Cr.P.C. – Section 386 – Murderous assault – acquittal by trial Court reversed in appeal, by the High Court – sustainability of judgment of conviction – enmity between parties – injured eye-witnesses who fully supported the prosecution case and proved roles of different accused – Prosecution case cannot be negated on the ground that it was a case of group rivalry – In connection with a court case between the parties, deceased 1 and 2, along with PWs 1 to 6 and PW.9 went on three two-wheelers to attend the Court and after attending the Court, they were returning back in the evening when all the accused conspired together, collected deadly weapons like axes, knives, rods and sticks, went in the lorry of A-18 and allegedly dashed the two wheeler in which both the deceased fell down from two wheeler and accused attacked them indiscriminately and killed them and also inflicted injuries on P.W.5 – deceased 1 died on the spot and other injured were shifted to the hospital where deceased 2 was declared dead – trial court acquitted the accused while holding that there were contradictions and omissions in evidence of eye-witnesses – trial court observed that medical evidence did not support any injury by bottle axe – on appeal, High Court convicted A-1 to A-3, A5 to A-7 and A-11 guilty for offence u/s 302/149 IPC – injured eye-witnesses PW.1, son of deceased 1 and 2 which was corroborated by the medical evidence – eye-witnesses including injured witness fully supported the prosecution case and proved the roles of different accused – whether conviction of accused appellants as recorded by the High Court was sustainable.

B. It is well settled that even if IO has committed any error and has been negligent in carrying out any investigation or in the investigation there is some omission and defect, it is legal obligation on the part of the Court to examine the prosecution evidence de hors such lapses.

C. The injured witness PW.5 having given specific role of the persons who caused injuries to deceased Nos.1 and 2 which stands corroborated with the medical evidence, ignoring the evidence of PW.5 an injured witness on the grounds as noted above by the Trial Court is clearly unsustainable and the High Court rightly after considering all aspects of the matter has relied on the evidence of PW.5 for holding the accused guilty.

D. The injuries noted in the postmortem of deceased Nos.1 and 2 are injuries which can be caused by axe, knives and sticks. Thus there was no inconsistency with medical evidence and the ocular evidence. The death of both deceased Nos.1 and 2 was homicidal in nature. A perusal of the statements of the PW.17 and 18, Doctors who conducted the postmortem as well as PW.16 who gave evidence on injuries of PW.5 indicates that they were not shown the weapons by which injuries were caused.

E. The eye-witnesses, PW.1,2,3 and 5 have clearly mentioned about the weapons used by the accused which eye-witnesses accounts are in accordance with medical evidence. Thus, mere non-showing of the weapons to the Doctors at the time of their depositions in the Court is inconsequential and in no manner weakens the prosecution case. Some discrepancies referred by the trial Court in the statements of eye-witnesses were inconsequential.

F. However, when there are eye-witnesses including injured witness who fully support the prosecution case and proved the roles of different accused, prosecution case cannot be negated only on the ground that it was a case of group rivalry. Group rivalry is double edged sword.

G. Present is a case where the High Court exercised its appellate power under Section 386 Cr.P.C. in exercise of Appellate power under Section 386 Cr.P.C. the High Court has full power to reverse an order of acquittal and if the accused are found guilty they can be sentenced according to law.

F. Present is a case where reasoning of the Trial Court in discarding the evidence of injured witness and other eyewitnesses have been found perverse. The High Court thus, in our opinion did not commit any error in reversing the order of acquittal and convicted the accused. From the eye-witnesses account, as noticed above and for the reasons given by the High Court in its judgment.

MADRAS HIGH COURT – CIVIL CASES

CDJ 2017 DHC 077

Alupro Building Systems Pvt. Ltd. vs. Ozone Overseas Pvt. Ltd.

Date of Judgment: 28.02.2017

Arbitration and Conciliation Act, 1996 – Section 34 – Arbitration clause – Setting aside of arbitration award – The running theme of the Act is the consent or agreement between the parties at every stage, Section 21 performs an important function of forging such consensus on several aspects viz. the scope of the disputes, the determination of which disputes remain unresolved; of which disputes are time-barred; of identification of the claims and counter-claims and most importantly, on the choice of arbitrator. Thus, the inescapable conclusion on a proper interpretation of Section 21 of the Act is that in the absence of an agreement to the contrary, the notice under Section 21 of the Act by the claimant invoking the arbitration clause, preceding the reference of disputes to arbitration, is mandatory. In other words, without such notice, the arbitration proceedings that are commenced would be unsustainable in law.

2017 (3) CTC 722 :: 2017 (4) MLJ 530 :: 2017 0 Supreme (Mad) 608

Comorin Match Industries Pvt Ltd., vs. Alagarsamy and other

Date of Judgment: 07.04.2017

Trade Mark – Infringement of Registered Mark – suit for injunction – trial court dismissed suit – plaintiff and defendants are manufactures of Match Boxes – plaintiff's mark is registered – Defendants' mark is unregistered – Defendants have adopted marks, similar to that of Plaintiff – Concept as whole has been copied – Defendants could have conceived different image – they attempted to trample goodwill created by Appellant – Plaintiff entitled to protection.

A Trade Mark involves picturisation of a particular label and such picturisation normally is very closely related to the product. There are examples in any health drink or a food product and the label has a direct connection between the product and the mark. There is a connection between the product and the label. In such case, if a competitor adopts a similar label, a claim can be taken that the said label is related to the very same product and therefore, the Courts have adopted the procedure of comparing the two labels to find out the similarities and dissimilarities.

Held, that the protection of Registration cannot be narrowed down to protect only the design and colour of the trade Mark but it should be extended to protect the concept or the idea behind such an image.

CDJ 2017 MHC 2988

S.Vivekanandan vs.Tahsildhar

Date of Judgment: 10.04.2017

The Tamil Nadu Land Encroachment Act, 1905 - The jurisdictional Tahsildar has also held that there is no provision for issue of patta for building a Samadhi (Tomb) and that the provision for issue of patta in such public land may be available only for landless farmers. Petitioner encroached and put up Samadhi, later claimed assignment of land in his favour - assignment only for landless farmers.

CDJ 2017 MHC 3736

Deputy Director of Medical Services, Dharmapuri vs. Velvizhi and other

Date of Judgment: 18.04.2017

The Motor Vehicles Act, 1988 - The Criminal Courts judgments are neither binding on the Civil Court/Motor Accident Claims Tribunal nor relevant in a Civil case or a claim for compensation under the Motor Vehicles Act, except for the limited purpose of showing that there was a criminal prosecution which ended in conviction or acquittal. But there is an exception to the general rule. When an accused pleads guilty and is convicted based on his admission, the judgment of the Criminal Court becomes admissible and relevant in Civil proceedings and proceedings before the Motor Accident Claims Tribunal, not because it is a judgment of the Criminal Court, but as a document containing an admission. Of course, admissions are not conclusive proof of the facts admitted therein unless and until they are proved to be incorrect or false by the person against whom the admissions are sought to be used as evidence.

CDJ 2017 MHC 3089

MD, Metropolitan Sate Transport Corporation vs. P.L.Rajeswari and another

Date of Judgment: 19.04.2017

Motor vehicle Act, 1988 – Section 173 – Compensation – Enhancement - Income tax, Professional tax which are deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, L.I.C., Contribution are amounts paid specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason. Such contribution made by the salaried person are deferred payments and they are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor vehicles Act is statutory and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the Legal Representatives are entitled to lump sum payment under the contractual liability. If the contributions made by the employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing the dependency compensation, then the Legal Representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, - the Tribunal can make only statutory deductions such as Income tax and

professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation. Any contribution made by the employee during his life time, form part of the salary and they should be included in the monthly income, while computing the dependency compensation.

CDJ 2017 MHC 2657 :: 2017 (3) LW 68:: 2017 (4) CTC 32 :: 2017 0 Supreme (Mad) 820

G. Venkatachalam vs. A.P. kuppuraj and others

Date of Judgment: 21.04.2017

Code of Civil Procedure, 1908(5 of 1908), Order 41, Rule 27 – Additional Evidence – Appellate Stage – Whether rightly accepted – suit for declaration of Easementary right – Application for accepting ‘Settlement Deed’ as additional evidence filed at Appellate stage – Application considered independently and allowed by Trial Court – as per settled legal principles, Application under Order 41, Rule 27 to be considered at time of hearing of Appeal on merits – need of documents for deciding issue in case only to be determined at time of hearing of final appeal – In instant case, approach adopted by Appellate Court in deciding application independently, without hearing main Appeal, held, not in consonance with principles governing Order 41, Rule 27 – Order of Appellate Judge, set aside – Application remanded and directed to be considered in accordance with Principles laid down by Apex Court in **Union of India vs. Ibrahim, 2012(8)SCC 148** – Appeal allowed.

2017 (6) CTC 579 :: 2017 (6) MLJ 68

Y.Mariya Selvam vs. E.Yesuraj and 4 others

Date of Judgment: 07.06.2017

Contract – Specific Performance – Limitation – Respondent/Plaintiff and Appellant/Defendant entered into sale agreement to sell suit property which belonged to Defendant to Plaintiff – Certain amount paid as advance – Suit filed by 1st Respondent/Plaintiff, for specific performance in respect of suit property decreed by Trial Court – Aggrieved, Defendant filed appeal – Whether suit barred by limitation – Whether Plaintiff was always ready and willing to perform his part in terms of suit agreement and entitled for specific performance – Held, Plaintiff established that Plaintiff had means to pay balance of sale consideration to complete sale transaction – readiness proved by Plaintiff beyond doubt – dates specified in agreement expired – no communication or exchange of notice between parties till suit filed after 3 years – reason for not approaching court within reasonable time not explained – unexplained delay in approaching Court would show that plaintiff was not will to perform his part of contract in terms of agreement – no notice calling upon defendant to execute sale deed any time before filing suit – suit barred by limitation – Plaintiff not entitled to equitable relief of specific performance – plaintiff did not prove his willingness to perform his part of contract in terms of suit agreement under E.A.1 – appeal allowed.

2017 (3) MWN (Civil) 565 :: 2017 (5) MLJ 119

Mohamed Diwan and others A.Venkaesh and another

Date of Judgment: 07.06.2017

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, (T.N. Act 18 of 1960) – Code of Civil Procedure, 1908 (5 of 1908), Order 1, Rule 10 – Landlord of property sought fixation of fair rent and order passed therein was subjected to appeal – during appeal, such landlord sold said property to present landlord – present landlord sought eviction of tenant on ground of wilful default of rent payable under order for fixation of fair rent – tenant sought to implead original landlord – present landlord secured all interest in decree obtained by earlier landlord – earlier landlord not necessary party.

2017 (6) MLJ 157 :: CDJ 2017 MHC 7524

Idol of Sri Renganathaswamy vs. Charitable and Religious Trust

Date of Judgment: 20.06.2017

Trust and Charities – Sale of Properties – Permission of Court – Charitable and Religious Trusts Act, 1920 (Act 1920), Section 7 – Code of Civil Procedure, 1908 (Code 1908), Section 92(1)(f) and Order 7 Rule 1 – Plaintiff Trust represented by its hereditary trustees/1st to 6th Respondents filed suit against 7th Respondent/Defendant for permission to sell suit properties to 8th Respondent and for direction to purchaser to deposit sale proceeds into Court – Trial Court granted permission to sell items 1 to 6 of suit properties and dismissed the suit in respect of items 7 and 8 – aggrieved, appeal filed by appellant/third party/idol represented by its executive officer – whether judgment and decree of trial court to be set aside – held, Plaintiff was not proceeding under Section 92(1)(f) of Code 1908 – they filed plaint under Order 7 Rule 1 of Code 1908 read with Section 7 of Act 1920 – Defendant said no objection to sell property – Trial Court did not form opinion that plaint relates to trust to which provisions of Code 1908 and Act 1920 applicable – Judgment without jurisdiction void – when jurisdiction of Court challenged, Court bound to determine question of jurisdiction, after hearing parties – In Ex.A1/settlement deed, settlers set out charities to be performed from out of income of properties and also stated that properties could not be alienated – there was no direction as to surplus income from properties and further evidence was necessary in present case – appellant filed a petition to receive document as additional evidence – oral evidence was necessary to connect such documents to suit properties – no compelling reasons to depart from mode of public auction to justify sale in favour of 8th respondent – no direction in judgment to sell property by public auction – court not fixed reserve price – judgment of trial court suffers from infirmities – matter require fresh consideration – judgment and decree of trial court set aside – suit remanded to trial court for fresh disposal in accordance with law.

S.Thiagarajan

vs.

Supreme Pipe Syndicate through its partners, Sajarath Thaiyaba and S.Rahmathullah

Date of Judgment: 05.07.2017

Constitution of India, Article 227 – Partnership Act, 1932(9 of 1932), Section 69(2) – Strike off Plaintiff – Abuse of process of law – frivolous and vexatious suit – suppression of material facts – Tenancy dispute – husband and wife entered into lease agreement with landlord – tenants carried business activity as unregistered partnership firm – landlord directed to vacate premises after demise of one tenant(husband) – tenant filed RCOP for deposit of rent – and unregistered firm consisting of two partners instituted suit for permanent injunction not to interfere with their peaceful possession except by due process of law against landlord – Civil Court granted ex parte injunction – Plaintiff-firm claimed that wife of deceased tenant and another partner entered into tenancy agreement – plaintiff did not file tenancy agreement and registration certificate of firm – landlord has no privity of contract with unregistered firm which instituted suit – Civil Court ought not to have numbered suit in absence of firm registration certification and tenancy agreement – suit instituted by unregistered firm against third party is not maintainable – trial court failed to exercise even minimum required scrutiny of pleading before taking Plaintiff on file – Non-disclosure of material fact and cause of action would suffice for rejection of Plaintiff – suit instituted by third party without any valid cause of action is abuse process of law – Plaintiff liable to be struck off.

MADRAS HIGH COURT – CRIMINAL CASES

CDJ 2017 MHC 7308

Rabindra Kumar Bhalotia and others

vs.

**State rep. by Inspector of Police, Central Bureau of Investigation, Anti-Corruption
Branch, Chennai and others**

Date of Judgment: 28.11.2017

Constitution of India - Article 20(3) - Criminal Procedure Code, 1973 - Section 53, Section 53A, Section 54, Section 311(A), Section 397, Section 401 - The Criminal Revision Case is filed, challenging the trial court order permitting the prosecution to compel the accused to undergo voice spectrograph test. The prime submission made in this revision petition is that, compelling an accused to give his voice sample for comparison is unconstitutional. Ultra vires to Article 20(3) of the Constitution of India. No law provides for drawing samples. In such circumstances, without any authority of law, Magistrate directing the prosecution to record voice sample of the accused person is illegal. Further, In view of the judgment rendered by the Hon'ble Supreme Court in the Ritish Sinha case, wherein, the learned Judges due to difference of opinion regarding the constitutional validity of drawing voice sample had referred the matter to the Larger Bench of the Hon'ble Supreme Court and pending. In such circumstances, the order passed by the trial court granting permission to the investigating officer to take voice sample is ultra-vires to the constitution.

Requesting the accused persons to give their voice sample for comparison with that of the questionable voice recorded in the course of intercepted telephonic conversation between them by no stretch of imagination fall within the mischief of testimonial compulsion. Therefore, the plea that the direction to the accused persons to give their voice sample for comparison with that of the questionable voice recorded in the course of intercepted telephonic conversation between them, is ultra vires to Constitution has no legs to stand. Regarding the wordings used in Section 53 of the Code which permits the investigating officer to examine the accused person through medical practitioner is not restricted to the examinations, referred in Explanation (A) for Sections 53, 53A, and 54 alone. Since the word 'such other tests' has been consciously inserted, it cannot be interpreted narrowly to say that 'such other tests' does not include voice test.

2018 (1) MWN (Cr.) DCC 100 :: 2017 (2) LW (CrI) 842

A.N.Chandru vs. K.Jayasankar

Date of Judgment: 30.11.2017

Negotiable Instruments Act, 1881 (26 of 1881), Sections 138 & 139 – Dishonor of Cheque – Case of Complainant that accused borrowed Rs.50,000/- by executing Pro-note/Ex.P1 and issuing cheque for Rs.60,000/- - accused in questioning under Section 313, Cr.P.C., denied having issued any cheque – However, during examination as DW1, accused stated that cheque was issued by him only as security – accused taking two conflicting stands on his own – clear admission reinforces case of complainant – However, stand taken accused

that same issued as security without obtaining any loan, held not acceptable when accused is not an ordinary rustic/illiterate villager but a practicing advocate – accused borrowed amount from complainant and issued impugned cheque to discharge liability. Held, not sustainable – order of conviction and sentence of one year’s RI and compensation of rs.75,000/- restored – However, offence being compoundable under Section 147, sentence suspended till 15.01.2018 to enable accused to deposit compensation amount with Rs.1,00,000/- as exemplary cost – trial court directed to compound offence in terms of Section 147 without any further extension.

Evidence Act, 1872(1 of 1872), Section 63 – Secondary Evidence – admissibility – Photocopy of Promissory Note marked as Ex.P1 – No objection taken by accused at time of marking – objection must be taken at earliest so as to afford opportunity to party to rectify deficiency – SC followed.

2018 (1) TLNJ 1 (Criminal) :: 2018(2) MLJ(Crl) 23

Sangili @ Sangilimadasamy

vs.

State, Rep by The Inspector of Police Sankarankoil Taluk Circle, Kuruvikulam Police Station, Tirunelveli District

Date of Judgment: 21.12.2017

Indian Penal Code, 1860, Section 302 – Murder – Appeal against conviction and sentence – all eye witnesses turned hostile – prosecution case thereby clings on the sole testimony of P.W.1 – Though house of PW1 is away from the scene of occurrence no explanation given by P.W.1 for his presence at the scene of occurrence – all the witnesses have testified that they know P.W.1, deceased and accused – but not supported the prosecution with regard to the incident – P.W.1 stand that his son/deceased went to go the place of occurrence to take back his two wheeler left for repairing at the workshop of P.W.2 – But, P.W.2 deposed that the day of occurrence being Sunday his shop was closed – contradiction with regard to the registration of the case – P.W.1 stated that he had taken the complaint written by an unknown boy and later stated that complaint was written by Police Constable – self contradictory – evidence of V.A.O and IO regard to the arrest of the accused and recovery of M.Os., contradictory in nature – no evidence produced to prove the motive – Even occurrence happened in a busy locality no other witness supported the prosecution case – delay in sending inquest report, confession statement witness statement etc., sent to court – not explained – also delay in sending material object to forensic science lab – possibility of exaggeration and concoction – criminal appeal allowed.

2018 (1)TLNJ (Criminal) 99

Premkumar Thangadurai and another

vs.

State by The Inspector of Police, Central Crime Branch, Team II, Vepery, Chennai.

Date of Judgment: 11.01.2018

Criminal Procedure Code 1973, Section 397 & 401 – Permission to travel and stay at abroad and further to permit to appear before Court below on receipt of summons – petition – refused by trial court – Revision – on considering the affidavit of the petitioner,

High Court modified the order of the court below and permitted petitioners to travel abroad – further directed court below cause service of summons on petitioners by addressing the same to summons to the e-mail address given by the petitioner – revision allowed.

2018 (2) MLJ (Crl) 67

V.Pechi

vs.

**State by Deputy Superintendent of Police, Vigilance and Anti-Corruption, Special Cell,
Coimbatore**

Date of Judgment: 31.01.2018

Illegal Gratification – Recovery of tainted money – Prevention of Corruption Act, 1988, Section 7 and 13 – Trial Court held appellant guilty of offences under Sections 7 and 13(2) read with 13(1) (d) for demanding and accepting money to give service connection to business premises of defacto Complainant, hence this appeal – whether explanation given by Appellant regarding recovery of tainted money from his possession was plausible – Held, P.W.3/trap witness was not present when money alleged to have demanded and received and also, denied suggestion during cross examination that Appellant demanded bribe from defacto complainant/PW2 – no corroboration for either demand or acceptance of bribe except evidence of PW2 – Recovery of tainted money from possession of appellant was doubtful, in view of evidence given by PW3 – mere recovery of tainted money not sufficient to hold accused person guilty unless demand and acceptance was proved – alleged demand of bribe on certain date was disproved through evidence of PW5 – in doubtful circumstances, appellant could not be convicted solely based on evidence of PW2 which was self-contradictory on several material facts – appeal allowed.

2018 (2) MLJ (Crl) 71

Ramachandran and another vs. Rajendran and others

Date of Judgment: 31.01.2018

Illegal Gratification – Demand and acceptance – Prevention of corruption Act, Sections 7 and 13 – Defacto Complainant/PW1's mother illegally fell tree in Government Poramboku land – 1st accused/village Administrative officer and 2nd accused/village assistant demanded illegal gratification for not indicting PW1's mother – trap was arranged on complaint of PW1 – PW1 gave money to 3rd accused/revenue inspector – 1st to 3rd accused/revenue inspector – 1st to 3rd accused charged for alleged offences under Section 7, 13(2) and 13(1)(d) – trial court acquitted 1st and 2nd accused however, convicted by 3rd accused – appeal against conviction by 3rd accused and revision Petition by PW1 against acquittal of 1st and 2nd accused - no evidence to infer that money recovered from 3rd accused obtained by him as pecuniary advantage, abusing his official position – money voluntarily given to him by PW1 under false protest – judgment of conviction and sentence imposed on 3rd accused set aside – revision dismissed – appeal allowed.

2018 (2) MLJ (Crl) 76

Kannan

vs.

**State, Rep. by The Inspector of Police, B-12, Ukkadam Police Station, (L&O),
Coimbatore District**

Date of Judgment: 07.02.2018

Murder – Extra Judicial Confession – Indian Penal Code, 1860, Section 302 –

Trial Court convicted Appellant/Accused under Section 302, hence this appeal – Whether prosecution was able to prove charges against Appellant/accused beyond all reasonable doubt – Held, value of evidence as to confession depends upon veracity of witness to whom it is made – no circumstances brought out by defence in cross-examination to doubt evidence of P.W.9 is tutored, his normal conduct would be to hand over Appellant/accused to Respondent police – P.W.9 took accused to Police Station and gave report Ex.P.12 – no reason to discard evidence of P.W.9 – prosecution through evidence of P.Ws 2 to 5 and 9, had proved guilt of accused beyond reasonable doubt – no infirmity in judgment of trial court – appeal dismissed.

2018 (1) TLNJ (Criminal) 352

Govinda

vs.

**State, rep by the Inspector of Police, Bagalur Police Station, Hosur, Dharmapuri
District and 3 others**

Date of Judgment: 12.02.2018

Criminal Procedure Code, 1973, Section 374(2) & 378(4) – Appeal by complainant against acquittal of accused/respondent ordered by Assistant Sessions Court – as per Section 374(2) appeal against conviction made by the Session Court or Additional Sessions Court, will lie before the High Court - where a conviction is made by any other Court other than additional or additional sessions Court, where conviction is given for seven years or more than seven years, the appeal would lie before the High Court – if the conviction of lesser punishment than seven years by any other Court, the natural corollary would be such appeal would lie before the Principal Sessions or additional Sessions Court – if such appeal against conviction lie before the Principal Sessions or Additional Sessions, certainly, in view of the proviso to Section 372, similar appeal against acquittal or lesser punishment or lesser compensation will also lie before the Principal Sessions or Additional sessions – present appeal shall only lie before the Principal Sessions or Additional Sessions and not before High Court, even though a leave is granted by High Court under Section 378(4) – criminal appeal disposed with directions.

CDJ 2018 MHC 2898

Pillappan @ Ravikumar

vs.

State, Represented by the Inspector of Police, Thanjavur District

Date of Judgment: 18.04.2018

Section 446-A, 436(2), 437(5) of Criminal Procedure Code – Accused – jumped bail – powers of Magistrate to issue Non-Bailable Warrant – forfeit bond and remand accused to judicial custody under Section 309 of Cr.P.C. If an accused on bail, be it in a case involving a bailable or non-bailable offence, (whether granted by the superior Court or by the Magistrate), does not appear on a hearing date and no petition is filed for dispensing with his presence, non-bailable warrant can be issued under Sec. 89 of the Code. On the appearance of the accused or on his production by the police, what is required to be given is, an opportunity to him to explain as to why he did not appear from that particular date onwards. If he gives a satisfactory explanation, he can be let off by recalling the warrant. If his explanation is not satisfactory, the Magistrate/Court is required to record the reasons and give a finding that the bond has been forfeited. On such finding, the bail bond gets automatically cancelled. Thereafter, the Magistrate/Court cannot release him on his own bond in view of the bar under Sec.446-A(b). He may be released under the proviso to Sec.446-A(b) on his executing a bond with fresh sureties, or, he may be remanded to custody under Sec. 309 of the Code. If he is so remanded to judicial custody, he should apply for fresh bail. Thereafter, the Magistrate/Court can issue notice under Sec. 446 of the Code to the sureties separately for payment of penalty. In the bail application filed afresh by the accused either under Sec.436 or 437 or 439 of the Code, the Court will have to consider not only the usual parameters for grant of bail but also the additional factor, viz., his abscondence.

2018 (1) MWN (Cr) 447

T.Ravikrishnan

vs.

The Commissioner, Officer of the Commissioner of Police and 3 others

Date of Judgment: 14.02.2018

Criminal Procedure Code, 1973(2 of 1974), Section 482 – Petition seeking Police protection based on complaint – Petitioner's right over property protected by Civil Court Judgment and Decree – and same confirmed in appeal – obstruction to peaceful enjoyment of property by R4 in spite of said Civil Court Judgment – No action taken on representation given by Petitioner – when there is threat of peaceful possession, Police bound to extend necessary protection for effectual implementation of Civil Court Judgment and Decree – Petition allowed issuing direction to Police/R3.
