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IMPORTANT CASE LAW



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SUPREME COURT – CIVIL CASES

2017 (6) CTC 201

J. Vasanthi and others vs. N. Ramani Kanthammal (D) Rep. by LRs. and others

Date of Judgment: 10.08.2017

Tamil Nadu Court Fees and Suits Valuation Act, 1955(T.N.Act 14 of 1955), Sections 40 & 25(d) – Court fees – Suit instituted for declaration of title and to declare registered Sale Deeds as null and void – Plaintiff valued relief of declaration to declare deed as void under Section 25(d) and paid Court-fee thereon – Plaintiff party to impugned Sale deeds – defendant filed application to reject Plaintiff in as much as Plaintiff ought to have valued Suit under Section 40 and not under Section 25(d) – issue relating to Court fee held to be mixed question of law and fact by High Court –word “Cancellation” implies that person suing should be party to document – case would fall under Section 40 – proper valuation of suit property stands on different footing than applicability of particular provision of Act under which Court fee is payable – relief of declaration should have been valued under Section 40.

(2017) 7 MLJ 107 (SC)

Canara Bank Rep. by its Deputy Gen. Manager vs. C.S. Shyam and another

Date of Judgment: 31.08.2017

Right to Information – Personal Information – Service Details of Employees – Right to Information Act, 2005, Sections 6 and 8(j) – Information sought by 1st Respondent/Staff from Public Information Officer of Appellant/Bank regarding transfer and posting of entire clerical staff for certain period in all branches of Bank rejected stating that information sought was protected under Section 8(1)(j) – Chief Public Information Officer dismissed appeal of 1st Respondent, but Central Information Commission allowed appeal and issued directions to Bank to furnish information – Petition and appeal filed by Bank dismissed, hence present appeal – Whether application submitted by 1st Respondent under Section 6 sustainable – Held, information sought by 1st Respondent of individual employees working in Bank was personal in nature and exempted from being disclosed under Section 8(j) – 1st Respondent has not disclosed any public interest involved in seeking such information of individual employee – Application made by 1st Respondent under Section 6 wholly misconceived and rightly rejected by Public Information Officer – Application submitted by 1st Respondent to Bank rejected – Appeal allowed.

2017 (10) SCC 643

M/s.Raptakos, Brett Uco Ltd vs. Ganesh property

Date of Judgment: 05.09.2017

Civil Procedure Code, 1908 – Order 2 Rule 2 r/w Rule 4 – Mesne profits, as in the present case for occupation of leased premises beyond the lease period by the lessee – when cannot be claimed by filing a second suit – cause of action for filing a separate suit for claiming mesne profits – when does not arise –Estoppel – applicability of.

2017 (9) SCC 404

Mihir Kumar Hazara Choudhury vs. Life Insurance Corpn. and another

Date of Judgment: 11.09.2017

- A. Service Law – Misconduct – Fiscal misconduct – Fraud committed for wrongful personal gain – proof of – allegation of issuing seven receipts including special premium receipts to policy holders without receiving any premium amount.
- B. Service Law – Penalty/Punishment – Proportionality/Quantum of punishment – dismissal – sustainability – fiscal misconduct – fraud committed for wrongful personal gain.
- C. Service law – Employer-Employee Relationship – Duties of employee towards employer especially in financial organization.
- D. Service Law – misconduct – acting beyond authority – Held, acting beyond authority by itself is breach of discipline constituting misconduct rendering delinquent to suffer adverse orders – No defence available to delinquent to say that there was no loss or profit resulting where employee is found to have acted without authority – very discipline of organization and especially financial institution where money is deposited by several depositors for their benefit is dependent on each of its employee, who acts within allotted sphere as custodian of such deposit.
- E. Service Law – Departmental Enquiry – Judicial review/validity – Scope – Limited – Held, Supreme Court as appellate Court cannot sit over findings of enquiry officer and find fault in it nor can appreciate evidence of witnesses examined in departmental enquiry.

2017 (10) SCC 706

Himangni Enterprises vs. Kamaljeet Singh Ahluwalia

Date of Judgment: 12.10.2017

A. Arbitration and Conciliation Act, 1996 – Section 8 – Reference to arbitration in pending suit – Application under Section 8 of 1996 Arbitration Act – Maintainability – Non-arbitrability of dispute (pertaining to tenancy/eviction/rent matter herein) – effect of – lease deed with respect to tenancy of premises in question containing arbitration clause for resolution of disputes arising out of that deed between parties concerned.

B. Precedents – Implied overruling – Decision of High Court taking view contrary to the view of Supreme Court – Effect and value of – Held, stands overruled – Constitution of India, Art.141.

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SUPREME COURT – CRIMINAL CASES

2017 AIR (SC) 2397

Machindra vs. Sajjan Galpha Rankhamb and others

Date of Judgment: 19.04.2017

IPC – SECTION 302/34 – Evidence Act (1 of 1872), Ss.3,45 – Murder – appreciation of evidence – Accused persons allegedly causing death of deceased with stick and yoke pin – Prosecution not examining person on whose land dead body of deceased found lying – Alleged eyewitness to incident not stating as to when accused came with alleged weapons or any extension of help to deceased – Delay of 6 days in lodging FIR, unexplained – Opinion of cause of injuries not mentioned in postmortem report and not deposed by doctor – No evidence to prove death caused due to injuries inflicted by recovered weapons – Accused entitled to benefit of doubt.

(2017) 3 MLJ (CrI) 92 (SC)

Mahendra Singh Dhoni vs. Yerraguntla Shyamsundar

Date of judgment: 20.04.2017

Complaint – Quashing of – Insult to Religion – Code of Criminal Procedure, 1973 (Code 1973), Section 482 – Indian Penal Code, 1860 (Code 1860), Section 295A – Complainant purchased monthly business magazine wherein main page of that magazine carried painting painted with photo of Petitioner with caption “God of Big Deals” – There was description underneath which had characters of some advertisement – Complainant filed complaint for offence punishable under Section 295A read with Section 34 of Code 1860 – Magistrate entertained complaint and issued summons – Petitioner filed transfer petition seeking transfer of proceedings in complaint case pending before Magistrate to another State – Pending transfer petition, Petitioner filed present petition seeking quashing of complaint case filed against him – Whether allegations made in complaint constitute offence under Section 295A of Code 1860 – Whether present Court, in obtaining factual matrix, relegates trial at some other place or grants him liberty to file an application under Section 482 of Code 1973 for quashing – *Held*, Section 295A of Code 1860 does not stipulate everything to be penalized and any and every act would tantamount to insult or attempt to insult religion or religious belief of class of citizens – It penalizes only those acts of insults to or attempts to insult religion or religious belief of class of citizens perpetrated with deliberate and malicious intention of outraging religious feelings of that class of citizens – Insults to religion offered unwittingly or carelessly or without deliberate or malicious intention to outrage religious feelings of that class do not come within Section – Said provision only punishes aggravated form of insult to religion when perpetrated with deliberate and malicious intention of outraging religious feelings of that class – Allegations made in complaint remotely did not satisfy essential ingredients of offence – Complaint proceedings initiated against Petitioner quashed – For reasons for which complaint was quashed shall squarely apply to co-accused,

who was Editor of magazine – Complaint even against co-accused quashed – Petition disposed of.

2017 AIR (SC) 2475

Fazar Ali and other vs. State of Assam

Date of Judgment: 21.04.2017

A. Criminal Procedure Code (2 of 1974), S.154 – FIR – Non-mentioning of names of accused – Effect – FIR clearly stating number of accused persons were twelve – But mentioning names of five accused only – Non-mentioning of seven other accused persons in FIR – Inconsequential.

B. Penal Code(45 of 1860), Ss.302, 149 – Murder – Unlawful assembly – Presence of family members of deceased in house at courtyard of informant where incident took place is natural – Eye-witnesses assigned role of all accused persons in causing injuries resulting into death of deceased – In crosscase filed by accused party, accused were found aggressor – Presence of accused proved by eye-witnesses – Minor inconsistencies with regard to manner of causing injuries in statement made by witnesses before Court and before police under S.161, Cr.P.C. – Would not make their statements unreliable – Conviction of accused under S.302 r/w. 149, proper.

2017 (6) SCALE 152

Heera Lal and another vs. State of Rajasthan

Date of Judgment: 24.04.2017

Criminal Law –IPC- Section 306A & 498A – India Evidence Act, 1872 – Section 113A – FIR against father-in-law and mother-in-law of lady who committed suicide due to harassment by in-laws – Trial Court relied upon evidence of PW's 4 and 5 who were neighbours who attested that harassment meted out by in-laws to deceased – Medical evidence shows that deceased poured kerosene on herself and suffered 90% burns – Dying declaration made by deceased before P.W.6 – Trial Court held that offence not made out u/s 498A but convicted appellants u/s 306 and sentenced them to imprisonment for three years – Appeal dismissed by High Court relying upon dying declaration – Appellants' contention that state did not appeal against their acquittal u/s 498A therefore offence u/s 498A has not been made out is final – Appeal allowed.

2017 (6) SCC 631

Vasanta Sampat Dupare vs. State of Maharashtra

Date of Judgment: 03.05.2017

A. Constitution of India – Article 137 – Review – minor girl of 4 years, raped and battered to death by 47 years old man – Petitioner-accused convicted under Ss.302,363,367,376(2)(f) and 201 IPC – Various sentences imposed upon petitioner, including death sentence under S.302 IPC and life imprisonment under S.376(2)(f) IPC – Death sentence confirmed by Supreme Court in judgment under review – Aggravating and mitigating circumstances – Re-consideration of, in review – Post-conviction conduct of review petitioner in jail – Relevance of – Aggravating circumstances, namely extreme depravity and barbaric manner in which crime was committed and fact that victim was a helpless girl of 4 year, clearly outweigh mitigating circumstances, including his post-conviction conduct in jail presently brought on record – No case made out to take a different view in the matter upon review – View taken in judgment under review, affirmed.

B. Criminal Procedure Code, 1973 – S.235(2) – Sentence hearing, held, not mandatorily to be on a separate date after conviction, though generally and normally it should be so – moreover, higher court can always cure defect vis-à-vis requirements of S.235(2) CrPC by giving a hearing to the accused on the question of sentence – Thus, for a proper and effective implementation of the provision contained in S.235(2), it is not always necessary to remand the matter to the court which has recorded the conviction – Remand is an exception not the rule and ought therefore to be avoided as far as possible in the interests of expeditious though fair, disposal of cases – Minor girl of 4 year, raped and battered to death by 47 year old man – Petitioner-accused convicted under Ss.302, 363, 367, 376(2)(f) and 201 IPC – Various sentences imposed upon petitioner, including death sentence under S.302 IPC and life imprisonment under S.376(2)(f) IPC – Fact that judgment of conviction and order of sentence were passed by trial court on the same day, if opposed to the law laid down by Supreme court in Allauddin Mian, 1989 (3) SCC 5 and/or the spirit of S.235(2) CrPC.

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MADRAS HIGH COURT – CIVIL CASES

2017 (6) CTC 568

Chiranjeevi Rathnam and 5 others vs. Ramesh and another

Date of Judgment: 19.07.2017

Companies Act 2013 – Sections 430, 242 & 241 – Code of Civil Procedure, 1908 (5 of 1908), Section 9 – Jurisdiction of Civil Courts – Ouster of Civil Court jurisdiction – Special Tribunals constituted under statute – Corporate dispute – Suit to declare appointment of Director of Private Limited Company as illegal and void – Maintainability of Civil Suit – Express bar of jurisdiction of Court – Distinction between common law right or right conferred under any statute – Dispute as to indoor management of company – Plaint allegations related to company mismanagement and oppression – Matter in dispute qua affairs of company – National Company Law Tribunal alone competent to consider complaints of oppression and mismanagement of company – Suit is not maintainable.

2018 (2) CTC 649

Venkatasamy vs. Annamalai and another

Date of Judgment: 01.08.2017

Hindu Succession Act, 1956 (30 of 1956) – Oral Partition – Proof of – Two brothers succeeded intestate to father's properties – Some properties sold independently by both brothers – 1st defendant sold his share of ancestral property to brother/Plaintiff – Such sales indicate that sharers divided properties for separate and exclusive enjoyment – Plaintiff pleaded oral partition in earlier suit between same parties filed in 1979 – Factum of oral partition also mentioned in pre-suit notice – Acid test for partition is conduct of parties in respect of properties after alleged partition – Non-inclusion of suit property in earlier suit only indicates title/possession not disputed at time of earlier suit – Same not proof of absence of oral partition – Second Appeal allowed – Trial Court Order allowing suit for declaration restored.

Evidence Act, 1872(1 of 1872) – Practice and Procedure – Appreciation of evidence – Evidence to be considered holistically, not in bits and pieces – Recitals in sale deed and testimony of DW1 indicated Partition of ancestral property – Lower Appellate Court failed to consider such evidence – Finding of Lower Appellate Court held to be perverse.

2018 (1) TLNJ 97 (Civil)

Chandrakala @ Chandra.M. vs. R. Jayachandran

Date of Judgment: 03.08.2017

Civil Procedure Code, 1908, Order 47 Rule 1 & 2, Section 114 – Hindu Marriage Act – Section 27 – Petitioner filed review against order passed in Revision – Revision filed by wife against dismissal of petition seeking return of cash, jewels and other articles given to her by parents at the time of marriage – Revision – Relying on Section 27 – Dismissed holding application not maintainable after decree of divorce has been granted – Review application filed – Held, petitioner filed petitioner for return of articles after her petition for divorce granted – not mentioned anything about jewels in petition for divorce or in counter filed against petition or restitution filed by husband – Based on Section 27 – Dismissal does not suffer any infirmity – Review will lie only if there is an error apparent on the face of record – Petitioner in review has not raised any apparent error and her contentions have already been considered while passing order – Review application dismissed.

2017-4-L.W. 43

National Insurance Co. Ltd., Cuddalore vs. Bakkiam

Date of Judgment: 04.08.2017

Motor Vehicles Act (1988), Section 167

Workmen’s Compensation Act(1923), Section 30

Whether a claim before the Motor Accident Claims Tribunal is maintainable by a Claimant who has earlier lost before the Commissioner, WC Act, on the same cause of action – Right of election under Section 167

Section 167 in essence states that a claimant can choose from any one of two independent remedial forums open to him to make his claim but not both

What is barred under Section 167 of the MV Act is not the pursuit to seek compensation under two tribunals created under two different enactments successively, but the actual receipt of compensation from both the tribunals on the same cause of action

Withdrawal of proceedings from the forum of first choice is held not to bar a proceeding before the forum of second choice on the same cause of action.

Institution of proceedings under the WC Act is something more than a mere preference of claim – A proceedings is said to be concluded only when the forum, a court or a tribunal, that is required to decide on the rights of the litigant before it, actually decides it and needs to do no more than executing its decision where it is not obeyed or complied with

Termination of proceedings by a summary dismissal of a claim without quantifying the compensation payable too will not destroy the right to move the MACT

Doctrine of election will operate only when the forum of first choice conclusively has quantified the compensation payable which has become final as regards the Tribunal that has passed it.

2018 (1) TLNJ 28 (Civil)

Nagarajan.C and another vs. Vennila.M and another

Date of Judgment: 07.08.2017

Hindu Marriage Act, 1955, Section 24 – Interim maintenance – Rejected by trial Court as not maintainable since maintenance case already filed by the wife is pending – Revision – Petition, under both Section 24 of Hindu Marriage Act and Section 125 of Criminal Procedure Code, can be maintained by parties and both can be considered and decided simultaneously – Only condition is that maintenance awarded in one application must be taken into account, while awarding maintenance in other application – If maintenance awarded in one application is reasonable and sufficient for maintenance of the spouse, no maintenance need be granted in other application – Amount awarded in maintenance case is reasonable and no further amount to be ordered in I.A.- Rs.1,500/- per month towards litigation expenses awarded set aside – Modified to a total sum of Rs.5,000/- – Petition closed with modification of award.

2018 (1) TLNJ 36 (Civil)

O.K.Venkatramani @ Venkataraman and others vs. Coimbatore Diocese Society

Date of Judgment: 09.08.2017

Civil Procedure Code, 1908, Section 100 – Easementary Right – Suit filed by Plaintiff for declaring the plaintiffs' right of free use of the suit cart-track and for injunction – suit decreed – First Appeal reversed the judgment of trial court – Second Appeal filed in High Court by plaintiff held, lower appellate court did not frame any point for consideration – Yet it has delved into the factual details of entitlement of the parties to the suit-cart-track – Permission granted by the 4th defendant, owner of the land to use the cart track as pathway – Plaintiffs have not established the easementary right by prescription or grant or necessary – Intention of the plaintiff appears to usurp the place – Persons not at all concerned with the property have been made as D1 to D3 – Plaintiffs have not approached the court with clean hands – 1993(1) MLJ 26 – Relied on – Second Appeal dismissed.

2018 (1) TLNJ 1 (Civil)

Rajaselvi and another vs. Meenatchi and others

Date of Judgment: 17.08.2017

Civil Procedure Code, 1908, Order 41, Rule 27 – Additional Documents – Plaintiff's sought to mark birth certificate, marriage certificate, transfer certificate of Plaintiffs in appeal to prove the case – Held – No reason given as to why Plaintiffs have not filed the same before the lower Court, when they were aware of their status and defendants denying the same documents sought to be marked not stated anywhere in plaint or evidence – Inconsistent with pleadings in plaint and evidence – Petition dismissed.

Evidence Act, 1872, Section 112 – Suit for Partition by Plaintiffs claiming share in father's property – Contention of Plaintiffs – Suit property belongs to their father Rathinam Pillai and they were born to one Rajammal and their father – Father married another Rajeshwari and defendants were born to them – Father died intestate – Plaintiffs seek their share – contention of Defendants – Rathinam Pillai was never married to Rajammal – Date of marriage not disclosed in Plaint – Rathinam Pillai only married Rajeshwari and defendants were born – Plaintiff's were not born to Rathinam Pillai and not his legal heirs – Suit dismissed – Appeal – Held – When defendant's deny the very factum of marriage between Rajammal and Rathinam Pillai, Plaintiff's duty bound to prove the same – Rajammal though alive when suit was filed, not made party and share claimed – She has not let in evidence to prove the factum of marriage between her and Rathinam Pillai – Plaint does not disclose date, venue of marriage – Other evidences of Plaintiffs to prove marriage not reliable – Defendants marked invitation card (Ex.D6) between Rathinam and Rajeshwari – Admitted by PW4 (brother of Rajeshwari) in cross – Defendants examined DW1 (Sister of Rathinam) deposed marriage between Rathinam and Rajeshwari, and Rajammal already married to Shanmugavel and only having illicit affair with Rathinam which did not end in marriage – Letters Ex.D8 – D10 prove the factum of illicit affair deposed by DW1 – Settlement deed (Ex.D1) by Rathinam does not describe Rajammal as his wife and states Plaintiff's as children of Rajammal alone – Settlement deed (Ex.12 and Ex.D13) by Rathinam describes Rajeshwari and Defendants as his wife and children – Plaintiff miserably failed to prove factum of marriage between Rathinam and Rajammal – Plaintiff not proved to be legal heirs of Rathinam – Appeal Suit dismissed.

2017 (5) CTC 295

Sri Kanishk Collection, Vellore District vs. SKC Readymades, Salem

Date of Judgment: 22.08.2017

Code of Civil Procedure, 1908(5 of 1908), Order 39, Rules 1 & 2 – Trade Marks Act, 1999(47 of 1999), Section 35 – Infringement of Trade Mark – Suit for Permanent Injunction restraining Infringement of Trade Mark – Ad-Interim Injunction granted in favour of Plainiff – Appeal against that Order – Plaintiff carrying on business in name of SKC Readymades and SLC Textiles in Dindigul and Salem and Defendant attempting to

commence business by adopting Trade Mark SKC Textiles & Readymades at Arcot in Vellore – Defendant contending that its actual Trade Name is “Sri Kanishk Collection” (SKC), Kanishka being name of daughter of one of its Partners – No evidence to show bonafide user – Claim of Defendant that user of abbreviation SKC would not amount to infringement, cannot be accepted – Once Trade Mark is registered, it had force all over India – It is open to registered holder to prevent any infringement, immaterial of fact that it has business interest in area in which alleged infringement takes place – Order of injunction is discretionary – Once trial court exercised its discretion, same will not normally be interfered with by Appellate Court unless such discretion was exercised arbitrarily or perversely – No reason to interfere with impugned order granted in favour of registered mark holder – appeal dismissed.

2018 (3) CTC 246

Raj Television Network Ltd. vs. Sony Music Entertainment

Date of Judgment: 07.02.2018

Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015(4 of 2016), Section 15(4), Proviso to – Code of Civil Procedure, 1908 (5 of 1908), Order 5, Rule 1 – Interpretation of Statutes – Suit for Copyright infringement – Suit transferred to commercial Court – Written statement filed after delay of 520 days – Application to condone delay filed under Order 5, Rule 1, CPC – Commercial Court has discretion to prescribe new time period for filing written statement under Section 15(4) of Act provided “Proviso” to Order 5, Rule 1(1) – Whether singular usage of term ‘Proviso’ refers to only one Proviso or both Provisos of Order 5, Rule 1(1) – Held, term ‘Proviso’ occurring in Proviso to Section 15(4) of Act should be construed as ‘Provisos’ in plural – When jurisdiction under act exercised over suit, both provisos under Order 5, Rule 1(1) will not apply – Application allowed.

2018 (3) CTC 250

A. Kanagalakshmi and 2 others vs. V. Gururaj and 16 others

Date of Judgment: 06.04.2018

Hindu Succession Act, 1956(30 of 1956), Sections 6 & 8 – Joint Ancestral properties partitioned – Entitlement of children born after partition – Effect of 2005 amendment act – Joint family property partitioned between father and 6 sons through registered Partitioned deed in 1956 – Father’s mother and thereafter his wife assigned life interest in properties – Property kept undivided, in common for family enjoyment – Six children born after partition – Father died intestate in 2006 – daughters born after partition, whether entitled to share as coparceners – Father entitled to 1/7th share in suit property on termination of life interests – Father died after amendment act came into force on 09.09.2005 – After 2005 amendment, children born after partition and daughters born before Partition become coparceners along with their father in respect of father’s 1/7th share – Sons, who were parties to partition deed, cannot claim as coparceners in father’s 1/7th share – Held, daughters, who were alive on 09.09.2005, necessarily become coparceners in father’s 1/7th share on partition – Right vested in daughter by amendment act equivalent to right of after born son.

Hindu Succession Act, 1956(30 of 1956), Section 15 – Inheritance of mother’s share by daughter-in-law – Plaintiffs’ mother acquired certain share in Joint Family property through husband and issueless pre-deceased son – Mother died intestate – Devolution only upon sons, daughters, children of pre-deceased son/daughter – Daughter-in-law/wife of another pre-deceased son not entitled to inherit as heir of mother-in-law.

Hindu Succession Act, 1956 (30 of 1956), Section 6 – Settlement deed by Coparcener – Validity of – Effect of 2005 amendment – Plaintiff’s father allotted 1/7th share of suit property through Partition in 1956 – Father executed settlement deed in favour of sons in 2006 – Father’s partition assumes coparcenary character in respect of after born sons – After amendment, sons & daughters born after partition and daughters born before partition become coparceners along with father in respect of father’s share – Settled law that coparcener cannot settle or gift undivided share in ancestral property – Such gift or settlement not binding on other coparceners – Held, settlement deed executed after cut-off date 2012.2004 prescribed under explanation to Section 6 of Act, not binding on Plaintiff.

Evidence Act, 1872(1 of 1872), Section 68 – Settlement deed – Proof of – Plaintiffs’ mother inherited pre-deceased son’s partition of suit property – Same pleaded to be settled on two other sons –recitals indicate suit property not allotted to pre-deceased son under partition deed – Mother’s title to suit property through pre-deceased son not proved – Same cannot be settled by mother – Attesting witnesses to settlement deed not examined – Held, settlement of suit property not established.

Contract Act, 1872(9 of 1872) – Sale deed – Validity of – Suit property is ancestral partitioned in 1956 – Plaintiffs born after partition – Suit property sold by plaintiffs’ father and some brothers – Plaintiffs held to be entitled to share in suit property – Plaintiffs not parties to sale deed – Held, sale deed not binding on plaintiffs.

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MADRAS HIGH COURT – CRIMINAL CASES

2018 (1) MLJ (Crl) 108

Hari Kumar vs. State by Inspector of Police, H-3 Tondairpet Police Station, Chennai

Date of Judgment: 29.11.2017

Voluntary Hurt – Common Intention – Indian Penal code, 1860, Sections 34,149 and 324 – Accused attacked and wounded P.W.1 as he allegedly engineered defection of members from his political party to another party – Trial Court acquitted 1st, 4th, 5th 6th and 7th accused and charges against 3rd accused abated – 2nd accused/appellant convicted under Section 324, hence this appeal – whether trial court justified in convicting Appellant for causing hurt – Held, attack on P.W.1 has been established beyond cavil by prosecution, through evidence of P.W.1, P.W.2 and P.W.3. – even in cross-examination, accused have not denied said incident – accused shared common intention under Section 34 and are vicariously liable with aid of Section 149 – Judgment passed by Trial court confirmed with modification in sentence – appeal dismissed.

2018 (1) MLJ (Crl) 63

M. Natarajan and others vs. State, Rep. by Inspector of Police, SPE/CBI/ACB, Chennai

Date of Judgment: 17.11.2017

Fraud – Import of Luxury Car – Violations of Customs Regulations – Indian Penal Code, 1860 (Code 1860), Sections 120-B, 420, 467 and 471 – Prevention of Corruption Act, 1988 (Act 1988), Section 13(1)(d) and 13(2) – Trial Court convicted Appellants/accused for they along with absconding accused and approver conspired among themselves to import luxury car in violation of customs regulations, fabricated and forged import documents and misused transfer of residence provisions – Aggrieved, appellants filed appeals – Whether trial court judgment bristles with legal and factual infirmities – Held, settlement under Kar Vivad Samadhan Scheme did not give any immunity to Appellants from prosecution under Section 120B, 420, 468 and 471 of Code 1860 and Act 1988 – Only after complying all formalities, pardon granted to approver/P.W.14 – Non-examination of Magistrate who granted pardon had no consequence – Subjective satisfaction of judicial mind reflected in order need not be testified under oath – DRI, Income tax and Customs Officials were not police officers – statement given to them admissible in evidence – Brand new luxury car imported to India totally in violation of Customs Regulations – Custom duty not paid from out of foreign inward remittance but with Indian Currency remitted into account of 1st accused and operated by 2nd accused – 3rd accused furnished forged first registration certificate, invoice and false affidavit on behalf of absconding accused – 4th accused aided other accused by instructing approver/P.W.14 to issue false certificate as if custom duty was paid out of foreign inward remittance of 1st accused account – All these actions was manifestation of criminal conspiracy unraveled through evidence of approver and other prosecution witnesses who have seen accused persons executing said conspiracy at customs house and bank branch – Senior customs officer who were members of conspiracy team not prosecuted – Appeals dismissed.

2018 (1) MLJ (CrI) 125

M. Rajaram vs. State, represented by Special S.I. of Police, District and another

Date of Judgment: 14.11.2017

First Information Report – quashing of – availability of civil remedy – Indian Penal Code, 1860, Section 420 – De-facto complainant/2nd Respondent filed complaint that Petitioner/2nd accused and his brother/1st accused received sale consideration but failed to execute sale deed – 1st respondent Police registered FIR under Section 420 against petitioner and another, hence this petition – whether FIR liable to be quashed for abuse of process of law that purely civil dispute was given criminal colour – Held, prayer made in complaint was to register case against accused so as to ensure registration of sale deed in favour of complainant – excepting vague allegation that complainant was threatened once, no reference to specific allegation as to which date threat was given to him – complainant filed complaint after thirteen years of sale agreement with absolutely vague and general in nature which could not be sole basis of prosecution under Section 420 – even if allegations made in FIR was taken as correct and on their face value, it did not constitute any criminal offence, since it was purely civil in nature – when civil remedy was available to party concern police authority must have looked into nature of complaint and therefore only to acted upon – F.I.R. on file of 1st respondent police quashed – petition allowed.

2018 (1) MLJ (CrI) 39

M.R. Saravanakumar and others

vs.

State, through the Inspector of Police, SPE/CBI/ACB, Chennai and others

Date of Judgment: 27.11.2017

Cheating – Evidence of witnesses – Indian Penal Code, 1860(Code), Sections 120-B, 420, 467, 468 and 471 – Prevention of Corruption Act, 1988(Act), Sections 13(1) (d) and 13(2) – 1st and 2nd accused/Bank managers in conspiracy advanced loan to said concern where 3rd and 4th accused were managing partners – said concern was wound up after securing loan without repayment – 3rd accused offered property as collateral security for loan advanced to another concern and pledged title deed of PW-14 as surety for obtaining loan and caused wrongful loss to said bank – 3rd, 6th and 7th accused cheated said bank by availing secured overdraft facility (SOD) in name of defaulted entities – charges framed against 1st to 7th accused under code and act – trial court convicted 3rd, 6th and 7th accused under Section 420 of code and acquitted others – aggrieved, 3rd, 6th and 7th accused preferred appeal against their conviction and state preferred appeal against acquittal of 1st to 7th accused – whether finding of trial court requires any interference – Held, no charge against any of accused for forgery and for using forged documents as genuine – no evidence to prove in which document 3rd and 4th accused forged signature of P.W.9 and P.W.14 – P.W.13 has not identified any of documents which he deposed as forged by 3rd and 4th accused – overheard conversation of 1st to 4th accused does not disclose any criminal design – evidence of 6th and 7th accused clears that they have floated name sake entity to just avail bank loans – they registered themselves as traders for one year but they did not renew the same, after availing loan – this clearly proves their intention to cheat bank by creating document for availing secured overdraft in the name of said concern for which 3rd accused has pledged the

document of P.W.14 – finding of trial court that 3rd, 6th and 7th accused guilty of offence under Section 420 code is well found – no substantial evidence to convict other accused for conspiracy – appeals dismissed.

2018 (1) MLJ (CrI) 103

S. Maria Saranya vs. M.J. Maria Jareen and others

Date of Judgment: 21.11.2017

Anticipatory Bail – Clarification of order – maintainability – Code of Criminal Procedure, 1973, Section 362 – Court issued directions regarding procedure of filing vakalath and other directions to Bar Council – aggrieved, same case listed again for clarification by said bar association and was represented that certain paragraphs in order may be recalled – whether clarification is required in said order of this Court – Held, no petition is filed to review or recall said order – such review petition is not maintainable, in view of bar under Section 362 – asking advocates to affix photographs in vakalat and in memorandum of appearance, in light of directions issued in said order of this court, cannot be recalled – if anyone is aggrieved by said order of this court, it is open for them to approach Supreme Court – If Bar Council is going to stand on technicalities and protect fraudulent advocates, this court cannot be party to it – court is concerned about moral values in advocate profession, than legality of any issue – no clarification is required in order of this court.

2018 (1) MLJ (CrI) 48

Vijayashanthi and another vs. Inderchand Jain and others

Date of Judgment: 05.12.2017

Quashing of Proceedings – availability of civil remedy – Code of Criminal Procedure, 1973, Sections 156(3), 200 and 482 – Sale agreement entered between revision petitioner and respondents/2nd to 4th accused and advance paid by revision petitioner to 1st accused/power agent – 1st accused alienated said property in favour of 5th respondent/accused – revision petitioner filed complaint and police authorities relegated petitioner to approach civil forum – Revision Petitioner filed civil suit to declare said deed as null and void – complaint filed by revision petitioner under Section 156(3) was dismissed, hence this revision – whether Revision Petition challenging order dismissing petition under Section 156(3) sustainable – whether proceedings initiated on private complaint against 1st accused/respondent to be quashed – held, 1st accused duly admitted sale agreement and receipt of said amount from revision petitioner – no sale deed was executed – this aspect is to be testified by competent civil court in civil suit already filed by Revision Petitioner – court is not in position to entertain proceedings initiated against accused in pendency of civil court proceedings – Provisions under which complaint was given is not made out against accused – Criminal prosecution is not to be used as instrument of harassment or for seeking private vendetta, when civil remedy is available to complainant – 1st accused made out case for quashment of private complaint and it is liable to be quashed – revision dismissed.

2018 (1) MLJ (Crl) 119

Saranraj vs. State, rep by its Inspector of Police, K-7 Police Station, Chennai.

Date of Judgment: 29.11.2017

Culpable Homicide not amounting to murder – admission – India Penal Code, 1860, Section 304 – 1st Accused, 2nd accused/minor assaulted P.W.1 with knife and when P.W.1's uncle/deceased intervened they stabbed him – Trial Court convicted accused under Section 304(ii) – Appeal against conviction by 1st accused/appellant – whether prosecution proved guilt of appellant beyond reasonable doubt – held, motive for attack was that P.W.1 was asking money from grandmother of accused – failure of police to collect accident register copy and wound certificate did not cause any prejudice to accused as no charge was framed for attacking P.W.1 – P.W.1 in his complaint to police and evidence before court has admitted that he was harassing grandmother of accused and that had infuriated accused, resulting in attack – no reason to disbelieve evidence of P.W.1, P.W.2 and P.W.3 – conviction imposed by trial court confirmed with modification in sentence – appeal dismissed.

2018 (1) TLNJ 305 (Criminal)

Govindaraj

vs.

State, Rep by Inspector of Police, Hosur, Dharmapuri District and 3 others

Date of Judgment: 15.03.2018

Constitution of India, 1950, Article 226 – Mother of boy arrested in a girl missing case – Habeas Corpus Petition – Too frequently parents and relatives of boys are without, a second thought, arrayed as accused in cases registered on boys and girls going missing and most commonly owing to love affairs and they immediately are taken into custody – copy of this order forwarded to the Director General of Police towards sensitizing the force against wrongful action in such matters – directed R1 to make out all efforts to trace the missing girl – petition closed with directions.

2018 (1) TLNJ 362

Ganapathi and another vs. State of Tamil Nadu

Date of Judgment: 27.03.2018

Indian Penal Code, 1860, Section 302 & 302/34 – Murder – Trial Court Convicted accused – High Court set aside the conviction and sentence against A1 but affirmed against A2 to A4 – motive to commit the crime on the part of accused is quite clear in as much as on the previous day of occurrence also, the parties met at the Police Station and there was heated discussion – merely because the eye-witnesses are family members their evidence cannot per se be discarded, but same has to be established – PW.1 & 2 are father and mother of the deceased – their evidence are found cogent and credible - Courts below property scrutinized their evidence before taking them into account – further prosecution taken possible steps to bring independent witnesses PWs 5 & 6 – but they turned hostile – neither the evidence of DW1 not Ext. D1 will come to the rescue of the accused – evidence of PW3/school going child cannot be disbelieved – Appeal dismissed.

(2018) 3 MLJ (CrI) 46

Sayeed vs. State

Date of Judgment: 31.05.2018

Juvenile Delinquent – Jurisdiction – Protection of Children from Sexual offence Act, 2012, Sections 3, 4, 7, 29 and 34 – Respondent/prosecution filed charge sheet against Petitioner/accused under Section 3 read with Sections 4 and 7 – On reference by Prosecution, Juvenile Justice Board held that, since occurrence/offence was continuous one and at time of possible occurrence/offence both petitioner and victim had been together and at that time Petitioner had become major, issue could be decided by Special Court itself – Before Special Court, Petition filed by Petitioner under Section 34 to refer matter to Board since Petitioner was minor during alleged incident was rejected, hence this revision – Whether decision rendered by Special Court confirming view taken by Board was correct or not – *Held*, in complaint, victim had stated specifically that after she gave birth to child she had been continuously living with Petitioner – She continued till prior to eight months from date of complaint – There had been relationship between Petitioner and victim atleast well after two months of Petitioner becoming major – It could be construed safely that Petitioner had become major during part of offence committed or occurrence taken place – During that period when Petitioner had become major and period of last living together, whether, there had been any occurrence or offence on side of Petitioner punishable under Section 3 and 4 had to be decided only after trial – At this juncture, on strength of presumption, in context of Section 29, decision rendered by Special Court treating Petitioner as major during the part of occurrence/offence taken place, was perfectly correct and valid and sustainable one – Revision dismissed.

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