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IMPORTANT CASE LAW



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SUPREME COURT – CIVIL CASES

(2019) 3 SCC 770

Ashish Jain v. Makrand Singh

Date of Judgment: 14.01.2019

Section 5 of Identification of Prisoners Act, 1920 provides for taking of such samples upon an order of a Magistrate, if Magistrate is satisfied as to its expediency. However, reiterated, Section 5 is not mandatory but is directory, and affirms bona fides of sample taking and eliminates possibility of fabrication of evidence. Although Section 4 mentions that police officer is competent to take measurement of accused, but to dispel doubts as to its bona fides and to rule out fabrication of evidence, it is eminently desirable that they were taken before or under order of a Magistrate. However, it cannot be held to mean that under Section 4, Police officers are not entitled to take fingerprints until order is taken from a Magistrate. Thus, there cannot be any hard and fast rule that in every case, there should be a Magisterial order for lifting fingerprints of accused.

(2019) 3 SCC 352

Reliance Infrastructure Ltd. V. State of Maharashtra

Date of Judgment : 21.01.2019

In electricity matters, validity of regulation framed under Sections 178/181 of the Electricity Act, 2003 can be tested before the court exercising judicial review and while the Tribunal may decide upon a dispute involving the interpretation of a regulation, for which an appeal under S. 111 of the Electricity Act, 2003 would be maintainable, no appeal can lie before the Tribunal on the validity of a regulation.

(2019) 3 SCC 520

Vijay A.Mittal V.Kulwant Raj

Date of Judgment: 28.01.2019

Impleadment of all legal heirs of the deceased defendant in appeal. Or. 22 Rule 4 (2) Civil Procedure Code, 1908. If out of all the legal representatives, majority of them are already on record and they contest the case on merits, it is not necessary to bring other legal representatives on record for the reason that the estate and the interest of the deceased devolved on the legal representatives is sufficiently represented by those who are already on record.

(2019)3 MLJ 540 (SC)

LNIND 2019 SC 101

Tek Singh v. Shashi Verma

Date of Judgment : 04.02.2019

Revision petitions filed under Section 115 are not maintainable against interlocutory orders in Order 39 Rule 1 and Section 115. It is well settled that the revisional jurisdiction under Section 115 of CPC is to be exercised to correct jurisdictional errors only.

(2019) 4 SCC 332

M.Revanna v. Anjanamma

Date of Judgment: 14.02.2019

Amendment of pleadings after commencement of trial. Not permissible except under conditions stated in provision Order 6 R.17 of CPC. Burden on person seeking amendment after commencement of trial to show that due diligence on his part as contemplated under above provision. Bona fides of prayer for amendment as also prejudice to the other side should be taken into consideration. Neither can amendment be claimed as a matter of right nor has court absolute discretion to allow amendment. In view of proviso, belated application for amendment, which if allowed, would result in travesty of Justice liable to be rejected.

SUPREME COURT – CRIMINAL CASES

(2019) 4 SCC 197

Bir Singh v. Mukesh Kumar

Date of Judgment : 06.02.2019

The presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from presumption of facts. Presumptions are rules of evidence and to not conflict with the presumption of innocence, which requires the prosecution to prove the case against the accused beyond all reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law and presumptions of fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

The provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

(2019) 4 SCC 415

Khushwinder Singh v. State Of Punjab

Date of Judgment: 05.03.2019

Murder of 6 family members by drugging them with sleeping tablets and pushing them into canal, proved by eyewitness a victim but luckily escaped. Corroboration by incriminating materials recovered at instance of accused and recovery of dead bodies from canal and motive for murder being proved minor discrepancies, not materials as witnesses were trustworthy. Finding by courts below neither perverse nor contrary to evidence on record. Concurrent conviction by courts below affirmed under Sections 364,302,307,201 and 380

(2019) 2 MLJ (CrI) 483(SC)

Serious Fraud Investigation Office V. Rahul Modi

Date of Judgment: 27.03.2019

Officers of Serious Fraud Investigation (SFIO) investigated affairs of certain Group of Companies, approval granted for arrest of three persons. Magistrate and Special Court extended their remand. Respondents / accused filed Habeas Corpus petitions for declaration that further proceedings, including their arrest were illegal after period of investigation and for their release. High court directed release of accused on interim bail, hence these appeals. Whether High Court was right and justified in entertaining petition and in passing order under appeal. It was held by the Supreme Court that as on date when matter was considered and order passed by High Court, there were orders of remand passed by Judicial Magistrate and Special Court, and also order of extension passed by Central Government. Legality, validity and correctness order or remand not challenged by filing appropriate proceedings before Magistrate and special Court who dealt with merits of matter. These orders not put in challenge before High Court and not open to High court to entertain Challenge with regard to correctness of those orders. Even after expiry of stipulated period, mandate in favour of SFIO and assignment of investigation would not come to end Extension granted by Central Government later and Original arrest was not illegal High Court completely erred in proceeding on that premise.

(2019) 4 SCC 342

Periyasami v. S.Nallasamy

Date of Judgment: 14.03.2019

Addition of accused not named in FIR, The additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused. In absence of said requirement being met, High Court adding accused under S.319 Cr.P.C., is unsustainable.

(2019) 2 MLJ (CrI) 477 (SC)

Mani v. State of Kerala

Date of Judgment: 01.04.2019

Whether conviction of Appellant under section 302 made out, victims were eight in numbers and in jubilant mood to celebrate victory of their party in panchayat elections and decided to go towards particular side. Accused suddenly came from opposite direction on two motorcycles. Injury received by Appellant is not serious, therefore, he could not have attacked deceased on chest which is vital part, as such injury is likely to cause death. Appellant not entitled to right of private defence which did not extend to inflict more harm than it was necessary. Accused or victims did not have any personal enmity except political differences appellant suddenly confronted with victims and in fight ensued, injuries inflicted upon deceased and other victims. In view of sudden fight without any premeditation, conviction of Appellant under section 302 not made out. Knife blow on chest of deceased was with knowledge that such injury was likely to cause death, but without any intention to cause death of victim was culpable homicide not amounting to murder as death occurred in heat of passion upon sudden quarrel falling within Exception 4 of Section 300 punishable under section 304 part (1) of IPC.

MADRAS HIGH COURT – CIVIL CASES

(2019) 3 MLJ 310

LNIND 2019 MAD 1146

A.K.Muthusamy Gounder v. Selvakumar

Date of Judgments : 20.02.2019

Appellant / Plaintiff filed suit to enforce sale agreement executed. When plaintiff failed to establish his right to get specific performance and not shown his ready and willingness from very beginning, suit for Specific Performance had to fail.

(2019) 3 MLJ 337

LNINDORD 2019 MAD 1845

Convinio Shopping Nine 2 Nine v. Olympia Opaline Owners Assn.

Date of Judgment : 04.03.2019

It is very clear that a judicial authority could not suo *moto* return/reject suit on ground that parties to suit had agreed to refer all their disputes to arbitration at threshold when case was filed under Arbitration and Conciliation Act, no total ouster of jurisdiction of Civil Court unlike in cases arising under other Acts such as SARFAESI Act, Motor Vehicles Act, etc., The ouster is only by choice of the defending party.

(2019) 3 MLJ 563

LNIND 2019 MAD 655

Natesan v. Pappammal

Date of Judgment : 04.02.2019

The records are clear and have not been manipulated. They are original records. They date back to a period more than 30 years back. They give the specific dates of birth of the two Plaintiffs. Unless specific and special reasons are given the said documents cannot be rejected. Once the documents are declared admissible in evidence, being original records and proved in manner known to law.

(2019) 3 MLJ 304
LNINDORD 2019 MAD 2208
V.Krishnamoorthy v. Radhabai Ammal
Date of Judgment : 11.03.2019

Execution petition filed for delivery of possession of immovable property dismissed and decree set aside by the Executing Court. Once the matter in issue already reached finality, the parties right have already been decided and determined conclusively, under Order 21 Rule 95. Executing Court cannot go behind the orders of the High Court and Apex Court and in this case Executing Court assumed itself as Appellate Court to non-suit the order passed by the High Court and Apex Court.

(2019) 3 MLJ 341
LNINDORD 2019 MAD 2339
Kirubasanam Kiruothuvin Saba v. T. Ramanathan
Date of Judgment : 13.03.2019

It is well settled that there must be “sufficient cause” in the application to condone the delay, satisfactory reason has to be given under Order 9 Rule 13, Section 150. Section 5 of Limitation Act. Though the word “Sufficient cause mentioned in Section 5 of the Limitation Act is normally approached liberally, to give such liberal approach there must be acceptable and palpable reason in the petition. On perusal of the affidavit there is no reason whatsoever for such huge delay.

MADRAS HIGH COURT – CRIMINAL CASES

(2019) 2 MLJ (CrI) 323

Ramesh v. State Rep. By Inspector of Police

Date of Judgment : 15.02.2019

When there is no convincing evidence that the rash and negligent act of the accused was the cause for the death, the offence made out against the accused falls under Section 337 and not under Section 304(A) of IPC.

(2019) 2 MLJ (CrI) 309

Vanaja v. S. Sankara Narayanan

Date of Judgment : 23.02.2019

When the execution of the cheque and the signature is not disputed, the Court can draw statutory pre-sumption under Section 139 of Negotiable Instruments Act that the cheque is issued only to discharge legally enforceable debt or liability. It is for the accused to rebuttal the presumption and the rebuttal must be in the manner known to law.

(2019)2 MLJ (CrI) 339

LNINDORD 2019 MAD 3064

N. Rajeswari v. State by Inspector of Police

Date of Judgment : 27.02.2019

When the trial court comes to a conclusion that there are materials available for framing charges, option available to the court is only to frame that charges, rather than conducting a roving enquiry or a mini trial and that the trial court, having found that there are enough materials available, has rightly framed charges. When there are enough and sufficient materials against the petitioners for having abetted first accused, explanation sought for in respect of all properties in the name of the petitioner and after considering all trial court sifted materials and found there was sufficient ground for proceeding against accused

2019) 2 MLJ (CrI) 208

Madras Flying Club Ltd v. Deputy Registrar of Companies

Date of Judgment : 04.03.2019

When there is no specific averments and allegation against company as well as other directors and allegations were very vague and not clear. There should be specific averments in complaint that accused was in-charge and was responsible for conduct of business of the company under Section 2 (60) (vi) of the companies Act, 2013, and if no specific averment in the complaint, the complaint is not at all sustainable.
