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IMPORTANT CASE LAW



HEADQUARTERS, CHENNAI

No.30/95, P.S.K.R. Salai, R.A. Puram, Chennai – 600 028

Phone Nos. 044– 24958595 / 96 / 97 / 98 Fax: (044) 24958595

Website: www.tnsja.tn.gov.in E-Mail: tnsja.tn@nic.in/tnsja.tn@gmail.com

REGIONAL CENTRE, COIMBATORE

No.251, Scheme Road, Race Course, Coimbatore - 641 018.

Telephone No: 0422 - 2222610/710

E-Mail: tnsja.rc.cbe@gmail.com

REGIONAL CENTRE, MADURAI

Alagar Koil Road, K.Pudur, Madurai - 625 002.

Telephone No: 0452 - 2560807/811

E-Mail: tnsja.rc.mdu@gmail.com

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MADRAS HIGH COURT – CRIMINAL CASES

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SUPREME COURT – CIVIL CASES

2019 (4) CTC 122

**G.Ratna Raj(Decd) by LRs. Vs. Sri Muthukumarasamy Permanent Fund Ltd., &
another**

Date of Judgment: 01.02.2019

Order 9, Rule 13 & order 17, Rules 2 & 3 of Code of Civil Procedure

Defendant set ex parte after cross-examining Plaintiff and before leading their evidence. Preliminary Decree passed, but defendant remained ex parte – Defendants subsequently filed application under Order 9, Rule 13 for setting aside exparte Preliminary Decree – Single Judge of High Court dismissed Application on ground that the Preliminary Decree passed was not exparte Decree – On Appeal, Division Bench allowed Application with costs – Preliminary Decree was exparte Decree – case in hand would not fall under Explanation to Order 17, Rule 2 – In order to attract explanation, party should have led evidence or should have led substantial part of evidence – Defendants in present case not led any evidence – B.Janakiramaiah Chetty vs. A.K.Parthasarathi, 2003 (2) CTC 242(SC), followed.

2019(5) CTC 97

**A.Sarojinidevi, Rep by her authorized Power Agent, [A.Raja @ Rajaram](#) vs.
R.Arumugam**

Date of Judgment: 25.03.2019

Order 3, Rules 1 & 2, Order 7, Rule 14(1) of Code of Civil Procedure – Rule 16 of Civil Rules of Practice – Section 32 of Advocates Act, 1961 (25 of 1961) – Party-in-person appeared before Trial Court and conducted litigation – Objection raised for appearance of “Party-in-person”, is legally unsustainable.

As per the provisions of Order 3, Rule 1, of CPC, any appearance by a Party-in-person either by themselves or through the Power Agent has been recognized by the Code of Civil Procedure. Further the Advocates Act also recognized this deviation from the usual Rule. Today parties appear in person before the Consumer Court, Family Court etc., and they also appear before the High Courts in Public Interest Litigation. The Courts have recognized appearance by parties or their agents subject to the permission of the court and on condition that they would not act adverse to the interest of their Principal. In the instant case the party has appeared so in the trial court without any objection from the respondent herein and the Revision is also filed so and the provisions of Rule 16 of the Civil Rules of Practice has been complied with. Therefore, the objection of the Respondent that the Party-in-person cannot enter appearance and address the court cannot be countenanced and the same is rejected.

2019 (6) SCC 82

Jagdish Prasad Patel(Decd) through LR's & another vs. Shivnath & others

Date of Judgment: 09.04.2019

Section 34 of Specific Relief Act, 1963 – Suit for declaration of title over immovable property – burden of proof – Plaintiff required to discharge his burden independent of case of defendant.

In the suit for declaration of title and possession, the plaintiff could succeed only on the strength of their own title and not on the weakness of the case of the defendants. The burden is on the plaintiffs to establish their title to the suit properties to show that they are entitled for a decree for declaration. The plaintiffs have neither produced the title document i.e, patta-lease which the plaintiffs are relying upon nor proved their right by adducing any other evidence to discharge his burden.

2019 (6) SCC 387

Bhivchandra Shankar More vs. Balu Gangaram More & others

Date of judgment:07.05.2019

Order 9, Rule 13 and Section 96(2) of Civil Procedure Code – setting aside of Exparte decree – scope and operation of Or.9 R.13 and S. 96(2) and duties of court when deciding cases under these provisions, explained. It is to be pointed out that the scope of Order 9 Rule 13 CPC and Section 96(2) CPC are entirely different. In an application filed under Order 9 Rule 13 CPC, the Court has to see whether the summons were duly served or not or whether the defendant was prevented by any “sufficient cause” from appearing when the suit was called for hearing. If the Court is satisfied that the defendant was not duly served or that he was prevented for “sufficient cause”, the court may set aside the exparte decree and restore the suit to its original position. In terms of Section 96(2) CPC, the appeal lies from an original decree passed ex parte. In the regular appeal filed under Section 96(2) CPC, the appellate court has wide jurisdiction to go into the merits of the decree. The scope of enquiry under two provisions is entirely different. Merely because the defendant pursued the remedy under Order 9 Rule 13 CPC, it does not prohibit the defendant from filing the appeal if his application under Order 9 Rule 13 CPC.

2019 (5) CTC 110

Arshnoor Singh vs. Harpal Kaur & others

Date of judgment:01.07.2019

Hindu Law – Section 6 of Hindu Succession Act, 1956(30 of 1956) – Ancestral property – Character of property after Partition – Whether Coparcenary or self-acquired.

If succession opened under the old Hindu Law, i.e, prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara Law. The property inherited by a male Hindu from his Paternal Male Ancestor shall be coparcenary property in his hands vi-s-a-vis his male descendants upto three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956.

2019 (7) SCC 158

Madhav Prasad Aggarwal & another vs. Axis Bank Limited & another.

Date of Judgment 01.07.2019

Order 7, Rule 11(d), Order 6, Rule 16 and Order 11(a) to (f) of Civil Procedure Code -
Rejection of a Plaintiff in part/only against one of the defendants in exercise of power under
Order 7, Rule 11(d) – impermissibility of.

The Plaintiff can either be rejected as a whole or not all. It is not permissible to reject
plaint qua any particular portion of a plaintiff including against some of the defendant(s) and
continue the same against the others. In no uncertain terms, that if the plaintiff survives against
certain defendant(s) and/or properties, Order 7, Rule 11(d) CPC will have no application at
all, and the suit as a whole must then proceed to trial.

2019 (7) SCC 76

Sopanarao & another vs. Syed Mehmood & others

Date of Judgment: 03.07.2019

Art.65 or Art.58 of Limitation Act, 1963 – Sections 5 and 34 of Specific Relief Act, 1963
– Suit for declaration of title and possession based on title – Limitation period applicable
would be that under Art.65 and not Art.58 – Distinguished from case where only relief sought
is that of declaration.

The Limitation for filing a suit for possession on the basis of title is 12 years. Merely
because one of the reliefs sought is of declaration that will not mean that the outer limitation
of 12 years is lost. In a suit filed for possession based on title the plaintiff is bound to prove
his title and pray for a declaration that he is the owner of the suit land because his suit on the
basis of title cannot succeed unless he is held to have some title over the land. However, the
main relief is of possession and, therefore, the suit will be governed by Article 65 of the
Limitation Act, 1963. This Article deals with a suit for possession of immovable property or
any interest therein based on title and the limitation is 12 years from the date when possession
of the land becomes adverse to the Plaintiff.

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SUPREME COURT – CRIMINAL CASES

2019 (3) MLJ (CrI) 86 (SC)

**Bikash Ranjan Rout vs. State through the Secretary (Home) Government of NCT of
Delhi, New Delhi.**

Date of Judgment:16.04.2019

Section 173 and 227 of Code of Criminal Procedure, 1973 Discharge of accused – Further investigation – The Magistrate cannot suo moto direct for further investigation under Section 173(8) of the Cr.P.C. or direct the reinvestigation into a case at the post-cognizance stage.

The Magistrate could not suo moto direct for further investigation under Section 173(8) or direct re-investigation into case at post-cognizance stage, more particularly when, in exercise of powers under Section 227 of Cr.P.C, the Magistrate discharges accused. However, Section 173(8) of Cr.P.C. confers power upon officer-in-charge of police station to further investigate and submit evidence, oral or documentary, after forwarding report under Section 173(2) of Cr.P.C. Therefore, it is always open for investigating officer to apply for further investigation, even after forwarding the report under Section 173(2) of Cr.P.C and even after the discharge of the accused. However, the aforesaid shall be at the instance of the investigation officer/Police Officer-in-charge and the magistrate has no jurisdiction to suo moto pass an order for further investigation/re-investigation after he discharges the accused.

2019 (3) MLJ (CrI) 71(SC)

Manju Devi vs. State of Rajasthan and another

Date of Judgment:16.04.2019

Section 284, 285 and 311 of Code of Criminal Procedure, 1973, - Summon to Foreign witness – Video Conferencing – The witness is residing in foreign country a viable alternative for his examination.

Where the witness is residing in foreign country, in order to avoid inconvenience to the witness as also to the parties, issuing of commission and recording his evidence through video-conferencing appears to be a viable alternative; and the Trial Court need to take all the requisite steps so as to ensure that his evidence comes on record with least inconvenience and/or burden to the parties and the witness.

2019 (2) SCC (Cri) 758 :: 2019(6) SCC 166

Kumar Ghimirey vs. State of Sikkim

Date of Judgment: 22.04.2019

Sections. 386, 374 and 401 of Criminal Procedure Code, 1973 – Powers of Appellate court therein to enhance sentence – proper exercise of – Principles restated – enhancement of sentence by High Court without giving notice to accused – not proper.

As per Section 386 Clause(b) Cr.P.C. in an appeal from a conviction although the appellate court can alter the finding, maintaining the sentence, or with or without altering the finding, alter the nature or the extent, of the sentence, but not so as to enhance the same. Under Section 386(b)(iii), in an appeal from a conviction, for enhancement of sentence, the

appellate court can exercise the power of enhancement. The appellate court in an appeal for enhancement, can enhance the sentence also. The proviso to Section 386, further provides that the sentence shall not be enhanced unless the accused had an opportunity of showing cause against such enhancement. The judgment of the High Court in so far as it enhanced the sentence from seven years to ten years is not in accordance with the procedure prescribed. The judgment of the High Court to the extent it has enhanced the sentence from seven years to ten years is set aside.

2019 (2) SCC (Cri) 729 :: 2019 (5) SCC 802

Nagji Odhavji Kumbhar & another vs. State of Gujarat

Date of Judgment:23.04.2019

Sections 302, 324 and 96 to 106 (Section 300 exceptions 2 & 4) of Indian Penal Code – Private defence - murder by stabbing with spears – injured witness – complainant party unarmed – right of private defence, not established.

There is no evidence on the part of the accused that the deceased were armed with any weapon in the first version, when they lodged a report. The right of private defence is not available when the alleged assailants are unarmed. The right of private defence to protect the person and the property. In such right, the person cannot cause more harm than what is necessary for the protection of the person and the property. It has been held in the judgment of the Supreme Court in Jangir Singh vs. State of Punjab (2019 (13) SCC 813), case that in order to succeed in such plea of private defence, it must be proved that the right of private defence extended to cause death. Since the deceased were not armed, therefore the appellants are not entitled to the right of private defence.

2019 (2) SCC (Cri) 796 :: 2019 (6) SCC 357

State, Rep. by Inspector of Police, CBI vs. M.Subrahmanyam

Date of Judgment:07.05.2019

Criminal Trial – Section 13 (2) r/w 13(1)(c) of The Prevention of Corruption Act, 1988 - Practice and Procedure - A procedural lapse cannot be placed on par with what is or may be substantive violation of the law.

The failure to bring the authorization on record, as observed, was more a matter of procedure, which is but a handmaid of justice. Substantive justice must always prevail over procedural or technical justice. To hold that failure to explain delay in a procedural matter would operate as res judicata will be a travesty of justice considering that the present is a matter relating to corruption in public life by holder of a public post. The rights of an accused are undoubtedly important, but so is the rule of law and societal interest in ensuring that an alleged offender be subjected to the laws of the land in the larger public interest. To put the rights of an accused at a higher pedestal and to make the rule of law and societal interest in prevention of crime, subservient to the same cannot be considered as dispensation of justice. A balance therefore has to be struck. A procedural lapse cannot be placed on a par with what is or may be substantive violation of the law.

2019 (2) SCC (Cri) 826 :: 2019 (6) SCC 477

Sasikala Pushpa & others vs. State of Tamil Nadu

Date of Judgment:07.05.2019

Sections 195(1)(b) and 340 of Criminal Procedure Code – The court must satisfy itself as to make complaint under Section 195(1)(b) of Cr.P.C – when prosecution under Section 340 to be launched – principles summarized.

It is fairly well settled that before lodging of the complaint, it is necessary that the court must be satisfied that it was expedient in the interest of justice to lodge the complaint. It is not necessary that the court must use the actual words of Section 340 Cr.P.C; but the court should record a finding indicating its satisfaction that it is expedient in the interest of justice that an enquiry should be made. Observing that under Section 340 Cr.P.C, the prosecution is to be launched only if it is expedient in the interest of justice and not on mere allegations or to vindicate personal vendetta. Before proceeding to make a complaint regarding commission of an offence referred to in Section 195(1)(b) Cr.P.C, the court must satisfy itself that “ it is expedient in the interest of justice”. The language in Section 340 Cr.P.C. shows that such a course will be adopted only if the interest of justice requires and not in every case. It has to be seen in the facts and circumstances of the present case whether any prima facie case is made out for forgery or making a forged document warranting issuance of directions for lodging the complaint under Sections 193,467,468 and 471 IPC.

2019 (2) SCC (Cri) 883 :: 2019 (6) SCC 638

Sukhpal Singh Khaira vs. State of Punjab

Date of Judgment:10.07.2019

Section 319 of Criminal Procedure - Power to proceed against other persons appearing to be guilty of an offence – exercise of.

At the outset, it is pertinent to note that Section 319 Cr.P.C reflects two important objectives; firstly, the court’s duty to bring home the guilt of all the accused and render complete justice and secondly, the duty of the state to take every criminal prosecution to its logical end. This Court in a catena of judgments has defined Section 319 Cr.P.C as an enabling provision, especially in the circumstances where the investigating agency had failed to array any person as an accused. This provision empowers the courts for calling such persons to face the trial. The Section stipulates that a “court” may summon any additional accused if it appears from the “evidence”, during the course of any inquiry or trial, that such an individual, not being an accused, has committed any offence for which such person could be tried together with the named accused. Sub-section (4) of Section 319 Cr.P.C indicates that the proceeding with respect to the summoned individual as per sub-section (1) of Section 319 Cr.P.C, may be de novo or joint trial.

MADRAS HIGH COURT – CIVIL CASES

2019 ACJ 1727

National Insurance Co.Ltd., Vs. P.Suresh & others

Date of Judgment: 19.09.2018

Motor Vehicles Act, 1988 Section 147(1) & 163-A r/w Second Schedule(as amended by notification dated 22.05.2018) - The amendment to the Second Schedule of Motor Vehicles Act is long after the accident – Any social welfare legislation can be interpreted to the extent of benefiting the meek and poorer section of the society.

The compensation payable on account of the death of the deceased is concerned, the apportionment of liability would be that, a sum of Rs.5,00,000/- is payable by the insurance company as per the amended second schedule of the Motor Vehicles Act. Though the amendment is long after this accident and though the amendment is not made retrospectively applicable, still any social welfare legislation can be interpreted to the extent of benefiting the meek and poorer section of the society. The remaining compensation is ordered to be paid by the government.

2019 ACJ 1772

I.Pavithra vs. R.Alan Joy & another

Date of Judgment: 28.09.2018

Motor Vehicles Act, 1988 Section 166 - Quantum – Injury – Principles of assessment – loss of earning capacity – the principles to assess loss of earning capacity due to permanent disablement.

The sum and substance of the principles on which the courts have decided the loss of earning power is as follows:

- 1) The quantum of permanent disability caused by the injuries is to be essentially decided by the medical professionals.
- 2) The effect of such permanent disability on the earning power of the victim will have to be decided by the Tribunals and Courts.
- 3) While deciding the said loss of earning power, the Courts and Tribunals are expected to arrive at just and reasonable compensation.
- 4) The basis for calculation of reasonable compensation would be the extent to which the earning power is reduced due to the injuries caused. This will however involve some guesswork and there cannot be a precise mathematical formula in deciding it.
- 5) The nature of the work or occupation or profession of the victim will definitely have a direct bearing on the loss of earning power due to the permanent disability caused.

2019 (2) MWN(Civil) 868

Thirthagiri vs. Chinnathambi Gounder

Date of Judgment: 01.02.2019

Sections 8 & 9 of Hindu Succession Act, 1956(30 of 1956) - Rule of succession among collaterals – based on proximity of relationship to deceased male Hindu.

As per Section 8 of the Hindu Succession Act, if there exists no heirs in Class –I, then the properties of a male Hindu will devolve to those heirs in Class –II of the schedule. If there be no heirs as per both Class –I & II available, then the property of the deceased male Hindu would go to his agnates. As per the Section 9 of the Hindu Succession Act, heirs in Class-I, would exclude every entry in Class-II. The order of succession under Section 9 is the heirs in the early entry excludes those in subsequent entries. Rule of succession among collaterals are based on proximity of their relationship to a deceased male Hindu.

2019 (4) CTC 907

Dr.Panneerselvam & 12 others vs. Padmasini & 2 others

Date of Judgment: 13.02.2019

Section 54 of Transfer of Property Act, 1882 (4 of 1882) – Principle of “Boundary prevails over extent” – Applicability of.

The Principles boundary will prevail over the extent, is applicable only when the boundaries are referred correctly and the intention of the parties to the documents from the recital lend credence to the boundaries mentioned. In this case, on facts the Title Deeds carry linear measurements, extent and boundaries. The parties do not dispute the linear measurement. In such circumstances, when linear measurements alone is consistent, the general rule that the boundary will prevail over extent is not applicable.

2019 (5) CTC 212

Thatha Sampath Kumar & another vs. Sri Vupputur Alwar Chetty’s Charities, rep by its Hereditary Trustee, Vupputur Ramesh & 4 others

Date of Judgment: 19.03.2019

Section 92 of Code of Civil Procedure - Application under Section 92 – Maintainability of - Conditions for.

Section 92 of CPC is a complete Code by itself in respect of the suits based upon an alleged breach of any express or constructive Trust created for Public purposes of a Charitable or Religious nature. In order to attract the Application of the Section, the following four conditions are necessary, viz.,

- 1) There must be a Trust, express or constructive, for Public purposes of a Charitable or Religious nature;
- 2) The Plaintiff must allege a breach of trust or necessity for direction as to administration of that Trust;
- 3) The Suit must be in the interests of the Public, i.e., it must be brought in a representative capacity for the benefit of the Public and not to enforce individual rights; and
- 4) The relief claimed should be one of the reliefs set out in the Section.

2019 (2) MWN (Civil) 821

S.Gopalakrishna Mudaliar (Deceased) & 3 others vs. Rangarajan

Date of Judgment: 20.03.2019

Cultivating Tenant - Tamil Nadu Cultivating Tenants Protection Act and Tamil Nadu Occupants of Kudiyruppu (conferment of Ownership)Act, 1971 - A person who claimed himself as a cultivating tenant, should contribute his own physical labour or that of any member of his family in the cultivation of the land.

A person who claimed himself as a cultivating tenant, should contribute his own physical labour or that of any member of his family in the cultivation of the land. Absolutely, there is no evidence available on record to show that the defendant is contributing his physical labour or any member of his family in the cultivation of the land. It is clear that no evidence is available to show that the defendant is occupying the suit property either as a tenant or an agriculturist. Whereas, his evidence clearly shows that he is an organizer of noon meal centre by profession. When a person seeks benefits under the Tamil Nadu Cultivating Tenants Protection Act, he should establish the ingredients of the act to get such benefit. In the absence of evidence in this regard, this court find that the defendant cannot seek any benefit either under the provisions Tamil Nadu Cultivating Tenants Protection Act or under the Tamil Nadu Occupants of Kudiyruppu (conferment of Ownership)Act, 1971.

2019 (2) MWN (Civil) 860

Commissioner, West Arni Panchayat Union, Arni Post, Thiruvannamalai District. vs. St.Joseph Social Welfare Centre, Rep by Brother-Superior Rev. Brother Lourduraj & 3 others

Date of Judgment: 25.03.2019

Section 126 of Transfer of Property, 1882 (4 of 1882) - Conditional gift and cancellation thereof – condition not complied – donor revoked gift – unilateral cancellation by donor is valid.

Gift once executed, it can be cancelled only under the circumstances stated under Section 126 of the Transfer of Property Act. A reading of Section 126 of the Transfer property Act makes it clear that Donor and Donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. Though for valid gift transfer of possession is not one of the essential conditions, the fact remains in this case that the very gift deed executed for the specific purpose for constructing school and hospital and possession has not been handed over Ex.B15, the gift has not been acted upon for various reasons. Hence, the unilateral cancellation by donor is valid.

2019 (3) TLNJ 63

Manickam.S. vs. Chinnapandiyan

Date of Judgment: 25.03.2019

Trial of Civi Suit - Suit for Money based on Pronote in the stage of arguments – seeking to reopen the case to summon the witness - Trial completed and posted for arguments – defendant filed application to reopen the case to summon the witness regarding dispute in signature – dismissed.

The Petitioner/defendant could very well file the documents containing his admitted signatures, which are in his possession, at the beginning of the trial. But without doing so and also after admitting the signature in the Cross-examination, he has filed the present petition at the fag end of the trial, which in my considering opinion, is only to drag on the proceedings. The Court below, after considering the above aspects, has rightly dismissed the same, which requires no interference from this Court. Therefore, Civil Revision Petition dismissed.

2019 (5) MLJ 207

Paul Marie Josephine vs. Louise Victorine Esperance Lafontaine

Date of Judgment: 11.04.2019

Order 7 Rule 11 of Civil Procedure Code – Striking of Plaintiff – Cause of Action – The defendant seeking to strike off the suit proceedings on the ground that the Plaintiff averments did not constitute cause of action - Maintainability.

The manner in which the plaintiff averments indicate the possibility of fraud, such pleadings requires to be tested only through framing of issues and through a proper trial. There exists a cause of action for maintaining the suit to set aside the sale deed on the grounds of fraud and misrepresentation. Only in the absence of such a cause of action, can the suit proceedings be termed as an abuse of the process of law. When the plaintiff averments reveal that the knowledge of the sale deed itself was brought to his notice on 23.04.2016 during the course of interrogation in the police station in connection with a criminal complaint, the plaintiff instituted in the month of August 2016 could be within the limitation. The issue as to whether the suit is barred by limitation since the plaintiff had knowledge of the existence of the sale deed much earlier is a mixed question of law and facts, which can only be tested through a proper trial. Hence, the suit cannot be deemed to be barred by limitation, on the basis of the plaintiff averments.

2019 (3) LW 505

T.K.K.N.N.Vysya Charaties, Chennai vs. Global Plastics

Date of Judgment: 26.04.2019

Section 106 of the Transfer of Property Act, 1882 – Possession is admitted – notice was issued under Section 106 - when validity of notice is not disputed it cannot be said that notice was not proper – issue under Section. 106 not a triable issue at all in view of the admission made in the trial.

As per this Section, fifteen days time is specified for issuing a legal notice on tenancy on monthly rental basis. Here, 60 days notice was given and after the lapse of 60 days, the suit

was filed. As per the amended provisions of Section 106 of the Transfer of Property Act, the landlord need not wait for anything and he can proceed with eviction, in the manner known to law. It is an admitted fact that the landlord has specifically conceded that he has not taken any steps without due process of law. In that event, there is no requirement to decide any issue under Section 106 of the Transfer of Property Act, 1882, much less, it is not triable issue at all, in view of the admission made in the trial.

2019 (3) TLNJ 5

T.Ravichandran vs. K.Kasthuri & 6 others

Date of Judgment:03.06.2019

Section 40 of Court Fees Act, 1870 – Where without seeking the set aside of Sale and by not paying Court Fees under Section 40 of the Court Fees Act, Plaintiff cannot be permitted for seeking to set aside the sale deed by way of declaration of Title.

On a reading of the entire Complaint, it is clear that the Plaintiff, though alleges certain irregularities in the preparation of the document, has signed the same with intention to execute a deed. The invalidity is stated only because the first defendant did not pay the consideration thereafter, that will not ex facie invalidate the document which has been executed voluntarily. Even if the allegations are true, before Court, these documents are purported to have been executed by the Plaintiff. The same cannot be declared as invalid without setting aside the same. By declaration, Plaintiff is really asking for setting aside the deed. Naturally, she has to pay the Court fee under Section 40 of the Court Fees Act (Old Section 7 (IV-A) of the Madras Court Fees Act), which deals with setting aside a document.

MADRAS HIGH COURT – CRIMINAL CASES

2019 (3) MLJ(Cr) 188

K.G. Denim Finance Limited, Coimbatore, Rep by D.Ramesh vs. Salem Textiles Limited & another

Date of Judgment: 09.04.2019

Sections 138 and 139 of Negotiable Instruments Act, 1881 – Dishonour of Cheque – Novation – Plea of Novation not pleaded by accused - when accused pleaded that liability had already been discharged, question of Novation for new contract substituting old contract did not arise.

The plea of novation not pleaded by the accused. He not only failed to plead that the defence but a contra plea has been taken by the accused. When the accused has pleaded that the liability has already been discharged, the question of novation or new contract substituting the old contract does not arise. The correspondence between the parties does not indicate that the debts were discharged by the accused. Neither it indicated the old contract has been rescinded or submitted by any new contract. The complainant is bound to succeed not only on the presumption clause under Section 139. But he has positively proved the liability of the accused through the evidence. Therefore, the Lower Appellate Court judgment being perverse and against the settled principles of law, this Criminal Appeal is to be allowed.

2019(3) MLJ(Cr) 394

Karthikeyan & others vs. State, Rep by Inspector of Police, Kaveripattinam Police station, Krishnagiri District

Date of Judgment:17.06.2019

Sections 216 and 311 of Code of Criminal Procedure, 1973 - Conditions request is to recall off prosecution witnesses by the prosecution for further examination.

Prosecution should not be allowed to resort to filing petition under Section 311 to fill up lacuna in a prosecution case, unless the facts and circumstances of the case makes it apparent that no exercise of power by Court will result in serious prejudice and miscarriage of justice. The Court below was swayed more by the fact that the materials that were collected also makes out a charge for another offence and therefore, court below wanted to recall PW1 to PW5 for further examination by prosecution. This reasoning given by the Court below will not stand the test of law. If the Court below wanted to alter the charges by adding offence, Court below ought to have followed procedure contemplated under Section 216. However, the Court below did not alter the charges except for making an observation to that effect and it has proceeded to recall PW1 to PW5 for further examination by prosecution. Therefore, there is no clarity in the order passed by the Court below and the same requires interference of this Court.

2019 (2) LW(Crl) 130

R.Kiruba Kanmani vs. L.Rajan

Date of Judgment:17.06.2019

Section 125 of Criminal Procedure Code - Section 20(3) Hindu Adoption and Maintenance Act - Unmarried daughter – Maintenance by father – scope.

Even though Section 125 of Criminal Procedure Code restricts the payment of maintenance to the children till they attain majority, when it comes to the daughter, Courts have taken a consistent stand that even though the daughter has attained majority, she will be entitled for maintenance till she remains unmarried by virtue of Section 20(3) of the Hindu Adoption and Maintenance Act, 1956. In order to avoid multiplicity of proceedings, the Courts have taken a consistent stand that the petition under Section 125 of Cr.P.C can be entertained without pushing her to file an independent petition seeking for maintenance under Section 20(3) of the Hindu Adoption and Maintenance Act, 1956.

2019 (3) MLJ(Crl)211

Dr.Sunder vs. State of Tamil Nadu, Rep by the Inspector of Police, K-4, Anna Nagar Police Station, Law and Order, Chennai.

Date of Judgment: 18.06.2019

Section 311 of Code of Criminal Procedure, 1973 - Eschewing of Evidence – Failure to cross examine – Whether evidence recorded from witness by competent court be eschewed at later point of time – whether lower court right in closing evidence of PW2 to PW4 on ground that effective steps were not taken to pay process fee to issue summons to witnesses.

Petitioner had right and opportunity to cross examine PW1 when he was examined in chief. Later, after nearly one year, Petitioner chose to file a petition to recall PW-1 along with three other witnesses and the said Petition came to be allowed. Prosecution was not able to find out the whereabouts of PW1. This fact by itself will not efface the evidence of PW1 recorded by Court below while he was examined in chief. Therefore, there is no question of eschewing the evidence of PW1 as sought for by the Petitioner. Petitioner must be given an opportunity to cross examine PW2 to PW4 since the application filed by the Petitioner to recall PW2 to PW4 was already allowed by the Court below. The cross examination of these witnesses will have a bearing while the court considers the probative value of the evidence of PW1 and in order to test whether the evidence of Pw2 to PW4 corroborates the testimony of PW1. Hence, petition against dismissal of petition to eschew evidence of PW1, dismissed – Petition against closure of evidence, allowed.

2019 (2) TLNJ 49 (Criminal)

Dharmarajan & 3 others vs. The State, Rep by the Inspector of Police, Ammapettai Police Station, Thanjavur District.

Date of Judgment:04.07.2019

Sections 341, 365, 342 of Indian Penal Code, 1860 and Sections 6 & 8 of Protection of Child from Sexual Offences Act, 2012,- Complaint of rape and outraged the modesty of victim against accused – testimony of the P.W.2 can also be the sole basis to record

conviction and sentence – Cross-examination was deferred on the petition filed by the accused and thereafter, P.W.2 not offer herself for cross-examination – effect of.

Complaint of rape and outraged the modesty of victim against accused. In chief examination P.W.1 stated that accused forcibly taken himself and P.W.2, tied himself and forcibility raped P.W.2 . But in the cross-examination he turned hostile. Testimony of the P.W.2 can also be the sole basis to record conviction and sentence. Cross-examination was deferred on the petition filed by the accused and thereafter, P.W.2 not offered herself for cross-examination. Immediately after the chief-examination of P.W.2 was over, her evidence was not closed and upon petition submitted on behalf of the accused, her cross-examination was deferred and therefore, it was the duty of the prosecution to secure her presence before the Court. No sexual intercourse before 48 hours of medical examination as per medical evidence found. appeals allowed – accused acquitted.

2019(2) MWN(Cr.) 487 (DB)

**Manickaraj vs. State, Rep by Inspector of Police, Alwarthiunagari Police Station,
Thoothukodi District**

Date of Judgment: 05.07.2019

Criminal Trial - Appreciation of Evidence – Motive is of no significance, when Prosecution case based on Eyewitness account. The prosecution has projected its case on Eyewitness account and therefore motive fades into in significance and insofar as the motive is concerned.

2019 (3) MLJ(CrI) 351

Palanivel vs. State, Rep by Inspector of Police, Veeranam Police Station, Salem District.

Date of Judgment:11.07.2019

Section 267, 444-A of Code of Criminal Procedure, 1973 – Cancellation of bail – PT warrant- A PT warrant can never be converted into a regular warrant, in a case where the accused person is already on bail.

It does not authorize the court to remand the accused on strength of a regular warrant. If an accused on bail in a non-bailable offence, whether granted by a Senior Court or a Magistrate, does not appear on the hearing date and no petition is filed for dispensing with his presence and non-bailable warrant has been issued, on the appearance of the accused or on his production by the Police (through PT warrant in this case) an opportunity should be given to the accused person to explain as to why he did not appear from that particular date onwards. If a satisfactory explanation is given, he can be let off by recalling the warrant. If his explanation is not satisfactory the trial court is required to record the reasons and give a finding that the bond has been forfeited. On such finding, the bail bond gets automatically cancelled. The effect of Section 446-a is that, on the cancellation of the bail bond, the bails also gets automatically cancelled. Thereafter, the accused person may be released under the proviso under Section 446-A(b) on his executing a bond with fresh sureties or he may be remanded to custody under Section 309, In the present case, the Court below did not follow this procedure. Court below has also proceeded to cancel the bail on the same day without giving sufficient opportunity to the accused person. Therefore, the order passed by the Court below warrants interference of this Court in exercise of its jurisdiction under Section 482.

2019 (3) MLJ (CrI) 423

L.G.R.Enterprises, Rep by its Propreitrix Sindu @ Lakshmi & others vs. P.Anbazhagan

Date of Judgment: 12.07.2019

Section 143A of Negotiable Instruments Act, 1881, - Dishonour of Cheque – Interim Compensation

- Discretionary power vested with Trial Court in ordering interim compensation must be supported by reasons.

A careful reading of the order passed by the Court below shows that the Court below has focused more on the issue of the prospective/retrospective operation of the amendment. The Court has not given any reason as to why it is directing the accused persons to pay an interim compensation of 20% to the complainant. As held by this Court, the discretionary power that is vested with the trial Court in ordering for interim compensation under Section 143 A of Negotiable Instruments Act, 1881 must be supported by reasons and unfortunately in this case, it is not supported by reasons.

2019 (2) LW (CrI) 263

Shanmugam & others vs. The Inspector of Police, Ariyalur Police Station, Ariyalur & another

Date of Judgment: 16.07.2019

Section 173 (8) of Criminal Procedure Code – Further investigation - To order further investigation and to transfer the investigation to another agency. On the basis of the application by the Defacto Complainant – not proper.

The defacto complainant filed a petition before the Court below to order further investigation and to transfer the investigation to another agency and ordered for further investigation under Section 173(8) of Cr.PC and directed the Deputy Superintendent of Police to supervise the investigation. The power to grant permission for further investigation can be exercised only based on the request made by the investigating agency. It cannot be done either based on the petition filed by the *defacto* complainant or *suo-motu* by the Court, after the final report has been taken cognizance. This position of law has further been reiterated by the Hon'ble Supreme Court in its latest judgment in (Bikash Ranjan Rout Vs. The State through the Secretary for Home, Government of NCT of Delhi, Delhi) reported in 2019 (3) MLJ (CrI) 86.

2019(2) TLNJ 109 (Criminal)

Venkatachalam & another vs. State, Rep by The Inspector of Police, Vennandur Police Station, Rasipuram Taluk, Nammakkal District.

Date of Judgment: 17.07.2019

Section 216 of Criminal Procedure Code – Powers under – Trial Court altered the charges by including Section 302 of IPC – challenge – contended that a court cannot alter the charges based on the petition filed by the prosecution not acceptable since it is always open to the prosecution to bring to the notice of the court the materials available for the alteration of the charges.

The Trial Court completely lost sight of a very vital document in the case viz., the postmortem report and the final opinion given by the doctor. This is the only document which can speak about the cause of death of the deceased. A careful reading of these documents shows that the deceased died due to natural causes and her death was not as a result of the incident. This is further substantiated by the fact that there were no external and internal injuries sustained by the deceased. Therefore, there are absolutely no materials to bring the case either under Section 299 or under Section 300 of IPC.

2019 (2) MWN(Cr) DCC 184(Mad)

Rangabashyam & another vs. Ramesh

Date of Judgment:23.07.2019

Section 141 of Negotiable Instruments Act, 1881(26 of 1881) – Sections 69(2) of Partnership Act, 1932(9 of 1932) - Offence by an unregistered Partnership Firm – registration or non-registration of Firm has no bearing in so far as Section 141 is concerned – complaint against partners of Firm not maintainable without making partnership as an accused.

Section 141 of NI Act deals with the concept of vicarious liability, wherein for the offence committed by the Company or a Partnership/Firm, the Directors of the Partners, as the case may, are deemed to be guilty of the offence when it is shown that they are in charge of and responsible for the conduct of the day-to-day affairs of the business or the Firm, as the may be. The complaint cannot be maintained against the Directors of the company, without making the company as an accused person. This concept has been extended even for Partnership/Firms. The registration or non-registration of the Partnership Firm will have no bearing in so far as Section 141 of the Negotiable Instruments Act is concerned. In this case admittedly, the Cheque was given in the name of the Partnership/firm and after the cheque was dishonored, no statutory notice was issued to the Partnership/firm, and the Partnership/firm was not made as an accused in the complaint. Only the partners have been shown as accused persons in this complaint. Such a complaint is unsustainable and not in accordance with Section 141 of the Negotiable Instruments Act.

2019 (2) TLNJ (Criminal) 170

C.Kalliappan vs. The State, Rep by the Inspector of Police, Vigilance & Anti-Corruption, Namakkal District

Date of Judgment:31.07.2019

Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 – Offence under – Petition to discharge - petition dismissed – Revision – It is trite that at the stage of discharge petition, the Trial Court cannot conduct a roving enquiry or is not permitted to conduct a mini trial.

It is trite that at the stage of discharge petition, the Trial Court cannot conduct a roving enquiry or is not permitted to conduct a mini trial and the Trial Court has to look into whether there are sufficient prima facie materials available for framing of charges against the accused. In the case on hand, the Trial Court, finding materials to frame charges against the Petitioner/A2 for the alleged offence, had held that the relief seeking to discharge as claimed by the Petitioner can be decided only after a full fledged trial and accordingly, dismissed the discharge petition. Revision dismissed.
