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IMPORTANT CASE LAW



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SUPREME COURT – CIVIL CASES

2018 (9) SCALE 423

**Diyora and Bhanderi Corporation Through its Partner and others
Vs.
Sarine Technologies Ltd.**

Date of Judgment: 30.07.2018

CIVIL PROCEDURE – CPC – ORDER XXVI, RULE 10A – COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS ACT, 2015 SECTION 8 – Commercial Trade Mark Suit filed by respondent-plaintiff contending that it had validly subsisting Copyright in Advisor software both in Israel as well as in USA – It was alleged that it had secured registration in USA in the 6th version of its Advisor software and that as per International Copyright Order, 1999 this right also extended to India – According to plaintiffs, the defendants had infringed the copyright of the plaintiff over Advisor software – Plaintiff prayed for permanent injunction against defendants in respect of ‘Advisor’ software, for which copyright subsists under common law and also version 6.0 whereof, the code for which also include programming from previous versions – Trial Court dismissed application for interim injunction – In appeal, High Court set aside the order passed by the trial Court and remitted the matter back to the trial Court for fresh consideration – Trial Court appointed one ‘Z’ as technical expert to compare the software of plaintiff and defendants and to report the Court as to whether the source code and object code of the defendants have infringed the copyright of the plaintiff – Objection filed by defendant was rejected by the High Court – Expert in question had already arrived to conduct the comparison – Whether considering facts and circumstances of the case, appointment of ‘Z’ as an expert needs to be confirmed – Held, Yes – Whether scope of the comparison ought to be restricted to version 6.0 in respect of which the plaintiff has registered copyright – Held, Yes – Disposing the appeals.

(2018) 7 SCC 558

Amrit Paul Singh Vs. Tata AIG General Insurance Co. Ltd.

Date of Judgment: 17.05.2018

A. Motor Vehicles Act, 1988 – Ss.149(2), (1), 66(1), (3), 2(28), (31), (47) and 166 – Defences available to insurer – Use of motor vehicle as a transport vehicle in public place without permit – Prohibition under S.66(1) of MV Act, 1988 with respect to – Invocation of – Offending truck on date of accident not having the permit as required under S.66(1) of MV Act – Exceptions to S.66(1) as given under S.66(3) of MV Act – Applicability of – Prerequisites as to

B. Motor Vehicles Act, 1988 – Ss.2(31), 66(1) and 149(2) – “Route permit” and “permit” – distinction between, explained in context of S.149 of MV Act, 1988 – Words and Phrases – “Route permit” and “permit”

(2018) 7 SCC 278

Siddagangaiah Vs. Giriraja Shetty

Date of Judgment: 11.05.2018

A. Civil Procedure Code, 1908 – Or.21 Rr.90, 92(1) & (3) and Ss.47, 104(1)(ffa) – Res judicata – Application filed under Or.21 R.90 r/w S.47 for setting aside court auction-sale – Order dismissing application though appealable but no appeal filed, sale confirmed under Or.21 R.92(1), and confirmation of sale not questioned whereby auction purchase attained finality – Held, by virtue of R.92(3) applicant/objector would be barred from bringing fresh suit to set aside sale on same ground

B. Civil Procedure Code, 1908 – Ss.96, 100 and Or.6 R.4 – When first and second appellate courts exceeded their jurisdiction – Rendering findings in absence of pleadings and evidence – Impermissibility

C. Civil Procedure Code, 1908 – Or.21 R.90 – Application to set aside court sale on ground of material irregularity and fraud – Requirements of – Applicant must prove to have suffered substantial injury and consequential injustice – Mere inadequacy of sale price not sufficient ground for setting aside sale

D. Civil Procedure Code, 1908 – Or.21 Rr.89, 90, 92 and S.47 – Relative scope – Application to set aside court sale – Grounds argued in application decisive – Claim to set aside sale on ground under Or.21 R.90 can be joined with claim under S.47 – When auction-purchaser is decree-holder himself and application made to set aside sale on ground other than that covered by R.90 and no application made under R.89, case would fall under S.47

E. Property Law – Transfer of Property Act, 1882 – Ss.52 and 100 – Lis pendens – Applicability – “Suit in which right to immovable property is directly and specifically in question” – Suit for maintenance with prayer for creating charge on specified property falls within the expression – Lis commences on date of presentation of plaint – Property in question sold by defendant owner by executing sale deed during pendency of suit – Held, S.52 attracted

F. Property Law – Transfer of Property Act, 1882 – S.100 – Applicability – Charge on property – Prevails against all but bona fide purchasers without notice thereof – Suit filed by wife for creating charge on husband’s property for maintenance – During pendency of suit, property sold to another person by husband – Wife’s suit decreed and in execution, wife decree-holder purchased that property – Purchaser from husband, despite being aware of dismissal of husband’s objection under Or.21 R.90 r/w S.47 CPC to court auction-sale and its confirmation, failed to question the same and thus he was not bona fide purchaser – Hence, charge of wife would have precedence – Family and Personal Laws – Maintenance and Financial Provision/Alimony/Palimony – Maintenance and relationship with Property – When a charge/Fructifies into property right

G. Property Law – Transfer of Property Act, 1882 – S.39 – Right to receive maintenance can be enforced by third person against transferee of property only if transferee has been put in possession thereof – S.39 akin to S.28 of Hindu Adoptions and Maintenance Act, 1956 – Hindu Adoptions and Maintenance Act, 1956, S.28

H. Family and Personal Laws – Hindu Adoptions and Maintenance Act, 1956 – S.27 – Applicability – Applies to case of creation of charge on estate of deceased, not estate of living person

I. Evidence Act, 1872 – S.18 – Admission of person interested or person from whom interest derived – Admission pertaining to interest which has been parted away not admission

J. Constitution of India – Arts.136 and 142 – Active role of Supreme Court – Suo motu action in case of manifest illegality – When not called for

(2018) 6 SCC 443

Subhash Chandra Sen Vs. Nabin Sain

Date of Judgment: 19.04.2018

Civil Procedure Code, 1908 – Ss.152, 151, 33 & 2(2) and Or.20 – Amendment of decree in order to make it executable – Partition suit – Decree passed by trial court holding plaintiff and defendants to be entitled to 3/5th share and 2/5th share respectively in suit property – No dispute as to share allotted in favour of parties concerned – But, in order to make that decree executable, defendants moving an application before trial court or amendment of decree seeking direction that sketch map submitted by plaintiff on 06.02.2001 be marked as an exhibit and a part of judgment and decree by effecting necessary corrections in that regard – Allowability thereof

(2018) 6 SCC 534

Oriental Insurance Company Ltd. Vs. Narbheram Power and Steel Private Ltd.

Date of Judgment: 02.05.2018

Arbitration and Conciliation Act, 1996 – Ss.7,8 and 11(6) – Arbitration clause – Interpretation of – Disputes barred from reference to arbitration – Remedy of arbitration – Non-availability of, for such disputes as are not covered by the arbitration clause

– Arbitration clause in the insurance policy barring reference to arbitration of such disputes where the insurance company disputes/does not accept the liability under or in respect of the policy – Strict interpretation and bindingness of – Held, the parties are bound by the clauses enumerated in the policy and the court does not transplant any equity to the same by rewriting a clause – Further, an arbitration clause is required to be strictly construed and if a clause stipulates that under certain circumstances there can be no arbitration, and the circumstances are demonstrably clear then the controversy pertaining to the appointment of arbitrator has to be put to rest.

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SUPREME COURT – CRIMINAL CASES

(2018) 7 SCC 499

Lalit Yadav Vs. State of Chhattisgarh

Date of Judgment: 05.07.2018

Penal Code, 1860 – Ss.228-A, 376 and 342 – Rape case – Victim (PW 2) named all through in judgments of both trial court and High Court – Held, such course is not consistent with S.228-A, though Explan. makes exception in favour of superior court judgments – Nonetheless, every attempt should be made by all courts not to disclose identity of victim in terms of S.228-A – Hence, necessary directions regarding, given – Conviction and sentence of accused under Ss.376 and 342, confirmed .

(2018) 7 SCC 536

Kumar Vs. State

Date of judgment: 11.05.2018

A. Penal Code, 1860 – Ss.302 and 324 – Murder trial – Fight between accused and deceased – Alleged assault by appellant-accused on head of deceased with a wooden log, resulted in his death – Material variations/contradictions in testimonies of witnesses – Serious lacunae in prosecution case – Accused entitled to benefit of doubt – Conviction reversed

B. Criminal Trial – Arrest – Irregularity and illegality of – Effect – Reiterated, irregularity and illegality of arrest by itself would not affect culpability of offence if the same is otherwise proved by cogent evidence – Murder trial – Herein, however such irregularity should be shown deference as investigating authorities are responsible for suppression of facts – Criminal Procedure Code, 1973 – S.41 – Penal Code, 1860, Ss.302 and 324

C. Criminal Trial – Investigation – Generally – Investigative authority to investigate in a fair manner and elicit truth – Responsibility of

D. Criminal Trial – Injuries, Wounds and Weapons – Failure/Non-explanation of injuries on accused – When may vitiate/weaken prosecution case

E. Criminal Trial – Motive – Absence of – Effect on ocular testimony of witnesses, if any

(2018) 7 SCC 572

State Vs. H. Srinivas

Date of Judgment: 18.05.2018

Criminal Procedure Code, 1973 – Ss.154 and 460 – General Diary – Non-maintenance of General Diary prior to preliminary enquiry, held, not per se illegal though an irregularity – Consequences of non-maintenance depend on merits of case, a matter of trial – It is for trial court to decide effect and find out whether it causes any prejudice and not High Court – Moreover, aim of preliminary enquiry to check false prosecution against public servants by misusing process of law for personal vengeance – Appeals allowed – Impugned order of High Court set aside – Police Act, 1861, Section 44.

(2018) 7 SCC 581

Sheila Sebastian Vs. R. Jawaharaj

Date of Judgment: 11.05.2018

A. Penal Code, 1860 – Ss.463, 465 and Expln.2 to S.464 – Conviction for making of false document – When sustainable – Held, S.463 defines offence of forgery, while S.464 substantiates the same by providing answer as to when a false document could be said to have been made for the purpose of committing offence of forgery under S.463 – Therefore, S.464 defines one of ingredients of forgery i.e. making of false document

- Charge of forgery cannot be imposed on/sustained against a person who is not the maker of false document in question – Making of a document is different than causing it to be made – As Expln.2 to S.464 further clarifies, for constituting offence under S.464, it is imperative that a false document is made and accused person is maker of the same, otherwise accused person is not liable for offence of forgery

B. Interpretation of Statutes – Particular Statutes of Provisions – Penal statutes or provisions – No ambiguity in – Held, penal statute cannot be expanded by using implications – Where there exists no ambiguity, there lies no scope for interpretation

C. Criminal Trial – Proof – Suspicion – Duty on court regarding – Held, strong suspicion, coincidence, grave doubt cannot take the place of proof – Always a duty is cast upon courts to ensure that suspicion does not take place of legal proof

D. Criminal Trial – Proof – Proof beyond reasonable doubt – Standard of proof in criminal trial

E. Criminal Trial – Investigation – Generally – Duty of investigating officer – What is

(2018) 7 SCC 327

Manoj Kumar Vs. State of Himachal Pradesh

Date of Judgment: 15.05.2018

A. Penal Code, 1860 – S.302 or S.304 Pt.II and Ss.341, 323 and 34 [S.300 Exception 4] – Ingredients and applicability of Exception 4 to S.300 – Injuries caused by sudden attack on deceased by accused persons, resulted in his death after sometime – Land dispute between parties – Sudden verbal quarrel related to – No premeditated plan to attack deceased – Civil disputes already pending between both families – Minor verbal exchange bloated into a sudden physical attack – Conviction converted from S.302 to S.304 Pt.II

B. Criminal Trial – Proof – Falsus in uno, falsus in omnibus – Inapplicability of principle – Evidence of witness – One part of it, if not believed – Effect – Held, merely because one part of evidence of certain witness is not believed, it does not mean that his entire evidence shall be discarded.

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MADRAS HIGH COURT – CIVIL CASES

(2018) 6 MLJ 139

G. Paras Singh Munoth Vs. Ms. Gyanlatha

Date of Judgment: 06.06.2018

Succession Laws – Will – Probate – Petitioner/Plaintiff, brother-in-law of testator appointed as executor, filed petition seeking grant of probate of Will executed by testator – Respondent/Defendant in Original Petition was wife of testator and sister of Petitioner and on her objection, Petition converted into suit – Respondent claimed that subsequent Will executed by testator – Plaintiff filed petition to implead subsequent purchasers as proposed 2nd and 3rd Defendants which was later given up – Probate granted in their absence and subsequently, on their application, probate was revoked and were permitted to participate in this proceedings – Whether Plaintiff had proved Will/Ex.P-1 in manner known to law – *Held*, only certified handwritten xerox copy produced and marked as Ex.P-1 – This was copy of Will without signatures – Registration copy had not been produced – Signature of Testator and signatures of two attesting witnesses were not available before this Court for proof and verification – Two originals of Will were prepared and both were deliberately not produced before this Court – Ex.P-1 was not admissible copy and could not be relied on by this Court – Plaintiff was handed over possession of original but he had not produced it and not given explanation for it – 1st Defendant denied that she had original – Plaintiff and 1st Defendant were suppressing material evidence from purview of Court which could not be permitted – Court not prepared to accept any explanation by Plaintiff with respect to either circumstances surrounding disappearance of original, identity of PW-2 or reason for not producing original Will – Explanations had not been given – Court could not grant probate of Will/Ex.P-1 – Will not been proved – Suit dismissed with costs.

(2018) 6 MLJ 225

N. Tajuddin Vs. Malar Kodi Ammal

Date of Judgment: 11.06.2018

Property Laws – Suit for Declaration – Measurement in Sale Deed – Code of Civil Procedure, 1908, Order 41 Rule 31 – Plaintiff purchased suit property and in possession of same – Defendant purchased house and garden on back side of Plaintiff's property – Defendant tried to encroach into Plaintiff's property and attempted to put up compound wall – Suit filed by Plaintiff for declaration, possession and permanent injunction was decreed – On appeal, 1st Appellate Court set aside judgment of Trial Court, hence this second appeal – Whether measurement given in sale deed in reference to property was not liable to be taken as proof of ownership and in absence of same that documents contained deliberate misstatement and devoid of any evidential value – Whether Subordinate Judge did not err in setting aside Trial Court judgment even without finding as to how Trial Court erred by setting out reasons as required to be done under Order 41 Rule 31 – *Held*, Plaintiff has to establish that B schedule property forms part of property acquired by him under Ex.A1 – As determined by 1st Appellate Court, both Plaintiff and Defendant purchased specific extents of

property under their sale deeds – Case of respective parties that they have prescribed title to their respective portions by way of adverse possession has been rightly negative by 1st Appellate Court – 1st Appellate Court found to have correctly appreciated that parties had not acquired properties by measuring same – Parties are found to be in possession of different extents than what was acquired in their sale deeds – Plaintiff miserably failed to establish alleged encroached portion forms part of suit property – Judgment and decree of Trial Court liable to be set-aside – Appeal dismissed.

(2018) 6 MLJ 247

R. Devanand Vs. Ms. Rukmani @ Meera

Date of Judgment: 06.07.2018

Hindu Laws – Custody – Autistic Child – National Trust Act, 1999 (Act 1999) – Indian Evidence Act, 1872 (Act 1872), Section 65(b) – Marital discord existed between Petitioner/husband and Respondent/wife – They had male child suffering from autism and girl child – Petitioner alleged that Respondent lives adulterous life and did not give her attention on children and he as dutiful father spend his earnings on them – Petitioner filed petition seeking permanent custody of children – Whether Petitioner entitled for permanent custody of minor children – *Held*, as boy has wished to continue his education with aid of his father in foreign country, Petitioner has to seek his appointment as guardian for his son, who is suffering from autism under Act 1999 by moving appropriate authorities – Act 1999 is enacted in respect of persons with certain disabilities and person suffering from autism – No order proposed to be passed in this petition in respect of boy who completed age of minority – Without establishing basic facts to prove allegation, mere filing of call register, phone number mentioned in call register cannot be assumed to be used by Respondent and her friends – Petitioner has not pleaded that phone number was used by wife – Same not certified by person, who has taken print out as mandated under Section 65(b) of Act 1872 and conditions stipulated not complied – Girl child is matured enough to understand things and expressed her desire to continue her education with her mother – Mere financial status of parties alone is not determining factor to hold that welfare of child will be taken care of – Overall healthy growth of female child, love, affection and emotion are remarkably important for healthy growth of child – Petition dismissed.

(2018) 6 MLJ 276

Idols Iyyanar Vs. P. Subramani

Date of Judgment: 04.06.2018

Trust and Charities – Temple – Trusteeship – Suit filed for relief of permanent injunction on ground that suit properties were owned by Plaintiff by way of gift deed and in exclusive possession and enjoyment of named hereditary trustee – Defendants denied exclusive possession of named hereditary trustee – Lower Courts dismissed suit, hence this appeal – Whether mere Poojariship in any Religious Institution automatically enlarges into Trusteeship – Whether civil court right in answering issue which was not within its jurisdiction and vested with competent statutory authority – Whether mistaken pleading in earlier proceeding could be purged as estoppel from claiming already existing accrued legal right – *Held*, litigation pending before department as regards claim of hereditary trusteeship

in respect of Plaintiff idols – Named hereditary trustee failed to establish that he was in exclusive possession and enjoyment of suit properties – Defendants were found to be in joint possession and enjoyment of suit properties as such – Right of Defendants recognized by Plaintiff himself in earlier litigation – Plaintiff failed to establish his claim of exclusive possession – Above factor being purely question of fact and rightly determined by lower Courts on proper appreciation of materials placed on record – Determination of lower Courts that Plaintiff was not entitled to obtain relief of permanent injunction did not call for any disturbance – Appeal dismissed with costs.

(2018) 6 MLJ 279

Krishnasamy Chettiar Vs. Velu Odayar (died)

Date of Judgment: 06.06.2018

Civil Procedure – Execution – Delivery of Property – Code of Civil Procedure, 1908, Section 115 – Suit filed by Respondents/Plaintiffs for delivery of vacant possession, decreed – Respondents filed execution petition and Trial Court ordered delivery of property, hence this revision – Whether Executing Court was right in ordering delivery of property – *Held*, High Court allowed second appeal and restored decree and judgment passed by Trial Court – Decree and judgment became final and no further appeal – Defendants have not disputed boundaries of suit property in suit, which means that they have accepted boundaries – Boundaries will prevail over identification of suit property – Courts of law should be careful to see through diabolical plans of judgment debtors to deny decree-holders fruits of decree obtained by them – In absence of any stay order from higher Court, Executing Court was right in ordering delivery of property – No justification in interfering with order of Executing Court under Section 115 – Exercise of revisional powers of High Court under Section 115 is purely discretionary – No illegality in order of Executing Court – Petition dismissed.

(2018) 6 MLJ 306

D.V.P. Raja Vs. A. Saleem

Date of Judgment: 21.06.2018

Tenancy Laws – Eviction – Wilful default – Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Sections 8 and 10 – Petitioner/landlord filed petition seeking eviction of Respondent/tenant on ground of willful default and own occupation – Respondent filed petitions for deposit of rent and for restoring amenities – Rent controller allowed eviction petition and dismissed petitions filed by tenant – On appeal, Appellate authority set aside common order passed by Rent Controller, hence these revisions – Whether tenant to be evicted on grounds of willful default in payment of rent and *bona fide* requirement – Whether order passed by Appellate Authority in respect of restoration of amenities and deposit of rent liable to be set aside – *Held*, tenant had issued cheque for payment of monthly rent of two months and admitted that said cheque was dishonoured due to his inadvertence – Tenant sent demand draft for payment of monthly rent of three months, that too after receipt of legal notice from landlord – Action of tenant show that he had neither followed procedure contemplated under Section 8 nor fulfilled duties and obligations contemplated under Act – Belated payment of rents for two months show that tenant had committed willful default in payment of rent – Reason that landlord's daughter required demised premises to run business,

appears to be *bona fide* requirement under Section 10(3)(a)(iii) – On this ground also, tenant liable to be evicted – Order passed by Appellate Authority in respect of restoration of amenities and direction to continue to deposit rent set aside – Duty of tenant to pay same till date of vacating premises – Common judgment passed by Appellate Authority set aside and that of Rent Controller restored – Revision Petitions allowed.

(2018) 6 MLJ 331

Sundaram Medical Foundation Vs. Inspector General of Registration

Date of Judgment: 08.06.2018

Registration – Stamp Duty – Enhancement of Market Value – Indian Stamps Act, 1899, Section 47-A – Appellant purchased land by registered Sale deed – 3rd Respondent entertained doubt regarding value of property indicated in sale deed and referred matter to 2nd Respondent for determination of market value of property under Section 47-A (2) – 2nd Respondent passed order on determination of correct market value and Appellant paid deficit stamp duty – Again, order passed by 1st Respondent enhancing market value without giving hearing to Appellant – On appeal, court directed 1st Respondent to reconsider issue – 1st Respondent passed order calling upon Appellant to pay sum towards deficit stamp duty and penalty, hence this appeal – Whether 1st Respondent justified in invoking his *suo motu* powers conferred under Section 47-A (6) to enhance market value of property in question – Whether 1st Respondent is right in enhancing market value of property as per prevailing guideline value at time of registration of sale deed by Appellant – *Held*, as per Section 47-A (6), 1st Respondent conferred with *suo motu* powers to review, vary modify or set aside order passed by his subordinates, if shown that interest of revenue is prejudiced under Section 47-A (2) and 47-A (3) – 1st Respondent to make enquiry that market value of property was undervalued befitting guideline value of property on date of registration of instrument – 1st Respondent has not assigned reason as to what prompted him to enhance market value of land – Order passed by 1st Respondent is bereft of material particulars and mechanically passed – 1st Respondent did not take effort to compare documents that might have been registered during period when Appellant presented sale deed – 1st Respondent did not cause enquiry, as required under Section 47-A (6) – In absence of proof to show that interest of revenue is prejudiced by reason of orders passed by his subordinates, order passed by 1st Respondent, in exercise of *suo motu* powers conferred under Section 47-A (6) cannot sustain – Appeal allowed.

2018 (2) TN MAC 157 (DB)

United India Insurance Co. Ltd. Vs. Malarvizhi

Date of Judgment: 20.07.2018

NEGLIGENCE – Finding of – If, proper – Deceased travelling in Ambassador Car as an occupant – Car dashed by Tata Car coming from opposite direction and driven rashly and negligently – Insurer contending that accident occurred due to negligent driving of Ambassador Car only – Evidence of RW2/Tata Car Driver that Ambassador Car, due to rash and negligent driving, hit against wall of bridge on left side of road and thereafter turned to its right and dashed against Tata Car – Evidence of RW2 rejected by Tribunal on ground that FIR registered as against Driver of Tata Car, RW2 and Criminal proceeding resulted in

conviction of RW2 – Criminal Court Judgment marked as Ex.P5 – No Appeal preferred against Judgment of conviction and sentence – Tribunal on basis of Ex.P5 rightly concluded that accident took place due to rash and negligent driving of Tata Car – No reason to interfere with factual finding of Tribunal.

INCOME – LOSS OF INCOME – Assessment – Deceased aged 47 years engaged in various businesses, authorized dealer for various Companies, real estate business, doing contract works for PWD, owning Agricultural lands – Deceased being Income-tax assessee, IT Returns marked – Tribunal fixing Business and Agricultural income at Rs.4,60,295/- - Adding 30% towards Future Prospects, Tribunal fixed Annual Income at Rs.5,98,387/- - If, proper – Income of deceased through various businesses as claimed not reflected in IT Returns – For computation of income, IT Returns, being statutory document, serve as best piece of evidence – When IT Returns marked, other documents showing income, financial capacity or resourcefulness cannot have much significance – IT Returns though marked for Assessment years 1997-1998 to 2000-2001, highest income declared in year 1997-1998 at Rs.2,09,211/- can be taken into account – Taking income at Rs.2,10,000/- p.a. and adding Rs.40,000/- towards Future Prospects, High Court fixed Income at Rs.2,50,000/- p.a. as against Rs.5,98,387/- p.a. fixed by Tribunal – However, without deducting any amount towards Personal Expenses and applying Multiplier of 13, High Court awarded Rs.32,50,000/- as *Loss of Income* [Rs.2,50,000 x 13] as against Rs.58,34,277/- awarded by Tribunal.

COMPENSATION UNDER CONVENTIONAL HEADS – Award of – Tribunal awarding Rs.10,000/- each under Loss of Consortium and Funeral Expenses and Rs.50,000/- towards Loss of Love & Affection [Rs.10,000 x 5] – If, proper – *Funeral Expenses*: Enhanced from Rs.10,000/- to Rs.15,000/- - *Loss of Consortium*: Enhanced from Rs.10,000/- to Rs.40,000/- - Decision in *Pranay Sethi* (SC) followed – *Loss of Love & Affection*: Tribunal justified in awarding Rs.10,000/- to each Claimant: Rs.50,000/- as awarded by Tribunal not interfered with.

2018 (2) TN MAC 174 (DB)

United India Insurance Co. Ltd. Vs. Revathi

Date of Judgment: 05.04.2018

INCOME – Assessment – Deceased aged 51 yrs., a Govt. Teacher, earning Rs.29,200/- p.m. – Tribunal adding 40% towards Future Prospects, if, proper – 15% to be added towards Future Prospects in respect of persons in permanent job – Deceased being Govt. Teacher (BT Assistant Teacher) 15% to be added towards Future Prospects – SC in *Pranay Sethi* followed – Adding 15%, income arrived at Rs.33,580/- - Deducting 10% towards Income-tax, monthly Income fixed at Rs.30,222/- [Rs.33,580/- – 10%].

PERSONAL EXPENSES – Deduction – Deceased aged 51 yrs. – *Claimants*: Wife, 2 children and mother of deceased – Number of family members being 4, ¼ to be deducted towards Personal Expenses – 1/3rd deduction made by Tribunal, *held*, not proper.

MULTIPLIER – Proper Multiplier – Deceased aged 51 yrs. – Application of Multiplier of 11 – *Held*, proper in view of dictum in *Sarla Verma*.

COMPENSATION UNDER CONVENTIONAL HEADS – Award of – Tribunal awarding Rs.18,000/- towards Loss of Consortium, Rs.15,000/- towards Loss of Estate, Rs.5,800/- towards Funeral Expenses and Rs.32,000/- towards Loss of Love & Affection – *Loss of Consortium*: Enhanced from Rs.18,000/- to Rs.40,000/ - *Loss of Estate*: Rs.15,000/- awarded by Tribunal confirmed – *Funeral Expenses*: Rs.5,800/- awarded by Tribunal enhanced to Rs.15,000/- - Dictum in *Pranay Sethi* followed – *Loss of Love & Affection*: Rs.32,000/- awarded by Tribunal: Confirmed, since same is akin to Loss of Consortium.

LIABILITY OF INSURER – Tractor-Trailer – Accident caused when Tractor knocked down Two-wheeler – Tractor and Trailer individually insured – Involvement of Trailer not found place in FIR initially – Whether Insurer of Trailer can be held liable – Admittedly Tractor attached with Trailer – Tractor and Trailer to be taken as one vehicle as a whole, since without Tractor, Trailer cannot move – If Tractor is involved in accident, Trailer also would have run over victim – Trailer alone cannot cause accident unless driven by Tractor – Liability fixed equally on Insurer of tractor and Insurer of Trailer, *held*, proper.

MOTOR ACCIDENT CLAIM – Compensation – Award of – Apportionment/Disbursement – *Claimants*: Wife, 2 children & mother of deceased – Death of 4th Claimant directed to be shared equally by Grandchildren/Claimants 2 & 3 – Insurer directed to remit entire Award amount within 4 weeks – Tribunal directed to transfer Award amount to Bank Accounts of respective Claimants through RTGS within period of 2 weeks thereafter.

(2018) 6 MLJ 440

Velsamy Vs. Jothi Vayola Rani

Date of Judgment: 05.06.2018

Contract – Specific performance – Subsequent Purchaser – 1st Defendant/Owner entered into sale agreement with Appellant/Plaintiff – 1st Defendant received advance but delayed in execution of sale agreement and fraudulently sold portion of suit property to 2nd Defendant – Suit filed by Plaintiff for specific performance decreed by Trial Court, however, 1st Appellate Court set aside judgment of Trial Court, hence this second appeal – Whether 1st Appellate Court is correct in law in coming to conclusion that Appellant is in habit of getting sale agreement in lieu of loan transaction, when it is not case as pleaded by 1st Respondent – Whether the subsequent purchaser can take any defence apart from that he is *bona fide* purchaser as against the proposed vendor in a suit for specific performance – *Held*, 1st Defendant produced several documents to show that Plaintiff is in habit of advancing loan against sale agreements – Habit of getting sale deed and attitude of Plaintiff in getting either registered sale agreement or receipt even while advancing small amount to persons are relevant – No irregularity in judgment of Appellate Court where documents were considered to arrive at finding with regard to transaction entered into by Plaintiff as moneylender – 2nd Defendant is *bona fide* purchaser when she purchased portion of property – 2nd Defendant purchased remaining portion with knowledge of claim of Plaintiff under sale agreement – Findings with regard to genuineness of Ex.A1 is confirmed and question whether 2nd Defendant is *bona fide* purchaser for value may not be relevant – Sale agreement cannot be enforced as against 2nd Defendant insofar as property purchased by her under Ex.B3 – Admitted that 2nd Defendant constructed house at heavy cost in suit property – Irreparable injury likely to be caused to 2nd Defendant and this Court is not inclined to interfere with

findings of lower Appellate Court – Plaintiff has not prayed for specific performance as against subsequent purchaser/2nd Defendant – Plaintiff knew that suit property sold in favour of 2nd Defendant and plaint averments would prove same – Second Appeal dismissed.

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MADRAS HIGH COURT – CRIMINAL CASES

(2018) 3 MLJ (Crl) 129

M. Manimuthu Vs. Registrar General

Date of Judgment: 14.06.2018

Trial – Transfer to Sessions Court – Explosive Substance Act – Principal District and Sessions Judges of various Districts passed orders transferring trial of Sessions Case involving offences punishable under act to be tried by Sessions Court for exclusive trial of Bomb Blast Cases by citing Circular issued by Registrar General of this Court, hence these petitions – Whether orders of transfer based on Circular were legally sustainable or not – *Held*, by reason of transfer of Sessions Cases, merely because it involves offences punishable under Act, accused in Sessions Case would be gravely prejudiced – Object with which Circular was issued was to make over Sessions Case to Sessions Court for Bomb Blast Cases based on jurisdiction indicated in Circular and considering sensitive nature of case and to distribute work – Respective Principal District and Sessions Judge/Session Judge/Chief Judicial Magistrate, transferred sessions case contrary to object of circular – Magistrate shall commit Sessions Case involving offence punishable under Act only to Court of District and Session Judge of his/her District – After committal, it was open to District and Session Judge to make over case to Sessions Court for Bomb Blast Cases provided Special Court had territorial jurisdiction over that District also – Accused shall be bound over by Sessions Court for Bomb Blast Cases, to appear before concerned Sessions Court on given date – Concerned Principal District Sessions Court/District Sessions Court/Chief Judicial Magistrates directed to take back Sessions Case on their file and dispose of same as expeditiously as possible – Petitions allowed.

(2018) 3 MLJ (Crl) 167

Umamaheswari Vs. Arunkumar

Date of Judgment: 05.06.2018

Maintenance – Enhancement – Code of Criminal Procedure, 1973, Section 125 – Revision Petitioner/mother filed petition for interim maintenance under Section 125 from Respondents/sons of Revision Petitioner – Revision filed by Revision Petitioner for enhancement of maintenance was partly allowed, hence this revision – Whether Revision Petitioner entitled for enhancement of interim maintenance – *Held*, Petitioner is entitled to file such application for enhancement of interim maintenance – Imperative on part of Trial Court to give finding in miscellaneous petition while passing final orders in main case – Enhancement of interim maintenance should be taken note of present change of circumstances – No amount, due as arrears payable to Revision Petitioner by Respondents – Final order passed in alleged petition not challenged before this Court – Trial Judge partly allowed amount sought for in enhancement of interim maintenance – Revision Petitioner not adduced any separate and important change of circumstances in facts of case – Considering age of Revision Petitioner, Court is inclined to revise monthly allowance of maintenance increasing it to alleged amount – Revision case disposed of.

(2018) 3 MLJ (CrI) 170

Parameswaran Pillai Vs. V.S. Ravi

Date of Judgment: 05.06.2018

Negotiable Instruments – Dishonour of Cheque – Enforceable Debt – Negotiable Instruments Act, Section 118, 138, 139 and 142 – Revision Petitioner/accused issued cheques for sum borrowed from Respondent/Complainant, but same were returned with endorsement that payment was stopped by drawer – On complaint filed by Respondent, Trial Court convicted Revision Petitioner under Section 138 and same confirmed on appeal, hence this revision – Whether subject cheque was issued to discharge legally enforceable debt – *Held*, lower Courts considered that Revision Petitioner had not sent any reply notice to statutory demand notice issued by Respondent – Cheque presumed to be issued in lieu of legally enforceable debt – No liability can be fixed upon accused for mere failure in responding to statutory demand notice – Complainant to prove that cheque was issued in lieu of legally enforceable debt and only then burden shifts upon Revision Petitioner to rebut presumption against him contemplated under Sections 118 and 139 – Lower Courts erred in convicting Revision Petitioner/accused for offence under Section 138 – Accused acquitted – Revision allowed.

(2018) 3 MLJ (CrI) 190

State Vs. V. Sathyamoorthy

Date of Judgment: 06.06.2018

Prevention of Corruption – Disproportionate Assets – Prevention of Corruption Act, 1988 (Act 1988), Section 13 – Indian Penal Code, 1860 (Code), Section 109 – Evidence Act, 1872 (Act 1872), Sections 91 and 92 – 1st accused/public servant during his tenure as Member of Legislative Assembly and Minister accumulated wealth above his known source of income in his name and names of his family members arrayed as 2nd to 7th accused – Charges framed under Sections 13(1)(e) and 13(2) of Act 1988 and under Section 109 of Code – Trial Court acquitted accused, hence these appeals by State – Whether Trial Court’s appreciation of evidence and calculation of disproportionality of income is in accordance with law – *Held*, Trial Court provided whimsical reasonings to discredit prosecution evidence – All properties were admittedly purchased during check period – Contrary to bar under Sections 91 and 92 of Act 1872, Trial Court overlooked recital in sale deed and accepted oral evidence to hold sale consideration was made by 1st accused prior to check period – Trial Court without reason arbitrarily reduced alleged amount from total value of assets acquired by 1st accused and his family during check period and was also, unmindful of fact that neither 1st accused as public servant nor his wife as private individual disclosed their source for purchase of assets in their name and their son’s name – Trial Court probalised source of income which in fact not in existence – Trial Court tinkered valuation statements to extend that accused were found deficit balance – Trial Judge boosted income and reduced value of assets held at end of check period by assigning fallacious reasons – Acceptance of documents relied by defence does not carry any probative value and renders finding of Trial Court unsustainable – Order of acquittal set-aside – Appeal allowed.

(2018) 3 MLJ (Crl) 215

Chinnaponnu Vs. State

Date of Judgment: 19.06.2018

Cruelty – Relative of husband – Indian Penal Code, 1860, Section 498(A) – Petitioners convicted for offence under Section 498(A) by lower Courts, hence this revision – Whether conviction of Petitioners for offence under Section 498 (A), sustainable – *Held*, PW-2/victim and her father/PW-4 had spoken about incident – Group of persons concluded among themselves that P.W-2 was possessed with evil spirit and decided to force and subject her to cruelty by tonsuring her head, make her walk without clothes and burn her tongue with red hot needle – Petitioners were mother-in-law and sisters-in-law of PW-2, who fell within expression ‘relative of husband’ and clear evidence of their involvement in cruelty committed upon PW-2 available – No illegality or impropriety in conviction of Petitioners for offence under Section 498(A) – Almost 17 years since incident took place and all Petitioners were women – Term of imprisonment modified from 1 year to term already undergone by Petitioners – Each of Petitioner directed to deposit compensation and on such deposit, PW-2 victim was entitled to withdraw same – Fine imposed by lower Courts confirmed – Petition partly allowed.

(2018) 3 MLJ (Crl) 219

K. Sekar Vs. State of Tamilnadu

Date of Judgment: 19.06.2018

Compounding of Offence – Compromise after conviction – Code of Criminal Procedure, 1973 (Code 1973), Sections 397, 401 and 482 – Indian Penal Code, 1860 (Code 1860), Section 498A – Petitioners/husband and parents-in-law of *de-facto* Complainant/wife convicted by lower Courts under Section 498 (A) of Code 1860 and Dowry Prohibition Act, hence this revision – Whether after conviction and sentence of accused person, this Court exercising its jurisdiction under Sections 397, 401 and 482 of Code 1973 could compound offence and set aside conviction and sentence where offence involved was non-compoundable in nature – *Held*, matrimonial dispute was more in nature of person dispute between husband, wife, in-laws – Background in which provisions like 498(A), 304(B) of Code 1860 or Dowry Prohibition Act was brought into force must be kept in mind and was to be ensured that husband or in-laws do not get impression that even after conviction for said offences, they could enter into compromise with victim and get away from clutches of law – Court, not in position to straight away quash conviction and sentence already ordered by lower Courts – On appreciation of evidence, it was found that demand of dowry had not been proved – Order of conviction and sentence passed by lower Courts set aside – Revision allowed.

(2018) 3 MLJ (CrI) 226

Ganeshan Vs. Deputy Superintendent of Police

Date of Judgment: 20.06.2018

Voluntarily Causing Hurt – Use of abusive words – Indian Penal Code, 1860, Sections 294(b) and 323 – Appeal filed against conviction of Appellant for offence under Sections 294(b) and 323 – Whether conviction of Appellant sustainable – *Held*, P.Ws.2 and 3/injured witnesses alone deposed regarding occurrence and their evidence reveals that P.W.2 was not present at time of occurrence – P.W.3 herself admitted that she was not present at time of occurrence, therefore, her evidence could not be relied upon – Evidence of P.W.2 regarding injury contradicts evidence of P.W.11/doctor – P.W.11 stated that there was chance for Complainant to have given false statement regarding pain – No external injury was made clear – Section 294(b) indicates that person must have used abusing words in presence of public place – Place of occurrence was not public place, therefore, section 294(b) was not made out – Contradictions regarding weapon used and regarding injury caused to Complainant – No eye witness except P.W.2 – Evidence of P.W.11 and P.W.2 contradictory, hence, offence under Section 323 not made out – Allegations against Appellant under Sections 294(b) and 323 not proved beyond reasonable doubt – Appellant acquitted – Appeal allowed.

(2018) 3 MLJ (CrI) 229

Madan @ Madankumar @ Mannandai Vs. State

Date of Judgment: 22.06.2018

Attempt to Murder – Intention – Indian Penal Code, 1860, Sections 294[b], 307, 324, 326, 341, 342, 352 and 506[ii] – Trial Court convicted Appellants/1st to 4th accused for offences under Sections 341, 294[b], 342, 324, 326, 352, 307, 506[ii] on allegation that Appellants waylaid P.W.1, assaulted and stabbed him with knife, hence this appeal – Whether Appellants had intention or knowledge for committing murder – *Held*, P.W.1 and P.W.2 were family members – On date of occurrence, P.W.2 and mother of 1st to 3rd accused quarreled with each other which was not disputed by accused – P.W.1 clearly mentioned overt act of each accused and same corroborated through evidence of P.W.2 – Doctor/P.W.9, who treated P.W.1 stated in his evidence that P.W.1 sustained injury on his left thigh and left abdomen – If 1st and 2nd Appellants assaulted as stated by P.W.1 and P.W.2, injuries mentioned by Doctor could have been caused – Evidence given by P.W.1 and P.W.2 corroborated by medical evidence – Appellants had no intention or knowledge for committing murder – Alleged offence happened in consequence of wordy quarrel in respect of morning incident – Trial Court without considering evidence in proper perspective, convicted Appellants for offence under Section 307 – Considering nature of offence committed by Appellants, punishment awarded under Section 326 was excessive, therefore, sentence imposed in above section reduced to two years – Conviction and sentence imposed on 3rd and 4th Appellants set aside and acquitted – 1st and 2nd Appellants voluntarily caused hurt to P.W.1 by using deadly weapons and thus, guilty for offence under Section 326 alone – Sentence reduced – In respect of offences under Sections 341, 294[b] and 307 conviction and sentence awarded by Trial Court set aside – Appeal partly allowed.

(2018) 3 MLJ (CrI) 234

S. Gopalakrishnan Vs. State of Tamilnadu

Date of Judgment: 22.06.2018

Breach of Trust – Entrustment – Indian Penal Code, 1860, Section 406 – Lower Courts convicted Petitioner for offence under Section 406 misappropriation of certain amount hence this revision – Whether findings arrived by Lower Courts without proving fact of entrustment, justified – *Held*, to prove that case fell under Section 406, Respondent police had to prove entrustment – Prior to registration of case, Petitioner and P.W.1 were having business transaction in respect of distributing films – Due to non-payment of commission amount, dispute went up to police station – Even in charge sheet, police had not mentioned anything about manner of entrustment – Basic ingredients for offence under Section 406 was “entrustment” – Without knowing said aspect, lower Courts had committed grave error and punished Petitioner – Conviction and sentence set aside – Revision allowed.

(2018) 3 MLJ (CrI) 240

P. Ganesan Vs. State

Date of Judgment: 18.06.2018

Illegal Gratification – Demand and acceptance – Prevention of Corruption Act 1988, Sections 7, 13 and 19 – Trial Court convicted Appellant/accused for offence under Sections 7 and 13(2) read with section 13(1)(d) for demand and acceptance of illegal gratification, hence this appeal – Whether conviction of Appellant for illegal gratification justified – *Held*, under Section 19(1), previous sanction by authority competent to remove accused person from his office required and said sanction order should be accorded after perusal of all documents and on fair application of mind – Evidence of PW-1 as well as sanction order marked clearly satisfied both conditions – Prosecution proved beyond doubt through its witnesses all ingredients such as there were illegal demand, acceptance, recovery of money and same not for any legal remuneration, but as illegal gratification to issue refund cheque to PW-2/*defacto* Complainant – No error in judgment of trial Court – Appeal dismissed.

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