

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

*Compiled by*

**Tamil Nadu State Judicial Academy  
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## **HIGH COURT CITATION OF CRIMINAL CASES**

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## SUPREME COURT CITATIONS CIVIL CASES

2012-1-L.W. 49

Sanjeev Kumar Jain

Vs

Raghubir Saran Charitable Trust & Ors

C.P.C., Sections 35, 35B, Order XXA/Suit for injunction, Temporary Injunction, vacating of, awarding costs, maximum costs, when can be awarded, Consent, Scope, 'actual realistic costs', what is.

Arbitration and Conciliation Act (1996), Sections 11, 31/"Appoint", meaning of, Terms and Conditions, Scope of,

C.P.C., Order 39/Injunction, Temporary vacating of, Awarding costs, Scope,

Delhi High Court Rules, Chapter 11, Part C,

Practice and Procedure/" Awarding Costs'; what is.

**Held:** Impugned order including the portion regarding costs, was not a consent order.

Court could not have awarded costs exceeding the scale that was prescribed in the schedule to the Rules. Doing so would be contrary to the Rules – Chapter 11 Part C of the Delhi High Court Rules deals with award of costs in civil suits.

By seeking consent of the parties to award litigation expenses as costs, the High Court could not have adopted the procedure of awarding what it assumed to be the 'actual costs'.

Nor could it proceed to award a sum of ₹ 45,28,000/- as costs in an appeal relating to an interim order in a civil suit.

There is no provision for award of 'actual costs' and the award of costs will have to be within the limitation prescribed by section 35.

"Actual realistic cost" should have a correlation to costs which are realistic and practical – Even if actual costs have to be awarded, it should be realistic which means what a "normal" advocate in a "normal" case of such nature would charge normally in such a case.

Mechanically ordering the losing party to pay costs of ₹ 45,28,000/- in an appeal against grant of a temporary injunction in a pending suit for permanent injunction was unwarranted and contrary to law – It cannot be sustained.

Discretion vested in the courts in the matter of award of costs is subject to two conditions, as is evident from section 35.

Maximum that can be awarded as compensatory costs in regard to false and vexatious claims is ₹ 3,000/- - Ceiling in regard to compensatory costs should be at least ₹ 1,00,000/-.

The word 'appoint' in section 11 of the Act, refers not only to the actual designation or nomination as an arbitrator, but includes specifying the terms and conditions, which the Chief Justice or Designate may lay down –

Whenever the Chief Justice or his Designate appoint arbitrator/s, it will be open to him to stipulate the fees payable to the arbitrator/s.

Order of the High Court, to the extent it levies costs of ₹ 45,28,000/- on the appellant is set aside – Appellant shall pay the costs of the appeal before the High Court as per Rules plus ₹ 3000/- as exemplary costs to the respondents.

2012 (1) CTC 96

K.N. Govindan Kutty Menon

Vs

C.D. Shaji

Code of Civil Procedure, 1908 (5 of 1908), Section 2(e) – Legal Services Authorities Act, 1987 (39 of 1987), Section 21 – Decree – Meaning – Whether award passed by Lok Adalat can be treated as decree of Civil Court – Criminal case filed by Appellant under Section 138 of the Negotiable Instruments Act was referred to Lok Adalat for settlement – Lok Adalat passed award settling dispute between parties – Respondent failed to make payment in terms of award passed by Lok Adalat – Appellant filed Execution Petition before District Munsif Court for execution of award – District Munsif Court dismissed Execution Petition in an unnumbered stage holding that award passed by Lok Adalat in pursuance of reference made by Magistrate in Criminal case is not a decree – Held, every award of Lok Adalat shall be deemed to be decree of Civil Court and such decree is executable by a Court of law – Act does not make out any distinction between reference made by Civil Court and Criminal Court – No restriction on power of Lok Adalat to pass award based on compromise arrived at between parties in respect of cases referred to by various Courts including both Civil and Criminal, Tribunals, Family Court, Rent Control Court, Consumer Redressal Forum, Motor Accident Claims Tribunal and other forums of similar nature.

2012 (1) CTC 106

Makers Development Services Pvt. Ltd

Vs

M. Visvesvaraya Industrial Research and Development Centre

Specific Relief Act, 1963 (47 of 1963), Section 39 – Mandatory injunction – Code of Civil Procedure, 1908 (5 of 1908), Order 39, Rules 1 & 2 – Grant of interim mandatory injunction – Factors to be considered – Suit for Specific Performance filed by Plaintiff – Pending Suit, Plaintiff sought for interim injunction restraining Defendant dealing with suit property and to permit Plaintiff to put up further construction – Interim relief to permit further construction sought by Plaintiff, if granted, would create enormous difficulty to Defendant in event of dismissal of main Suit later – Interim relief sought by Plaintiff is in nature of mandatory injunction and not mere prohibitory order – Same cannot be granted – Courts while granting injunction must take into consideration conduct of parties – Order of Division Bench refusing to grant interim relief in nature of positive mandatory injunction cannot be faulted with.

2011 (12) SCALE 182

Jaswant Singh

Vs

Gurdev Singh & Ors

CIVIL PROCEDURE – EVIDENCE ACT, 1872 – SECTION 74, 76, 77 – Public document – Certified copy of the public document – Admissible in evidence without being proved by calling witness – Appellant filed a civil suit for declaration to the effect that he was the owner and in possession of land – A civil suit was filed by appellant seeking permanent injunction against one 'AK' and others restraining them from interfering in the land – During pendency of the suit, the parties entered into a compromise and on that basis the suit was decreed on 8.12.1972 and Mutation was sanctioned in favour of appellant – As per appellant, he became the owner and in possession of 12 ½ acres of land whereas as per the defendants, the plaintiff was admitted to be the owner of 8 acres of land –

Compromise decree was produced – Even though the appellant raised an objection as to the compromise, admittedly, the same had not been challenged by him – Record of the court had been proved to be burnt in a fire in Judicial Record Room but the certified copy of the compromise deed which was part of the decree was obtained from the record room on 24.8.1988 and decree was issued – Whether the compromise deed was admissible in evidence – Dismissing the appeal, Held.

2012 – 1 -L.W. 409

Poonam & Ors

Vs

Harish Kumar and Anr

Limitation Act (1963), Section 5/Petition for condonation of delay of 63 days in filing appeal condoned, not a gross delay, when properly explained, Constitution of India, Article 136.

Appellants brought a suit for declaration of their title as 3/9<sup>th</sup> owner each – Trial Court dismissed the suit – An appeal was filed along with an application for condonation of delay of 63 days in filing the appeal – District Judge dismissed the application.

High Court dismissed the revision petition upholding the order of the District Judge – All the three ladies, were appellants, one of them was pursuing the case and she fell sick – She was not in a position to pursue the legal remedy with due diligence as a result of which the appeal was filed with a delay of 63 days.

High Court should have, before passing the impugned judgment, considered the explanation for the delay along with the facts of the case, the position of the parties, the nature of the litigation and the period of delay – Unless the delay is gross, an explanation for the same should be liberally construed – Appeal should be restored to its file.

2011 (10) SCALE 510

Arulmighu Lakshmi Narayanaswamy Temple, Rep. By Its Chairman, Board of Trustees

Vs

Nallammal (Dead) Thr. Lrs. & Ors

LAND REFORMS – TAMIL NADU MINOR INAMS (ABOLITION AND CONVERSION INTO RYOTWARI) ACT, 1963 – SECTION 2(5) & 8 – Ryotwari settlement in Inams – Acquisition of rights of Inamdars in minor Inams – Grant of Ryotwari Pattas – Once the land are notified as minor Inam land under Act No. 30 of 1963, the same is binding on the authorities constituted under the Act – Lands were granted as ‘Devadayam Inam’ in favour of appellant Temple in ‘K’ village in Tamil Nadu – Inam grant was confirmed by the British Government and title deed was also issued in favour of appellant Temple by the Inam Commissioner – These Inams were held not only the appellant Temple but also by other four temples – As the lands were Minor Inam lands, they were notified and taken over by the Tamil Nadu Government under Act 30 of 1963 – Patta proceedings were initiated and the Assistant Settlement Officer granted Ryotwari Patta in favour of appellant Temple in respect of Survey Nos. 2/1, 2/2, 3/1 and 3/3 – On appeal, High Court confirmed the order of the Tribunal – Whether lands in question were liable to be resumed and converted into Ryotwari lands – Dismissing the appeal, Held.

2011-4-L.W. 510

Hari Ram

Vs

Jyoti Prasad & Anr

Limitation Act (1963), Section 22, Continuing Tort, commencement of fresh period of limitation every moment of the time during which the breach of the Tort continues, Public wrong, Scope,

C.P.C., Order 8, Rule 1 / Representative suit, Since affected person himself has filed a suit, the suit cannot be dismissed on the ground of alleged non-compliance of the provisions of Order I Rule 8 of the CPC,

Tort/Continuing Tort, Encroachment on street, Public Wrong, Continuous case of action, Mandatory injunction for removal, Scope, Cause of action is created as long as such injury continues and as long as the doer is responsible for causing such injury.

Injunction, Mandatory/Encroachment, Public Wrong, Continuous cause of action,

Any act of encroachment is a wrong committed by the doer – Such an encroachment when made to a public property like public road would be a graver wrong – Such wrong prejudicially affects a number of people and therefore is a public wrong – Cause of action is created as long as such injury continues and as long as the doer is responsible for causing such injury.

Apart from being a representative suit, the suit was filed by an aggrieved person whose right to use public street of 10 feet width was prejudicially affected – Suit cannot be dismissed on the ground of alleged non-compliance of the provisions of Order I Rule 8 of the CPC – Suit filed by the plaintiff/respondent No. 1 was maintainable.

2011-4-L.W. 523

B. Kothandapani

Vs

Tamil Nadu State Transport Corporation Ltd.

Motor Vehicles Act (1988), Sections 166, 168/Permanent disability, partial loss of eyesight, Middle finger on right hand, Compensation, awarding of, Question considered whether the appellants is entitled to a sum of ₹ 1,00,000/- towards “permanent disability” in addition to the amount awarded under the head “loss of earning capacity”?

It cannot be construed that compensation cannot be granted for permanent disability of any nature – Partial loss in the eye sight, loss of middle finger of the right hand, not only affects earning capacity but also affects normal avocation and day-to-day work.

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## SUPREME COURT CITATIONS CRIMINAL CASES

2011 (9) SCALE 295

Inderjit Singh Grewal  
Vs  
State of Punjab & Anr.

CRIMINAL LAW – PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – SECTION 12 – Cr.P.C. – SECTION 482 – HINDU MARRIAGE ACT, 1955 – SECTION 13-B – I.P.C. – SECTION 40, 43, 191 & 193 – Complaint filed u/s 12 of Domestic Violence Act after obtaining decree of divorce – Abuse of process of court – Even if divorce decree is void, allegedly having been obtained by playing fraud upon the court, declaration to that effect has to be obtained from the competent court, but not in collateral proceedings – Appellant-husband and respondent 2 wife, got married and from the said wedlock a son was born – Parties filed petition u/s 13-B, Hindu Marriage Act, for dissolution of marriage by mutual consent – Court allowed the said petition after recording their statements in second motion and dissolved their marriage on 20.3.2008 – Respondent filed a complaint against appellant on 4.5.2009 under the provisions of the 2005 Act alleging that the decree of divorce obtained by them was a sham transaction and that even after getting divorce, both of them had been living together as husband and wife – Allegations that the complainant respondent was now forced to leave the matrimonial home – Appellant filed petition u/s 482, Cr.P.C. for quashing the complaint – Respondent filed civil suit seeking declaration that decree of divorce was null and void and that suit is still pending – Whether High Court erred in rejecting appellant's petition u/s 482, Cr.P.C. – Allowing the appeal, Held.

2011 (6) CTC 445

Vijay Kumar  
Vs  
State of U.P. & Anr

Code of Criminal Procedure, 1973 (2 of 1974), Section 311 – Evidence Act, 1872 (1 of 1872), Section 165 – Power to summon material witness, or examine person present – Appellant preferred a Complaint against Respondents alleging that Government officials demanded bribe from him to settle Civil dispute raised by his daughter – Complaint was filed under Prevention of Corruption Act – After framing of charges and closing of evidence of prosecution Accused filed an Application to summon daughter of Appellant to examine as Court Witness and Trial Court dismissed Application but High Court allowed Application in Revision – Section 311, Cr.P.C. consists of two parts (a) it enables Court to exercise its discretion to examine witness at any stage, (b) it compels Court to examine any witness if evidence of such witness is essential to decide case justly – Section 311, Cr.P.C. gives wider discretion and power of Court under Section 165 of Evidence Act is complementary to its power under Section 311, Cr.P.C. – Power should be exercised provided evidence which may be tendered by witness is germane to issue involved, or if proper evidence is not adduced or relevant material is not brought on record due to any inadvertence – Discretion conferred on Court to summon witness must be exercised judicially, with application of judicial mind – Impugned judgment passed by High Court summoning Appellant's daughter as Court Witness bristles with arbitrariness – Appeal allowed.

2011 (12) SCALE 471

Mrs. Anita Malhotra  
Vs  
Apparel Export Promotion Council & Anr

NEGOTIABLE INSTRUMENTS – NEGOTIABLE INSTRUMENTS ACT, 1881 – SECTION 138 & 141 – COMPANIES ACT, 1956 – SECTION 25, 159, 163 & 610(3) – Cr.P.C. – SECTION 482 – EVIDENCE ACT, 1872 –

**SECTION 74 – Complaint against Director of a Company – Quashing of – Mere bald and cursory statement with regard to appellant regarding her role in day to day affairs of the Company – Defence of appellant that she had resigned from Directorship – Appellant placed on record copy of Form 32 filed by the Company along with receipt of filing with the Registrar of companies as also a certified copy of the Annual Return – A certified copy of Annual Return is a public document – Appellant, who was a non-executive Director on the Board of the Company, resigned from the Directorship w.e.f. 31.8.1998 – On 21.11.1998, recording resignation of the appellant, the Company filed statutory Form 32 with the Registrar of Companies – A notice dated 10.12.2004 was issued to appellant regarding dishonor of alleged cheques – Appellant, vide letter dated 15.12.2004, replied to the said notice informing respondents that she had resigned from the Directorship of the Company long back in 1998 – Respondents filed a complaint u/s 138 of the Act against the company arraying the appellant as accused 3 – Appellant filed a petition for quashing of the complaint – High Court dismissed the petition as Form 32 was not available in the record of Registrar of Companies while holding that annual return dated 30.9.1999 filed by the accused was not a public document – Whether judgment of the High Court was sustainable – Held, No – Whether appellant had made out a case for quashing the criminal proceedings – Held, Yes – Allowing the appeal, Held.**

**(2011) 7 Supreme Court Cases 616**

**A. Subash Babu**

**Vs**

**State of Andhra Pradesh and Anr**

**(A) Criminal Procedure, 1973 – S. 198 – Bigamy – Prosecution for – Expression “aggrieved person” under S. 198 – Scope, meaning, ambit and interpretation – Second spouse, whether an aggrieved person entitled to file complaint for offences under Ss. 494 and 495 IPC – Appellant concealing fact of his having an earlier living wife, and marrying Respondent 2.**

**Held, a woman with whom a second marriage is contracted by suppressing fact of former marriage is an “aggrieved person” for purposes of S. 198 CrPC and would be entitled to maintain a complaint under Ss. 494 and 495 IPC – S. 494 IPC does not restrict right of filing complaint to first wife only and there is no reason to read S. 494 IPC in a restricted manner – To achieve laudable object of monogamy, meaning of phrase “aggrieved person” has to be expanded – Expression “aggrieved person” denotes an elastic and an elusive concept – Its scope and meaning depends on diverse and variable factors.**

**Further, S. 495 IPC purchases an aggravated form of bigamy and is an extension of S. 494 – Word “concealment” in S. 495 refers to concealment of former marriage from second wife – Therefore, second wife is an “aggrieved person” under S. 495 IPC – As S. 495 is an extension of S. 494 IPC, second wife is also an “aggrieved person” under S. 494 IPC – Considering the miseries inflicted on such second wife arising out of the gross fraud perpetrated upon her, further held, to debar second wife from filing complaint under S. 494 IPC would be the height of perversity – Penal Code, 1860 – Ss. 494 and 495 – Crimes Against Women and Children – Bigamy.**

**(B) Penal Code, 1860 – S. 494 – Applicability – Due performance of ceremonies of both marriages, as required by the personal law governing the parties – Requirement of, reiterated.**

**(C) Penal Code, 1860 – Ss. 494 and 495 – Relative Scope and inter-relationship between, explained.**

**(D) Hindu Marriage Act, 1955 – Ss. 11 and 5(i) – Declaration under S. 11 that second marriage is null and void as per S. 5(i) – Rights of second wife prior to and after such declaration to file a complaint under S. 494 IPC – Held, woman with whom second marriage is solemnised by suppressing fact of former marriage would be entitled to maintain a complaint under S. 494 IPC before or after the S. 11 declaration by a competent court – Complaint can be filed by person with whom second marriage takes place which is void by reason of its taking place during life of first wife – To hold that a woman with whom such second marriage is performed is not entitled to maintain a complaint under S. 494 IPC though she suffers legal injuries due to the gross fraud perpetrated upon her, would be the height of perversity – Criminal Procedure Code, 1973 – S. 198 – Crimes Against Women and Children – Bigamy.**

**(E) Family and Personal Laws – Bigamy – Declaration that second marriage is void – Deleterious effects upon second wife and legal disabilities attaching to her, pointed out – Hindu Marriage Act, 1955 – Ss. 11 and 5(i) – Criminal Against Women and Children – Bigamy.**

(F) Hindu Marriage Act, 1955 – Ss. 11 and 5(i) – Voidness of second marriage when first marriage subsisting – Role of declaration by court under S. 11 – Status of second wife till declaration – Family and Personal Laws – Bigamy – Specific Relief Act, 1963 – S. 34 – Transaction void ab initio – Role of declaration thereof by court.

(2011) 9 Supreme Court Cases 626

Mahesh and Anr  
Vs  
State of Madhya Pradesh

(A) Penal Code, 1860 – S. 302 r/w S. 34 – Common intention – Active participation of co-accused in accessory role established – Conviction of co-accused, confirmed – Accused R fired a shot at deceased, while M and K were holding hands of deceased – Trial court convicted R, and acquitted M and K on ground of some embellishment in prosecution case – High Court confirmed order of conviction of R and set aside acquittal of M and K and convicted them also – Appellants M and K contended: (i) role attributed to appellants not mentioned in FIR, (ii) statements under S. 161 CrPC of eyewitnesses recorded after about 8 days, (iii) independent witnesses allegedly present, not examined, (iv) no motive for commission of crime, and (v) there were two versions sought to be raised, benefit of doubt should go to appellants – Complainant was not eyewitness – Delayed examination under S. 161 CrPC is explained – Motive was proved, as there was a dispute some time before incident – PWs 2 and 4 have specifically stated that present appellants were holding deceased by his hands and also exhorted R to bring a gun and to shoot at deceased – They had intentionally become a party to commit murder of deceased – Held, fact that appellants were holding hands of deceased, exhorting R to bring a gun and to fire upon deceased so as to kill him speaks volumes and establishes that they have done the act intentionally so as to see that deceased is fired upon and shot dead.

(B) Criminal Procedure Code, 1973 – S. 154 – Detail in FIR – Non-mentioning of role of appellant co-accused in FIR – Effect – FIR is only a report submitted informing police about commission of crime – Detailed and vivid description of incident not required – It cannot be expected from informant, especially, a relative of injured/deceased to give each and every minute detail of incident in FIR – PW 1, the informant was not eyewitness – Held, it cannot be said that non-mentioning of role played by present appellants in FIR would be in any manner fatal to prosecution – Penal Code, 1860 – S. 302 – Murder trial – FIR.

(C) Criminal Procedure Code, 1973 – S. 161 – Delayed recording of statements under – Effect of – IO recorded statements after about 8 days of occurrence, because religious rituals were going on – This reason is written in case diary also – Held, a proper and appropriate explanation has been given – Being a plausible and possible explanation given for recording statement of eyewitnesses after 8 days, some cannot demolish or vitiate prosecution case – Penal Code, 1860, S. 302.

(D) Criminal Trial – Motive – Present appellants and informant had an altercation in filed and because of said altercation, deceased came out of his house and was going to filed – During this process deceased was hot dead as alleged by prosecution – Held, motive for offence is established – There was an enmity between complainant party and accused persons.

(E) Criminal Trial – Witnesses – Related witness – Credibility of – Witnesses who were examined were relatives of deceased – There is no ground and reason to disbelieve them – No reason why they would not speak truth, so as to see that actual guilty persons are convicted.

(F) Evidence Act, 1872 – S. 134 – Number of witnesses – Appreciation of evidence – No necessity for prosecution to multiply witnesses to prove and establish prosecution case – There is no requirement in law of evidence that any particular number of witnesses is to be examined to prove something – Evidence has to be weighted and not to be counted – Criminal Trial – Witnesses – Sole/Solitary witness.

2011 CIJ 723 CTJ

Shiji @ Pappu and Ors  
Vs  
Radhika and Anr

Code of Criminal Procedure, 1973(2 of 1974)-Sec.320, 482-Prosecution-Compounding-High Court-Inherent power-Compromise-police registered FIR for an offence under Sec.354, 394 IPC on the allegation that the appellant committed robbery and also slapped a woman-Before final report was filed, parties entered into a compromise and the defacto complainant filed an affidavit stating that the complaint was lodged on a misconception of fact-High Court refused to quash FIR by stating that offence was not personal in nature against which the appellant preferred SLP-While the appellant contended that besides the defacto complainant, the other witnesses were the close relatives and there was no possibility of conviction and the continuance of prosecution was only an empty formality, respondent contended that the offence was not compoundable-Held, when the parties approached the High Court to quash the prosecution on the ground that facing trial would be an empty formality, the High Court could exercise its inherent power to quash the prosecution-quashing the prosecution would be different from that of compounding the offences-While compounding may not be permitted in respect of non compoundable offences, prosecution could be quashed even in respect of such offences-Appeal was allowed and the prosecution against the appellant was quashed.

Code of Criminal Procedure, 1973 (2 of 1974)-Sec.320, 482-Prosecution-Compounding-High Court-Inherent power-Compromise-When the parties approach the High Court to quash the prosecution on the ground that facing trial would be an empty formality, the High Court could exercise its inherent power to quash the prosecution-Quashing the prosecution in exercise of the inherent powers of the High Court would be different from that of compounding the offences-While compounding may not be permitted in respect of non compoundable offences, prosecution could be quashed by the High Court under its inherent powers even in respect of such offences.

Ratios:

- a. When the parties approach the High Court to quash the prosecution on the ground that facing trial would be an empty formality, the High Court could exercise its inherent power to quash the prosecution.
- b. Quashing the prosecution in exercise of the inherent powers of the High Court would be different from that of compounding the offences.
- c. While compounding may not be permitted in respect of non compoundable offences, prosecution could be quashed by the High Court under its inherent powers even in respect of such offences.

(2011) 3 MLJ (Crl) 741 (SC)

R.S. Mishra  
Vs  
State of Orissa and Ors

Code of Criminal Procedure, 1973 (2 of 1974), Section 228 – Framing of charge – Role of Judge at stage of framing of charge – Judge expected to look into material placed before him – Order ought to be clear and self – explanatory with respect to material placed before him – Bald order would raise serious doubt about bona fides of decision rendered by Judge concerned.

**RATIO DECIDENDI:** At the stage of framing of the charge, the minimum that is expected from the Judge is to look into the material placed before him and if he is of the view that no case was made out for framing of a charge, the order ought to be clear and self – explanatory with respect to the material placed before him.

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## HIGH COURT CITATIONS CIVIL CASES

2012-1-TLNJ 1 (Civil)

D. Soundararaj  
Vs  
K. Ashok

Limitation Act 1963, Section 5 – (Improper delay cannot be condoned on liberal approach or to do substantial justice) – Suit filed under Order 37, Rule 3(4) – for recovery of money – defendant did not appear and ex parte decree passed – defendant filed petition to condone delay with an application to set aside ex parte decree – trial court dismissed the petition – on revision High Court expressed that the court does not enjoy unlimited unbridled discretionary power – further liberal approach justice oriented approach and substantial justice cannot be employed to jettison substantial law of limitation in particular when there is not justification for delay – CRP dismissed.

2012-1-TLNJ 45 (Civil)

Kamatchi and Ors  
Vs  
Fathima Beevi and Ors

Legal Maximums – “Nemo dat qui non habet” & “ubi jus, ibi remedium” – See Transfer of Property Act 1882, Section 52.

Transfer of Property Act 1882, Section 52 – Suit for permanent injunction – suit property was sold prior to ABJ on a previously instituted money suit – sale details not found in Encumbrance certificate – therefore subsequently attached and brought to auction sale for realization of suit amount – auction purchaser’s legal heirs filed suit against previous purchaser’s heirs for declaration and injunction – dismissed by trial court and confirmed by first appellate court – on second appeal the contention of the plaintiff that the prior sale of the property was hit by “lis pendens” not accepted – held that the property is not subject matter of litigation – sale prior to court attachment can not be said to be affected by lis pendens – SA dismissed.

2012 (1) CTC 46

S. Thirugnanasambandam  
Vs  
P. Kaliyaperumal and Ors

Specific Relief Act, 1963 (47 of 1963), Section 16(c) – Meaning of Readiness and Willingness – Sale Agreement was entered into in 1992 and time of ten years was fixed for performance of contract – Plaintiff filed a Suit for bare injunction restraining Defendant from interfering with his peaceful possession over suit property – Defendant disputed signature found in Sale Agreement and same was sent for expert opinion – Plaintiff withdrew Suit and later in 2005 filed Suit for Specific Performance – Held, Plaintiff failed to explain why ten years’ time was fixed for paying balance of sale consideration – Suit was filed in year 2005 nearly three years later after issuance of reply notice by Defendant – Conduct of Plaintiff would amply prove that he was not ready and willing to perform his part of contract – Delay in filling Suit for Specific Performance after receipt of reply notice would disentitle Plaintiff to seek discretionary relief of Specific Performance.

2012 (1) CTC 53  
Lakshmi and Ors  
Vs  
Muthusamy

Evidence Act, 1872 (1 of 1872), Section 92 – Party to contract is debarred from adducing any evidence contradicting, varying, adding to or subtracting from its terms found in written contract – One exception to this rule is found in First Proviso to Section 92 is where such evidence could be adduced to prove fraud, intimidation, illegality want of due execution, want of capacity in any contracting party, want or failure of consideration or mistake in fact or law.

Contract Act, 1872 (9 of 1872), Section 16 – Undue influence – Where on party to contract holds real or apparent authority over other or where he stands in fiduciary relation to other fiction is created to mean that such party is in position to dominate will of other – A creditor would on facts and circumstances of case stand in such position over debtor.

Interpretation of Statutes – Special overrides general – Contract Act, 1872 (9 of 1872), Section 16(2) – Evidence Act, 1872 (1 of 1872), Section 101 – Section 101 of Evidence Act is general provision relating to burden of proof, whereas Section 16 of Contract Act is special provision in respect of burden of proof of undue influence in matter of contract – Section 16 of Contract Act overrides Section 101 of Evidence Act.

Contract Act, 1872 (9 of 1872), Section 17 – Fraud – Promise made without any intention of performing it constitutes fraud – Obtaining agreement to sell property as security for repayment of loans borrowed with promise to return agreement on repayment of loan would amount to fraud when it was never intended to perform it.

Contract Act, 1872 (9 of 1872), Section 19-A – Contract brought about by undue influence is voidable and Defendant by raising such plea in Written Statement can avoid such contract.

2012-1-L.W. 74  
Chinnu Padayachi and Anr  
Vs  
Dhanalakshmi W/o. Thangavel Ors

C.P.C., Order 6, Rule 17/Amendment seeking Mandatory Injunction, when can be allowed.

Limitation Act (1963), Article 113, Section 22/Continuous offence, what is.

An application was filed by the respondents for amendment of the pleadings, incorporating the prayer for mandatory injunction – Respondents have stated that after filing of the suit, the petitioners herein have put up the said construction – It is not stated, when such construction was put up, even though it is stated that after filing of the suit – Hence, the relief of mandatory injunction cannot be entertained.

Construction in the common passage, cannot be considered as a continuous breach, which will entitle the respondents to file application for amendment, even after the prescribed period of three years – Amendment sought for by the respondents barred by limitation.

2012-1-L.W. 86  
R. Mohanasundaran & Ors  
Vs  
Arulmigu Koavizhi Amman Temple, G.N.Chetty Street, Mylapore, Chennai -4

Tamil Nadu Hindu Religious and Charitable Endowments Act (1959), Sections 23, 29, 47 (Tamil Nadu Amendment Act 28 of 2003), Section 109, Substituted Section applies to pending suits, Suit for recovery of possession, declaration of title when needed.

Limitation Act (1963), Section 10/Applicability to Religious institutions,

Adverse possession/Claim by Poojaris-in-charge of temple, whether maintainable.

Trusts, Limitation, Adverse Possession.

Suit filed for recovery of Possession by Respondent-plaintiff temple – (-Arulmigukolavizhiammal temple) Mylapore, Chennai was decreed and reported in 2008-3-L.W. 1083-Appeal was preferred by defendants against that.

**Held:** Plaintiff temple has established that it has got title by grant made by the Government – Defendants were only in-charge of the temple in their capacity as poojaris and managers of the temple and that they do not have any legal right to be in possession of the suit property – Plaintiff temple is entitled for recovery of possession.

Defendants 1 to 4 have been in possession and enjoyment of the suit property as poojaris and defacto trustees to the plaintiff temple and not in possession of the suit property in their own right as owners.

Only when a cloud is cast on the title, there is a need to file the suit for declaration – A cloud upon title is an apparent defect in it – In the instant case, defendants 1 to 4 and their ancestors have been held to be poojaris/Archakas, who were performing poojas and in management of the temple – There was no necessity for the plaintiff temple to seek for declaration of title.

Even though no specific trust/endowment has been produced, the very purpose of grant would show that the property is intended for the purpose of the temple establishing that it is a religious endowment – In the case of religious and charitable endowment of Hindus and Muslims, for the purpose of Section 10, the endowed property should be regarded as property vested in Trust for a specific purpose and the Manager thereof as a trustee.

For applicability of Section 10 – There must be property which has become vested in a person in trust for a specific purpose; The suit must be against such person or his legal representatives or assigns not being assigned for valuable consideration; The suit must be for the purpose of following in the hands of such person the trust property or its proceeds or for an account of such property or proceeds.”

Archakas cannot acquire rights in the lands of the temple to which the grant was made because the Archakas should be deemed to be in possession in a fiduciary capacity and as such they cannot claim right – Defendants 1 to 4 and their ancestors were only managers of the temple and the properties and therefore the plaintiff temple has rightly invoked Section 10.

Conducting of poojas and ceremonies and upkeep of the temple satisfy the of Section 10 and the ancestors of the appellants, being in-charge of the temple as Managers/Trustees, plaintiff temple has rightly invoked Section 10.

Plaintiff temple has been dealing with the property – Appellants are not right in contending that the suit property became vested in them prior to the cut-off date i.e., 30<sup>th</sup> September 1951 and invoking the unamended Section 109 of H.R. & C.E. Act cannot be countenanced.

Section 109 makes it clear that the entire provisions of the Limitation Act, 1963 shall not apply to any suit for possession of immovable property belonging to any religious institution.

Substituted Section 109 of H.R. & C.E. Act will apply even for the pending suits – Archakas/trustees cannot claim adversely to the temple and acquire proprietary rights in the lands of the temple, where patta stands in the name of the plaintiff.

2012 - 1 TLNJ 88 (Civil)

A.K. Yarabjan and Anr  
Vs  
Hussainajan and Ors

Civil Procedure Code 1908 as amended, Section 10 – Stay of the suit as prior suit on the relating issued is pending as second appeal in High Court – dismissed and on revision expressed that section 10 CPC is to protect litigant from plurality of proceedings between same parties – a restrictive provision under code to protect litigants from being vexed twice for trial on same cause of action and on the policy that there ought to be an end of litigation – held that earlier proceedings are different and view of the trial court as correct – CRP dismissed.

2012 (1) CTC 128

Malla Naicker @ Singari and Ors  
Vs  
Jeeva (minor) and Ors

Hindu Law – Joint family property – Presumption of joint family property – Suit for Partition filed by coparcener of joint family property claiming share in joint family property – Kartha of joint family property pleads that suit properties are separate properties and not joint family properties – Burden of proof – Onus lies on Kartha to prove that properties are his separate properties and purchased out of joint family property – Kartha should also prove that there is no existence of ancestral nucleus in joint family property - When coparcener claims that certain properties are his separate properties, onus lies on him to prove that properties were purchased not out of joint family income – When Kartha fails to prove any source of independent income by other coparcener in whose name property was purchased, Court can presume joint family properties would have provided consideration for purchase of suit properties.

2012 - 1 - TLNJ 144 (Civil)

D. Anthony Marianathan  
Vs  
Josephine Sahayarani

Indian Divorce Act 1869, Section 17 – Husband filed petition for judicial separation – wife sought divorce – trial court granted divorce and referred to High Court for confirmation as per earlier law as amended Divorce Act 1869 dispensed with confirmation by High Court from 3.10.2001 – on reference the Full Bench of the High Court in its Madurai Bench held that the amendment to dispense with confirmation is only prospective – on facts of the case finding of the trial judge confirmed – reference answered – decree confirmed.

2012 - 1 - TLNJ 148 (Civil)

S.A.No.990 of 2004:- Gopi  
Vs  
H. David  
And  
S.A.No.990 of 2004:- Gopi  
Vs  
Sivagnanam  
And  
C.R.P. (NPD) No.1108 of 2004: - Harris David  
Vs  
Sivagnanam

Specific Relief Act 1963, Section 34 and 38 – Suit for declaration of title and possession – decree by trial court – appeal allowed – on further appeal the High Court held that When a person of full age and understanding puts his signature to a legal document without taking trouble of knowing contents and signs it relying on the word of another as to its character, contract or effect, he cannot be heard to say that it is not his document – SA allowed and connected CRP dismissed.

2012 (1) CTC 159

Solavaiammal W/o Ettiappa Goundar and Ors  
Vs  
Ezhumalai Goundar S/o Ettiappa Goundar and Anr

Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 17 – Amendment of Plaintiff – Partition Suit – Whether amendment of Plaintiff in Partition Suit can be allowed at instance of Defendant – Principle of dominant litis is general rule in respect of all Suits barring Suit for Partition – Plaintiff and Defendant are considered to be on same pedestal in Partition Suit – Amendment sought for in Partition Suit does not alter or change character of Suit and it can be allowed for effective adjudication and to avoid multiplicity of proceedings – Application for amendment in Suit for Partition at instance of either party of Suit is maintainable – Law laid down in Ramasamy v. P. Marappan, 2005 (3) MLJ 663 clarified and ratio laid down in A.A. Ganga v. A.R. Usha, 2010 (4) CTC 331 upheld.

2012 - 1 - TLNJ 199 (Civil)

M/s. Vestas RRB (India) Ltd rep. by its president Mr. S.D. Singh No.78, Vembuliamman Kovil Street,  
Virugambakkam, Chennai -92.  
Vs  
Anulatha

Civil Procedure Code 1908 as amended, Order 6, Rule 17 – Suit for declaration and injunction – plaintiff sought amendment seeking a relief of recovery of possession and compensation also as defendant made constructions – petition allowed – on revision High Court held that when amendment sought trial court not supposed to go into the merits and demerits of the amendment – should not be a substitute for a original cause of action – further amendment defeats legal right not be allowed – not as matter of right of parties but to reduce multiplicity of proceedings – trial court view found correct – CRP dismissed.

2012 (1) TLNJ 217 (Civil)

Elumalai  
Vs  
Subbaramani

Civil Procedure Code 1908 as amended Order 26, Rule 9 – Appointment of Advocate Commissioner – Suit for promissory note – defendant wanted the pronote to sent for expert opinion as inks used for signature are different – dismissed – on revision the High Court held that various scientific avenue are available to find out the age of ink and latching an opportunity to the defendant the disputed document to the expert – CRP allowed.

2012 -1 TLNJ 248 (Civil)

Ramani and Anr  
Vs  
P. Parvathi and Ors

Tamil Nadu Court Fees and Suit Valuation Act, 1955, Section 25(b) – In a suit for declaration when the suit property is valued as a vacant site the appointment of a Commissioner to find out the value of the vacant land will not be necessary – for finding out the value of the land, instead of relying on the Commissioner's report, it shall be prudent to make a decision based on the evidence adduced on both sides – a Sale Deed regarding comparatively

smaller piece of land with an extent of 7080 sq.ft. is taken as sample sale for fixing the market value of the suit property having an extent of 58,880 sq.ft – Civil suit closed with direction.

2012-1-L.W. 248

A/M Kothandaramasamy Koil Thrupuvanam, rep. by its Managing Trustee Jayaprakash  
Vs  
Vairam and Ors

C.P.C., Order 7, Rule 3/Mandatory injunction to remove unauthorised construction, Proper description lacking, **Plaint defective.**

Specific Relief Act (1963), Section 39.

Suit was instituted for the relief of mandatory injunction so as to remove the construction alleged to have been put up by the defendants 1 to 4 – **Plaint does not contain the breadth and length of the alleged construction or survey numbers, plaint is completely lacking proper description of the suit properties so as to identify the same.**

As per order 7 Rule 3, C.P.C. if a suit has been instituted in respect of an immovable property the concerned **plaint should contain necessary description so as to identify the same – As per section 39 of the Specific Relief Act, a decree of mandatory injunction should be granted only when the same is capable of being executed – Plaint filed is defective – Appellant/plaintiff is directed to file necessary petition so as to amend the plaint suitably.**

2012-1-L.W. 270

Ms. G. Sijala  
Vs  
M. Prabhu and Anr

Hindu Marriage Act (1955), Sections 7, 7-A, 8, 9, Extract of Marriage Register not substantial to prove marriage.

Family Courts Act, Section 19/Appellant-Receptionist in CMS college of Science and Commerce at Coimbatore filed a suit against the respondent for a declaration that no marriage, between herself and the 1<sup>st</sup> respondent, took place and for a permanent injunction restraining the first respondent from projecting himself as her husband on the strength of the Marriage Registration Certificate issued by the 2<sup>nd</sup> respondent and also for a mandatory injunction to direct the 2<sup>nd</sup> defendant/Registrar of Marriage to cancel the marriage registration – Respondent filed HMOP under Section 9 for restitution of conjugal rights – Family Court Judge held that it is a valid marriage and cannot be declared as non-est or null and void and dismissed the suit and allowed the application for restitution of conjugal rights.

Two prove the marriage, solemnized under the Hindu Rites and Customs, it is mandatory to prove that **Saptapati was performed.**

**Extract of Hindu Marriage register is not a substantial evidence to prove the marriage when one of the parties to the document repudiates the same – Once one of the parties to the extract repudiates then it is for the other party to prove the fact of marriage either conducted under sec.7 or 7-A of the Act.**

**Alleged marriage as evidenced by the extract of marriage register is not a valid marriage and the appellant is entitled to repudiate the same and the trial court is wrong in holding that the marriage has been proved.**

2012-1-L.W. 280

Smt. P. Leelarathinam W/o. P.Venkata Gopala Rathinam and Anr  
Vs  
P.E. Srinivasan and 11 Ors

C.P.C., Order 7, Rule 11, Order 23, Rule 1, Order 2, Rule 2/Compromise decree filed, bare injunction later not maintainable.

Constitution of India, Article 227.

Respondents 1 to 6 laid the suit for permanent injunction restraining the defendants 7 to 13 therein from alienating or encumbering the suit property in any manner – In the said suit, the petitioners being the defendants 7 and 9 filed an application under Order 7 Rule 11 CPC to reject the plaint and it was dismissed – Civil revision is directed against the said order.

Pleadings in the present suit are verbatim of the pleadings raised in the earlier suit – Respondents 1 to 6 herein has made an endorsement to dismiss the suit as withdrawn with a liberty to file a fresh suit – No reason whatsoever has been stated by the counsel, as to why the said suit is sought to be withdrawn – Under Order 23 Rule 1 CPC, a suit could be withdrawn seeking liberty to file a fresh suit, if there are some formal defects and if the Court is satisfied the sufficient grounds exist for allowing the plaintiff to institute a fresh suit – Respondents 1 to 6 have not sought permission to withdraw the suit with liberty to file a fresh suit giving any reasons thereon and have not filed any application under Order 23 Rule 1 CPC.

Though respondents 1 to 6 sought permission to withdraw the suit, with a liberty to file a fresh suit, this Court was cautious enough in saying that if the plaintiffs have got any right to do so, they can do so.

Persons who were parties to the compromise decree can no longer maintain the suit for bare injunction – Present suit is not only barred by Res Judicate but also a clear abuse of process of law.

2012-1-L.W. 298  
Ammani Ammal and Anr  
Vs  
Babu and Ors

C.P.C., Section 149/Appeal, Delay in paying deficit Court fee, Notice to defendants before granting time for payment of deficit court fee, Necessity of.

Tamil Nadu Court Fees and Suits Valuation Act (1955), Section 4, Delay in paying deficit Court Fee, Appeal, Notice to defendants before granting time for payment of deficit court fee, Necessity of.

Practice and Procedure/ Specific Performance, Appeals, Delay in paying deficit Court fee, Notice to defendants, before granting time for payment of deficit court fee, Necessity of.

Three specific performance suits have been filed to enforce the agreement of sale – All three suits came to be dismissed – Plaintiff/revision petitioner filed appeals paying a court fee of ₹ 10/- for two appeals and nil in another case – Whereas the relevant court fee payable was different – Appeals Suits came to be returned by the appellate court on various dates for re-presentation – Respondents/defendants in the suits filed I. As under Section 151 CPC read with Section 4 of the Tamil Nadu Court Fees and Suits Valuation Act 1955 praying to reject the appeals as one not properly and validly presented and there is substantial delay in payment of deficit court fee and the revision petitioner/plaintiff did not chose to file an application under Section 149 CPC to condone the delay – Court below allowed the applications and dismissed the appeals holding that the appeals have not been properly and validly presented.

In the present cases, the court fee payable in respect of the appeals was paid beyond the period of limitation.

In the present case, the deficit court fee was not paid in time (i.e.) within the period of limitation – Need to hear the defendants becomes a necessity as per law.

Objection made by the respondents herein that the appeals were defective at the time of filing and the delay in paying court fees render the appeals bad at its inception is justified – Court fee paid in two cases is only ₹ 10/- each whereas the actual amount is huge – It is not substantial payment to plead bona fide – Court fee was paid belatedly, action of the revision petitioner/plaintiff does not appear to be bona fide.



2011-4-TLNJ 393 (Civil)

T.R.K. Saraswathy

Vs

R. Kandasamy and Ors

Specific Relief Act 1963, Section 20 (2) – Suit for Specific Performance of the sale Agreement dated 20.01.2005 – the suit was dismissed by the Addl. District Judge, Coimbatore and the property was sold to the 8<sup>th</sup> Respondent .. the Appeal was allowed since the contract of the Respondents was not blemishless and the Appellant was ready and willing to perform her part of the contract and has got the necessary means to raise the funds to complete the sale transaction – further since the 8th Respondent has purchased the property waving full knowledge about the Appeal, the said sale is not by Lis Pendens and the sale is set aside – the Appellant is directed to deposit the amounts to the credit of the suit in O.S.No.420 of 2006 within 4 weeks and on such deposit the Respondents 1 to 7 are directed to execute the sale Deed in favour of the Appellant – further which the Addl. District Judge is directed to execute the Sale Deed – Appeal Suit allowed.

2011 CIJ 405 REJ

K.A. Shanmugam & Anr

Vs

Tamilarasi & Ors

Transfer of Property Act, 1882 (4 of 1882) – Sec.122, 126-Gift-Settlement-Acceptance-Validity-Cancellation-Revocation-Possession-Transfer-Document-Mother had executed a deed of settlement of a property to one of her daughters and also resided with her - Donee daughter did not mute her name in the patta and kist-Later, after 2 years, mother cancelled the settlement and sold the property to her other daughters which was challenged by the donee daughter-While the donee contended that after the settlement to her which was accepted by her, it could not be cancelled, other daughters contended that possession was not handed over to the donee, kist was not changed and the cancellation was valid-While the trial Court dismissed the suit filed by the donee, first appellate Court allowed the appeal against which the defendants preferred second appeal-Parties stood by their stands-Held, mere production of the original settlement deed by the donee before the Court would indicate that settlement was accepted by the donee – As the mother was residing with her in the same house, failure to change patta and kist to her name would not make any difference-Non examination of the mother as a witness by the defendants would raise an adverse inference against the defendants – Decree of the appellate Court was upheld and the settlement was held as valid-Appeal was dismissed.

Transfer of Property Act, 1882(4 of 1882)-Sec.122, 126-Gift-Settlement-Acceptance-Validity-Cancellation-Revocation-Possession-Transfer-Document-In case of gift, possession of the gift deed in the hands of the donee is an evidence of her acceptance of the gift made to her - In case of gift, effect of failure to mute the name of the donee in the revenue records would depend upon the facts of each case.

Ratios:

- a. In case of gift, possession of the gift deed in the hands of the donee is an evidence of her acceptance of the gift made to her.
- b. In case of gift, effect of failure to mute the name of the donee in the revenue records would depend upon the facts of each case.

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## HIGH COURT CITATIONS CRIMINAL CASES

2012 (1) CTC 166

Panjali @ Savaridoss and Ors  
Vs

The State, rep. By Inspector of Police, Town Sough Police Station, Dindigul, Dindigul District

Code of Criminal Procedure, 1973 (2 of 1974), Sections 211 & 212 – Framing of Charge – Necessary particulars thereof – Charge to contain particulars as to time, place and person – Accused to be put on notice about time, place and person against whom, or thing (if any) in respect of which, crime was committed, so that accused would be in a position to defend himself – In instant case, charge framed against eight Accused under Section 120-B of Indian Penal Code – No particulars as to date, time and place, where eight Accused conspired to murder deceased included in charge framed – Held, said charge is very vague – Thus, held, charge under Section 120-B was baseless – Indian Penal Code, 1860, Section 120-B.

Code of Criminal Procedure, 1973 (2 of 1974), Section 464 – Lacunas in charge framed – Coupled with laxity of prosecution – Effect on Justice Delivery System – Any error or omission in charge not to be a ground to set aside conviction and sentence, unless Accused has shown failure of justice occasioned thereby – However, in instant case, serious error in framing of charges; moreover, no evidence let in to prove charges – In such circumstances, Court compelled to acquit Accused – Held, instant case a classic example as to how stakeholders in dispensation of Criminal Justice miserably fail in their duties and as a consequence, Appellants, who have projected as perpetrators of heinous crime, flee away from clutches of strong arm of law.

Code of Criminal Procedure, 1973 (2 of 1974) – Complaint – Irregularities in Complaint and FIR – Complaint whether a concocted document? – Grave inconsistencies between evidence of the Prosecution Witnesses in respect of submission of Complaint to Police – Held, consistency is not only test to find out veracity of case of prosecution – However, in instant case, Complaint filed by PW-1 and case was registered under Sections 147, 148, 324 & 302 of IPC - However, nothing in evidence rendered by PW-1 to establish that deceased had died before Complaint was made – Moreover, no explanation available to establish as to what was earliest information to Police, that brought Police to occurrence – Furthermore, as per prosecution case, Complaint was allegedly registered at 10.45 a.m. – However, as per evidence of Head Constable, FIR was handed over to him at 12.30 p.m. and same was handed over to jurisdictional Magistrate only at 3.00p.m. – Held, unexplained delay, coupled with other infirmities and improbabilities, create a doubt in case of prosecution – Thus, held, that Complaint would have come into existence, after due deliberation and therefore, not much importance could be attachment to same.

Indian Evidence Act, 1872 (1 of 1872), Section 27 – Verification of weapon by eyewitness – Relevant fact – Establishment of - Duty of prosecution – Case of prosecution that particular weapon was recovered from possession of Accused – Held, Prosecution Witnesses ought to have specifically spoken that particular weapon was recovered from particular Accused – Vague statements that weapons were recovered from Accused would not satisfy legal requirements – Held, it is not discovery of every fact, out of disclosure statement made by the Accused to Police that said statement becomes admissible in evidence under Section 27 of Evidence Act – Per contra, if only fact so discovered is a relevant fact, disclosure statement will be admissible under Section 27 of Evidence Act – Relevancy can be established by many ways – Mostly relevancy will be spoken to by eyewitness to occurrence – Eyewitness would identify weapon used by each accused – Duty of prosecution to lead eyewitness to identify weapon used in crime, if witness is able to do so – Held, this would be an important link, establishing link between crime, weapon and accused - However, in instant case, eyewitnesses not at all asked by prosecution to identify weapons said to have been used by Accused at time of occurrence – Relevant aspects not elicited from witnesses to establish link between weapon and crime – Moreover, Trial Court also not exercised its power under Section 165 of Evidence Act in order to bring on record material evidence on record – Thus, for want of connecting link between crime and weapon, alleged disclosure statements made by accused on their arrest, could not be given due importance.

**Criminal Justice Delivery System – Duty of Stakeholders – Confidence of public at large – Value of – Each stakeholder in Criminal Justice Delivery System ought to be vigilant to ensure real culprit does not escape from clutches of law and every innocent is acquitted – Even if one stakeholder fails to discharge his judicial obligation, it may result in failure of justice, thereby eroding confidence of people in very Justice Delivery System – It is only confidence of people reposed in system that strengthens fabric of justice delivery – Judiciary one of strongest pillars of democracy and last hope for people, survives on strength of people – Therefore, each stakeholder, i.e. Judges, Prosecution, Defence Counsel and Police to realise their responsibilities and respond to call of society for justice delivery.**

**(2011) 4 MLJ (Crl) 252**

**V.N. Rajangam  
Vs**

**State by Sub - Inspector of Police, P1, Pulianthope Police Station, Chennai**

**Code of Criminal Procedure, 1973 (2 of 1974), Section 482 – Indian Electricity Act (9 of 1910), Sections 39(1) and 44(i) (c) – Dishonest abstraction or use of energy – Malicious interference with metres – Service connection in name of petitioner – Premises let out on rent to 2<sup>nd</sup> accused – Petitioner not actual consumer of energy – Criminal liability cannot be fixed on a person merely on reason of service connection being in his name – Liability cannot be fixed unless there is specific material to show his involvement in offence – No material against petitioner that he was actual consumer or party to offence – Proceedings quashed.**

**Held:** As per the provisions, it is clear that whoever dishonestly, maliciously or willfully or fraudulently acts is to be held liable, but criminal liability cannot be fixed on the person merely for reason that the service connection stands in his name. If he is not the actual consumer of energy unless there is specific material that he had been party to the offence liability cannot be fixed on such person.

As per the material available in this case, it is stated that in the F.I.R and also in the statement of witnesses that it was only the second accused, who is the proprietor of the plastic company was running the factory and he was in occupation of the premises and he was fully responsible. There is no material against the 1<sup>st</sup> accused that he was actual consumer or he was party to the offence along with second accused. Hence, the proceedings in C.C. No. 11220 of 2001 on the file of the learned X metropolitan Magistrate, Egmore, Chennai against the 1<sup>st</sup> accused/petitioner alone stands quashed.

**RATIO DECIDENDI: Criminal liability for offence of dishonest abstraction, consumption or use of energy cannot be fixed on a person merely for reason that service connection stands in his name is he is not actual consumer of energy unless there is specific material that he had been party to the offence.**

**(2011) 4 MLJ (Crl) 428**

**Kalam @ Abdul Kalam  
Vs**

**Inspector of Police, Madipakkam Police Station, Chengalpattu District**

**Indian Penal Code (45 of 1860), Sections 304 (ii) and 201 read with 34 – Indian Evidence Act (1 of 1872), Sections 25, 26 and 114(b) – Conviction and sentence – Appeal – Confession of accused to police in presence of Tahsildar not admissible in evidence – Confession of accused while in police custody to be recorded by Judicial Magistrate to be made admissible – Record of confession of accused by Executive Magistrate inadmissible – Evidences of accomplices not trustworthy unless corroborated – Evidence of accomplices not inspiring confidence of Court – Guilt not proved beyond reasonable doubt – Accused entitled for acquittal.**

**RATIONES DECIDENDI:**

- I. Confessions of accused while in police custody can be made admissible in evidence only if it is recorded in the presence of a Judicial Magistrate.**
- II. Confessions recorded by police in the presence of Executive Magistrate will be hit by Section 25 and 26 of the Indian Evidence Act and will be inadmissible in evidence.**

- III. A conviction cannot be based solely on the tainted evidences of accomplices without corroboration in material particulars unless the Court finds that their evidences inspire the confidence of the Court and that it will not be unsafe to convict on the basis of the same.

2011 CIJ 455 IPJ

State by Inspector of Police, Antil Land Grabbing Special Cell  
Vs  
K.N. Nehru & Ors

(A) Constitution of India-Art.21, 22(2)-Code of Criminal Procedure, 1973(2 of 1974)-Sec.57, 167, 267-Fundamental right-Right to life-Personal liberty-Police-Arrest-Custody-Remand-Prison transfer warrant-When the respondent was confined in prison in connection with a case, he was formally arrested in another case but was produced before the magistrate for remand in the new case after few days-When the police sought for his remand in the new case, magistrate refused on the ground that the respondent was not produced within 24 hours from the time of his arrest by the police which was challenged by the State-While the State contended that when the respondent was formally arrested, his delayed production before the Court for remand in that case would not be a ground for refusal of the prayer for remand which was resisted by the respondent – Held, delayed production of the accused before the magistrate for remand by itself would not be a ground for refusal of remand in the facts of the case otherwise warranted remand-When a person was formally arrested when he was in prison, the provision that he had to be produced before the magistrate within 24 hours of such arrest would not be strictly applicable-Law in that regard was explained, order of refusal passed by the magistrate was set aside and the matter was remitted to the magistrate to pass orders after considering the facts and the law laid down-Ordered accordingly.

(B) Constitution of India-Art.21-Code of Criminal Procedure, 1973(2 of 1974)-Sec.57, 167-Fundamental right-Right to life-Personal liberty-Police-Arrest-Custody-Remand-Magistrate-Duty-For getting the authorisation from the Court for detention, either in judicial custody or police custody, the accused has to be physically produced before the Magistrate under Section 167 Cr.P.C-While passing an order of remand, either judicial custody or police custody, the magistrate shall not pass such order in a mechanical fashion.

(C) Constitution of India-Art.21, 22(2)-Code of Criminal Procedure, 1973(2 of 1974)-Sec.46, 57, 167, 267-Fundamental right-Right to life-Personal liberty-Police-Arrest-Custody-As per Section 46(1) Cr.P.C., the arrest necessarily involves the taking of the accused into physical custody by the person who effects the arrest.

(D) Constitution of India-Art.21-Code of Criminal Procedure, 1973(2 of 1974)-Sec.267-Fundamental right-Right to life-Personal liberty-Police-Arrest-Prison transfer warrant- P.T. Warrant can be issued only by the Jurisdictional Magistrate and not by any other Magistrate.

(E) Constitution of India-Art.21, 22(2)-Code of Criminal Procedure, 1973(2 of 1974)-Sec.57, 167, 267-Fundamental right-Right to life-Personal liberty-Police-Arrest-Custody-Remand-Prison transfer warrant-For a Magistrate to exercise his power of remand under Section 167(1) of the Code of Criminal Procedure, the pre-requisite condition is that the accused must be in the custody of the Court and such custody may be had either by arrest by a competent officer and production before the Magistrate or on the surrender of the accused on his own volition before the learned Magistrate or on his appearance in pursuance of any process.

(F) Constitution of India-Art.21, 22(2)-Code of Criminal Procedure, 1973 (2 of 1974)-Sec.57, 167-Fundamental right-Right to life-Personal liberty-Police-Arrest-Custody-Remand-Unless the accused is “in the physical custody” of the police on arrest, the question of production of the accused before the magistrate within 24 hours from the time of such formal arrest cannot be insisted upon-When an accused is formally arrested when he is confined in prison in another case, there is no legal mandate that he should be thereafter produced before the Jurisdictional Magistrate or nearest Magistrate, within 24 hours of such formal arrest.

(G) Constitution of India-Art.21, 22(2)-Code of Criminal Procedure, 1973 (2 of 1974)-Sec.57, 167, 267-Fundamental right-Right to life-Personal liberty-Police-Arrest-Custody-Remand-Jail authorities-Duty-Prison transfer warrant-When an accused is involved in more than one case and has been remanded to judicial custody in connection

with on case, there is no legal compulsion for the Investigating Officer in the other case to effect a formal arrest of the accused and he has got discretion either to arrest or not to arrest the accused in the latter case – The police officer shall not arrest the accused in a mechanical fashion. He can resort to arrest only if there are grounds and need to arrest-When a formal arrest of the accused is effected in prison, the accused does not come into the physical custody of the police at all, instead, he continues to be in judicial custody in connection with the other case-Before the accused is transmitted and produced before the Court in pursuance of a P.T. Warrant in connection with a latter case, if he has been ordered to be released in connection with the former case, the jail authority shall set him at liberty and return the P.T. Warrant to the Magistrate making necessary endorsement.

**Ratios:**

- a. For getting the authorisation from the Court for detention, either in judicial custody or police custody, the accused has to be physically produced before the Magistrate under Section 167 Cr.P.C.
- b. While passing an order of remand, either judicial custody or police custody, the magistrate shall not pass such order in a mechanical fashion.
- c. As per Section 46(1) Cr.P.C., the arrest necessarily involves the taking of the accused into physical custody by the person who effects the arrest.
- d. P.T. Warrant can be issued only by the Jurisdictional Magistrate and not by any other Magistrate.
- e. For a Magistrate to exercise his power of remand under Section 167(1) of the Code of Criminal Procedure, the pre-requisite condition is that the accused must be in the custody of the Court and such custody may be had either by arrest by a competent officer and production before the Magistrate or on the surrender of the accused on his own volition before the learned Magistrate or on his appearance in pursuance of any process.
- f. Unless the accused is “in the physical custody” of the police on arrest, the question of production of the accused before the magistrate within 24 hours from the time of such formal arrest cannot be insisted upon.
- g. When an accused is formally arrested when he is confined in prison in another case, there is no legal mandate that he should be thereafter produced before the Jurisdictional Magistrate or nearest Magistrate, within 24 hours of such formal arrest.
- h. When an accused is involved in more than one case and has been remanded to judicial custody in connection with one case, there is no legal compulsion for the Investigating Officer in the other case to effect a formal arrest of the accused and he has got discretion either to arrest or not to arrest the accused in the latter case.
- i. The police officer shall not arrest the accused in a mechanical fashion. He can resort to arrest only if there are grounds and need to arrest.
- j. When a formal arrest of the accused is effected in prison, the accused does not come into the physical custody of the police at all, instead, he continues to be in judicial custody in connection with the other case.
- k. Before the accused is transmitted and produced before the Court in pursuance of a P.T. Warrant in connection with a latter case, if he has been ordered to be released in connection with the former case, the jail authority shall set him at liberty and return the P.T. Warrant to the Magistrate making necessary endorsement.

(2011) 4 MLJ (CrI) 535

Suresh Babu

Vs

State rep. by Inspector of Police, S.R.M.C. Police Station, Cr. No 494 of 2004, Chennai Suburban Police

Code of Criminal Procedure, 1973 (2 of 1974), Sections 385 and 386 – Dismissal of appeal – Non-appearance of accused – Dismissal for default – Denial of opportunity to accused to argue his case – Criminal matter to be decided on merits – Cannot be dismissed for default or non-prosecution – Matter remitted back to Sessions Court for fresh hearing and disposal – Revision petition allowed.

**RATIO DECIDENDI:** Criminal appeal cannot be dismissed for default or non prosecution and must be decided on merits.

(2011) 3 MLJ (Crl) 817

Darmaraj

Vs

Inspector of Police, Anuparpalayam Police Station, Coimbatore District

Indian Penal Code (45 of 1860), Sections 393 and 398 – Offences under – Conviction and sentence – Appeal – Denial of fair trial – Instead of affording fair trial to accused, trial Court has conducted only farcical trial – When grave illegality committed by trial Court by denying fair trial to accused, Section 465 Code of Criminal Procedure, 1973 (2 of 1974) not available for prosecution to make attempt to sustain conviction – Impugned judgment of trial Court convicting accused based on farcical trial cannot be sustained – Appeal allowed.

**RATIO DECIDENDI:** In a criminal appeal, it is immaterial as to whether a specific ground has been taken in the memorandum of appeal or not. It is sufficient if argument is advanced pointing out that fair trial was not afforded to the accused and when such a grave illegality has been committed by the trial Court in denying the fair trial to the accused, Section 465 Cr.P.C. is not available to the prosecution to make an attempt to sustain the conviction.

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