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IMPORTANT CASE LAW



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INDEX

S. No.	IMPORTANT CASE LAW	PAGE No.
1.	Supreme Court – Civil Cases	1
2.	Supreme Court – Criminal Cases	4
3.	Madras High Court – Civil Cases	7
4.	Madras High Court – Criminal Cases	11

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGEMENT	SHORT NOTES	PG. NO
1	Punjab Wakf Board vs Sham singh Harike	2019 (4) SCC 698	07.02.2019	Wakf Act, 1995 – Ss. 85, 83, 6 and 7 - (as stood prior to amendment in 2013) - Bar of jurisdiction of civil courts as provided under S. 85 – Scope and applicability of – Test of determine that bar – Principles explained	1
2	Sneh Lata Goel vs Pushplata and Others	2019 (3) SCC 594	07.01.2019	Civil Procedure Code, 1908 – Ss. 47 and 21 – Objection to territorial jurisdiction of court	1
3	Gopalakrishna (Dead) by Legal Representatives and others vs Narayanagowda (Dead) by Legal Representatives and others	2019 (4) SCC 592,	03.04.2019	Family and Personal Laws – Hindu Law – Hindu Women, Property Rights of – Widow’s estate under Hindu law	1
4	Jamila Begum (Dead) Through legal Representatives vs Shami Mohd,(Dead) Through legal Rep. and another	2019 (2) SCC 727	14.12.2018	Specific Relief act, 1963 – S.31 – Invalidity of a registered sale deed- Onus to prove, in suit for declaration and cancellation of sale deed.	2
5	Prakash Chand Daga vs Saveta Sharma and others	2019 (2) SCC 747	14.12.2018	Motor Vehicles Act, 1988 – Ss. 166 to 168 and S. 50(1)(b) r/w S.2(30) – Liability of registered owner of vehicle to pay compensation in case of accident.	2
6	Shantaben and Others vs National Power Transport and another	2019 (5) SCC 623	06.03.2019	Motor Vehicles Act, 1988 – Ss. 166, 168 and 173 – Compensation – Just compensation – Future prospects	2
7	Kamal Kumar vs Premlata Joshi and Others	2019 (3) SCC 704	07.01.2019	Contract and Specific Relief – Specific Relief Act, 1963 – Ss. 10, 16 and 20 to 23 – Grant of – Prerequisites to be examined by courts summarized	3

SUPREME COURT - CRIMINAL CASES

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGEMENT	SHORT NOTES	PG. NO
1	Balakrishnan and others vs St. of Tamil Nadu	2019 (1) SCC (Cri) 550: 2018 (14) SCC 55	18.01.2018	Penal Code, 1860 – Ss. 302/34, 307, 326, 146 and 148 – Murder trial – Appreciation of evidence	4
2	Pranjay Purushotambhai Goradia vs State of Maharashtra	2019 (1) SCC (Cri) 553: 2018 (14) SCC 58	16.01.2018	Penal Code, 1860 – S. 307 – Conviction under – Case of frustrated love affair – Sentence of life imprisonment altered to period already undergone, of 12yrs of incarceration – But, substantial Compensation added to fine already deposited.	4
3	Ashoke Mal Bafna vs Upper India Steel Manufacturing and Engineering Company Limited	2019 (1) SCC (Cri) 568: 2018 (14) SCC 202	06.03.2017	Negotiable Instruments Act, 1881- S. 141 – Offences by companies – Vicarious liability under S.141	4
4	Gulam Mohammad Malik vs State of Gujarat and another	2019 (1) SCC (Cri) 608: 2018 (14) SCC 473	01.02.2017	Narcotics, Intoxicants and Liquor – Narcotic Drugs and Psychotropic Substance Act, 1985 – S. 67 and Ss. 8(c), 20(b) and 29 – Confession of accused	5
5	State of Uttar Pradesh vs Wasif Haider and others	2019 (1) SCC (Cri) 701: 2019 (2) SCC 303	10.12.2018	Criminal Trial–Witnesses–Injured witness – Non-examination – Effect_.	5
6	Naman Singh Alias Naman Pratap Singh and another vs State of Uttar Pradesh and others	2019 (1) SCC (Cri) 737 : 2019 (2) SCC 344	13.12.2018	Criminal Procedure Code, 1973 – Ss. 156(3), 20, 22 and 482 – Power of Executive Magistrate to direct the police register an FIR on basis of a private complaint lodged before him	5
7	Nipun Saxena and another vs Union of Indian and others	2019 (1) SCC (Cri) 772 : 2019 (2) SCC 703	11.12.2018	POCSO, 2012 – Ss. 33(7), 37 and 24(5) – Minor/Child victims of sexual offences under POCSO Act – Disclosure of identity of	6

MADRAS HIGH COURT – CIVIL CASES

SL. No.	CAUSE TITLE	CITATION	DATE OF JUDGEMENT	SHORT NOTES	PG. NO
1	M. Rathinasamy vs G. Vaithiyanathan	2019 (1) LW 844, 2019 (1) MLJ 878	02.01.2019	CPC Sec.11 Order 41, rule 31(a), Order 2 Rule 2- Court in the prior suit has incidentally discussed about the title though without framing any issue, in subsequent suit - effect	7
2	M/s.Hateemy Sales Corporation, Rep by its Prop.Husseni (deceased) and others vs Mr.R.Sudhakar	2019 (2) LW 217	15.02. 2012	Tamilnadu Buildings (Lease and Rent Control) Act (1960), Sections 10(2)(ii)(a), 10(3)(a)(iii)- Seek for eviction for carrying on his business.	7
3	G. Vasanthi vs M. Muneeshwaran	2019 (2) LW 186	02.01.2019	Evidence Act, Section 112, DNA test - Scope	7
4	Dr. S. Senthilkumar vs A.R. Venkidusamy	2019 (3) LW 241	03.06.2019	Examination of witnesses attested in a will - Evidence Act, Section 68, 69, 71 Succession act, Section 63 C.P.C., Order 16, rules 10,11,12,13	8
5	Purushothaman vs Ranganathan (deceased) Sivakamasundari	2019 (3) MLJ 173 2019 (2) LW 35	14.02.2019	C.P.C., Order 21, rules 69, 90 . Execution – Court auction – Sale proclamation – Date adjourned – whether fresh proclamation needed.	8
6	P.Balasubramanian and Others vs P.Sivaprakash and others	(2019) 4 MLJ 74	31 st January 2019	Succession Laws – Partition by Kartha – Validity	8
7	Hari steel and General Industries Ltd. and another vs Daljit Singh and Others	(2019)4 MLJ 100 (SC) LNIND 2019 SC 384	24.04.2019	Civil Procedure – Judgment on admissions – Unconditional admissions – Code of Civil Procedure, 1908, Order 12	9

SL. No.	CAUSE TITLE	CITATION	DATE OF JUDGEMENT	SHORT NOTES	PG. NO
8	Prema and Others vs Manivannan and Another	(2019) 3 MLJ 567	01.02.2019	Succession Laws – partition – Ouster – Hindu Succession Act, Section 15	9
9	Palani and Another vs V.Nithyanandam and Another Date of Judgement : 25.02.2019	(2019) 4 MLJ 175	25.02.2019	Civil Procedure – Restitution – Obstruction Petition – Code of Civil Procedure, 1908, Section 144 and Order 21 Rule 97	9
10	Dharmaji Shankar Shinde and Others vs Rajaram Shripad Joshi (Dead) Through Lrs.	2019 (4) MLJ 627	23.04.2019	Property Laws – Mortgage by conditional sale – Intention of Parties – Transfer of Property Act, Section 58(c)	10
11	P.V.Parasuraman (died) and others vs Ravichandran @ Murugan and others	2019 (2) L.W. 611	12.09.2018	Injunction/ Declaration, when to ask, Declaratory relief, asking of, scope Specific relief Act (1963), Section 34, Declaratory relief, asking of, scope	10

MADRAS HIGH COURT – CRIMINAL CASES

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGEMENT	SHORT NOTES	PG. NO
1.	State represented by the Deputy Superintendent of Police, 'Q' Branch CID, Madurai City, Tallakulam PS vs Roopesh	2019 (1) LW (CrI) 456	10.08.2018	Criminal Procedure Code, Section 207, 482 – challenging the order of session judge who had directed the state the translating the copies of the final report into English-drag on the proceedings.	11
2	A. Ahamed Salaluden and others vs R. Kannan S.I.Dn. 113, Food Inspector, Zone VII, Corporation of Chennai	2019 (1) LW (CrI) 784	24.01.2019	Prevention of Food Adulteration Rules (1955), Rule 32(b)(2)(ii) and 32(b)(2)(v) Food Adulteration act, Section 13(2)- manner of misbranding sample	11
3.	M/s. BMD Hotels & Resorts Pvt. Ltd. Vs P. Murali	2019 (1) LW (CrI) 805	12.04.2019	Criminal Procedure Code, Section 362, 482, Criminal Rules of Practice, Rule 254- Recall of judgment when to be made.	11
4.	V. Nagarajan and others vs B.P. Thangaveni	2019 (1) LW (CrI) 936	04.04.2019	Domestic Violence Act (2005), Sections 28,32 Protection of Women from Domestic Violence Rules (2006), Rule 15(6) Criminal Procedure Code, Section 468 Domestic Violence – compensation claim against in laws – whether permissible	12
5	Rangan and another vs State rep. by The Inspector of Police, K-6, T.P. Chatram Police Station, Chennai	2019 (1) MLJ (CrI) 625: LNIND 2019 MAD 96	11.01.2019	Narcotics – Custody of contraband – Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 8(c) and 20(b)(ii) (B) – punishment varies depending upon the quantity of narcotics substance posses by the accused	12

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGEMENT	SHORT NOTES	PG. NO
6	Veerasamy vs State Rep By The Inspector of Police, Suramangalam Police Station, Salem	2019 (2) MLJ (CrI) 472 :: LNIND 2019 MAD 1955	04.03.2019	Indian Penal Code – 1860, Sections 366-A and 496 Abduction of minor girl- illegal marriage of minor girl whether the trial judge right in convicting appellant based on evidence on record. Specific intention or knowledge to force the victim to have illicit intercourse is the most important element of Section 366-A	12
7	M.Abdul Gaffar and another Vs. State Rep.by Protection Officer, Domestic Violence Act, District Welfare Officer, Collectorate, B.Block, Sathuvachari, Vellore, Vellore District and another	2019I MLJ(CrI) 680	22.01.2019	Criminal Procedure Code, Sec 125- Muslim women(Protection of right on divorce) Act 1996 Sec5 – Protection of women from domestic violence act 2005- Muslim wife, who is unable to maintain herself can invoke the provision of Sec.125 of Crpc.	13
8	Thomas (A) Rajan Vs State By Inspector of Police, Villianur Police Station, Puducherry .	(2019)1 MLJ (CrI) 742 LNIND 2019 MAD 52	02.01.2019	Indian Penal Code 1860 Sec 304 Part I – Culpable homicide not amounting to murder – conviction of accused on sole eye witness – effect.	13
9	T.Varadharajan Vs Inspector of Police, Sooramangalam Police Station, Salem District and another	(2019) 2 MLJ (CrI) 117 LNINDORD 2019 MAD 1704	19.02.2019	Code of Criminal Procedure Sec.195(1) – Indian Penal Code 1860 Sec.120b, 176 and 384 - Complaint against Government Servant - Requirements	14
10	Syed Ali Abbas abd another vs S.M.M. Md. Ali and Others	2019 (2) MLJ (CrI) 654 LNIND 2018 MAD 7473	13.12.2018	Indian Penal Code, 1860, Sections 499, 500 and 501 – Defamation – requisite - mens rea	14

SUPREME COURT – CIVIL CASES

2019 (4) SCC 698

Punjab Wakf Board vs Sham Singh Harike

Date of Judgment: 07.02.2019

In the judgment in Haryana Wakf Board v. Mahesh Kumar, (2014) 16 SCC 45, Supreme Court has laid down that the question as to whether the suit property is a Wakf property is a question which has to be decided by the Tribunal. In the above case plaint was returned by the Appellate Court under Order VII Rule 10 for presentation before the Tribunal which view was upheld by Supreme Court.

2019 (3) SCC 594

Sneh Lata Goel vs Pushplata and Others

Date of Judgment: 07.01.2019

Section 21 CPC makes it clear that an objection to the want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit. Hence, it has to be raised before the court of first instance at the earliest opportunity, and in all cases where issues are settled, on or before such settlement. Moreover, it is only where there is a consequent failure of justice that an objection as to the place of suing can be entertained. Both these conditions have to be satisfied.

2019 (4) SCC 592

**Gopalakrishna (Dead) by Legal Representatives and others vs Narayanagowda (Dead)
by Legal Representatives and others**

Date of Judgment: 03.04.2019

There is no dispute that the parties are governed by the Madras School of Hindu Law. There under, every female who succeeded as an heir whether to a male or a female, took a limited estate in the property inherited by her.

2019 (2) SCC 727

Jamila Begum (Dead) Through legal Representatives vs Shami Mohd,(Dead) Through legal Representatives and another

Date of Judgment: 14.12.2018

Sale deed dated 21.12.1970 in favour of Jamila Begum is a registered document and the registration of the sale deed reinforces valid execution of the sale deed. A registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law.

2019 (2) SCC 747

Prakash Chand Daga vs Saveta Sharma and others

Date of Judgment: 14.12.2018

The Supreme Court in view of the prevailing law and specifically in view of it's recent judgment in the case of *Naveen Kumar v. Vijay Kumar & ors* held that "Even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person ...*Merely because the vehicle was transferred does not mean that such registered owner stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person.*"

2019 (5) SCC 623

Shantaben and Others vs National Power Transport and another

Date of Judgment: 06.03.2019

The deceased was self-employed and was 23 years of age, an addition of 40% of the established income is required to be provided in view of the decision in *Pranay Sethi*. Further, for determination of multiplicand, it is noticed that the deceased had left behind his wife, mother and two minor sisters apart from his father. Even if father of the deceased is not taken as dependent, it appears reasonable to take the number of his dependents as 4 and to provide for deduction of 1/4th for personal and living expenses. The deceased being 23 years of age and in the overall circumstances, multiplier of 18 would be appropriate in the present case.

2019 (3) SCC 704

Kamal Kumar vs Premlata Joshi and Others

Date of Judgment: 07.01.2019

Specific Relief being discretionary remedy, material questions looked into are:

- (i) existence of valid concluded contract;
- (ii) readiness and willingness of plaintiff to perform his part of contract;
- (iii) plaintiff performing his part of contract and its extent and manner, and whether such performance is in consonance with terms of contract;

- (iv) whether it is equitable to grant relief of specific performance regarding suit property or it causes any hardship to defendant, and if yes, how and in what manner such relief can be granted;
And

- (v) entitlement of plaintiff to any other alternative remedy such as refund of earnest money with interest, etc. and on what grounds such relief can be granted – Parties must properly plead and prove their respective stand.

SUPREME COURT – CRIMINAL CASES

2019 (1) SCC (CrI) 550: :2018 (14) SCC 55

Balakrishnan and others vs State of Tamil Nadu

Date of Judgment: 18.01.2018

The evidence of P.W.1 and 2 are considered. The said witnesses have without any ambiguity implicated the accused for the injuries caused leading to the death of Chelladurai and also the injuries caused to PW-1 and PW-2. On such consideration we find that the inconsistencies and contradictions do not affect the core of their testimonies. Merely because the defence witnesses have not been contradicted by reference to their previous statements following the provisions of section 145 of the Evidence Act it would not permit the Court to accept the version as unfolded by the said witnesses to be the correct version.

2019 (1) SCC (CrI) 553: 2018 (14) SCC 58

Pranjay Purushotambhai Goradia vs State of Maharashtra

Date of Judgment: 16.01.2018

Taking into account date of incident which is almost two decades old; age of appellant at the time of incident (i.e. 21yrs) and period of custody suffered (i.e. over 12 yrs), ends of justice would be adequately met if sentence of life imprisonment is altered to one of period undergone by the appellant till date. Additionally, a total amount of compensation of Rs. 10,00,000(inclusive of Rs. 2,00,000 which was deposited before High Court) shall be paid by appellant within 6 months of his release from prison. Such compensation will be paid to victim or her family . In the event of any refusal to accept compensation, it will be open for trial court to pass orders making available the said sum of Rs 10 lakhs to such social or charitable body as the court may deem fit and proper.

2019 (1) SCC (Cri) 568: 2018 (14) SCC 202

Ashoke Mal Bafna vs Upper India Steel Manufacturing and Engineering

Company Limited

Date of Judgment: 06.03.2017

To fasten vicarious liability under Section 141 of the Negotiable Instrument Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action [See : Pooja Ravinder Devidasani v. State of Maharashtra & Ors. AIR 2015 SC 675].

2019 (1) SCC (Cri) 608:: 2018 (14) SCC 473

Gulam Mohammad Malik vs State of Gujarat and another

Date of Judgment: 01.02.2017

The statement of appellant/accused as recorded by prosecution was voluntary – Appellant-accused accepted that he knew Hindi language although he could not write it .While recording of statement, it was specifically stated that statement of appellant-accused was read over to him, he understood it and then only put his signature . In absence of any retraction of such statement, it can be treated as voluntary and conviction can be based on it. Evidence Act, 1872 Ss. 24 to 26 – Criminal Trial – Confession – Confession under special statutes.

2019 (1) SCC (Cri) 701: : 2019 (2) SCC 303

State of Uttar Pradesh vs Wasif Haider and others

Date of Judgment: 10.12.2018

Criminal Trial injured witnesses – Non examination of and effect. The prosecution failed to examine Ram Chandra, the orderly of the deceased who was also injured in the same incident and had suffered a gunshot injury. The prosecution was also unable to prove the injury report of the above victim. Such a failure is fatal to the prosecution case as his presence in the place of occurrence is beyond doubt. It has been placed on record that, despite Ramchandra attending the proceedings of the trial regularly he was not examined by the prosecution.

2019 (1) SCC (Cri) 737 :: 2019 (2) SCC 344

Naman Singh Alias Naman Pratap Singh and another vs State of Uttar Pradesh and others

Date of Judgment: 13.12.2018

It is therefore apparent that in the scheme of the Code, an Executive Magistrate has no role to play in directing the police to register an F.I.R. on basis of a private complaint lodged before him. If a complaint is lodged before the Executive Magistrate regarding an issue over which he has administrative jurisdiction, and the Magistrate proceeds to hold an administrative inquiry, it may be possible for him to lodge an F.I.R. himself in the matter. In such a case, entirely different considerations would arise. A reading of the F.I.R. reveals that the police has registered the F.I.R on directions of the Sub-Divisional Magistrate which was clearly impermissible in the law. The Sub-Divisional Magistrate does not exercise powers under Section 156(3) of the Code. The very institution of the F.I.R. in the manner done is contrary to the law and without jurisdiction.

Nipun Saxena and another vs Union of Indian and others

Date of Judgment: 11.12.2018

POCSI for – Sections 33(7) and 24 (5) minor/child victims a sexual offences – Disclosure of identity – Guidelines – In view of the discussion, we issue the following directions:-

- 1) No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.
- 2) In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorization of the next of the kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.
- 3) FIRs relating to offences under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of IPC and offences under POCSO shall not be put in the public domain.
- 4) In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.
- 5) The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinized in the public domain.
- 6) All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.
- 7) An application by the next of kin to authorise disclosure of identity of a dead victim or of a victim of unsound mind under Section 228A(2)(c) of IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228A(1)(c) and lays down a criteria as per our directions for identifying such social welfare institutions or organisations.
- 8) In case of minor victims under POCSO, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.
- 9) All the States/Union Territories are requested to set up at least one ‘one stop centre’ in every district within one year from today

MADRAS HIGH COURT – CIVIL CASES

2019 (1) LW 844

M. Rathinasamy vs G. Vaithyanathan

Date of Judgment: 02.01.2019

Court in the prior suit has incidentally discussed about the title though without framing any issue, then in the subsequent suit without seeking declaration of title, mere relief of recovery of possession alone is not sustainable. Alternatively, if, the plaintiff claims recovery of possession based on previous possession and not on title, the judgment in the prior suit will act as a bar under resjudicata. Either way the plaint as framed is not sustainable.

2019-2 L.W. 217

M/s.Hateemy Sales Corporation, Rep by its Prop.Husseni (deceased)

and others vs Mr.R.Sudhakar

Date of Judgment: 15 .12. 2012

It is well settled that the Bonafide requirement has to be decided on the date of petition, Landlord has changed the business during the pendency of this revision, it cannot be stated that there was no bonafide to all.

Landlord is carrying on business in another building which is not his own – If the building is not his own building, there is nothing under section 10(3) (a)(iii) which debars him to have a recourse to seek for eviction for carrying on his business-It is for the landlord to choose the building , area and extent of the land required for his own business. Tenant cannot dictate to the land lord to continue business in the same extent as he was carrying on in the rented building.

2019 (2) LW 186

G. Vasanthi vs M. Muneeshwaran

Date of Judgment: 02.01.2019

The contention of the revision petitioner is that the Court below could not have directed the revision petitioner / wife to undergo DNA test, since the respondent / husband had himself accepted that he had physical contact with the revision petitioner herein on two occasions. The respondent husband had taken part in the Valaikappu function and only after the birth of the child, he developed suspicion – The initial contention of the revision petitioner’s Counsel was that directing the wife to undergo DNA test when there is no pleading of non-access would run counter to Section 112 of the Indian Evidence Act and also be violative of the fundamental right of the wife guaranteed under Article 21 of the Constitution of India – The revision petitioner / wife did not file any application before the learned trial Judge, disputing the observation of the trial Judge that she had consented to undergo the DNA test. Therefore, I have to necessarily hold that this Civil Revision Petition itself is not maintainable.

2019 (3) LW 241

Dr. S. Senthilkumar vs A.R. Venkidusamy

Date of Judgment: 03.06.2019

The combined reading of the Section 68 of the Indian Evidence Act and the Section 63 of the Indian succession Act would go to show that insofar as the truth and validity of the will in question, it shall be necessary to call the attesting witness in proof of the same and only in circumstances where the attesting witnesses are not alive or if such attesting witnesses could not be found or in other words could not be summoned by the party concerned for one reason or the other, it is found that the recourse could be made to section 69 of Indian Evidence Act.

2019 (3) MLJ 173:: LNINDORD 2019 MAD 1170::2019 (2) LW 35

Purushothaman vs Ranganathan(deceased) Sivakamasundari

Date of Judgment: 14.02.2019

Order 21 Rule 69 1 CPC, – empowers the Execution Court to adjourn any sale by recording the reasons for such adjournments. Rule 69(2) of CPC., prescribes that when the sale is adjourned under Rule 69(1), for more than 30 days, a fresh proclamation shall be made.

(2019) 4 MLJ 74

LNIND 2019 BMM 110

P.Balasubramanian and Others vs P.Sivaprakash and others

Date of Judgment : 31.01. 2019

Two suits, one filed by Plaintiff for partition and another suit filed by 2nd Defendant for declaration partition deed, settlement deed, and will are invalid were filed. The trial court decreed suit for partition alone. Hence these appeals. The partition effected by Kartha of the Hindu joint family could not be upheld unless it was shown to be just, fair and equal. Since the trial court did not frame any issues recording fairness and justness, it is insufficient for the court to come to the conclusion that the partition deed executed by Kartha is fair and just. In the absence of any material evidence in this regard the validity of partition deed is in question Hence suits remitted to trial court only for deciding the fairness and justness of the partition deed.

(2019)4 MLJ 100 (SC)

LNIND 2019 SC 384

Hari steel and General Industries Ltd. and another vs Daljit Singh and Others

Date of Judgment : 24.04.2019

There is no categorical and unconditional admissions, as claimed by the Respondents. In view of the stand of the appellants that the pages 3 and 4 of the agreement are tempered and their signatures are fabricated, when specific issue is already framed, it cannot be said that there are categorical and unconditional admissions by the Appellants. Mere admission of entering into arrangement/ contract cannot be considered in isolation, without considering the further objections of the Appellants that certain pages in the agreement are fabricated.

(2019) 3 MLJ 567

LNIND 2019 MAD 601

Prema and Others vs Manivannan and Another

Date of Judgment : 01.02.2019

When mother had died, her right in suit properties had devolved on her heirs under Section 15 of Hindu Succession Act, Mere inaction or non-responsiveness to demand for partition by co-sharer inadequate to strip latter of his vested right in property – positive act must be done by co-sharer adverse to interest of other co-sharer who was sought to be ousted, and to latter's knowledge.

(2019) 4 MLJ 175

LNINDORD 2019 MAD 3089

Palani and Another vs V. Nithiyanandam and Another

Date of Judgment : 25.02.2019

Application for obstruction under Order 21 Rule 97 shall be filled only for seeking removal of obstruction made by third person – Only in process of execution of decree, if obstruction made by third party, decree holder could file application to remove such obstruction caused by any third party not by others – Issue was not with regard to execution of decree, but only restitution of possession of property – who were already evicted through process of law, on the basis of fair and decreetal order passed by the court, which was subsequently set aside by a competent civil court. When a person who is in possession of the property is dispossessed on the basis of any decree or fair and decreetal order, thereafter such decree or final order was set aside by the competent court either by law or by some other proceedings, the person who dispossessed from property can restore his possession only by way of seeking restitution of possession under Section 144- When such person was exercising his right provided under Statue, judgment-debtor or any person claiming right through him, could not make any obstruction under Order 21 Rule 97 – Revision allowed.

2019 (4) MLJ 627 (SC)

Dharmaji Shankar Shinde and Others vs Rajaram Shripad Joshi (Dead) Through Lrs.

Date of Judgment: 23.04.2019

Though transaction and condition to repurchase were embodied in one document, having regard to intention of parties and surrounding circumstances, Ex.P-73 did not fall within proviso to Section 58(c) – Ex.P-73, registered document, was not mortgage but transaction of sale with condition to repurchase.

2019-2-L.W. 611

P.V.Parasuraman (died) and others vs Ravichandran @ Murugan and others

Date of Judgment : 12.09.2018

The High Court failed to appreciate the evidence and Ex. P73, a deed of “ Mortgage by conditional sale” which is a registered document that even through the transaction and condition to repurchase are embodied in one document, having regard to intention of the parties and surrounding circumstances, it does not fall within the proviso to see 58(c). The High Court failed to note that since executants failed to pay the amount within the stipulated time of 5 years, the respondents have lost their right to repurchase the property and the judgment is liable to be set aside.

MADRAS HIGH COURT – CRIMINAL CASES

2019 (1) LW (Crl) 456

**State represented by the Deputy Superintendent of Police, 'Q' Branch CID, Madurai
City, Tallakulam PS vs Roopesh**

Date of Judgment: 10.08.2018

In the instant case, the respondent seems to be a highly knowledgeable person and a reading of the petitions that have been prepared by him clearly shows that he understands the case that has been filed against him and he also understands the various rights that have been given to him under the Code of Criminal Procedure. The ground taken by the respondent that he does not know Tamil language gets falsified by the very fact that he subsequently chose to file a discharge petition by extensively referring to the final report and the 161 Cr.P.C. statements from the witnesses.

2019 (1) LW (Crl) 784

**A. Ahamed Salaluden and others vs R. Kannan S.I.Dn. 113, Food Inspector, Zone VII,
Corporation of Chennai**

Date of Judgment: 24.01.2019

The Public Analyst has not mentioned as to how and what in manner the sample was misbranded and there is no specific averments that the consumers being misled on account of misbranding and in the absence of any such clear averments, it cannot be said that the consumers are misled or misdirected. Further, there is a delay in issuing 13(2) Notice and the details of misbranding has not been mentioned. In view of the above the complaint against the petitioner is liable to be quashed.

2019 (1) LW (Crl) 805

**M/s. BMD Hotels & Resorts Pvt. Ltd. Rep by its Managing Director Nirmala Devi
and 3 Others Vs P. Murali**

Date of Judgment: 12.04.2019

There is no material in the Court records to show that the accused were served notice in the appeals. Even the private notice ordered by this Court was returned unserved. Once the accused were not put on notice about the pendency of the appeals before this court, this Court has to take a call as to whether non-service of notice on the petitioners/ accused in the appeal proceedings is detrimental to the judgment and whether the appeal could be disposed of on merits, which disposal, in the circumstances of the case was adverse to the interests of the accused.

2019 (1) LW (Crl) 936

V. Nagarajan and others vs B.P. Thangaveni

Date of Judgment: 04.04.2019

It is seen that the relief sought for by the respondent in the domestic violence case with regards to residential rights, compensation etc., can be made and claimed as against her husband, who is already a party in that case. The petitioners 2 to 4 herein are only in-laws of the respondent and they are living separately. As such, the protection order sought for by the respondent herein in the domestic violence case against these petitioners 2 to 4 /in-laws, based on the allegations, cannot be maintained, in view of the fact that the allegations of harassment meted out by the petitioners 2 to 4 against the respondent itself seems to be false. While that being so, there cannot be any act of any domestic violence as defined under Domestic Violence Act against these petitioners 2 to 4. In the absence of the same the proceedings as against these petitioners 2 to 4 cannot be maintained and consequently, the petitioners 2 to 4 need not undergo the ordeal of facing a criminal trial.

2019 (1) MLJ (Crl) 625: LNIND 2019 MAD 96

Rangan and another vs State rep. by The Inspector of Police, K-6, T.P. Chatram Police Station, Chennai

Date of Judgment: 11.01.2019

The provision of Act is so clear and stringent and the punishment varies depending upon the quantity of the narcotic substance possessed by the accused, when that being the position, in so far as the conclusion arrived at by the Courts on the quantity of the contraband seized as if possessed by the accused is concerned, it must be so vigilant and satisfy itself without any iota of doubt that, the quantity of the contraband as claimed by the prosecution, seized from the accused is produced before the Court and the measurement also shall be ensured.

2019 (2) MLJ (Crl) 472 :: LNIND 2019 MAD 1955

Veerasamy vs State Rep By The Inspector of Police, Suramangalam Police Station, Salem

Date of Judgment: 04.03.2019

When prosecution failed to prove existence of specific intention or knowledge that she will be forced or seduced to illicit intercourse with another person which is most important element in constitution of offence under Section 366-A, Trial Court erred in convicting Appellant / accused – In respect of offence under Section 496, prosecution had to prove by legal evidence that accused with dishonest or fraudulent intention went through ceremony of marriage and when going through such ceremony, Appellant/Accused know that notwithstanding those ceremonies, he was not thereby lawfully married to complainant. Prosecution has miserably failed to bring home the fault of Appellant/accused for offence under Section 496 also beyond all reasonable doubt. The Trial Court without understanding

the charges and the evidence let in rendered an erroneous judgment finding the Appellant/Accused guilty of offences.

2019I MLJ(CrI) 680

M.Abdul Gaffar and another Vs. State Rep.by Protection Officer, Domestic Violence Act, District Welfare Officer, Collectorate, B.Block, Sathuvachari, Vellore, Vellore District and another

Date of Judgment: 22.01.2019

Section 125 of the Code of Criminal Procedure 1973 provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties. Muslim wife, who is unable to maintain herself, can therefore invoke the provisions of Section 125 of Code 1973 and there is nothing which comes in her way.

(2019)1 MLJ (CrI) 742
LNIND 2019 MAD 52

Thomas (A) Rajan Vs State By Inspector of Police, Villianur Police Station, Puducherry

Date of Judgment: 02.01.2019

The evidence given by the alleged sole eyewitness, PW3, cannot be considered at all since she was declared as hostile witness and replete with inconsistencies. It is, therefore, very difficult to treat the said witness as wholly reliable so as to uphold the conviction of the accused on the basis of such evidence as held by the learned trial court, The prosecution has also failed to prove other circumstances in this case because of the missing chain of link since the material witnesses did not support the prosecution case. The Prosecution has failed to prove the charges framed against the appellant. It appears that the learned trial judge placed reliance upon the inadmissible portion of P.W.3 taking corroboration with the hearsay evidences of P.Ws1 and P.W.2, convicted the Appellant erroneously. Merely on the basis of a suggestion given by some of the hearsay witnesses, the Appellant cannot be held to be guilty.

(2019) 2 MLJ (CrI) 117
LNINDORD 2019 MAD 1704

**T.Varadharajan Vs Inspector of Police, Sooramangalam Police Station, Salem District
and another**

Date of Judgment: 19.02.2019

The object of Section 195(1) is to protect person from being vexatiously prosecuted upon inadequate materials or insufficient grounds by person actuated by malice or ill-will or frivolity of disposition at the instance of private individuals for the offences specified therein. Therefore, it is mandatory that the Court has no jurisdiction to take cognizance of any of the offence mentioned therein unless there is a complaint in writing of ‘ the public servant concerned’ as required by the section without which the trial under section 176 Code 1860 becomes void ab initio.

2019-1- L.W.(CrI) 654

I. Syed Ali Abbas and another vs S.M.M. Md. Ali and Others

Date of Judgment: 13.12.2018

To satisfy ingredients of Section 499 of Code 1860, requisite men rea also would be essential. It is pertinent to note that the letter is not the brain-child of the Respondents alone. This Court is of the opinion that the learned Magistrate was well justified in arriving at a particular conclusion after recording reasons especially in view of the fact that two views are possible, one in favour of the accused and another to the contra, it is needless to say that benefit always to go in favour of the accused and not in favour of the prosecution. Court is satisfied that this case would fall under Exception-8 of Section 499 of Code 1860 involving a public question and the findings recorded by the learned Magistrate cannot be found fault and accordingly they are hereby confirmed.
