

**Vol -VII  
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## **IMPORTANT CASE LAWS**

*Compiled by*

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# INDEX

<b>S. NO.</b>	<b>IMPORTANT CASE LAWS</b>	<b>PAGE NO.</b>
1	Supreme Court - Civil Cases	01
2	Supreme Court - Criminal Cases	04
3	High Court - Civil Cases	12
4	High Court - Criminal Cases	21

# TABLE OF CASES WITH CITATION

## SUPREME COURT CITATION OF CIVIL CASES

SL. NO.	CAUSE TITLE	CITATION	PAGE NO.
1	Nawab John. A& Ors Vs V.N. Subramaniam	2012 (4) CTC 206	01
2	Yogendra Pratap Singh Vs Savitri Pandey & Anr	2012 (2) CIJ 689	02
3	Pushpa Sahakari Avas Samiti Ltd Vs Gangotri Sahakari Avas Samiti Ltd and Ors	(2012) 4 SCC 751	02
4	Ranjit Kaur Vs Major Harmohinder Singh and Ors	(2012) 3 MLJ 831 (SC)	02

## **SUPREME COURT CITATION OF CRIMINAL CASES**

<b>SL. NO.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>PAGE NO.</b>
1	ANAND MOHAN Vs STATE OF BIHAR	(2012) 7 SCC 225	04
2	Ashok Sadarangani & Anr Vs Union of India & Ors	2012-2-L.W.(CrI.) 241	05
3	Nitinbhai Saevatilal Shah and Anr Vs Manubhai Manjibhai Panchal and Anr	(2012) 2 MLJ(CrI) 388 (SC)	06
4	Vasanti Dubey Vs State of Madhya Pradesh	(2012) 2 MLJ(CrI) 402 (SC)	06
5	Nupur Talwar Vs Central Bureau of Investigation & Anr	2012 (4) CTC 422	06
6	Kalyani. W Vs State Tr. Inspector of Police & Anr	(2012) 1 MLJ (CrI) 546 (SC)	07
7	ANEETA HADA Vs GODFATHER TRAVELS AND TOURS PVT LTD With ANIL HADA Vs GODFATHER TRAVELS AND TOURS PVT LTD With AVNISH BAJAJ Vs STATE AND EBAY INDIA PVT LTD Vs STATE AND Anr	(2012) 5 SCC 661	07
8	Ram Dhan Vs State of U.P & Anr	2012 (2) CIJ 730	08
9	Bhajju @ Karan Singh Vs State of M.P	2012 (2) CIJ 754	09
10	Govindaraju @ Govinda Vs State by Srirampuram P.S. & Anr	2012 (2) CIJ 765	10

## HIGH COURT CITATION OF CIVIL CASES

S.NO	CAUSE TITLE	CITATION	PAGE NO.
1	LT Foods Ltd & Anr Vs Sunstar Overseas Ltd & Anr	2012 (4) CTC (IP) 22	12
2	Dharmapuri Handlooms Weavers Co-operative Production & Sales Society Ltd., rep. by its Special Officer Vs S.Lakshmi w/o C.M. Sivanandam, Bharahipuram, Dharmapuri-5	2012 – 4 -L.W. 124	12
3	Syed Mohammed Buhari. S.M Vs The Sub-Registrar (District Registrar Cadre), Triplicane, Chennai – 2 and Ors	2012 (4) CTC 138	13
4	Shriram Transport Finance Company Ltd, No. 178-B, Kamarajar Salai, Madurai rep. by its Senior Manager M. Jeevanantham Vs Raju Naidu Ginning & Oil Mills rep. by its Partner R. Bala Sundaram and Ors	(2012) 4 MLJ 177	14
5	Padmini W/o N.Murugesan Vs Easwari & Ors	2012 – 4 -L.W. 179	14
6	Radhakrishnan. V Vs K. Mani	(2012) 4 MLJ 228	15
7	Bhashyam Ramesh @ Rajagopalan, rep. by Power Agent, V.S. Vhasyam Vs R. Saroja @ K.K. Saroja, 35/2, T.P. Koil Street, Triplicane, Chennai - 5	2012 (4) CTC 337	15
8	Owners and Persons interested in The Vessel M.V. GATI ZIPP, now lying at the Port of Chennai, rep. by its Master Vs Mars Petrochem Pvt. Ltd., No.25, Jackeria Bunder Road, Next to Bank of Maharashtra, Cotton Green(W), Mumbai-400 033, rep. by its Authorised Signatory, P. Sankaran	2012 (4) CTC 465	16
9	Mohan. S Vs Rani Ammal	2012 – 3 – L.W. 555	16
10	Arul. P & Ors Vs P.Sekaran	2012 – 4 -L.W. 681	16
11	Janaki. D Vs S. Jayalakshmi	(2012) 3 MLJ 694	17
12	Thangavel. N Vs. Balasaraswathy	2012 – 4 -L.W. 719	17
13	Durairaj & Ors Vs Venugopal & Anr	2012 – 3 – L.W. 807	18
14	Sree. U Vs U. Srinivas	2012) 2 MLJ 833	19
15	Pauraj. C Vs Secretary, Ministry of Transport, Chennai and Ors	(2012) 2 MLJ 889	19
16	Rajendren. N Vs V.C.P. Periakathan	(2012) 2 MLJ 897	19
17	State Bank of India, Vadavalli Branch, Coimbatore, Now at State Bank of India, Stressed Assets Management Branch Vs Minor Krithaanyaa rep. by its mother/guardian G. Rekha	(2012) 1 MLJ 952	20
18	Kanniammal Vs S. Jyothi and Ors	(2012) 1 MLJ 1060	20

## **HIGH COURT CITATION OF CRIMINAL CASES**

<b>SL. NO.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>PAGE NO.</b>
1	Ramnaresh & Ors Vs State of Chattisgarh	(2012) -2- L.W. (CrI.) 1	21
2	Thangapandian @ Sankaranarayanan Vs State by the Inspector of Police, Madathukkulam, Coimbatore District	(2012) 2 MLJ (CrI) 11	21
3	Karikalan and Ors Vs Food Inspector, G. Pakirisamy, Food & Drugs Admin., Govt. G.H, Karaikal	(2012) 2 MLJ (CrI) 18	22
4	Anbathagan Vs State represented by Inspector of Police, Pallikarani Police Station, Kancheepuram District	(2012) 2 MLJ (CrI) 29	22
5	Pavithra @ Swathi Vs The Inspector of Police, J8 Neelankarai Police Station, Chennai and Ors	2012-2-L.W.(CrI.) 50	22
6	Sundari. Smt Vs Smt. Sushila	2012-2-L.W.(CrI.) 107	23
7	Idukkan (name changed as per order of Court) Vs The Inspector of Police	2012-2-L.W.(CrI.)121	24
8	State represented by, Inspector of Police, Prohibition Enforcement Wing, Gobichetipalayam, Erode District Vs Sivasakthi @ Sakthi and Ors	2012-2-L.W.(CrI.) 141	25





## SUPREME COURT CITATIONS CIVIL CASES

2012 (4) CTC 206

A. Nawab John & Ors  
Vs  
V.N. Subramaniam

Code of Civil Procedure, 1908 (5 of 1908), Section 149 – Scope of – Limitation as to application of – Provision discretionary in nature – It deals with Court-fees payable on every document with respect to which Court-fee is required to be paid under appropriate law – Thus, provision takes within its sweep not only Plaints but also Written Statements where Court-fees is required to be paid under appropriate law – Court has authority to call upon Plaintiff to make payment of necessary Court-fee – Such authority can be exercised at any stage of Suit – Amount of lapse of time would not fetter authority of Court to direct payment of deficit Court-fee – Thus, even Plaintiff cannot be said to be barred from paying deficit Court-fee because of lapse of time – However, provision does not confer an absolute right in favour of Plaintiff to pay Court-fee as and when it pleases to Plaintiff – Plaintiff only enabled to seek indulgence of Court of payment of Court-fee at a point later than presentation of Plaintiff – Exercise of discretion by Court conditional upon satisfaction that Plaintiff offered a legally acceptable explanation for not paying Court-fee within period of limitation – In instant case, delay of 1328 days and of 585 days on two separate occasions condoned by Trial Court for making delayed representation on account of deficit Court-fee – High Court in Revision set aside order of Trial Court and struck off Plaintiff – Held, discretion under Section 149 was not exercised by Trial Court in accordance with principles of law – Order of High Court not interfered with – Appeal dismissed.

Transfer of Property Act, 1882 (4 of 1882), Section 52 – Effect of provision – Provision does not render transfers affected during pendency of a Suit by a party to Suit void – Such transfers are only subservient to right of parties to such Suit, as may be eventually determined in Suit – Transfer remains valid, subject to result of Suit – Pendente lite purchaser would be entitled to or would suffer same legal rights and obligations of his vendor as may be eventually determined by Court.

Tamil Nadu Court Fees and Suit Valuation Act, 1955 (T.N. Act 14 of 1955), Section 12(1) – Obligation of Court to examine all relevant material and determine whether proper fee payable on Plaintiff is paid or not – Defendant can also raise objections to either valuation of Suit or determination of Court-fee payable – Trial Court mandated to reject Plaintiff if Plaintiff fails to pay necessary Court-fee even after being called upon.

Tamil Nadu Court Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1955), Section 4 – Document on which deficit Court-fee is paid – Said document shall not be acted upon, however, document cannot be declared to be without any validity.

– Deficit Court-fee – Dismissal of Suit – Held, Defendant entitled to bring to notice of Court that amount of Court-fee paid by Plaintiff is not in accordance with law, however, Defendant cannot succeed in Suit only on that count.

2012 (2) CIJ 689

Yogendra Pratap Singh  
Vs  
Savitri Pandey & Anr

- (A) Negotiable Instruments Act, 1881 (26 of 1881) - Sec.138, 142-Code of Criminal procedure, 1973 (2 of 1974) - Sec. 190-Cheque dishonor-Complaint-Filing-Notice-Premature-Cognizance-Validity-Appellant had filed the complaint for the dishonor of the cheque before the expiry of 15 days from the date of receipt of notice by the respondent but was taken cognizance by the Magistrate after 15 days-When the respondent sought to quash the cognizance of the complaint on the ground that the complaint was premature which could not be taken cognizance subsequently, the High Court accepted the plea and quashed the cognizance against which the appellant preferred SLP-While the appellant contended that even if the complaint was presented before the expiry of 15 days from the date of receipt of notice by the accused, cognizance of it would not be bad if it was taken after 15 days which plea was resisted by the respondent-Court noticed the divergent views of two coordinate benches and various High Courts on that question of law and referred the matter for decision by a larger bench.
- (B) Negotiable Instrument Act, 1881(26 of 1881)-Sec.138, 142-Code of Criminal Procedure, 1973(2 of 1974)-Sec.190 - Cheque dishonor-Complaint-Filing-Notice-Premature-Cognizance-Validity – A premature complaint is no complaint in the eyes of law and no cognizance could be taken on the basis thereof.

**RATIO:** A premature complaint is no complaint in the eyes of law and no cognizance could be taken on the basis thereof.

(2012) 4 Supreme Court Cases 751

Pushpa Sahakari Avas Samiti Limited  
Vs  
Gangotri Sahakari Avas Samiti Limited and Ors

Civil Procedure Code, 1908 – Or. 21 R. 32, Ss. 47, 115 and Or. 23 R. 3 – Premature application for execution of compromise decree – When maintainable – Application for execution of decree filed prior to expiry of period of six months stipulated in decree – Objection raised under S. 47 that application being premature cannot be entertained – Rejecting the objection executing court took into consideration submission of judgment-debtor and passed execution order – By the time matter was taken up and order was passed, decree had become mature for execution – Held, executing court justified in entertaining premature execution application.

(2012) 3 MLJ 831 (SC)

Ranjit Kaur  
Vs  
Major Harmohinder Singh and Ors

Eviction – Filing of suit for injunction by wife after dissolution of marriage to restrain ex-husband from alienating property and interfering with her peaceful possession – Decree of divorce became final – No provision made in decree of divorce for maintenance of wife including right of residence in suit property – Appellant not entitled to continue to occupy house owned by ex-husband as of right – Appellant's prayer to restrain respondent 1 from alienation of suit property, rejected – Though occupation of suit property by appellant unauthorised,

respondent 1 cannot forcibly evict her except by procedure established by law – Respondent 1 at liberty to evict appellant only in accordance with law.

#### RATIO DECIDEND

1. Where decree of divorce has become final and no provision is made in the decree of divorce for maintenance of wife including her right of residence in suit property, wife will not be entitled to continue to occupy the house of ex-husband as of right.
2. Though occupation of suit property in name of husband by divorced wife is unauthorised, husband cannot forcibly evict her except by procedure established by law.

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# SUPREME COURT CITATIONS CRIMINAL CASES

(2012) 7 Supreme Court Cases 225

ANAND MOHAN  
Vs  
STATE OF BIHAR

- A. Criminal Procedure Code, 1973 – S. 154 – FIR – Generally – What amounts to and requirements of FIR – Cryptic information/messages not to be treated as FIR.
- Whether wireless message sent soon after incident was real FIR as contended on behalf of defence or whether typed report subsequently lodged by PW 14 (DSP) in police station was FIR, as contended on behalf of prosecution – Determination of – As per S. 154(1), every information relating to commission of a cognizable offence, whether given in writing or reduced into writing, has to be signed by person giving it – Hence, held, person who gives information and who has to sign information, has to choose which particular information relating to commission of a cognizable offence is to be treated as an FIR – Herein, PW 14 chose not to treat wireless message but subsequent typed information as FIR and police had also not treated wireless message but subsequent typed information as FIR – Moreover, wireless message was cryptic and did not sufficiently disclose nature of offence committed much less identity of persons who committed offence – Unless and until more information was collected on how exactly deceased was killed, it being a case of murder, it was not mandatory for either PW 14 to lodge wireless message as FIR or for officer in charge of police station to treat the same as FIR – Such cryptic information has been held by Supreme Court not to be FIR – Such cryptic information had been held by Supreme Court not to be FIR in a number of cases – Therefore, courts below rightly treated subsequent typed written information lodged by PW 14 and not the wireless message as FIR – Penal Code, 1860, Ss. 302/109.
- B. Criminal Procedure Code, 1973 – S.154 – Whether FIR antedated and ante-timed – Determination of – On basis of all evidence on record, High Court held that evidence created a reasonable suspicion about FIR being antedated and ante-time – Held, there is no error in this finding of High Court – Penal Code, 1860 – Ss. 302/109 – Abetment of murder.
- C. Criminal Trial – Appreciation of Evidence – Credibility of witnesses – Established – Abetment of murder – Exhortation to kill – Culpability for, under S. 109 r/w S. 302 IPC – Conviction of accused for exhorting lone killer to shoot dead victim, a District Magistrate (DM), in a surcharged riotous atmosphere, which shooting lead to death of DM – Conviction under S. 109 r/w S. 302 IPC, Confirmed.
- Herein, C and his associates were murdered by some unknown criminals – After post-mortem, body of C was taken in a procession to his ancestral house in village, which was escorted by officers of civil and police administration, in which A-1 to A-7 were also present – A -1 to A – 3 gave speeches instigating crowd to take revenge for this murder and to teach administration a lesson if it created any hurdle – Thereafter, assembled people became aggressive – When procession was on national highway, car of a DM (deceased victim) came from opposite direction – On exhortation by accused, B (brother of C) shot the DM who got wounded and eventually died in the hospital.
  - High Court on basis of evidence of PWs 1,3,4,9,10 and 14 (all police officials claiming to be with or behind procession till incident occurred) held that A –1 had exhorted lone shooter to kill deceased and hence he alone was guilty of offence of abetment of murder under Ss.302/109 IPC – Accordingly, High Court acquitted A-2 to A-7 of all charges and sustained conviction of A – 1 – Further, High Court held that attack on car of deceased and its occupants was a sudden act of mob fury which had gathered to watch funeral procession – Thus, processionists did not have any common object and therefore did

not constitute an unlawful assembly and hence A-1 to A-7 could not be held liable for offence under Ss. 302/149 IPC.

- Held, ten out of fourteen witnesses who were accompanying procession and were near place of occurrence, have given a consistent version that A – 1 exhorted B to shoot at deceased – Hence, just because four of fourteen witnesses have not deposed regarding exhortation by A-1, it cannot be held that ten witnesses have falsely deposed – Accordingly, High Court has rightly recorded finding that only A-1 exhorted lone shooter to kill deceased and was guilty of offence of abetment under S. 109 IPC and was liable for punishment under Ss. 302/109 IPC for murder of deceased and A-2, A-3 and A-4 have to be acquitted of charges under Ss. 302/109 IPC – Further, held, High Court rightly rejected contention of prosecution that A-1 to A-7 were liable for conviction under Ss. 302/149 – Penal Code, 1860 – Ss. 302/109 or 302/149 – Exhortation.
- D. Criminal Trial – Injuries, Wounds and Weapons – Firearm/Gunshot injuries/wounds/Ballistics/Ballistic expert – Abetment of murder – Submission of defence that witnesses deposed that deceased was shot by B when he was lying injured on ground but medical evidence established that bullets were fired when deceased was in a standing position, and thus evidence of such witnesses should be discarded – Tenability – Held, evidence of PW 16 (doctor who carried out post-mortem) is clear that projectile may travel in body even in standing or sleeping position – Therefore, it cannot be held that medical evidence is such as to entirely rule out truth of evidence of prosecution witnesses that deceased was shot when he was lying injured on ground – Penal Code, 1860, Ss. 302/109.
- E. Criminal Trial – Appreciation of Evidence – Credibility of witnesses – If established – Abetment of murder – Culpability of exhortation – Conviction of accused for exhorting lone killer to shoot victim, leading to his death – Contention of defence that High Court did not take into consideration evidence of PW 17 and PW 21, who were driver and bodyguard of deceased respectively, and who did not support prosecution case – Tenability – Held, both PWs 17 and 21 were silent with regard to exhortation by A -1 to B to shoot at deceased – Clearly, PWs 17 and 21 were not aware of any shooting incident at all and they were under impression that deceased had been injured by assault of mob after they were pulled out from car as they did not seem to know what exactly happened thereafter, as they were beaten up by mob – On basis of their evidence, court cannot discard evidence of ten other witnesses, that deceased was shot by B with revolver on exhortation of A – 1 when medical evidence established that cause of death of deceased was on account of bullet injuries on deceased and not assault by mob – Moreover, PWs 17 and 21 may not have supported prosecution case but their evidence also does not belie prosecution case that deceased was shot by B on exhortation by A – 1 – Penal Code, 1860, Ss. 302/109.
- F. Evidence Act, 1872 – S. 103 – Prosecution establishing guilt of accused - Burden of proving innocence lies on accused – Abetment of murder – Prosecution establishing that A -1 had exhorted B to shoot deceased – A -1 seeking to establish that he was elsewhere, so could not have exhorted B – A – 1 failing to prove this alibi – In instant case, since accused had not discharged this burden, High Court, held, was right in holding that he was guilty of offence under Ss. 302/109 IPC – Penal Code, 1860 – Ss. 302/109 – Criminal Procedure Code, 1973 – S. 313 – Criminal Trial – Defence - Generally.
- G. Criminal Trial – Sentence – Death sentence – Commutation to life when warranted – Abetment of murder – In a funeral procession, accused exhorting lone killer to shoot victim, leading to his death – Held, as accused was not assailant himself, RI for life and not death sentence, would be appropriate sentence – Hence, High Court was correct in converting death sentence of accused to RI for life – Penal Code, 1860, Ss. 302/109.

2012-2-L.W.(Cri.) 241

Ashok Sadarangani & Anr.

Vs.

Union of India & Ors

Criminal Procedure Code (1973), Sections 320/Non-Compoundable offence whether can be quashed, 482/Quashing of non-compoundable offence,

I.P.C., Section 120-B r/w.465,467,468 and 471,

Constitution of India, Article 32/Non-compoundable offence, Quashing of Article 142/Power of Supreme Court.

In the instant case, the allegation is that as part of a larger conspiracy, property acquired on lease from a person who had no title to the leased properties, was offered as collateral security for loans obtained.

Dispute between the petitioners and the Banks having been compromised, whether the continuance of the criminal proceeding could turn out to be an exercise in futility.

Continuance of a criminal proceeding after a compromise has been arrived at between the complainant and the accused, would amount to abuse of the process of court and an exercise in futility.

In the instant case, emphasis is more on the criminal intent of the Petitioners than on the civil aspect involving the dues of the Bank in respect of which a compromise was worked out.

(2012) 2 MLJ (CrI) 388 (SC)

Nitinbhai Saevatilal Shah and Anr

Vs

Manubhai Manjibhai Panchal and Anr

Code of Criminal Procedure, 1973 (2 of 1974), Section 326(3) – Negotiable Instrument Act (26 of 1881), Section 138 – Dishonour of cheque – Conviction on evidence partly recorded by one Magistrate and partly by another – Appeal – In summary proceedings, the successor Judge or Magistrate has no authority to proceed trial from the stage at which his predecessor has left it – Conviction set aside – Appeal allowed.

**RATIO DECIDENDI:** Except in regard to those cases which fall within the ambit of Section 326 Cr.P., the Magistrate cannot proceed with the trial placing reliance on the evidence recorded by his predecessor.

(2012) 2 MLJ (CrI) 402 (SC)

Vasanti Dubey

Vs

State of Madhya Pradesh

Code of Criminal Procedure, 1973 (2 of 1974), Section 200 – Prevention of Corruption Act (45 of 1988), Section 13(l)(d) read with Section 13(1)(2) – Closure report – Order of Special Judge refused to accept closure report – Criminal revision – Dismissal – Appeal – Special judge not justified in proceeding with the matter without sanction for prosecution, and could not have ordered for reinvestigation of the case for the third time by refusing to accept Closure Report – Abuse of process of law – Order of Special Judge set aside – Appeal allowed.

**RATIO DECIDENDI:** The enquiry under Section 200 Cr.P.C. cannot be given a go-bye if the Magistrate refuses to accept the closure report submitted by the investigating agency as this enquiry is legally vital to protect the affected party from the vexatious prosecution.

2012 (4) CTC 422

Nupur Talwar

Vs

Central Bureau of Investigation & Anr

**Code of Criminal Procedure, 1973 (2 of 1974), Sections 204, 209 & 465 – Double Murder case – Issue of summons – Exhaustive and detailed order of Magistrate – Validity of - Closure Report submitted by CBI in double murder case – Magistrate, however, refused to accept said report and issued Summons to Petitioner and her husband for murder of their daughter Aarushi and house help Hemraj – Magistrate while issuing Summons passed a detailed and reasoned order – Held, since CBI wanted to close matter, it was appropriate, though not necessary for Magistrate to record reasons – Moreover, Complainant himself was being summoned as Accused – Furthermore, recording of reasons was justified as Magistrate believed that there was sufficient material to proceed against Accused, and to establish how his opinion differed from that of CBI's Closure Report – Additionally, reasoned order of Magistrate would facilitate Court of Sessions to appreciate the understanding of Magistrate in issuing Summons – Thus, held, no criticism is warranted questioning Magistrate's order being detailed and lengthy – Magistrate's order merely highlighted circumstances emerging out of investigation carried out in matter, which constituted basis for her decision to issue process – Magistrate's order being speaking one cannot be stated to have occasioned failure of justice – Order of Magistrate, cannot be stated to have occasioned failure of justice – Order of Magistrate, cannot be faulted on ground that it was reasoned order.**

**(2012) 1 MLJ (Cri) 546 (SC)**

**W. Kalyani  
Vs**

**State Tr. Inspector of Police & Anr**

**Code of Criminal Procedure 1973 (2 of 1974), Section 482 – Indian Penal Code (45 of 1860), Sections 498-A, 386, 341 read with 34 – Offence of Adultery – Order of High Court dismissing petition filed for quashing proceedings against appellant – Appeal – Only a man can be proceeded against and be punished for offence of adultery – Mere fact that appellant is a woman makes her completely immune to the charge of adultery – All the allegations in the complaint taken on their face value do not make out any case against the appellant – Proceedings against the appellant accused are equally fit to be quashed – High Court was in error in not allowing the quashing application filed by the appellant – Order of High Court set aside – Impugned proceedings quashed – Appeal Allowed.**

**RATIO DECIDENDI: Only a man can be proceeded against and punished for the offence of adultery and the wife cannot be punished even as an abettor. Thus, the mere fact that the accused is a woman makes her completely immune to the charge of adultery and she cannot be proceeded against for that offence.**

**(2012) 5 Supreme Court Cases 661**

**ANEETA HADA**

**Vs**

**GODFATHER TRAVELS AND TOURS PRIVATE LTD**

**With**

**ANIL HADA**

**Vs**

**GODFATHER TRAVELS AND TOURS PRIVATE LTD**

**With**

**AVNISH BAJAJ**

**Vs**

**STATE**

**AND**

**EBAY INDIA PRIVATE LTD**

**Vs**

**STATE AND Anr**

- A. Debt, Financial and Monetary Laws – Negotiable Instruments Act, 1881 – Ss. 141, 138, 7, 139, 118 and 140 – Criminal liability for dishonour of cheque drawn by company – Officers of company when may be implicated – Extent of deeming fiction in S. 141 – Mandatory requirement of impleading company as**

- one of the accused – Director or authorized signatory of cheque – Prosecution against, without arraigning of company as accused, held, not maintainable.
  - Only exception would be in a case applying principle of *lex non cogit ad impossibilia* i.e. if for some legal snag, company cannot be proceeded against without obtaining sanction of a court of law or other authority, trial as against the other accused may be proceeded against if ingredients of S. 138 as also S. 141 are otherwise fulfilled – In such an event clarified that it would not be a case where company had not been made an accused but would be one where company cannot be proceeded against due to existence of a legal bar – A distinction must be borne in mind between cases where a company had not been made an accused and the one where despite making it an accused, it cannot be proceeded against because of a legal bar.
  - Held, criminal liability on account of dishonor of cheque primarily falls on drawer company and extends to its officers only when conditions incorporated in S. 141 stand satisfied – Explaining import of words “as well as the company” occurring in S. 141, held, for maintaining prosecution under S. 141, arraigning of company as accused is imperative.
  - Sheoratan, (1984) 4 SCC 352, overruled on this point and Anil Hada, (2000) 1 SCC 1, partly overruled and partly affirmed on this point.
- B. Corporate Laws – Company Law – Corporate Criminal Liability – Company – Nature of its entity and applicability of criminal liability to it – Reiterated, company is a juristic person, and can be fastened with criminal liability – Companies Act, 1956, S .34.
- C. Essential Commodities Act, 1955 – S. 10 – Prosecution of person in charge of company only without arraying the company – Held, not permissible.
- D. Precedents – Supreme Court vis-à-vis itself – Larger Bench’s decision, reiterated, is binding precedent – Judgments which had not followed the same, overruled – Constitution of India, Art.141.
- E. Information Technology Act, 2000 – Ss. 85 and 67 – Offence by company – Criminal Proceedings against Director for, without impleading Company as accused, held, not maintainable – Penal Code, 1860, S.292.
- F. Information Technology Act, 2000 – S. 85 – Provisions of, held, are in pari material with S.141, Negotiable Instruments Act, 1881.
- G. Negotiable Instruments Act, 1881 – Ss. 7 and 141 – “Drawer” – Scope – Authorised signatory of company, held, covered.

2012 (2) CIJ 730

Ram Dhan

Vs

State of U.P & Anr

- (A) Code of Criminal Procedure, 1973(2 of 1974) – Sec.195, 340-Indian Penal Code, 1860(45 of 1860) – Sec.177, 181, 182, 195-False information-FIR-Prosecution-Perjury-Complaint-Maintainability-On the information lodged by the appellant that his son was kidnapped by another, the accused was prosecuted and convicted-Later, when the appellant had disclosed to others that his son was working in another State and he had lodged a false information with the police, the convicted accused had lodged FIR against the appellant-After investigation final report was filed against the appellant for an offence under Secs.177, 181, 182, and 195 IPC-Appellant had sought for discharge on the ground that as the offence was committed in Court, the accused could not be a complainant under Sec.195, the Magistrate and when the revision against that order



was also dismissed, appellant preferred SLP-Appellant stood by his stand-Held, offence under Sec.177, 181 and 182 did not take place in the Court and so Sec.195 Cr.P.C. was not attracted-Offence under Sec.195 IPC could also taken place outside the Court proceeding and in such case, Sec.195 Cr.P.C. was took place outside the Court proceeding, Se.195 Cr.P.C. was not attracted-Appellant had also concealed his petition before the High Court under Sec.482 Cr.P.C which warranted rejection of his claim-Appeal was dismissed.

- (B) Code of Criminal Procedure, 1973(2 of 1974) – Sec.195, 340-Indian Penal Code, 1860(45 of 1860) – Sec.177, 181, 182, 195 – False information-FIR-Prosecution-Perjury-Complaint-Maintainability-To prosecute a person for an offence under Sec.177, 182 IPC, Sec.195 Cr.P.C. is not a bar and a private person could lodge a report in this regard to the police-Offence under Sec.195 IPC could also take place outside the Court and in such an event, provision of Sec.195 Cr.P.C. is not attracted.

**RATIOS:**

- a. To prosecute a person for an offence under Sec.177, 182 IPC, Sec.195 Cr.P.C. is not a bar and a private person could lodge a report in this regard to the police.
- b. Offence under Sec. 195 IPC could also take place outside the Court and in such an event, provision of Sec. 195 Cr.P.C. is not attracted.

**2012 (2) CIJ 754**

**Bhajju @ Karan Singh  
Vs  
State of M.P**

- (A) Indian Evidence Act, 1872(1 of 1872) – Sec.3, 32 154-Criminal trial-Dying declaration-Reliability-Corroboration-Appreciation of evidence-Hostile witness-Appellant was accused of murdering his wife by pouring kerosene over her and set her on fire-Immediately after her admission in the hospital, her statement was recorded by the doctor, tahsildar and police which implicated the appellant-Though the other witnesses had turned hostile, by relying upon the dying declaration, the appellant was convicted by the trial Court which was affirmed by the High Court against which the appellant preferred appeal-While the appellant contended that the dying declaration was not reliable and based upon it conviction could not be granted and the affidavit of the deceased notarised later exonerated the appellant which pleas were resisted by the respondent-Held, even when a witness turned hostile, the portion of the statement which supported the party calling such witness could be used provided it was reliable-When consistent and natural, conviction could be granted based solely upon the dying declaration of the deceased – Affidavit allegedly signed by her and notarized was disbelieved-Judgments of the trial Court and the High Court was confirmed and the appeal was dismissed.
- (B) Indian Evidence Act, 1872(1 of 1872) – Sec.3, 32-Criminal trial-Dying declaration-Reliability-Corroboration-Appreciation of evidence-If the dying declaration has been recorded in accordance with law, is reliable and gives a cogent and possible explanation of the occurrence of the events, then the dying declaration can certainly be relied upon by the Court and could form the sole piece of evidence resulting in the conviction of the accused.
- (C) Indian Evidence Act, 1872(1 of 1872) – Sec.3, 8, 32-Criminal trial-Expectation of death-Civil suit-Under the Indian law, the dying declaration is relevant, whether the person who makes it was or was not under expectation of death at the time of such declaration-The dying declaration is admissible not only in the case of homicide but also in civil suits.
- (D) Indian Evidence Act, 1872(1 of 1872) – Sec.3, 32-Criminal trial-Dying declaration-Reliability-Appreciation of evidence-A dying declaration, if found reliable, can form the basis of a conviction-The dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence-Dying declaration has to be

judged and appreciated in light of the surrounding circumstances and its weight determined by reference to the principle governing the weighting of evidence.

- (E) Indian Evidence Act, 1872(1 of 1872) – Sec.3-Criminal trial-Appreciation of evidence-Hostile witness- Evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident.

**RATIOS:**

- a. If the dying declaration has been recorded in accordance with law, is reliable and gives a cogent and possible explanation of the occurrence of the events, then the dying declaration can be relied upon by the Court and could form the sole piece of evidence resulting in the conviction of the accused.
- b. Under the Indian law, the dying declaration is relevant, whether the person who makes it was or was not under expectation of death at the time of such declaration.
- c. The dying declaration is admissible not only in the case of homicide but also in civil suits.
- d. A dying declaration, if found reliable, can form the basis of a conviction.
- e. The dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence.
- f. Dying declaration has to be judged and appreciated in light of the surrounding circumstances and its weight determined by reference to the principle governing the weighting of evidence.
- g. Evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident.

2012 (2) CIJ 765

Govindaraju @ Govinda

Vs

State by Srirampuram P.S. & Anr

- (A) Indian Evidence Act, 1872 (1 of 1872) – Sec.3, 134-Code of Criminal Procedure, 1973(2 of 1974) – Sec.378 – Criminal trial-Appreciation of evidence-Police officer-Number of witness-Sole witness-Appeal against acquittal – Perversity - Accused-Innocence-Presumption-Material witness - Non examination-Appellant was accused of murdering a person in a public street which was witnessed by a sub inspector-In the trial, except that sub-inspector, all other eye witnesses turned hostile and so the trial Court acquitted the appellant by disbelieving the evidence of the Sub-Inspector – In the appeal against acquittal preferred by the State, the High Court reversed the acquittal by holding that the other view was also possible against which the appellant preferred SLP – While the appellant contended that acquittal could be interfered by the appellate Court only in case of perversity of finding and not on a mere ground of possibility of contra view and the evidence of the police officer, without corroboration could not be accepted for conviction – State contended that mere fact that the witness was a police officer would not warrant the rejection of his evidence and justified the judgment of the High Court – Held, if reliable and cogent, conviction could be based upon the sole testimony of a police officer who witnessed the occurrence – There was no rule of law that the evidence of a police officer could not be relied on for conviction – In case of appeal against acquittal, mere possibility of another view could not be a ground for interference - In criminal cases based on sole eye witness, the non examination of material witnesses assume significance – As the evidence of the police officer who allegedly saw the occurrence was not reliable and other material witnesses like doctor who had conducted

the post mortem were not examined and the other witnesses had turned hostile, the interference by the High Court into the acquittal was set aside – Appeal was allowed and the judgment of acquittal passed by the trial Court was restored.

- (B) Code of Criminal Procedure, 1973(2 of 1974)-Sec.378 – Criminal trial – Acquittal-Appeal against acquittal-Appreciation of evidence – Appellate Court – Power-In an appeal against an order of acquittal, an appellate Court has every power to re-appreciate, review and reconsider the evidence before it, as a whole.
- (C) Code of Criminal Procedure, 1973(2 of 1974) – Sec.378-Criminal trial-Appeal against acquittal-Court-Power-Appreciation of evidence-Once leave is granted, there is hardly any difference between a normal appeal and an appeal against acquittal.
- (D) Code of Criminal Procedure, 1973(2 of 1974) – Sec.378 – Criminal trial-Appeal against acquittal-Perversity-High Court-Duty While dealing with appeal against acquittal, the High Court has to specifically deal with the perversity in applying the law or in appreciation of evidence by the trial Court.
- (E) Indian Evidence Act, 1872(1 of 1872) – Sec.3, 134 – Criminal trial-Appreciation of evidence-Police officer-Number of witness-Sole witness-If the testimony of a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidences, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in success of the case.
- (F) Indian Evidence Act, 1872(1 of 1872) – Sec.3 114-Criminal trial-Appreciation of evidence-Accused-Innocence-Presumption-In criminal trial, presumption cannot be raised against the accused either of fact or in evidence.
- (G) Indian Evidence Act, 1872(1 of 1872) – Sec.3, 27-Criminal trial-Appreciation of evidence-Police officer-Recovery-Independent witness-Mere absence of independent witnesses when the Investigating Officer recorded the statement of the accused and the article was recovered pursuant thereto, is not a sufficient ground to discard the evidence of the Police Officer relating to recover at the instance of the accused.

#### **RATIOS:**

- a. In an appeal against an order of acquittal, an appellate Court has every power to re-appreciate, review and reconsider the evidence before it, as a whole.
- b. Once leave is granted, there is hardly and difference between a normal appeal and an appeal against acquittal.
- c. While dealing with appeal against acquittal, the High Court has to specifically deal with the perversity in applying the law or in appreciation of evidence by the trial Court.
- d. If the testimony of a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in success of the case.
- e. In criminal trial, presumption cannot be raised against the accused either of fact or in evidence.
- f. Mere absence of independent witnesses when the Investigating Officer recorded the statement of the accused and the article was recovered pursuant thereto, is not a sufficient ground to discard the evidence of the Police Officer relating to recover at the instance of the accused.

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## HIGH COURT CITATIONS CIVIL CASES

2012 (4) CTC (IP) 22

LT Foods Ltd & Anr  
Vs  
Sunstar Overseas Ltd & Anr

Trade Marks – Injunction – Party committing fraud on Court – Entitlement to equitable relief – Both parties claiming ownership rights in relation to mark ‘HERITAGE’, in respect of rice – Mark ‘HERITAGE’ used by Plaintiffs and mark ‘INDIAN HERITAGE’ & ‘INDIAN HERITAGE SELECT’ used by Defendants – Admitted by parties that marks are deceptively similar and there would be confusion and deception if parties continue to use same – Evidence adduced by parties – Local Commissioner appointed to verify copies of invoices produced before Court by parties – Established that documents produced by Defendants were not genuine – Difference of marks found at pre-shipment and post-shipment stage in documents of Defendant – Moreover, sales figures for any year not produced by Defendants guilty of filing false Affidavits and improper documents before Court - Attempt of Defendants to raise all kinds of patently false and frivolous allegations against report of Local Commissioner – Arguments of Defendants based on documents, which were prima facie forged and fabricated – Held, party who takes recourse of fraud, deflects course of Judicial proceedings or does anything with oblique motive, such person is required to be dealt with properly in order to maintain faith of people in system of administration of justice – Practice of dubious ways to be curbed by imposition of costs – Costs of ₹ 50,000/- each imposed on Defendants – Application filed by Defendants for grant of injunction, dismissed – Application filed by Plaintiffs for grant of injunction, allowed.

Legal Maxims – Omnia praesumuntur contra spoliatores – Party who withholds a document or evidence from Court knowingly that said document would operate to his disadvantage, Court can draw adverse presumption against said party – Evidence Act, 1872, Section 114.

Trade Marks Act, 1999 (47 of 1999), Section 28(3) – Suit for infringement – Both parties registered owners of trade mark in question – Thus, Suit for infringement against each other, not maintainable – However, an action for passing off would be maintainable.

2012 – 4 -L.W. 124

Dharmapuri Handlooms Weavers Co-operative Production & Sales Society Ltd., rep. by its Special Officer  
Vs.  
S.Lakshmi w/o C.M. Sivanandam, Bharahipuram, Dharmapuri-5

Tamil Nadu Cooperative Societies Act (1983), Section 146, 156/Suit for recovery of Possession, unregistered, lease, expiry, whether maintainable,

Tamil Nadu Cooperative Societies Rules, Rr.1151 (1), (6),

C.P.C., Section 9/Suit for recovery of possession, Unregistered lease, Expiry, whether maintainable, Section 11, *Res Judicata*, decision in summary proceeding, not applicable, Order XII, Rule 6, judgment on admission, Sections 100,103.

Evidence Act, Section 58/Admitted fact, non-payment of rent, accepted.

Society has rightly filed the suit for recovery of possession.

Suit for recovery or delivery or possession of the society's property is not barred by Section 156.

Lease deed was not executed with prior sanction of the competent authority – Defendant/tenant has also put up superstructure in the suit property without prior permission violating unauthorised lease deed – plaintiff Cooperative Society moved an application before the higher authority mentioning all these violations for cancellation of the said lease.

Section 146 will not apply – When there was an unauthorized lease deed between the Society-lessor and the defendant-lessee, the rights and obligations arising out of the lease deed cannot be legally decided by a Registrar or a person empowered by the Registrar like the Assistant Director of Handlooms and Textiles herein. An illegal or unauthorized lease deed was executed by one of the Board of Directors who had absolutely no authority to do so, hence the possession taken by the defendant was illegal – Order passed by the assistant Director of Handlooms and Textiles, Salem, cancelling the lease by issuing a specific direction to handover possession being not supported by any provision in the Act, the same will not have any statutory force capable of being executed under Rule 115.

Jurisdiction of the civil court under Section 9 C.P.C. alone can be availed of for the purpose of removing a trespasser as he has no authority to occupy a land of the society – No provision in the Tamil Nadu Co-operative Societies Act indicating exclusion of Civil Court jurisdiction by necessary implication for filing a suit by the Co-operative Society for delivery of vacant possession of its own property.

C.P.C. ,Section 9/Suit for recovery of Possession, Unregistered lease, Expiry, whether maintainable, Section 11, *Res Judicata*, decision in summary proceeding, not applicable.

If any decision or order is passed in a summary proceeding which is not a suit and that the said order is not appealable, then the question of doctrine of res-judicata will not apply so as to bar a regular suit.

2012 (4) CTC 138

S.M. Syed Mohammed Buhari

Vs

The Sub-Registrar (District Registrar Cadre), Triplicane, Chennai – 2 and Ors

Constitution of India, Article 226 – Writ Petition seeking declaration that Cancellation Deed cancelling Settlement Deed is void – Held, Writ declaration can only be issued when a statutory duty has been wrongly exercised or done without authority – Question of admissibility or relevancy of recital in a document or factum of possession resulting in consequential conclusion of valid gift, under realm of a Civil Court having competent jurisdiction – Writ Petition, thus, dismissed.

Constitution of India, Article 226 – Writ Petition – Disputed question of fact – Maintainability – Writ Petition seeking declaration that Cancellation Deed is null and void – Factum of possession of concerned property disputed – Held, issue of possession to be decided by competent Civil Court – Writ Court cannot embark upon exercise merely based on recital contained in document which at most would give a presumption against donor which can be rebutted by other forms of evidence.

Registration Act, 1908 (16 of 1908), Sections 17, 48 & 49 – Registration Rules, Rule 55 – Registration of Cancellation Deed under Mohammedan Law – Role of Registering Authority – Registering Authority need not go into question of validity of Cancellation Deed – Registration is an act of an officer appointed under law and cancellation of Settlement is under Mohammedan law – Settlement Deed does not depend upon consent – Registering Officer not duty bound to see recitals of document – Not incumbent upon said Officer to look into attending circumstances.

Transfer of Property Act, 1882 (4 of 1882), Sections 2, 8 & 129 – Mohammedan Law – Document reduced in writing concerned with donor and done being Mohammedan can be stated to be compulsorily registrable, however, validity of valid gift would be governed only by Mohammedan Law and not by 1882 Act.

Mohammedan Law – Oral Gift – Registration of - Effect of – Mere registration of oral gift reduced in writing would not imply that Personal Muslim Law cannot be applied to said Gift post registration – Registration merely places document in public domain, it does not efface rights and liabilities governed under Personal Law of a Muslim – Thus, a registered Gift Deed under Muslim Law is nothing but a piece of evidence subject to satisfaction of other provisions contained therein.

(2012) 4 MLJ 177

Shriram Transport Finance Company Ltd, No. 178-B, Kamarajar Salai, Madurai rep. by its  
Senior Manager M. Jeevanantham

Vs

Raju Naidu Ginning & Oil Mills rep. by its Partner R. Bala Sundaram and Ors

Code of Civil Procedure (5 of 1908), Section 96 read with Order 41 Rule 1 and 2 – Suit for recovery of money based on lease agreement – Contention of Plaintiff that there were two financial transactions between the parties – Defendants deny alleged second transaction – Contention that prime documents in question were forged, using signatures obtained on blank stamp paper during previous transaction – Difference in ink between signature of witnesses indicate time gap – Plaintiff's name absent on stamp paper – Handing over possession of machinery to custody of Defendants as per alleged lease deed, not proved – Electricity charges not paid by the alleged lessee as per lease deed – Important documents to prove second transaction not produced before Court by Plaintiff – Resolution of Board of Directors approving equitable mortgage, not filed – Circumstances cumulatively taken together indicate that prime documents are concocted documents – Case of Defendants amply substantiated – Appeal filed by plaintiff dismissed.

**RATIO DECIDENDI:** When the genuineness of a documents is in question, the holistic circumstances surrounding the entire document has been taken into consideration in arriving at a conclusion.

2012 – 4 -L.W. 179

Padmini W/o N.Murugesan

Vs.

Easwari & Ors

Evidence Act, Sections 68,69/Executor, Witnesses, Scribe, dead/Will proving, of,

Succession Act, Section 63, 69/Will, Suspicious circumstances, witnesses, attesting, identifying, Effect, Affixure by thumb impression,

Will/Testator, 95 years, affixing, thumb impression, whether Suspicious Circumstance,

Hindu Succession Act (1956), Section 15(2)(1)(a), devolution of rights, Partition, Will, Genuineness, Scope of.

Will was registered and the executor, all the witnesses and scribe were dead and hence DW.2 was examined to prove the thumb impression of late E and signatures of other witnesses and scribe – Ex.B2. Will is proved as per Section 69.

In the instant case, the testator, all witnesses and scribe died but DW.2 had accompanied them and had seen the entire proceedings of execution and attestation.

It was duly registered and validly executed as per Section 63 of the Indian Succession Act and it is proved under Section 69 of the Indian Evidence Act on the side of defendants.

Ex.B2 Will was executed and registered on the same day in the same Registrar office and the document writer had written the Will in the verandah of the Registrar office and obtained thumb impression from 'R', one of the daughters as attesting witnesses.

Plaintiff has not pleaded and proved that the testator was of unsound mind or unable to understand at the time of execution of Will and further had not proved that the above said thumb impression was forged by proounders of the Will – Plaintiff has not proved that the above said document was forged one by reliable oral and documentary evidence so as to discharge her burden.

(2012) 4 MLJ 228

V. Radhakrishnan  
Vs  
K. Mani

Code of Civil Procedure (5 of 1908), Section 96 – Specific Relief Act (47 of 1963), Section 16(c) – Specific performance of contract – Plaintiff filed suit for Specific Performance of sale agreement – Suit contested by defendant on ground that plaintiff was never ready to perform his part of contract – Trial Court directed defendant to execute sale deed – On appeal – Plaintiff chose to get period of sale agreement extended without any reference to possession being handed over to him – Inference is that plaintiff relinquished his right to demand actual possession – Conduct to plaintiff shows he had session – Conduct to plaintiff shows he had not been ready and willing to perform his part of contract – Plaintiff guilty of inordinate delay in every stage of transaction – Lapse of time of 17 years since agreement entered into – Price with regard to house property escalated over lapse of time - plaintiff not entitled to relief to specific performance – Appeal allowed.

RATIO DECIDENDI: According to Section 16(c) of the Specific Relief Act, the continuous readiness and willingness on the part of the plaintiff is a condition precedent to the grant of relief of specific performance.

2012 (4) CTC 337

Bhashyam Ramesh @ Rajagopalan, rep. by Power Agent, V.S. Vhasyam  
Vs  
R. Saroja @ K.K. Saroja, 35/2, T.P. Koil Street, Triplicane, Chennai - 5

Code of Civil Procedure, 1908 (5 of 1908), Sections 16 to 20 – Family Courts Act, 1984(66 of 1984) – Court of Competent Jurisdiction – Marriage between parties in India – Both parties Hindu – Parties automatically subjected themselves to jurisdiction of Family Court to deal with Matrimonial dispute under Section 19 of Hindu Marriage Act, 1955 – Husband, however, upon shifting to United States, initiated Divorce proceedings in Superior Court of California and got marriage dissolved – Held, marriage between Husband and Wife could be resolved only on grounds set out under Section 13 of Hindu Marriage Act, 1955 – Application for divorce under said provision could not be made in Superior Court of California – Family Court would only be competent Court of jurisdiction – Hindu Marriage Act, 1955, Section 1, 13 & 19.

Conflict of Laws – Private International Law – Submitting to jurisdiction of Foreign Court – What is? – Divorce proceedings initiated by Husband in Superior Court of California, United States, when marriage had taken place according to Hindu rites and customs in India – Wife upon receiving summons submitted written representation – Pertinent issues raised in said representation were : (a) challenge to jurisdiction of Foreign Court, (b) maintainability of Divorce Petition within one year of marriage, (c) maintainability of Divorce Petition by husband when wife had initiated proceedings for Restitution of Conjugal rights in Competent Court, (d) inability to submit

herself to jurisdiction of Superior Court of California – Wife had challenged very jurisdiction of Superior Court of California – Act of Wife not amounting to ‘submitting to jurisdiction’ – Wife not stopped from challenging decree of divorce passed by said Court in Family Court in India.

2012 (4) CTC 465

Owners and Persons interested in The Vessel M.V. GATI ZIPP, now lying at the Port of Chennai, rep. by its Master  
Vs  
Mars Petrochem Pvt. Ltd., No.25, Jackeria Bunder Road, Next to Bank of Maharashtra, Cotton Green(W), Mumbai-  
400 033, rep. by its Authorised Signatory, P. Sankaran

Code of Civil Procedure, 1908 (5 of 1908), Order 12, Rule 6 – Negotiable Instruments Act, 1881 (26 of 1881), Sections 118(a) & 139 – Interim Decree – Admission of Defendant – Nature of – Admission on part of Defendant ought to be clear, unambiguous, unconditional and unequivocal in order to pass an interim decree – Moreover, power to grant an interim decree is based on discretion of Court and Plaintiff cannot claim interim decree as a matter of right – In instant case, though six cheques issued by Defendant to Plaintiff for amount claimed by Plaintiff in Suit got dishonoured, there was no clear and unambiguous admission on part of Defendant admitting its liability to pay – Presumption under Sections 118(a) & 139 of 1881 Act are rebuttable in nature – Mere dishonor of six cheques issued by Defendant would not lead to presumption that Defendant had admitted its liability – Interim decree passed by Single Judge, set aside – Appeal allowed.

2012 – 3 – L.W. 555

S. Mohan  
Vs  
Rani Ammal

C.P.C., Section 59/Arrest of judgment debtor who is ill/ordering of, Scope, Order 21, Rule 37/Arrest of judgment debtor, when can be ordered.

Respondent filed the E.P. for arrest, by way of enforcing the recovery of the decretal dues – Executing Court ordered arrest.

Against that order revision was filed by the judgment debtor.

There is no embargo on the part of the Executing Court to go into the question, at the time of arrest, as to whether the judgment debtor had sufficient means or not, to discharge the decretal dues – Executing Court is expected to consider the plea of the judgment debtor that he is suffering from ill-health and that his health condition will not permit him to undergo imprisonment in the civil prison.

2012 – 4 -L.W. 681

P. Arul & Ors  
Vs.  
P.Sekaran

Hindu Law/ Doctrine of ‘*throwing into common stock*’; Blending, Coparcenary, Separate property/Joint Family Property. Suit property is not a joint family property – It is a separate property, since the first defendant has succeeded to the property on the maternal side, because any property derived or inherited from the female line cannot be termed as the character of joint family.

‘*Doctrine of throwing into common stock*’; postulates that the owner of separate property is a coparcener who has an interest in the coparcenary property and a desire to blend his separate property with the coparcenary property – Once the separate property of a member of a joint Hindu family is treated as joint family property by putting into



common stock, the separate property ceases to be so and acquires the characteristic of a joint family – Owner of a separate property should have an interest in the coparcenary property along with desires to blend his separate property with the coparcenary property.

An act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation.

Suit property is a separate property of the first defendant – It has to be held that he has every right to dispose of it in the manner known to law.

(2012) 3 MLJ 694

D. Janaki  
Vs  
S. Jayalakshmi

Code of Civil Procedure, (5 of 1908), Order 41 Rule 27 – Indian Evidence Act (1 of 1872), Sections 73 and 45 – Expert opinion – Suit for recovery of money – Money lent on a promissory note – Genuineness of signature disputed – Held, where the trial Court has not given a positive conclusion on admitted and disputed signature inspite of exercise of power under Section 73, first appellate Court can send the documents to get expert opinion under Section 45 – Exercise of first appellate Court not amounting to letting in additional evidence in terms of Order 41 Rule 27 CPC – Order of first appellate Court, justified – Revision petition dismissed.

**RATIO DECIDENDI:** There is no bar on the first appellate Court for sending documents to get expert opinion under Section 45 of the Indian Evidence Act, 1872 on the reason that the trial Court has by its self compared the admitted signature and the disputed signature invoking power under Section 73 of the said Act and such exercise of power by the first appellate Court cannot be stated as letting in additional evidence in terms of Order 41 Rule 27 of the Code of Civil Procedure, 1908.

2012 – 4 -L.W. 719

N. Thangavel  
Vs.  
Balasaraswathy

Hindu Adoptions and Maintenance Act (1956), Section 18/Maintenance of wife, 24, 25, Suitable amendment suggested as in Section 13/Hindu Marriage Act,

Hindu Marriage Act (1955), Sections 13, 10 (i),(b)/Before, after amendment, Cruelty, Maintenance, granting of/Law Commission 59<sup>th</sup> Report.

C.P.C., Section 100(5)/New substantial question of law, formation of, Maintenance, foetus, aborting, cruelty, if. Fact that there was an abortion at the instance of the husband, without the consent of the wife, has been proved – Abortng a foetus against the will of the wife, amounts to cruelty.

Judgment rendered between he same parties in an earlier proceedings for divorce by the husband, can be taken on record for the limited purpose of ascertaining the findings, even if the said judgment is not marked as evidence in the lower Court, in the subsequent proceedings instituted by the wife for maintenance.

Condition imposed in Section 18(2)(b), for claiming maintenance, the wife has to prove that, “*he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband*”, is onerous.

There is an anomaly in continuing the limiting words, in Section 18 which is a special provision, whereby, a right is given to the wife to live separately – When cruelty simpliciter is a ground for claiming maintenance, interim or even after divorce or judicial separation, under the Hindu Marriage Act, a onerous condition is imposed in Section 18 of the Hindu Adoptions and Maintenance Act.

There is no need to plead and prove reasonable apprehension in her mind that it would be harmful or injurious to live with him – She can still exercise her right to live separately from her husband, and seek for maintenance – Suitable amendment has to be made in the Hindu Adoption and Maintenance Act also, as done in the Marriage Act.

Factors required to be kept in mind, while awarding interim maintenance, Stated.

2012 – 3 – L.W. 807

Durairaj & Ors  
Vs  
Venugopal & Anr

Constitution of India, Article 227/Revision maintainability against CMA,

C.P.C., Section 115/Revision maintainability against CMA, Scope of, Order 9, Rule 13/Condoning of, delay in representation, Setting aside of ex parte decree,

Practice/ Trial, serving of copies to other side, before numbering application, whether needed.

No revision under Section 115 of CPC would lie as against the order in Appeal – Once appeal remedy is contemplated in respect of an order and has been exhausted, then the question of invoking Section 115 of CPC would be a impossibility.

If at all the party concerned could make out a case under Article 227 of the Constitution of India, then he could petition the High Court.

Suit is one for recovery of money – Petitioner approached this Court under Article 227 because despite condoning the delay in representing the I.A. under Order IX Rule 13 no opportunity was given to the petitioner to contest the suit, by allowing the said I.A. and setting aside the ex parte decree – Court below concentrated on the fact that after filing the application under Order IX Rule 13 and obtaining return of it, re-representation was not made diligently.

Before numbering the application, the lower Courts cannot mandate that the application should be served on the other side.

Having condoned the re-representation delay of 316 days, no reason on the part of the trial Court in simply rejecting the application under Order IX Rule 13 of CPC.

Ex parte decree is set aside subject to the condition that the petitioners deposit in Court the decretal amount.

(2012) 2 MLJ 833

U. Sree  
Vs  
U. Srinivas

Hindu Marriage Act (25 of 1955), Sections 13(1)(i-a) and 9 – Restitution of conjugal rights – Dismissal of relief – Grant of divorce decree in favour of husband – Appeal – Husband, a reputed performing musician – Harassment and mental cruelty by wife – Interruption of music practice sessions of husband by hurling abuses – Hurling of abuses in private as well as in public and creating embarrassment – Threatened husband with criminal proceedings by her father’s official position – Mental cruelty established – Desertion by wife proved by her course of conduct – Separately living for past 15 years – Irretrievable break down of marriage – Grant of custody of child to wife – Held, relief of restitution of conjugal rights, rightly dismissed – Dissolution of marriage, confirmed – Appeal dismissed.

**RATIONES DECIDENDI:**

- I. Mere trivial irritations or quarrels of married life would not be adequate for grant of divorce on ground of mental cruelty and a feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of the other for a long time may lead to mental cruelty which ought to be of such a nature that the parties cannot reasonably be expected to live together.
- II. Mental cruelty may encompass all verbal abuses and insults by using filthy and abusive language resulting in persistent disturbance of mental peace of the other party.

(2012) 2 MLJ 889

C. Pauraj  
Vs  
Secretary, Ministry of Transport, Chennai and Ors

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), Sections 8 and 18 – Motor Vehicles Act (59 of 1988), Section 2(18) and 52 – Registration of vehicles as invalid carriages – Writ of mandamus – Petitioner, physically challenged – Conversion of car into invalid carriage – Denial of permission for registration, challenged – No prohibition under Section 52 of MV Act to convert motor vehicles as invalid carriage so long as alterations does not change basic feature of vehicle – Held, vehicle of petitioner entitled to be treated as invalid carriage and for issuance of permanent registration – Registering authorities directed to advise Government to appropriately enable physically challenged persons to alter three and four wheelers to suit their requirements and register same under MV Act – Writ petitions disposed of.

**RATIO DECIDENDI:** Conversion of a motor vehicle without changing the basic feature of such vehicle can be registered as an invalid carriage by the registering authorities and there is no prohibition for such conversion under Section 52 of the Motor Vehicles Act, 1988.

(2012) 2 MLJ 897

N. Rajendren  
Vs  
V.C.P. Periakathan

Code of Civil Procedure (5 of 1908), Section 149 and Order 7 Rule 11 – Rejection of plaint – Second appeal – Rejection on reason of non-filing of application under section 149 C.P.C. seeking extension of time for remitting deficit Court fee – Discretionary power under Section 149 to make up deficiency of Court fees, to be exercised by

Court in favour of litigant barring mala fide cases – Return of plaint by trial Court for payment of deficit Court fee – Representation of same rectifying defects within granted time – Full Court fee paid as per endorsement – Held, no application under Section 149 required – Impugned orders rejecting plaint, set aside – Second appeal allowed.

**RATIONES DECIDENDI**

- I. Discretionary power conferred on Court under Section 149 of the Code of Civil Procedure, 1908 to make up deficiency of Court fees is to be exercised in favour of litigant barring cases of mala fides.
- II. Application under Section 149 of Code of Civil Procedure, 1908 is not required for payment of deficit Court fee when the plaint was returned for payment of deficit fees and the same is represented after rectifying defects within the time granted by the Court with an endorsement that the entire Court fee has been paid.

**(2012) 1 MLJ 952**

**State Bank of India, Vadavalli Branch, Coimbatore, Now at State Bank of India,  
Stressed Assets Management Branch**

**Vs**

**Minor Krithaanyaa rep. by its mother/guardian G. Rekha**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), Section 13, 17 and 34 – Code of Civil Procedure (5 of 1908), Order 39 Rule 1 and 2 read with Section 151 – Suit for partition – Plaintiff, a minor – Order of temporary injunction against appellant/bank – Challenged – Creation of mortgage by father of minor in favour of bank – Execution of personal guarantee by parents of minor – SARFAESI proceedings by bank – Maintainability of civil suit – Scope of – Remedy of appeal before DRT available under Section 17 – No jurisdiction for Civil Court to grant order of injunction against bank – Civil Court to have jurisdiction only when action of secured creditor is fraudulent or claim absurd – No such allegation against bank – Applications filed by parents before DRT, dismissed – Order of temporary injunction, set aside – Appeal allowed.

**RATIO DECIDENDI:** The Civil Court has no jurisdiction to grant an order of injunction as against bank after the bank had initiated action under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 unless when the action of the bank is fraudulent or claim is absurd and the remedy of appeal lies before the Debts Recovery Tribunal under Section 17 of the aforesaid Act.

**(2012) 1 MLJ 1060**

**Kanniammal**

**Vs**

**S. Jyothi and Ors**

Code of Civil Procedure (5 of 1908) Section 96(2) and Order 9 Rule 13 – Suit for specific performance – Agreement of sale – Passing of ex-parte decree in favour of appellant/plaintiff by trial Court – ex-parte decree – Proceeding under Order 9 Rule 13 and a regular appeal can be simultaneously prosecuted – Dismissal of application filed under Order 9 Rule 13 – Regular first appeal as against ex-parte decree maintainable even after dismissal of application under Order 9 Rule 13 – Ex-parte decree not passed on merits – Lower appellate Court correctly set aside ex parte decree and remanded matter Appeal dismissed.

**RATIO DECIDENDI:** Even after dismissal of an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908, a regular first appeal under Section 96(2) of the Code is maintainable.

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## HIGH COURT CITATIONS CRIMINAL CASES

(2012) -2- L.W. (Crl.) 1

Ramnaresh & Ors  
Vs.  
State of Chattisgarh

I.P.C., Sections 499, 376(2)(g) and 302 r/w 34, Death sentences, when to be awarded, 'rarest of rare cases'; 'Aggrieved circumstances'; 'Mitigating circumstance'; Principles, 'Jus deserts'; 'Doctrine of proportionality'

Criminal Procedure Code, Section 313/Death Sentence, when to be awarded, 'rarest of rare cases'; 'Aggrieved circumstances'; 'Mitigating circumstance'; Principles, 'Jus deserts'; 'Doctrine of proportionality'; commutation to life imprisonment Scope of.

Criminal Trial/Rape, Sole eye witness; reliance of, awarding of death sentence, when, Scope of.

External and internal injuries deceased suffered as a consequence of rape and strangulation indicate that the crime could not have been committed by a single person – Statement of PW6, despite he being the sole eye-witness, need not doubted.

Cause of death was asphyxia due to throttling.

In terms of Section 313 Cr.P.C., the accused has the freedom to maintain silence during the investigation as well as before the Court.

Accused have denied their presence on the spot, at the time of occurrence – It was for them to prove that they were not present at the place of occurrence and were entitled to plea of alibi – They have miserably failed to establish this fact.

'Aggravating circumstances'; 'mitigating circumstances', stated, 'Doctrine of proportionality' has a valuable application to sentencing policy under the Indian criminal Jurisprudence.

Test to determine 'rarest of rare' case stated.

All the accused are guilty of the offence under Sections 376(2)(g) and 302 read with Section 34 IPC.

(2012) 2 MLJ (Crl) 11

Thangapandian @ Sankaranarayanan  
Vs.  
State by the Inspector of Police, Madathukkulam, Coimbatore District

Indian Penal Code (45 of 1860), Sections 120-B, 147, 395 and 450 – Conviction and Sentence – Appeal – No corroboration from any other source to corroborate evidence of eye witnesses – Prosecution was at fault in not proving the complaint, FIR and other relevant documents and material object collected during investigation – Conviction not sustainable – Accused Acquitted – Criminal Appeal allowed.

**RATIO DECIDENDI :** *When no evidence connecting the accused with the alleged crime has been proved Order of conviction not sustainable.*

(2012) 2 MLJ (Crl) 18

Karikalan and Ors.

Vs.

Food Inspector, G. Pakirisamy, Food & Drugs Admin., Govt. G.H, Karaikal

Code of Criminal Procedure 1973 (2 of 1974), Section 397 read with 401 – Prevention of food Adulteration Act (37 of 1954), Sections 9, 13(2) – Adulteration of food – Dismissal of discharge petition challenged – Delay in sending report to the accused – Right of accused in getting sample for analysis before it becomes unfit is lost – The possibility of sample undergoing biological changes due to lapse of time resulting in probable increase in alcoholic acidity cannot at all be ruled out – Order rejecting application for discharge without verifying time limit prescribed under Act and without considering implication of delay upon statutory right available to accused is factually and legally unsustainable – Accused discharged from charges leveled against them – Criminal revision allowed.

**RATIO DECIDENDI :** *When the right of the accused in getting the sample for analysis before it becomes unfit is lost, and when the delay caused serious prejudice to the accused in availing his valuable statutory right the same would vitiate the criminal proceedings initiated against the accused and the criminal proceedings is liable to be quashed.*

(2012) 2 MLJ (Crl) 29

Anbazhagan

Vs.

State represented by Inspector of Police, Pallikarani Police Station, Kancheepuram District

Code of Criminal Procedure, 1973 (2 of 1974), Section 397 read with 401 – Tamil Nadu Prohibition of Harassment of Women Act (44 of 1998), Section 4 – Harassment of women in public place – Conviction and sentence – Criminal revision – Offending action of accused has not been committed in a public place – A private dwelling house is not one such place to constitute offence under Tamil Nadu Prohibition of Harassment of Women Act, 1998 – Accused acquitted – Criminal revision allowed.

**RATIO DECIDENDI:** To attract offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 1998, offence must have taken at a place particularly covered by the Section and a private dwelling house is not one of such places.

2012-2-L.W.(Crl.) 50

Pavithra @ Swathi

Vs.

The Inspector of Police, J8 Neelankarai Police Station, Chennai and Ors

Immoral Traffic (Prevention Act (1956), Section 17(4),

Criminal Procedure Code (1973), Sections 482, 483.

Question is whether petitioner requires such a care and protection so as to be kept in the Protective Home – When her father appeared before him and filed a petition, seeking the release of the petitioner assuring that he would give protection and care to her, the learned Magistrate ought to have considered the same seriously and to passed appropriate order.

Keeping the woman in a Protective Home, thereby curtailing her free movement, itself is an infringement of the fundamental right guaranteed under Article 21 – Under Section 17(4) of the Act, even after the final order is passed by the Magistrate after holding enquiry, the period of Protective Home life shall not exceed three years.

Without any final order being passed as required under Section 17(4) of the Act, the petitioner has been ordered to languish in the Protective Home for two years and ten months now under the guise of protection.

Order of the learned Judicial Magistrate, Alandur directing the petitioner to be kept in the second respondent Government Vigilance Home/ Government Protective Home, Arasinar Magalir Kaapagam, Mylapore, Chennai -4 is hereby set aside and the petitioner is set at liberty.

2012-2-L.W.(CrI.) 107

Smt. Sundari

Vs.

Smt. Sushila

Criminal Procedure Code, Sections 210, 245,246,259, Chapter XIX-B,XX/Case on Police report, Private Complaint; whether can be clubbed; Evidence in one case whether can be used in another;Scope,

Criminal Trial/ Case on Police report, Private Complaint; whether can be clubbed; Evidence in one case whether can be used in another; Scope, Common judgment, delivery of, Effect,

Evidence/Evidence, deposition, Cross-examination, evidence in one case, use in another, whether Permissible.

I.P.C., Sections 120-B, 352,381,448 and 427,448 r/w.109 and 427 r/w.109.

There is only some dispute in respect of the identity of the property.

De facto complainant preferred the complaint to the police in respect of both occurrences – Charges in the police case are not out of the same transaction – The accused are also different – In the police report case, there were four accused; whereas in the private complaint case, there were only three accused.

An order under Section 210 of Cr.P.C. could be made before the commencement of trial – But, in this case such an order was passed, only after examination of the prosecution witnesses and after questioning the accused under Section 313 of Cr.P.C. – This is illegal.

Taking cognizance of offence under Section 381 of IPC is baseless and the same is illegal.

In law, the evidence recorded in one case cannot be simply adopted as evidence in the other case.

Irregularity is that the offence under Section 352 of IPC is not triable as a warrant case.

If only any one of the offences is triable under Chapter XIX-B of the Cr.P.C., then it would be appropriate for a Magistrate to frame charges.

In order to invoke Section 259 of Cr.P.C., it is essential that the maximum punishment of imprisonment imposable should exceed six months.

If once the Magistrate finds that there is no scope for framing charge under Section 246 of Cr.P.C. as the case is triable as summons case, Magistrate should convert the case into one of a summons case and proceed further.

In a warrant case, the accused has got right of cross examination of the prosecution witnesses at two stages namely, one prior to framing of charges and the other after the framing of charges – In summons case, the accused has got right of cross examination only once i.e., after recording the plea of the accused.

Section 210 of Cr.P.C., does not provide for clubbing of two cases – Clubbing of these kinds of two cases is unknown to the Code of Criminal Procedure.

Learned Magistrate has considered the evidence recorded in the police report case as evidence, in the private complaint case and vice versa.

Prosecution has failed to prove the case beyond reasonable doubt and so, the accused are entitled for acquittal in the police report case also.

2012-2-L.W.(CrI.) 121

Idukkan(name changed as per order of Court)  
Vs  
The Inspector of Police

Juvenile Justice (Care and Protection of Children) Act (2000), Sections 4,2(2),63,

Juvenile Justice(Care and Protection of Children)Amendment Act (2000), Rules 8, 4(3)

Juvenile Justice (Care and Protection of Children) Rules (2007), Rules 4,5,9,

Tamil Nadu Juvenile Justice (Care and Protection of Children) Rules (2001),

Criminal Procedure Code, Section 24/Appointment of Apps, Prosecuting Officer in Juvenile Justice Board, Section 407.

I.P.C., Sections 302, 506(ii)/Juvenile in conflict with law, a student, caused the death of a teacher in the School by stabbing her with knife.

There is no provision in the Tamil Nadu Rules governing the Constitution and Composition of Juvenile Justice Boards – Rules 4 and 5 of the Central model rules are applicable to the State of Tamil Nadu.

The XX Metropolitan Magistrate has not been appointed as the Principal Magistrate of the Board, Chennai – She was authorized to discharge the functions only of the XII Metropolitan Magistrate – She was never empowered to act as the Principal Magistrate of the Juvenile Justice Board – Entire proceedings are without jurisdiction.

Juvenile Justice Board, Chennai is concerned, the specified place of sitting is in a Government building at Kelly's, Chennai, which is not in a court premises – Curiously, the entire proceeding in this case was conducted by the Juvenile Justice Board only in the Chamber of the learned XX Metropolitan Magistrate, Ripon Buildings, Chennai.

Prosecuting officer before the Juvenile Justice Board should be a special public prosecutor to be appointed under Section 24(8) of Cr.P.C.,

Proceedings of the Juvenile Justice Board, Chennai is quashed.



State represented by, Inspector of Police, Prohibition Enforcement Wing, Gobichetipalayam, Erode District  
Vs.  
Sivasakthi @ Sakthi and Ors

Tamil Nadu Prohibition Act, Section 4(1) (aaa),

I.P.C., Sections 468,471,485,486 and 487,

Criminal Procedure Code, Section 248.

As per the Full Bench decision of this Court in 1980 LW(CrI.) 187(F.B.), after the charges being framed, though there is no specific provision for acquitting the accused if witnesses are not produced by the prosecution under Section 248 CrP.C., for want of evidence accused may be acquitted.

An acquittal of the accused merely on the ground that the prosecution had not produced the witnesses would not be proper if the Court had not discharged its duty by enforcing the attendance of the witnesses.

It appears that as the main witness, was not produced before the Court, the trial Court has not chosen to examine the other witnesses – Trial Court also has not discharged its duty for procuring the witnesses.

Though the order passed by the learned Magistrate acquitting the accused under Section 248 Cr.P.C. is improper, more than 7-1/2 years had elapsed from the date of the alleged occurrence and five years had elapsed from the date of judgment acquitting the accused, this Court does not want to interfere with the order of acquittal passed by the learned Magistrate.

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