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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

2011 (13) SCALE 527

Gaytri Bajaj
Vs
Jiten Bhalla

Hindu Law – Hindu Marriage Act, 1955 – SECTION 13B – HINDU MINORITY AND GUARDIANSHIP ACT, 1956 – GUARDIANSHIP AND WARDS ACT, 1890 – Custody of two daughters – Welfare and interest of the child as paramount consideration – Petitioner wife and respondent husband were married on 10.12.1992 and two daughters were born, elder daughter on 20.8.1995 and the younger daughter on 19.4.2000 – On 3.6.2003, a decree of divorce was passed u/s 13B of the Hindu Marriage Act – Two daughters, now aged 17 years and about 11 years are living with their father and are in his custody – Petitioner wife had no access to the children or even a brief meeting with them – Both the children wanted to continue to live with their father and they did not want to go with their mother – Whether visitation rights can be provided to the mother – Allowing the petition, Held.

2011-5-L.W. 612

Ganuri Koteswaramma & Anr
Vs
Chakiri Yanadi & Anr

Hindu Succession Act (1956), Section 6,

Hindu Succession (Amendment) Act (2005), Section 6/Daughters share in Co-parcenary property, when arises,

Hindu Law Coparcenary property, Right of daughter after amendment, Decree, Preliminary and final, Scope,

C.P.C., Section 97, Order 20, Rule 18 New Section 6 provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from September 9.2005 – On and from September 9.2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son.

Excepted categories to which new Section 6 is not applicable are (i) where disposition or alienation including any partition has taken place before December 20, 2004; and (ii) where testamentary disposition of property has been made before December 20, 2004 – Question is whether the preliminary decree passed by the trial court on 19.9.2003 and amended on 27.9.2003 deprives the appellants of the benefits of 2005 Amendment Act although final decree for partition has not yet been passed.

A preliminary decree determines the rights and interests of the parties – the suit for partition is not disposed of by passing of the preliminary decree- It is by a final decree that the immovable property joint Hindu family is partitioned by metes and bounds.

After passing of the preliminary decree and before the final decree is passed, circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree predetermining the rights and interests of the parties.

(2011) 8 Supreme Court Cases 613

Ramesh Kumar and Anr

Vs

Furu Ram and Anr

(A) Arbitration Act, 1940 – Ss. 32, 33, 30, 14 and 17 – Suit challenging validity of order and decree passed under S. 17, on allegation of them having been obtained by fraud and misrepresentation – Maintainability – In order to establish said allegation of fraud and misrepresentation, further contentions raised that arbitration agreement and award as well as proceedings under Ss. 14 and 17 were all fraudulent – Latter contentions, held, were merely incidental to the challenge to the order and decree of court – Hence, Ss. 32 and 33 do not bar maintainability of said suit – Civil Procedure Code, 1908, S. 9.

(B) Arbitration Act, 1940 – Ss. 17, 14 and 2(b) – Award – Registration of, when compulsory – Effect of non-registration – Dispute over loan agreement leading to transfer of possession of land – Arbitral award declaring transfer of title to transferee- Such arbitral award, held is compulsorily registrable – Where subject-matter of arbitration was non-payment of loan and not any dispute regarding immovable property, but in view of admission by both parties that one of them borrowed amount exceeding ₹ 100 from, and delivered possession of his land to, other party due to former's inability to repay, arbitrator passed award declaring lender to have become absolute owner of said land, held, such award was compulsorily registrable – Therefore, if not registered, the same could neither be acted upon nor could a decree be passed in terms thereof – Arbitration and Conciliation Act, 1996 – Ss. 35, 36 and 2(1)(c) – Registration Act, 1908 – Ss. 17(1)(b) & (2) (vi) and 49 – Property Law – Conveyancing – Arbitral award when amounts to conveyance of title – Transfer of Property Act, 1882, S. 54.

(C) Arbitration Act, 1940 – Ss. 17 and 14 – Decree made in terms of collusive and sham award – Held, invalid – Fraud / Forgery / Mala Fides – Civil Procedure Code, 1908, Ss. 33 and 2(2).

(D) Arbitration Act, 1940 – Ss. 17, 14, 2(b), 32, 33 and 30 – Decree under S. 17 as well as award itself, on facts, held, vitiated by fraud or misrepresentation on part of award-holder – Meaning of word “fraud”, its ingredients, and forms it might take, considered - On evidence held: (i) appellants had, although transferred their land to respondents, albeit for limited period, for consideration received, respondents got certain documents signed by appellants and submitted same to court under S. 17, Arbitration Act, 1940, (ii) order from said court was obtained in fraudulent manner, (iii) arbitration agreement, arbitral awards declaring respondents herein to have become absolute owners of said land and submitted before said court, and decrees so obtained were sham and nominal, underlying object of award-holder being evasion of stamp duty and registration charges which would have been otherwise payable, and (iv) obtaining of decree in such manner amounted to committing fraud upon court and State Government by evading liability to pay stamp duty and registration charges – Contract Act, 1872 – S. 17 – Hindu Marriage Act, 1955 – S. 12 – Taxation – “Tax fraud” what is – Stamp Act, 1899 – S. 3 – Registration Act, 1908 – S. 17 – Civil Procedure Code, 1908 – Or. 21 R. 90 – Constitution of India – Art. 136 – Maintainability – Reappreciation of evidence.

(E) Arbitration Act, 1940 – Ss. 17, 14 2(b), 33 and 30 – Decree under S. 17 as well as award itself, if on facts, vitiated by fraud or misrepresentation on part of award-holder – Circumstances warranting interference by Supreme Court with factual findings of courts below on said question – Appellant-plaintiffs challenging said decree as null and void and also alleging the same to have been obtained by fraud and misrepresentation – Trial court upholding said challenge but rejecting the latter allegation – Without adverting to question of fraud and misrepresentation, first second appeal filed by appellant-plaintiffs – In such circumstances, held, appellant-plaintiffs could rightly raise said question in SLP – Finding in the negative given by courts below by ignoring material evidence and failing to draw proper inference therefrom, interfered with and set aside – Constitution of India – Art. 136 – Maintainability – Questions of fact – Findings of fact relating to fraud and misrepresentation.

(F) Arbitration Act, 1940 – Ss. 17, 14 and 2(b) – Decree in terms of award, as well as award itself, if on facts vitiated by fraud on part of parties – Appreciation of evidence – Avoidance by defendant from being examined – Adverse inference from – Where defendant, although produced several defence witnesses, did not himself enter into witness box to give his version, adverse inference drawn in view of S. 114 III. (g) of Evidence Act – Evidence Act, 1872 – S. 114 III. (g) and Ss. 101 to 103 – Civil suit – Witnesses.

(G) Practice and Procedure – Pleadings – Evidence contrary to – Inadmissibility – Reiterated, such evidence cannot be relied on or accepted – Civil Procedure Code, 1908 – S. 26, Or. 6 Rr. 1 & 2. Or. 18 R. 2 and Or. 7 R. 1 and Or. 8 R. 1 – Evidence Act, 1872, Ss. 101 and 102.

(H) Arbitration Act, 1940 – Ss. 8, 21 and 2(e) & (a) – Reference to arbitration – Condition precedent for, reiterated, is existence of dispute and arbitration agreement – Arbitration and Conciliation Act, 1996, Ss. 8, 11, 34, 7 and 2(1)(b).

2011-4-L.W. 725

State of Haryana

Vs

Mukesh Kumar & Ors

Adverse Possession / Claim by the State whether tenable, Urgent need for a fresh look of the entire law on adverse possession.

Recommendation made to the Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession, and in the alternate to make suitable amendments in the law of adverse possession, Historical Background.

How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling – This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible.

It is indeed a very disturbing and dangerous trend – In our considered view, it must be arrested without further loss of time in the larger public interest.

No Government Department, Public Undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens and grab the property of its own citizens in the manner that has been done in this case – Special Leave Petition dismissed with costs of ₹ 50,000/-.

(2011) 10 Supreme Court Cases 756

Laxman Alias Laxman Mourya

Vs

Divisional Manager, Oriental Insurance Company Ltd and Anr

Motor Vehicles Act, 1988 – Ss. 166, 168, 173 and Sch. II – Compensation – Determination of – Permanent partial disability – Compensation for – Pecuniary and non-pecuniary heads – Some guesswork permissible – Need to estimate functional disability – Doctor (PW 2) certified that appellant claimant had suffered 26% disability in the right lower limb, 25% urethral injury and overall 38% disability to the whole body – Held, MACT and High Court did not properly award compensation under pecuniary and non-pecuniary heads – Appellant was 24 yrs and was earning ₹ 5000 p.m. and respondent Insurer did not controvert these facts – Appellant claimant suffering 38% disability his working capacity was rendered to zero – Therefore by taking 18 as multiplier and ₹ 5000 as his monthly earning, loss of future income of appellant claimant must be determined at ₹ 3,32,640/- Appellant must be awarded ₹ 1,50,000 towards compensation for future treatment by adopting guesswork as he did not lead any evidence to show possible expenses for future treatment – For pain, suffering and trauma, appellant must be awarded compensation of ₹ 1,50,000 – For loss of amenities including loss of marriage prospects, appellant claimant must be awarded compensation of ₹ 2,00,000 – Thus his overall compensation enhanced to ₹ 8,37,640 with interest at 8% from date of filing petition till date of realisation – Workmen's Compensation Act, 1923, S.4.

Motor Vehicles Act, 1988 – Ss. 166, 168, 173 and Sch. II – Compensation – Determination of – Permanent or temporary disability – Non-pecuniary loss – Methodology to be adopted by MACTs and courts – Reiterated – Held, MACTs and courts should adopt proactive approach and dispose of claims petitions with required urgency –

Compensation awarded should include pecuniary and non-pecuniary damages – Adequate compensation must be awarded not only for physical injury and loss of income but also for pain, suffering and trauma caused due to accident – Non-pecuniary damages should also include victim’s inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability causes due to the accident, including diminished marriage prospects, if any – Tort Law – Workmen’s Compensation Act, 1923, S.4.

Motor Vehicles Act, 1988 – S. 166 – “Compensation” – Scope of – Permanent partial disablement – Pecuniary loss – Expenses for future medical treatment – Held, apart from expenses required for immediate treatment, expenses for future medical treatment/care necessary for particular injury are included within scope of compensation – Words and Phrases – “Compensation” – Consumer Protection Act, 1986, S. 14.

2011-4-L.W. 774

Ruchi Majoo

Vs

Sanjeev Majoo

Guardians And Wards Act (1890), Sections 12, 9 Court having Jurisdiction to entertain Petition for Interim custody of Minor and grant Interim order, Expression “Where the minor ordinarily resides”, Scope,

Criminal P.C., Sections 4, 13 as amended Acts of 1999, 2002,

C.P.C., Section 151 / Interim order in application for custody of minor in a petition under G.W. Act,

Private International Law / Principle of Comity of Courts,

Conflict of Laws, Jurisdiction of Court,

Words and Phrases/ “Ordinarily resident” appearing in Section 9(1) of G.W. Act, meaning of, Liberal interpretation is the first and the foremost rule of interpretation.

Petition filed by the mother of the boy involving the jurisdiction of the Guardian Court at Delhi, stating that on the date of the presentation of the petition for custody, he was ordinarily residing at New Delhi was allowed – Order was set aside by High Court on revision preferred by the father under Article 227 – Mother appealed to Supreme Court from the said order.

Parties engaged in a bitter battle for the custody of their only child ‘K’, aged about 11 years born in America, hence a citizen of that country by birth – Proceedings included an action filed by the father (-respondent in this appeal), before the American Court seeking divorce from the wife and also custody – An order passed by the Superior Court of California, Country of Ventura in America eventually leading to the issue of a Red Corner Notice based on allegations of child abduction leveled against the mother who, like the father of the minor child, is a person of Indian origin currently living with her parents in Delhi.

Question was raised (i) Whether the High Court was justified in dismissing the petition for custody on the ground that the court at Delhi had no jurisdiction (ii) Whether the High Court was right in declining exercise of jurisdiction on the principle of Comity of Courts and (iii) Whether the order calls for any modification in terms of grant of Visitation rights to the father pending disposal of petition before trial court.

Court was requested to entertain the application on the basis of the available material, though at one stage of hearing the Court thought of doing so, and instead taking a final view on the question of jurisdiction of the Delhi Court.

High Court was not right in holding that the respondent’s version regarding the letter in question having been obtained under threat and coercion was acceptable – High Court failed to notice these aspects and fell in error in accepting the version of the respondent and dismissing the application filed by the appellant – Question No.1 answered in the negative.

Duty of a Court exercising its *Parens Patriae* jurisdiction as in cases involving custody of minor children is all the more onerous, welfare of the minor in such cases being the paramount consideration; the court has to approach the issue regarding the validity and enforcement of a foreign decree or order carefully – Simply because a foreign court has taken a particular view on any aspect concerning the welfare of the minor is not enough for the courts in this country of shut out an independent consideration of the matter – Objectivity and not abject surrender is the mantra in such cases.

In G & W Act cases, jurisdiction of the Court is determined by whether the minor ordinarily resides within the area on which the Court exercises such jurisdiction – There is thus a significant difference between the jurisdictional facts relevant to the exercise of powers by a writ court on the one hand and a court under the G & W Act on the other.

Issue whether the Court should hold a summary or a detailed enquiry would arise only if the Court finds that it has the jurisdiction to entertain the matter.

A Court that has no jurisdiction to entertain a petition for custody cannot pass any order or issue any direction for the return of the child to the country from where he has been removed, no matter such removal is found to be in violation of an order issued by a Court in that country – Party aggrieved of such removal, may seek any other remedy legally open to it – But no redress to such a party will be permissible before the Court who finds that it has no jurisdiction to entertain the proceedings.

On the question whether the High Court was right in this case in relying upon the principle of Comity of courts and dismissing the application, our answer is in the negative – Principle of ‘comity of courts’ ensures that foreign judgments and orders are unconditionally conclusive of the matter in controversy – This is all the more so where the courts in this country deal with matters concerning the interest and welfare of minors including their custody.

Respondent’s case that the minor was removed from the jurisdiction of the American Courts in contravention of the orders passed by them, is not factually correct.

Repatriation of the minor to the United States, on the principle of ‘Comity of courts’ does not appear to us to be an acceptable option worthy of being exercised at this stage – Dismissal of the application for custody in disregard of the attendant circumstances referred to above was not in our view a proper exercise of discretion by the High Court – Interest of the minor shall be better served if he continued in the custody of his mother the appellant in this appeal, especially when the respondent has contracted a second marriage – Question No. 2 is also for the above reasons answered in the negative.

Proceedings in G.P. No. 361/2001 filed by the appellant shall go on and be disposed of on the merits and expeditiously as possible.

2011-4-L.W. 805

H. Siddiqui (dead) by Lrs.

Vs

A. Ramalingam

(Indian) Evidence Act (1872), Sections 65, 66 / Secondary Evidence, when admissible – Failure to produce original document has to be accounted for – Power of Attorney, Production of xerox copy in cross examination and admitted, by witness whether sufficient proof as secondary evidence,

C.P.C., Order 41, Rule 31 / Duty of Appellate Court, Guidelines set out in Rule 31, how court has to proceed and decide the case,

Specific performance / Xerox copy of Agreement, Admissibility,

Mere admission of a document in evidence (in cross examination) does not amount to its proof – Therefore, the documentary evidence is required to be proved in accordance with law.

The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon.

Trial Court could not proceed in such an unwarranted manner for the reason that the respondent had merely admitted his signature on the photocopy of the power of attorney and did not admit the contents thereof.

More so, the court should have borne in mind that admissibility of a document or contents thereof may not necessary lead to drawing any inference unless the contents thereof have some probative value.

High Court failed to realise that it was deciding the First Appeal and that it had to be decided strictly in adherence with the provisions contained in Order 41, Rule 31 and once the issue of alleged power of attorney was also raised as is evident from the point (a) formulated by the High Court, the Court should not have proceeded to point (b) without dealing with the relevant issues involved in the case, particularly, as to whether the power of attorney had been executed by the respondent in favour of his brother enabling him to alienate his share in the property.

It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points.

Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court.

Courts below have not proceeded to adjudicate upon the case strictly in accordance with law – However, the judgment impugned cannot be sustained in the eyes of law.

We remit the matter to the High Court setting aside its judgment and decree (impugned) and request the High Court to decide the same afresh in accordance with law, as explained hereinabove.

2011-4-L.W. 840

Rajiv Gakhar (Fig. Officer)

Vs

Ms. Bhavana @ Sahar Wasif

Hindu Marriage Act (1955), Sections 5, 11 – Appeal by the husband from judgment of High Court of Punjab and Haryana setting aside judgment and decree of Additional District Judge granting his prayer for dissolution of marriage.

Grievance of the appellant was that the respondent by using emotional coercion, impersonation, misrepresentations, fraud and cheating tricked the appellant to marry her on 28.11.1999 at Arya Samaj Mandi, as per Hindu rites and ceremonies, and that appellant came to know that the respondent's actual name was 'SW' and that she had converted to Islam and was married to a Muslim, she had 2 children aged 13 and 11 out of her previous wedlock and that the High Court committed an error in dismissing the husband's petition to declare the marriage as nullity.

Held: Though the trial Court granted decree holding that the marriage between the appellant and the respondent is a nullity, the materials placed by the respondent-wife in the form of oral and documentary evidence clearly show that there was no contravention of any of the provisions, more particularly, Section 5 of the Act.

Analysis of the assertion of the respondent as RW1 and the evidence of RW 2, RW 4 and RW 6 clearly show that the respondent-wife established that before the marriage with the appellant she became a full-fledged Hindu by performing Shudhikaran ceremonies in the manner being followed by Hindu custom and all these material facts were known to the appellant at the time of the marriage.

Inasmuch as the respondent-wife established her claim that on the date of marriage with the appellant she was Hindu and the same is permissible under Section 5 of the Act, we agree with the conclusion arrived at by the High Court and reject the argument of the counsel for the appellant.

(2011) 8 MLJ 1062 (SC)
Shiveshwar Narayan and Anr
Vs
High Court of Jidicature, Patna and Anr

Constitution of India (1950), Article 226 – Judicial Service – Claim for extension of service of petitioner from 58 to 60 years – Decision of High Court on its administrative side refusing benefit of extension, quashed by Division Bench – Direction given to High Court on its administrative side to re-evaluate case for extension – Challenged – Direction by Supreme Court in All India Judges’ Association and Others v. Union of India AIR 1993 SC 2493 : (1993) 4 SCC 288 : 1993-II-LLJ-776 to enhance superannuation age of judicial officers to 60 years provided they have potential for continued useful service – Extension benefit not automatic – Directions, transitory in nature until framing of statutory rules – Primary consideration for High Court, is potential for continued usefulness of a judicial officer in service – Judicial Officer found unfit by Evaluation Committee – Unanimous acceptance of decision by Full Court – Assessment based on entire service record, quality of judgments, conduct, integrity and other relevant factors – Decision making process, not flawed – Held, interference of Division Bench with unanimous administrative decision of High Court, not justified.

RATIO DECIDENDI: The Division Bench of High Court is not justified in exercising its power of judicial review under Article 226 of the Constitution to interfere with the unanimous decision of High Court on its administrative side in not extending benefit of enhancement of retirement age of Judicial Officer from 58 to 60 years when the decision making process is not at all flawed.

(2011) 8 MLJ 1121 (SC)
Ramesh Kumar and Anr
Vs
Furu Ram and Anr

(A) Suit for declaration – Suit for declaration that orders directing arbitration awards to be made rule of Court were obtained by defendants in fraudulent manner – Trial Court decreed suits of appellants/plaintiffs – Orders passed by first appellate Court and High Court holding that there was no fraud or misrepresentation on part of defendants/respondents – Appeals – References to arbitration, proceedings before arbitrator, awards of arbitrator and proceedings in Court to get decrees in terms of awards and decrees in terms of award, all sham and bogus – Sole fraudulent object to avoid payment of stamp duty and registration charges – Courts below not justified in holding that there was no fraud or misrepresentation in obtaining decrees in terms of arbitration awards – Arbitration awards invalid for want of registration – Orders directing that said awards be made rule of Court, invalid – Judgments of first appellate Court and High Court set aside – Decree of trial Court decreeing suits filed by plaintiffs/appellants restored – Appeals allowed.

(B) Registration Act (16 of 1908), Section 17 – Documents of which registration compulsory – Arbitration award – Arbitration award which declare any right, title or interest in any immovable property of value of more than ₹ 100, compulsorily registrable – If not registered, they could not be acted upon nor could decree be passed in terms of such unregistered awards.

RATIONES DECIDENDI:

- I. Normally the Supreme Court would not interfere with a finding of fact relating to fraud and misrepresentation, but when the material evidence produced by the defendants had been ignored and the Courts below failed to draw proper inferences therefrom and had ignored a cause of fraud, the Court could interfere with reference to a question of fact.
- II. Unregistered awards which are compulsorily registrable under Section 17(1) (b) of the Registration Act, 1908 could neither be admitted in evidence nor can decrees be passed in terms of the same.

SUPREME COURT CITATIONS CRIMINAL CASES

2011 CIJ 753 CTJ

Pancho
Vs
State of Haryana

Indian Evidence Act, 1872 (1 of 1872)-Sec.3, 27, 30-Criminal trial-Appreciation of evidence-Confession-Extra judicial Confession-Delay-Coaccused-Court-Approach-Appellants were prosecuted for an offence under Sec.396 IPC for causing the death of a farmer by shooting and taking away his tractor but were convicted for an offence under Sec.302 r/w 34 IPC and were sentenced to death-High Court confirmed the conviction but reduced the sentence to life imprisonment against which they preferred SLP-While the appellants contended that extra judicial confession was not proved and the confession of the coaccused which was retracted was not to be considered, respondent resisted the same-Held, only after the charge was proved with the other evidences, to add assurance to such proof, the confession of the coaccused could be used-There was no necessity for the accused to travel 30-40 KM and make extra judicial confession after 4 months from the date of occurrence-Charge was held as not proved and the appeal was allowed.

Ratio: In dealing with a case against an accused, the court cannot start with the confession of a co-accused; it must begin with other evidences adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

(2011) 3 MLJ (Cri) 769 (SC)

Bachni Devi and Anr
Vs
State of Haryana through Secretary, Home Department

Indian Penal Code (45 of 1860), Section 304 – B - Dowry death – Harassment and ill-treatment – Any demand having connection with marriage amounts to dowry demand – Cause for demand immaterial – Demand for purchase of motor cycle amounting to demand for dowry – Conviction confirmed.

RATIO DECIDENDI: Any demand for property or valuable security, directly or indirectly, has a nexus with marriage would constitute “demand for dowry” so as to bring it within the ambit for Section 304 – B of the Indian Penal Code and the cause or reason for such demand is immaterial.

(2011) 3 MLJ (Cri) 774 (SC)

Milind Shripad Chandurkar
Vs
Kalim M. Khan and Anr

Negotiable Instruments Act (26 of 1881), Sections 138 and 142 – Dishonour of cheque - Complaint to be made by payee or by holder in due course – Appellant miserably failed to prove any nexus or connection with firm which has been payee – Appellant cannot claim to be payee of cheque nor can he be holder in due course – Appellant not entitled to make complaint.

RATIO DECIDENDI: A person can maintain a complaint provided he is either a “payee” or “holder in due course” of the cheque.

(2011) 3 MLJ (CrI) 779 (SC)

Sunita Kumari Kashyap

Vs

State of Bihar and Anr

Indian Penal Code (45 of 1860), Sections 498 – A and 406 – Dowry Prohibition Act (28 of 1961), Sections 3 and 4 – Code of Criminal Procedure, 1973 (2 of 1974), Section 178 (c) – Territorial jurisdiction to try accused for alleged offences – Issue as to territorial jurisdiction about criminal proceedings initiated by wife – Continuing offence of ill – treatment and humiliation meted out to wife in hands of all accused persons – Clause (c) of Section 178 Cr.P.C. is clearly attracted – Offence was continuing one having been committed in more local areas – The learned Magistrate in any of such local areas has jurisdiction to proceed with criminal case instituted therein.

RATIO DECIDENDI: When it is uncertain in which of several local areas an offence was committed or where an offence is continuing one and continues to be committed in more than one local area and takes place in different local areas as per Section 178 Cr.P.C, the Court having jurisdiction over any of such local areas is competent to inquire into and try the offence.

(2011) 8 Supreme Court Cases 803

Jermaniyadav

Vs

State of Bihar

Criminal Procedure Code, 1973 – Ss. 437 and 439 – Grant of bail – Condition imposed – Sustainability – Absconding accused vis-à-vis co-accused who had surrendered – Appellant with co-accused B picked up a child and killed him in revenge – Appellant was taken in custody 10 years after occurrence – Bail granted, with condition that appellant would be enlarged on bail only after he completes the same period of incarceration as co-accused B – Held, order of High Court not sustainable – High Court might have rejected bail application, distinguishing appellant's case that he was an absconder – High Court might have ordered expeditious trial, but such bail condition is unsustainable – High Court directed to reconsider bail application – Penal Code, 1860, S. 302.

(2011) 3 MLJ (CrI) 939 (SC)

Lakhan Lal and Anr

Vs

State of Bihar

- (A) Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Sections 7-A, 2(k) and (l) – Claim of Juvenility – Determination of age – Reckoning date for juvenility the date on which the offence committed – Not the date when produced before Court or Authority.
- (B) Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Sections 7-A, 2(k) and (l) – Claim of Juvenility – Maintainability – Fact of Juvenility ignored by trial Court as well as Appellate Court – Appellants crossed 40 years of age – Yet claim continued in further appeal as if they were to be juvenile – Claim considered even though the appellants convicted under Section 302 IPC and serving the sentence of three years therefore – Conviction sustainable – Sentence awarded set aside and released forthwith – Dharambir v. State, (2010) 4 MLJ (CrI) 716, followed.

RATIONES DECIDENDI:

- I. Even when the juvenile ceases to be a juvenile i.e., crosses the age of 18 years, the inquiry must be continued and orders made in respect of such person as if such person had continued to be a juvenile.
- II. Even though issue as to whether the accused were juvenile did not come up for consideration for whatever reason before the Courts below, the same could be considered at any stage of the proceedings.

(2011) 4 MLJ (CrI) 1048 (SC)

**Inderjit Singh Grewal
Vs
State of Punjab and Anr**

Protection of Women from Domestic Violence Act (43 of 2005), Section 12 – Code of Criminal Procedure, 1973 (2 of 1974), Section 482 – Quashing of criminal complaint – Filing of criminal complaint against husband by wife – Allegation that divorce decree obtained by them, a sham transaction – Plea of fraud – Wife alleges that both of them living together even after divorce – Wife seeks to declare decree of divorce as null and void – Order of dismissal of application filed under Section 482 for quashing complaint, challenged – Complainant admits herself to be abettor to alleged fraud – Not entitled to any equitable relief – Aggrieved party to approach appropriate forum to question validity of order of divorce – An order even if void or voidable requires to be set aside by competent Court – Suit to declare decree of divorce as nullity, still pending before competent Court – Held, judgment and decree of a competent Civil Court cannot be declared null and void in collateral proceedings – Further proceedings amounts to abuse of process of Court – Complaint quashed – Appeal allowed.

RATIO DECIDENDI: Judgment and decree of a competent Civil Court cannot be declared null and void in collateral proceedings and an order even if void or voidable requires to be set aside by the competent Court.

HIGH COURT CITATIONS CIVIL CASES

2012-1-TLNJ 281 (Civil)

Mr. K. Chandrasekar
Vs
Mrs. Ramani

Hindu Marriage Act, 1955, Section 13(1)(ia) & Section 9 – Husband sought divorce on alleged mental cruelty and guilty of adultery – Wife sought conjugal rights – DNA test report obtained to prove paternity of child – trial court dismissed divorce petition – on appeal in High Court Husband argued that DNA report establishes husband only as biological father of child but cannot be conclude that wife did not have alleged illegal illicit intimacy – contentions negative and Court expressed that such allegations without proper proof are only to tarnish image of wife – not entitled to decree of divorce – further expressed that thought wife cannot be expected to live with such kind of husband bearing all kinds of insults and serious false allegations but for the sake of child her willingness to live husband – held wife entitled to decree of restitution of conjugal rights – husband CMAs dismissed.

2012-1-TLNJ 291 (Civil)

Jayaraman and Ors
Vs
The Collector of South Arcot – Vallalar District, Cuddalore and Ors

Tamil Nadu Land Encroachment Act, 1945 – Pattai Promboke – suit for injunction against government on the basis of occupation of pattai promboke land for more than alleged period of 35 years – dismissed and on appeal, appellate court held that eviction should be made after following procedures stipulated and granted injunction from evicting – declaratory relief negative – on further appeal to High Court it was held that as the property belongs to Government – mere right of enjoyment including planting of trees and constructing sheds will not entitled the plaintiff to any relief of declaration and decree of appellate court for injunction alone confirmed – Second Appeal dismissed.

2012-1-TLNJ 337 (Civil)

Arumugam @ Tamarasan
Vs
Gothamchand Jain

Limitation Act, 1963, Article 54 – Specific performance suit filed for property situated in Pondicherry state – agreement of the year 1984 sought to be executed only in 1991 – suit decreed as the relief claimed is not bared as per French Code Civil under Article 2262 – appellate court confirmed the decree and on further appeal High Court held that French Code Civil not prevail over Limitation Act and the suit filed after three years is barred by limitation – Judgment made in Justiniano Augusto De Piedade Barreto Vs. Antonio Vicente Do Fonsesa and reported in 2001(2) MLJ 97 followed and suit dismissed – Second Appeal allowed.

2012 -1- L.W. 340

M. Magammal
Vs
V.M. Nogammal

Hindu Succession Act (1956) Sections 27, 25, 5, 14 / Pension of deceased wife, entitlement to, by husband – appellant / Murderer, disqualification, as to Mother, if entitled as class I heir.

Tamil Nadu pension Rules (1978) Rr (46-A(1), 2(a) Pension if 'Property' / Pension.

When a heir is disqualified under Section 25 of the Act, he cannot be said to be entitled to succeed to the property of the deceased – Had he not committed murder, then as per Sections 15 and 16 of the Act, the appellant/defendant would be qualified and entitled to inherit the property of his wife.

Entitlement to succeed to the property is not an independent right dehors the statutory disqualification under Section 25 of the Act.

Finding that the respondent/ plaintiff alone is entitled to receive the death benefits of the deceased cannot be said to be illegal.

As per Section 46-A(2)(a), of the Tamil Nadu Pension Rules, if a person, who in the event of death of a Government servant while in service is eligible to receive gratuity in terms of Rule 46, is convicted for the murder or abetting in the murder of the Government servant, he shall be debarred from receiving his share of gratuity which shall be payable to other eligible members of the family, if any – Tamil Nadu Pension Rules, debar a person from receiving Gratuity, as well as Family Pension in the case of conviction for murder or abetting in the commission of murder of the Government Servant Para 31, 34.

Even though Hindu Succession Act does not specifically debar the murderer from receiving the service or the death benefits of the victim, the disqualification provided under Section 25 of the Act, to inherit the property of the person murdered, should be extended even to receive the above benefits.

It can be justified on the principle of 'justice, equity and good conscience'.

Murderer should be treated as non-existent, as one who does not form a fresh line of descent and that he should not be allowed to take advantage of his crime.

2012-1-TLNJ 404 (Civil)

O. Nagendran

Vs

Arulmigu Meenakshi Sundareshwarar Devasthanam, Madurai rep. through its Executive Officer, Madurai

Transfer of Property Act, 1882, Section 106 – Temple filed suit for ejection against erstwhile tenant's son for alleged arrears of rent – notice of quit sent and returned – suit decreed and confirmed on appeal – on second appeal, High Court expressed that the words "at his residence" in section 106 TP Act relate only to service upon family or servants of tenant and notice sent at the tenanted shop in dispute is proper service of notice – Second Appeal dismissed.

2012-1-L.W. 412

Ayisha Beevi and Ors

Vs

Sheik Mydeen and Ors

C.P.C., Section 144/Restitution, Plea of Nullity of order, Scope, Order passed in a CRP in favour of a dead person, effect of, Order 22, Rules 1 to 12/Summary of Provisions detailed and set out in Para 21 (a) to (s), Section 47/Execution/Prayer for Re-delivery of Excess Property delivered.

Civil Revision Petition arose out of an order passed by the Executing Court dismissing the application filed by the legal representatives of the judgment debtor, seeking restitution under Section 144, CPC – Order passed allowing the earlier civil revision petition in favour of a dead person, is only a nullity.

Order passed in CRP is found to be a nullity; the order of the Executing Court dismissing E.A. filed by the judgment-debtor attains finality – Therefore, no restitution can be ordered, directing the decree-holder to hand over the land allegedly taken possession in excess of the property ordered to be delivered – CRP dismissed.

C.P.C., Order 22, Rules 1 to 12/Summary of Provisions detailed and set out in Para 21(a) to (s) – See C.P.C., Section 144/Restitution, Plea of Nullity of order, Scope, Order passed in a CRP in favour of a dead person, effect of.

C.P.C., Section 47/Execution/Prayer for Re-delivery of Excess Property delivered – See C.P.C., Section 144/Restitution, Plea of Nullity of order, Scope, Order passed in a CRP in favour of a dead person, effect of, Order 22, Rules 1 to 12/Summary of Provisions detailed and set out in Para 21(a) to (s).

2012-1-TLNJ 414 (Civil)

Andal
Vs
Ajjai Alva and Ors

Civil Procedure Code 1908 as amended, Order 41 Rule 23, Rule 23A, Rule 24 – Scope of/Suit filed for delivery of possession of B schedule property and declaration of letter providing electricity connection is honest in law/Lac reversing the dismissal of the suit and remanding the matter for appointment of commissioner for properly identifying the property was held to be unsustainable by the High Court/order of remand for re-trial can be done only in exceptional cases – CMAs allowed.

2012 -1 - L.W. 432

Santharaju and Anr
Vs
Chinnamma
And
K. Puspavathi
Vs
Elizaneth Ammal and Anr

Transfer of Property Act (1882), Sections 123, 126/Gift, Acceptance, Revocation.

Settlement deeds executed in favour of the daughter by the mother and the father, challenged by the sons and the daughter-in-law of the original owner.

The Courts below, found that transfer of immovable property by way of gift or settlement, was validly effected by the owners under registered instrument and accepted under Section 123, and non accepted under Section 123, and non existence of any of the circumstances contemplated under Section 126 for legally suspending or revoking the same, rightly answered in negative the claim of the right of the original owner to effect revocation of the same.

No right is available to the father to undo what is already legally done – Validity of the settlements and the legal right accrued to the daughter is in no manner affected by the subsequent revocation deeds if any.

Claim of sons/defendants and the claim of the daughter-in-law/plaintiff on the strength of Exs.B2 and B3 registered and Ex.B10 unregistered documents is not only factually established, but also regally unsustainable.

Daughter along with support of her mother, has duly established her right, title, interest and possession of the Suit schedule properties.

2012-1-TLNJ 436 (Civil)

Vasantha
Vs
Krishnan (dead) and Ors

Civil Procedure Code 1908 as amended, Order 6, Rule 17 – Suit filed for declaration of title and for permanent injunction – suit filed in the year 1990 and written statement filed in 1991 – application filed for

amendment in 2010 – seeking amendment in respect of boundary and the measurement – original claim was in respect of 6 cents – present claim seeking amendment is 25,620 sq.ft. – petition dismissed by lower court – CRP filed in High Court – held, petitioner not pointing out as to how claim is made suddenly for right over an extent of 25,620 sq.ft – when the original claim is for 6 cent on the basis of assignment of land – there is no proper explanation for delay in filing application for amendment – CRP dismissed.

2012-1-TLNJ 441 (Civil)

The Aruvipuram Dharma Paripalan Yogam and Ors
Vs
K. Karunakaran

Constitution of India 1950, Article 227 – When the suit filed in City Civil Court at Chennai is with ulterior motive knowing fully well that the City Civil at Chennai has no jurisdiction and hence, such a person need not be shown any leniency and instead of returning the plaint, the Court constrained to strike off the plaint on the file of the said court – lower court is directed to delete the suit from his file – this will not preclude the respondent to initiate proceedings in the other forums – CRP allowed.

2012 -1 - L.W. 469

S. Lakshmanan
Vs
S. Palani

Stamp Act, Sections 35, 36, 61/Unregistered, Unstamped usufructuary mortgaged deed, Admissibility, use for 'Collateral purpose', Scope of/Suit for recovery of possession.

Registration Act, Sections 17, 49/Use of unstamped unregistered deed of usufructuary mortgage for collateral purpose, Scope.

Practice and Procedure/Unregistered, Unstamped usufructuary mortgage deed, Admissibility of, reliance for collateral purpose, Suit for recovery of possession Scope of.

Ex.A.3 is not found attested by two witnesses even though a deed of usufructuary mortgage should be attested by at least two witnesses – Ex.A.3 is an insufficiently stamped document.

A document which is not a registered one, cannot be relied on by anyone of the parties, in order to assert and enforce their rights under the said document – Section 49 of the Registration Act, is an exception to it and only for collateral purpose, that can be relied on – Even if the document is insufficiently stamped and not a registered one, it could be on payment of stamp duty and penalty, relied on for collateral purpose so as to prove the nature of the possession and not to prove the terms and conditions embodied therein.

Ex. A.3 was marked without any objection relating to insufficiency of stamp duty.

The appellate Court ought to have held that the trial Court should have collected deficit stamp duty and penalty as per Section 35 of the Indian Stamp Act.

Original purposed usufructuary mortgage deed, Ex.A.3 is directed to be sent to the Collector for collecting the stamp duty and penalty concerned as per law.

2011 (6) CTC 477

Chinnu Padayachi and Anr
Vs
Dhanalakshmi W/o. Thangavel and Ors

Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 17 – Limitation Act, 1963 (36 of 1963), Article 113 -- Amendment of Plaint – Relief of mandatory injunction sought to be introduced – Suit was filed on 26.4.2005 for declaration of title and permanent injunction – Advocate Commissioner had filed his interim report on 28.4.2005

and final report on 30.9.2005, mentioning construction put up by Defendants over common lane – Defendants filed Written Statement on 30.9.2005, stating about construction made, before filing of Suit – On 9.7.2010, Plaintiffs filed Application to incorporate prayer for mandatory injunction to remove constructions – Application was allowed – Order challenged Revision – Application for amendment was admittedly filed after five years from date of filing of report by Advocate Commissioner – There is no disputed question of fact regarding limitation – Prayer for mandatory injunction, is clearly barred by limitation – If prayer for mandatory injunction is permitted, it would prejudice Defendants and cause grave injustice to them – Impugned order set aside – Civil Revision Petition allowed.

2011-4-TLNJ 548 (Civil)

V. Ramasamy Naidu
Vs
S.P. Damodaran

Negotiable Instruments Act 1881, Section 118 – Suit for recovery of money – decree and reversed by the appellate court – on further appeal High Court expressed that when plaintiff has not come with clean hands to court, the presumption under section 118 of NI act has to be rebutted – SA dismissed.

2011-4-TLNJ 587 (Civil)

K.M.H. Sultan Ajmal Sha
Vs
Mrs. Jaya and Ors

Tamil Nadu Buildings lease and Rent Control Act 1960, 10(2)(1) and 11(4) – Eviction ordered by Rent Controller and confirmed by Appellate Authority – revision it was argued that the premises was transferred to third party and no attornment of Tenancy not made High Court held that no need of attornment of lease – transferee of the lease steps into shoes of transferor – CRP dismissed.

2012 -4-TLNJ 612 (Civil)

U. Gregory
Vs
The District Collector, Kanyakumari District, Nagercoil and Ors

Specific Relief Act 1963, Section 37, 38 – Suit for permanent injunction decreed by trial court and reversed on appeal – on further appeal the Madurai Bench of Madras High Court expressed that the “onus probandi” is on the plaintiff to prove the case – when a pleading is made that suit property is poramboke land – it should be proved by sufficient evidence that it is Government land – when no right is found either by documentary or oral evidence mere assertion will be a well neigh impossibility – SA dismissed.

2012 -1- L.W. 636

Perumal
Vs
Allagammal @ Pappathi

Evidence Act (1872), Sections 68, 69, Will/Suspicious Circumstance, Presence of beneficiary, Disinheritance of testator’s brother without sufficient cause, unexplained.

Only surviving witness in order to satisfy Sections 68 and 69, should plainly depose that he witnessed the testator signing in his presence and that he attested the testator’s signature – When that witness ventures to speak about one other attester’s role, then he must be able to say that the deceased attesting witness, either saw the testator signing the Will or got acknowledgment from the testator; the testator signed the Will and whereupon the deceased attesting witness attested the testator’s signature in the presence of the testator.

Presence of beneficiary at the time of execution of the Will should be taken as the one of the suspicious circumstances and that would lead to the suspicion that he might have dominated the Will of the sexagenarian testator aged about 65 years, who had no issues and that her husband also predeceased her.

No doubt, in the presence of Class I heirs, Class II heirs cannot obviously have any claim, but if there are no Class I heirs, then Class II heirs can very well press into service the plea that their unexplained disinheritance is fatal to the Will.

Unexplained disinheritance of the testator's brother in this case, is fatal – Courts below were justified in disregarding the Will – Ex.A3 in view of the suspicious circumstances, participation of the beneficiary-plaintiff in bringing about the Will. Disinheritance of testator's brother without sufficient cause – Second Appeal dismissed.

2011-4-TLNJ 637 (Civil)

David Christopher

Vs

Dr. Jayanthi

Indian Divorce Act 1869, Section 10(1)(x) – Wife alleging cruelty by husband sought divorce and trial judge ordered dissolution of marriage – on appeal to intra court bench, it was expressed that, the mental cruelty to be determined considering relationship, status of parties, their educational and family background – further leveling of false accusations and doubting chastity and integrity would certainly amount to mental cruelty – findings of trial court confirmed – further held that as per the amended law the petition for cruelty alone can be a ground and need not be coupled with adultery – OSA dismissed.

2011 CIJ 644 ALJ

Sri Humbi Hema Gooda & Ors

Vs

M/s. The Tamilnadu State Transport Corporation (CBE) Ltd & Ors

Code of Civil Procedure, 1908 (5 of 1908) - Sec.64, O.XXI ₹ 58, 63, O.XXXVIII ₹ 5, 11-B-Attachment-Security-Notice-Failure-Registrar-Communication-Court-Validity-Effect-Appellant had purchased a property when it was under the Court attachment in the money suit filed by the respondent-After the suit was decreed, the respondent filed execution petition in which the Court proceeded to sell the property which was objected by the appellant-Appellant contended that he was not aware of the attachment and was a bone fide purchaser and without passing a preliminary order calling upon the debtor to offer security, order of attachment was passed straight away which was void and so the property could not be sold-Respondent objected it by contending that the appellant was a third party who could not raise such plea and there was a long delay in raising such plea-When the executing Court dismissed the petition, the appellant preferred appeal-Parties stood by their stands-Held, an order of attachment could be passed only on the failure of the respondent from furnishing security and complying with the order of the Court in that regard and the order of attachment passed straight away in violation of this condition was invalid-Intimating the order of attachment to the Registrar of registration was also mandatory-As both those conditions were violated, the order of attachment passed was not valid-Appeal was allowed and the sale proceeding was set aside.

Code of Civil Procedure, 1908(5 of 1908)-Sec.64, O. XXI ₹ 58, 63, O. XXXVIII ₹ 5-Attachment-Security-Notice-Failure-Validity-Effect-Order of attachment before judgment passed by the Court without first calling upon the respondent to furnish the security would be void.

Code of Civil Procedure, 1908 (5 of 1908)-Sec.64, O. XXI ₹ 58, 63, O. XXXVIII ₹ 5, 11B-Attachment-Registrar-Communication-Court-Failure-Effect- Communicating the order of attachment passed by the Court to the concerned registering officer is mandatory and in the absence of such communication, the order of attachment has no force.

Ratios:

- a. Order of attachment before judgment passed by the Court without first calling upon the respondent to furnish the security would be void.
- b. Communicating the order of attachment passed by the Court to the concerned registering officer is mandatory and in the absence of such communication, the order of attachment has no force.
- c. When an order of attachment passed by the Court is void because of the violation of any of the mandatory provisions, it could be questioned even by the subsequent purchaser of the property.

2012 -1- L.W. 685

S. Navaneethkrishnan

Vs

Kamachi Ammal & Anr

Tamil Nadu Buildings (Lease and Rent Control) Act (1960), Section 25/Wilful default, Landlord-tenant relationship, Pursuant to agreement of sale, Plea of.

Revision petitioner/tenant was inducted into possession as a tenant – Revision petitioner committed willful default in payment of the rent – It is admitted by respondents/landlords that there was an agreement of sale between the parties and the landlord agreed to sell the tenanted premises to the revision petitioner/tenant for a consideration and received a sum as advance, but petitioner filed suit for return of advance amount and the suit was decreed in his favour.

Having rescinded the contract and filed a suit for the return of the advance, it is no longer open to the tenant to contend that he continues to be in possession of the property in part performance of the agreement of sale.

(2011) 8 MLJ 832

T. Ali, Kohinoor Roller Flour Mills, rep. by its Managing Director, Kerala

Vs

Koodal Industries Ltd., through one of its Directors Thiru B. Sundarapandian, Madurai – 625 001

Money Suit – Claim for interest – Suit dismissed by trial Court – First appellate Court in appeal decreed suit – Second Appeal – Defendant has paid entire principal amount due to plaintiff – Only for interest amount, suit laid by plaintiff – Oral agreement between parties for payment of any interest not proved – Claim for interest not based on any contract – Claim of interest without any balance of principal cannot be allowed – plaintiff not entitled to claim interest amount as prayed for in plaint – Plaintiff cannot claim compound interest merely because transaction is commercial in nature – Suit liable to be dismissed – Second appeal allowed.

RATIO DECIDENDI: When there is no written contract between the parties to the payment of compound interest and also when the plea of oral agreement between the parties for payment of any interest has been negated by the Court, the plaintiff cannot claim a compound interest merely because the transaction is commercial in nature.

HIGH COURT CITATIONS CRIMINAL CASES

(2011) 3 MLJ (CrI) 821

Sambunayagi and Ors
Vs
S.K. Manickam

Code of Criminal Procedure, 1973, (2 of 1974), Sections 128 and 125 (3) – Non – compliance of maintenance order – Petition filed under Section 128 for enforcement of order – Returning of petition by Family Court on ground of limitation – Case taken up by Court under Section 125 (3) by reason of mentioning issue of distress warrant in prayer portion – Petition being filed under Section 128, no period of limitation – Family Court directed to take petition on file on re-presentation.

RATIO DECIDENDI: Limitation does not apply to a petition filed under Section 128 of the Code of Criminal Procedure for enforcement of order of maintenance.

(2011) 3 MLJ (CrI) 823

P.K. Chandrasekaran
Vs
Inspector of Police, CBI Chennai

(A) Code of Criminal Procedure, 1973 (2 of 1974), Section 172 – Diary of proceeding in investigation – Deposition of Police Officer – Perusal of case diary in deposition – Case diary entitled to be used for refreshing of memory – Case diary not entitled to be used as evidence but as an aid to trial – Police Officer who made investigation alone entitled to look into case diary for refreshing – Refreshing of memory in respect of entries made in course of investigation by police officer – Any reference made by Police Officer in respect of any writing made by him in course of investigation entitles accused to cross-examine such Police Officer on that aspect – Case diary used by Police Officer who investigated entitled to be used to refresh his memory.

(B) Indian Evidence Act (1 of 1872), Sections 145, 159 and 161 – Right of adverse party as to writing used to refresh memory – Deposition of police officer – Perusal of case diary in deposition - Case diary entitled to be used for refreshing of memory – Police officer who made investigation alone entitled to look into case diary for refreshing – Any reference made by Police Officer in respect of any writing made by him in course of investigation entitles accused to cross-examine such police officer on that aspect.

RATIONES DECIDENDI:

- I. A police officer who made the investigation alone is entitled to use the case diary maintained by him for the purpose of refreshing his memory on deposition and any statement or entries in the diary cannot be used as legal evidence but only to aid the Court in the trial.
- II. When the case diary is used by the police officer who investigated the case for refreshing of his memory and if any reference is made by such officer in respect of any writing made by him in course of his investigation, the accused is entitled to cross examine such police officer under Section 161 of the Indian Evidence Act.

(2011) 3 MLJ (Crl) 858

**Murugan and Ors
Vs
Kasimani
And
Kasimani
Vs
Murugan and Ors**

Code of Criminal Procedure, 1973 (2 of 1974), Section 200 – Protection of Women from Domestic Violence Act (43 of 2005), Section 12 – Maintenance – Claim for enhancement of maintenance amount - Complainant unmarried and staying with accused/brother and family – Complainant working as daily wage coolie and entire amount of her earning given to accused – Ill-treatment towards complainant at hands of accused – Domestic Incident Report from Protection Officer nominated by Court not considered by trial Court – Non-consideration of Report of Protection Officer vitiates order passed by trial Court – Orders passed by lower Court for aside - Matter remitted back to trial Court for consideration of Domestic Report so as to act in accordance with provisions of Act.

RATIO DECIDENDI: Judicial Magistrate who deals with application filed by aggrieved persons under Section 12(1) of the Protection of Women from Domestic Violence Act, 2005, shall necessarily follow and act in accordance with provisions of the Act and consider the Domestic Incident Report from the Protection Officer or the service provider and any order passed by the Court in default is vitiated.

(2011) 3 MLJ (Crl) 961

**B. Kumar @ Jeyakumar @ Left Kumar @ Stephen Kumar
Vs
Inspector of Police, C.B.C.I.D., Pudukkottai, Vaitheeswaran Koil Police Station**

Indian Penal Code (45 of 1860), Sections 302, 307, 394 read with 397,376 – Offences of murder and rape – Conviction and sentence – Death sentence – Appeal – Extreme depravity with which offences of murder and rape committed on school going children and merciless manner in which death inflicted on victim would bring case under category of rarest of rare cases – None of mitigating factors present in case – Act of accused shocked collective conscience of society – Death sentence awarded by trial Court confirmed – Appeal dismissed.

RATIO DECIDENDI: When the offences of murder and rape were committed by the accused on the school going children with extreme depravity and the death was inflicted on the victim in merciless manner and when the act of the accused had shocked the collective conscience of the society, the case would fall under the category of rarest of rare cases and the punishment of sentence of death awarded by the trial Court is proper and has to be confirmed.

(2011) 3 MLJ (Crl) 971

**S.N. Palanisamy and Ors
Vs
State by Inspector of Police, Appakudal Police Station, Bhavani Taluk**

Indian Penal Code (45 of 1860), Sections 147, 148, 324, 325 and 304 Part II – Culpable homicide not amounting to murder – Conviction and sentence – Appeal – Enmity between two families – Quarrel leading to death – Armed attack – Finding of trial court the common object present – Acquittal of accused from charge under Section 149 read with 302 and 149 read with 307, not challenged – No appeal preferred by State – Acquittal of accused nos.8 and 9 disbelieving evidences of eye – witnesses, unchallenged – No explanation offered for not preferring appeal – Mere failure to recover blood stained clothes from injured witnesses or to recover blood stained earth from scene of occurrence though a lapse cannot be a ground to acquit accused unless it is shown such lapses caused a serious dent in prosecution case – Actual participants in occurrence not clearly found –

Prosecution not come up with true version of occurrence – Lots of infirmities and lapses in prosecution case – Evidence of injured witnesses not inspiring confidence of court – Conviction set aside – Appeals allowed.

RATIO DECIDENDI: Mere failure to recover blood stained clothes from injured witnesses or to recover blood stained earth from scene of occurrence though a lapse on part of the investigating officer, cannot be a ground to acquit accused unless it is shown such lapses caused a serious dent in prosecution case.

(2011) 3 MLJ (Crl) 980

Lingam @ Lingadurai
Vs

Inspector of Police, Susendram Police Station, Kanyakumari District and Anr

Indian Penal Code (45 of 1860), Section 364 – Probation of Offenders Act (20 of 1958); Sections 4 and 6 – Release of offenders on probation of good conduct – Conviction and sentence of accused under 364 IPC – Five years rigorous imprisonment imposed on accused – A Person found guilty by Court of an offence punishable with death or imprisonment for life not entitled to obtain benefits under Probation of Offenders Act – Section 364 IPC enables Court to give a sentence of life imprisonment upon accused – Accused not entitled to benefits of provisions of Act.

RATIO DECIDENDI: An accused is not entitled to extension of benefit of Probation of Offenders Act, 1958, if he is found guilty of having committed an offence punishable with death or imprisonment for life.
