



# TAMIL NADU STATE JUDICIAL ACADEMY

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## IMPORTANT CASE LAW



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## **SUPREME COURT – CIVIL CASES**

**(2018) 3 SCC (Civil) 622**

**Sundaram Finance Limited Vs. Abdul Samad and Another**

**Date of Judgment: 15.02.2018**

Arbitration and Conciliation Act, 1996 – Ss. 36, 32 and 42 – Execution/enforcement of arbitral award – Court through which may be effected – Held, execution/enforcement of award can be done/filed anywhere in country where such decree can be executed and there is no requirement for obtaining a transfer of decree from court which has jurisdiction over arbitral proceedings/award/within whose jurisdiction award is passed – Civil Procedure Code, 1908, Ss.47, 151, 37, 38 & 46 and Or.21 Rr.6, 11(2) and 27.

**(2018) 3 SCC (Civil) 686**

**ICICI Lombard General Insurance Company Limited**

**Vs.**

**Ajay Kumar Mohanty and Another**

**Date of Judgment: 06.03.2018**

A. Motor Vehicles Act, 1988 – Ss. 166, 168 and 173 – Temporary disability – Compensation to victims of accident – Principles summed up – One aspect relates to impairment of person's earning capacity while the other relates to pain and suffering due to loss of enjoyment of life caused by the disability – When victim suffers from temporary or permanent disability, efforts must be made to award adequate compensation not only for physical injury but also for: (i) pain, suffering and trauma caused due to accident; (ii) loss of earnings; (iii) and victim's inability to lead normal life and enjoy amenities.

B. Motor Vehicles Act, 1988 – Ss. 166 and 173 – Reduction in compensation awarded – Incorrect calculation of income, and injury temporary and not permanent.

C. Motor Vehicles Act, 1988 – S. 173 – Duty to apply mind and to pass reasoned order – Reemphasised – On facts, High Court passing cryptic order held unsustainable.

**(2018) 2 CTC 940**

**Sejal Glass Ltd. Vs. Navilan Merchants Pvt. Ltd.**

**Date of Judgment: 21.08.2017**

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 & Order 6, Rule 6 – Rejection of Plaintiff – Cause of action – Partial rejection of Plaintiff – Permissibility – Suit for recovery of money instituted against Company and its Director – Trial Court rejected Plaintiff as against Directors of Company and permitted Plaintiff to continue Suit as against Company – Plaintiff as a whole must be rejected under Order 7, Rule 11 – No plea or averment to effect that as against Director, pleadings should be struck out on ground that they are unnecessary, scandalous, frivolous and vexatious – Partial rejection of Plaintiff is legally impermissible.

**(2018) 3 MLJ 696 (SC)**

**Kalawati (D) Thr. Lrs. and Others Vs. Rakesh Kumar and others**

**Date of Judgment: 16.02.2018**

Contract – Specific Performance – Readiness and Willingness – Respondent Plaintiff entered into agreement to sell and made part payment to Appellants / Defendants – Plaintiff filed suit for specific performance and obtained interim injunction on condition to deposit balance consideration – Plaintiff failed to deposit and Trial Court dismissed suit – On appeal, First Appellate Court reversed judgment of Trial Court, hence this appeal – Whether High Court justified in allowing Plaintiff's claim of specific performance, reversing judgment of Trial Court – Held, material on record indicates that Plaintiff did not have necessary funds to pay balance consideration – Plaintiff's low income and low bank balance indicated his incapacity to make balance payment – Trial Judge right in concluding that Plaintiff was not in a position to pay balance consideration to Defendants – By necessary implication, to be held that he was neither ready nor willing to perform his part of agreement – High Court was in error in setting aside judgment and decree of Trial Judge – Appeal allowed.

**(2018) 3 MLJ 350 (SC)**

**Kanaklata Das and Others Vs. Naba Kumar Das and others**

**Date of Judgment: 25.01.2018**

Civil Procedure - Impleadment of parties – Ejectment Suit – Code of Civil Procedure, 1908, Order 1 Rule 10(2) – Appellants / Plaintiffs filed suit for ejectment against 2<sup>nd</sup> to 5<sup>th</sup> Respondents for their eviction from suit premises – Application filed by 1<sup>st</sup> Respondent under Order 1 Rule 10(2), to permit him to become co-plaintiff along with Appellants claiming that he was member of Appellants' family was dismissed, however, on appeal, High court allowed application, hence this appeal – Whether High Court was justified in allowing application filed by 1<sup>st</sup> Respondent under Order 1 Rule 10 (2) thereby permitting him to become co-plaintiff in ejectment suit – *Held*, in eviction suit, question of title or extent of shares held by Appellants and 1<sup>st</sup> Respondent against each other in suit premises could not be decided nor could not be made subject matter for its determination – This was not suit between Appellants and 1<sup>st</sup> Respondent where their inter se rights relating to suit premises could be gone into but it was ejectment suit filed by Appellants against 2<sup>nd</sup> to 5<sup>th</sup> Respondents for their eviction from suit premises – Lis in suit was between Appellants on one hand and 2<sup>nd</sup> to 5<sup>th</sup> Respondents on other hand – Decision in suit would depend upon question as to whether there exists any relationship of landlord and tenant between Appellants and 2<sup>nd</sup> to 5<sup>th</sup> Respondents in relation to suit premises – If so, whether grounds pleaded in plaint for claiming eviction of 2<sup>nd</sup> to 5<sup>th</sup> Respondents were established or not – For deciding these two main questions, presence of 1<sup>st</sup> Respondent was not necessary – 1<sup>st</sup> Respondent neither necessary nor proper party in suit – Impugned order set aside – Order of Trial Court restored – Appeal allowed.

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## **SUPREME COURT – CRIMINAL CASES**

**(2018) 1 SCC (Cri) 714:: (2018) 2 SCC 342**

**State of Himachal Pradesh Vs. Trilok Chand and Another**

**Date of Judgment: 17.01.2018**

Criminal Trial – Appreciation of Evidence – Contradictions, inconsistencies, exaggeration or embellishments – Contradictions in the statement of witnesses – Effect – Held, contradictions in the statement of witnesses are fatal for the case, though minor discrepancies or variance in their evidence will not disfavor.

Criminal Trial – Appreciation of Evidence – Generally – Evidence, how to be considered – Held, it is well settled, that court can shift chaff from the grain and find out the truth from testimony of witnesses – Evidence is to be considered from the point of view of trustworthiness and once the same stands satisfied, it ought to inspire confidence in the mind of court to accept the stated evidence – However, the present case is not such a case – Hence, reversal of conviction by the High Court was justified.

**2018 (2) SCC (Cri) 63:: 2018 (3) SCC 358**

**Mauvin Godinho and Others Vs. State of GOA**

**Date of Judgment: 17.01.2018**

Criminal Procedure Code, 1973 – S. 228 – Charges to be framed by Judge on being satisfied that prima facie case of commission of offence by accused is made out, considering facts and circumstances of each case as a whole – How to determine prima facie case – Prudent man test to be applied – Roving inquiry and weighing of pros and cons of case not to be undertaken by court at this stage – Held, facts and circumstances of instant case disclosed prima facie case against accused – Hence charges rightly framed by court – Prevention of Corruption Act, 1988, Ss. 13(1)(d)(i) and 13(1)(d)(ii) r/w S. 120-B IPC.

**(2018) 2 SCC (Cri) 138:: (2017) 16 SCC 226**

**S.Mohammed Ispahani Vs. Yogendra Chandak and Others**

**Date of Judgment: 04.10.2017**

A. Criminal Procedure Code, 1973 – Ss. 319 and 161 – Power of court to summon persons, not named in the charge-sheet, to face ongoing trial – Nature of “evidence” that may be relied on for exercise of – Law laid down by five- Judge Bench in Hardeep Singh, (2014) 3 SCC 92, clarified.

- Statement recorded by police under S.161 Crpc – Cannot be considered as independent material for exercise of such power – Power to be exercised, only where strong and cogent evidence occurs against a person and not in a casual and cavalier manner – Such “evidence” is required to be brought before court during trial and material/evidence collected by the investigating officer at the stage of inquiry may be utilized only for corroboration and to support the evidence recorded and examined during trial by court to invoke the power.

B. Criminal Procedure Code, 1973 – S. 319 – Power of court to summon accused under S. 319 – When can be exercised – Principles reiterated.

**(2018) 2 SCC (Cri) 187:: (2017) 16 SCC 466**

**Suresh Chandra Jana Vs. State of West Bengal and others**

**Date of Judgment: 11.08.2017**

Criminal Trial – Judge/Presiding Judge – Function of – Held (per curiam), is to find out the truth and it is not the correct approach to simply pick up minor lapses of investigation and acquit accused, particularly when ring of truth is undisturbed.

Criminal Trial – Proof – Proof beyond reasonable doubt – Degree of doubt to which accused entitled to take benefit of – What is

Criminal Procedure Code, 1973 – Ss. 215 and 464 – Error in charge – Benefit of such defect – When available to accused – Held (per curiam), it is only when prejudice is caused to accused in defending himself, that benefit of such defect can be given to accused.

Evidence Act, 1872 – S. 32(1) – Dying declaration – Non-recording of – Death due to acid attack – Treating doctor not allowing dying declaration on ground that victim was responding well to treatment – Conduct of doctor – Need for evaluation of, in light of utter disregard for professionalism – Duty of doctors in criminal cases – What should be.

Evidence Act, 1872 – Ss. 32(1) and 157 – Dying declaration – Principle underlying S.32(1), summarized – If person making dying declaration survives – Effect of

Criminal Trial – Fair and Speedy trial – Purpose of trial – What is – Duty of court regarding, given – Basic requirement that a trial must be fair – Necessity of.

**(2018) 4 SCC (Cri) 428**

**Dashrath Alias Jolo and Another Vs. State of Chhattisgarh**

**Date of Judgment: 23.01.2018**

Penal Code, 1860 – Ss. 302/149 – Formation of unlawful assembly armed with deadly weapons, with common object to commit murder – Appreciation of evidence – Evidence of injured eyewitness, trustworthy – His evidence stands corroborated by another eyewitness – Disclosure statement of accused leading to recovery of murder weapons – Contention that complainant party were aggressors and accused acted in self-defence, rejected – Injuries sustained by accused, simple in nature, and it was not incumbent upon prosecution to explain such injuries – Conviction and sentence of imprisonment imposed upon accused, confirmed.

Criminal Trial – Injuries, Wounds and Weapons – Failure/ Non-explanation of injuries on accused – When material – Principles summarized.

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## **MADRAS HIGH COURT – CIVIL CASES**

**2018 (2) CTC 620**

**P.M. Elavarasan Vs. A.Sujatha and others**

**Date of Judgment: 19.03.2018**

Evidence Act, 1872 (1 of 1872), Sections 138 & 146 – Questions in Cross – Examination – Nature of – Suggestion to Witness as being prominent land grabber, whether defamatory – Questions regarding character of Witness permissible during cross – examination – Witness denied suggestions – Evidence not defamatory – Evidence recorded not struck out.

**2018 (2) CTC 859**

**K. Balakrishnan Vs. S. Dhanasekar**

**Date of Judgment: 06.10.2017**

Code of Civil Procedure 1908, (5 of 1908), Section 2(9) – Judgment – Ex parte Judgment – Cryptic Judgment – Defendant set ex parte for non-appearance – Non-speaking ex parte Judgment pronounced Legality– Even ex parte Judgment should contain bare minimum facts, points for determination, evidence adduced, application of facts, and evidence, which are basis for deciding issues – Ex parte Judgment lacking material details cannot be termed as Judgment – Court should consider pleadings, evidence adduced by Plaintiff and render finding on issues framed in Suit – Judgment unsupported by reason is not Judgment in eye of law – Ex parte cryptic Judgment of Trial Court did not satisfy requirement under Section 2(9) – Ex parte Judgment and Decree set aside – suit remanded to Trial Court for fresh consideration.

**2018 (2) CTC 775**

**Padma @ Padmavathi Vs. Jaya @ Jayalakshmi**

**Date of Judgment: 02.03.2018**

Code of Civil Procedure, 1908 (5 of 1908), Section 10 – Stay of Suit - Applicability to proceedings before Registrar or Sub- Registrar – To attract provisions of Section 10, Suit must be pending in Civil Court having competent jurisdiction – Parties and issues must be directly and substantially same – Section 10 is invoked to avoid conflicting Judgments being delivered – In present case, one proceeding is pending before Sub-Registrar for registration of Settlement Deed and other proceeding is pending before Civil Court for Partition – Proceedings pending before Registrar cannot be termed as Suit pending before competent Civil Court – Provisions of Section 10 are not attracted – Impugned Orders set aside – Civil Revision Petitions allowed.

**2018 (3) CTC 23**

**Nexmoo Solutions (India) Pvt. Ltd., Vs. Nexmo Inc.,**

**Date of Judgment: 01.03.2018**

Code of Civil Procedure, 1908 (5 of 1908), Order 39 – Interim Injunction – Grant of – Cardinal parameters – Three key considerations for grant of Interim Injunction are: (i) prima facie case; (ii) balance of convenience; and (iii) irreparable injury incapable of Compensation – ‘Nexmoo’ and ‘Nexmo’ too close for comfort – ‘Nexmo’ non-existent in India, when Plaintiff incorporated ‘Nexmoo’ and commenced website in 2005 – Plaintiff prior user by atleast half decade – Defendant is giant entity in USA – Only 0.7% turnover yielded by its India business activity – Over 80% turnover obtained by Plaintiff’s India activity – Significant erosion of Plaintiff’s business likely in absence of Interim Order – Held, balance of convenience tilts in favour of Plaintiff – Irreparable injury to Plaintiff incapable of Compensation likely – Interim Injunction granted for one year.

Code of Civil Procedure, 1908 (5 of 1908), Order 15-A Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (4 of 2016) – Case Management hearing – Timeline for trial – Suit filed in 2015 – Pleadings in main Suit complete – Admission and denial of documents to be completed in 3 weeks – Suit to be listed within 4 weeks for Case Management hearing before Commercial Division – Issues to be framed in Case Management hearing – Trial can be completed within 6 weeks – Judgment can be delivered within 90 days, if timelines followed – Case Management hearing under Order 15-A of Code directed – Time lines to be fixed in said hearing – Trial must be expedited and completed in accordance with such timelines.

**2018 (3) CTC 51**

**The Banyan, rep. by Director, Vs. Florida Constructions (P) Ltd.,**

**Date of Judgment: 29.01.2018**

Evidence Act, 1872 (1 of 1872), Section 65 – Secondary Evidence – Admissibility of – Recovery Suit by Respondent/Contractor for Final Bill payment – Final Bill approved and certified by Appellant’s Architect – Photocopy of Final Bill produced – Necessary conditions for admitting Secondary Evidence are: (i) original proved to have existed, but lost/misplaced; (ii) photocopies established as made from original or compared with original; (iii) evidence to be adduced before concerned Judge recording evidence; (iv) document to be otherwise admissible irrespective of objections being raised or not; (v) execution of document must be proved according to Section 67 of Act; (vi) Application for production of Secondary Evidence must furnish full details supported by proper Affidavit – Exception for proof of execution available, when document is 30 years old as presumption can be drawn under Section 90 of Act – Document cannot be refused as Secondary Evidence, even if source of document not disclosed or if documents not coming from proper custody – Original Final Bill sent by PW1 to Appellant’s Architect – Non-availability of Original Final Bill sufficiently explained by PW1’s evidence – DW1 admitted that document is Xerox copy of original Final Bill – Copy admitted by DW1 – Non-availability of original Final Bill satisfactorily explained – Admission being best evidence, non-production of original Final Bill not fatal – No patent illegalities or material irregularities in Order of Single Judge – Original Side Appeal dismissed.

Contract Act, 1872 (9 of 1872), Section 188 – Code of Civil Procedure, 1908 ( 5 of 1908), Order 1, Rule 9 – Recovery Suit by Respondent/Contractor for Final Bill payment – Said Final Bill approved and certified by Appellant’s Architect – Architect neither party to Suit nor examined as Witnesses – Final Bill approved only by Architect but not by Appellant – Whether Appellant liable for same – Architect was agent of Appellant – Act of Agent binding on Principal – Same not affected by non-examination of Architect – Held, non-examination or non-impleadment of Agent does not affect Suit materially.

**2018 (2) L.W. 464**

**Valli and another Vs. Kandasamy**

**Date of Judgment: 26.02.2018**

C.P.C., Order 8 rule 9, additional written statement, Order 8 rule 6-A, counter claim

Permission to receive additional written statement and counter claim – New pleas – Court’s power to extend time – scope – Respondent trying to interfere with right to use common cart track. Petitioners seek to file counter claim in respect of incident on 14.06.2014 Petitioners filed written statement on 01.11.2005 before alleged incident that took place on 14.06.2014 – counter claim not maintainable as the cause of action has arisen after they filed written statement.

**2018 (2) L.W. 480**

**R. Baskaran Vs. N. Kamatchi**

**Date of Judgment: 23.11.2017**

C.P.C., Order 9 Rule 7

Partition Suit – Ex parte order – Delay setting aside of – No time limit. Order dated 01.12.2016 made in CRP(MD). No.2473 of 2016 (S.Santha Vs. M.S.M.K. Packiam and others); - Referred to CRP allowed.

**2018 (2) L.W. 374**

**Jeyalakshmi Vs. Selvaraju**

**Date of Judgment: 02.03.2018**

Transfer of property act, Section 123, settlement deed, possession, handing over, exception, when.

Settlement deed – possession handing over – when not necessary.

Whether physical possession of properties is necessary for completing validity of settlement transactions. Settlement deeds executed by father – whether settlement deeds accepted by appellants and acted upon – whether deceased ‘S’ entitled to revoke deeds unilaterally by way of revocation deeds.

held: settlees are daughters of S – settlees aware of the litigation pending between deceased S and respondent (his son) – S would not have been in a position to entrust the physical possession of the suit properties to the settlees at the time of the execution of settlement deeds – settlees became entitled to recover the possession of suit properties from the respondent by stepping into the shoes of the settler.

Transfer of physical possession of the suit properties is not necessary – Mere factum of non delivery of settled properties would not render settlement deeds invalid.

**2018 (3) CTC 113**

**Ilango Vs. Jayapal**

**Date of Judgment: 03.11.2017**

Motor Vehicles Act, 1988 (59 of 1988), Section 168 – Enhancement of Compensation – Functional Disablement – Appellant injured in accident while riding Two-wheeler as Pillion Rider – Tribunal awarded Rs.1,40,500 as Compensation against Insurance Company – Appellant pleaded Functional Disability due to headache from Head injury – Same not construed as disability by Tribunal – Tribunal must be sensitive to human suffering – Persistent headache affects victim's work performance, efficiency and ability to find alternative employment – Violator of personal right shall pay victim, when victim not acted negligently – Victim to be believed over person paying Compensation directly, vicariously or contractually – 40% Functional disability estimated considering nature of injuries – Quantum of Compensation enhanced to Rs.5,00,000 – Insurance Company directed to pay enhanced Award, since Owner remained ex parte before Tribunal and Insurance Company already stepped into shoes of insured – 9% p.a. Interest awarded – Appeal allowed.

**2018 (3) CTC 117**

**Tidel Park Ltd., Vs. Arkay Energy**

**Date of Judgment: 26.02.2018**

Tamil Nadu Court Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1955), Section 69-A – Refund of Court-fees paid – When eligible – Amendment to Section 69-A – Effect of – Before Amendment, party entitled to refund of Court-fees 'if dispute referred by Court culminated in Settlement' – After Amendment, party entitled to refund 'on mere reference to Settlement' – Culmination of same in Settlement not pre-requisite for refund post 01.03.2017 – Reference to Arbitration, in instant case, made before Amendment – Application for refund filed after Amendment – On date of filing of present Application, Plaintiff entitled to refund on mere reference to Arbitration – Held, Plaintiff entitled to refund irrespective of Arbitration outcome – Application allowed – Registry directed to process refund of Court – fees.

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## **MADRAS HIGH COURT – CRIMINAL CASES**

**2018 (2) MLJ (CrI) 277**

**Dr. Meermustafa Hussain Vs. State**

**Date of Judgment: 05.03.2018**

Framing of Charge – Amendment of charge – Code of Criminal Procedure, 1973 (Code 1973), Sections 212, 216, 218 and 219 – Indian Penal Code, 1860 (Code 1860), Sections 409, 420, 468 and 471 – Prevention of Corruption Act (Act), Section 13 – Petitioner / former Vice Chancellor of University faced 2 counts of charge under Section 409, 420, 468, 471 Code 1860 and Section 13(2) read with 13(1)(c)(d) of Act – Petitioner filed petition to amend charges on ground that alleged occurrence took place within one year and therefore, there must be one single count – Trial Court found no error in framing 2 counts of charge under Code 1860, since two distinct offences of same kind committed within period of one year – Trial court delinked offence under Section 13(1)(c) & (d) of Act under two different charges and partly allowed petition, hence this revision petition – Whether there was error or irregularity leading to failure of justice in charges framed by Trial Court – Held, for each distinct offence of which any person accused, there shall be separate charge and every such charge shall be tried separately – As exception, three offences of same kind within one year may be charged together – For each distinct transactions, that number of counts to be mentioned – For each count, punishment to be imposed, if found guilty – Petitioner as Head of institution had dominion over financial affairs of institute whereby he dishonestly induced ministerial staff to reimburse money for Executive Business class fare which he never travelled – His act fell within meaning of cheating under Section 415 of Code 1860 and explained in illustration(f) of said section – Petitioner liable to be charged both under Section 409 and 420 of Code 1860 – Section 409 and 420 of Code 1860 were not mutually exclusive penal provisions – Charges altered – Amended charges did not have error or omission – Revision dismissed.

**2018 (2) MLJ (CrI) 362**

**Arunachalam @ Arun and Others Vs. S. Ambika and Another**

**Date of Judgment: 05.03.2018**

Maintenance – Return of Sreedhana Property – Code of Criminal Procedure, 1973, Section 125 – Protection of Women from Domestic Violence Act, 2005 (Act 2005) – Revision Petitioners were husband and in laws of 1<sup>st</sup> Respondent/ wife – Respondents filed three petitions under Section 125 of Code 1973 and Act 2005 seeking maintenance, return of Sreedhana properties and Residence orders which were allowed by Trial Court and same confirmed by First Appellate Court, hence these revision petitions – Whether orders directing return of Sreedhana properties and payment of monthly maintenance passed by Trial Court, confirmed on appeal, sustainable – Whether residence orders passed by Trial Court, confirmed on appeal by High Court, sustainable – Held, direction given to husband's side to return Sreedhana properties to wife's side, if same available with him – Rider that "if it is available with husband" made by Magistrate, confirmed by Appellate Court – If all properties not available with husband's side, he must prove the same in main case – Suitable amount out of salary required for husband to maintain himself and his parents – After the sum reserved for same, only remaining amount directed to be paid by way of interim maintenance – Earning of husband admitted as per salary certificate – Wife cannot by way of interim relief compel husband to vacate premises let in for rent and hand over same – Husband can pay reasonable sum to wife and child for taking residential house on rental basis – Revision petition against order of maintenance and return of Sreedhana dismissed – Revision for residence orders ordered in terms indicated.

**2018 (1) L.W. (CrI) 653**

**Dr. S.K. Packiaraj Vs. T.V. Mathan Kumar**

**Date of Judgment: 21.12.2017**

Criminal Procedure Code Sections 195, 340, 397

I.P.C. Section 193, To prosecute for offence under Section 193 only concerned Court can be the Complainant – Amendment with effect from 16.04.2006. Prosecution commenced in 2005 – Court alone can be the complainant – Illegality goes to the root of the matter. Complaint by private party – Invoking section 193 – only if accused has given false evidence at any stage of Judicial proceedings – In this case prosecution was not by court concerned.

**2018 (2) L.W. 664**

**Ayshwarya Vs. State**

**Date of Judgment: 13.03.2018**

Motor Vehicles Act (1988), Section 185, 202, 203, 204, Accident breath analyser – Test, examination by medical practitioner, scope.

I.P.C., Section 279, 304(ii), Accident Breath analyser test, examination by medical practitioner, scope.

Accident on Tharamani – Rajiv Gandhi salai at night, car hit pedestrian – Drunken driving – whether proved. Power of police to arrest without a warrant under section 202 – scope. provision to subject to a medical examination – scope.

Whenever a person is arrested on ground of drunken driving he has to be mandatorily subjected to a medical examination by a registered medical practitioner. Time limit for taking breath test – Breath analyser test is required to be taken as soon as reasonably practicable after the accident – It is mandatory to subject suspect for a medical examination within two hours of arrest. Content of the alcohol in the petitioner's blood was 36mg/100 ml, offence under section 185 is attracted. Delay in taking the blood sample – Effect of – Accident occurred at 04.25, blood sample was taken only after about 6 hours and handed to Forensic lab after 2 days – Delay – Effect of – Breath analyser test conducted in conformity with procedure under section 203(2)(b).

**2018 (2) MLJ (CrI) 7**

**K. Balamurugan Vs. State**

**Date of Judgment: 19.12.2017**

Rape – Consent – Indian Penal Code, 1860, Sections 417, 375, 376, 394(b) and 506(i) – Second Respondent filed complaint against Petitioner alleging offences under Sections 417, 376, 394(b) and 506(i) – Petition filed for quashing of proceedings – Whether Petitioner is guilty of offences as charged and whether proceedings against Petitioner ought to be quashed – Held, second respondent was major at time of alleged occurrence and it cannot be said that second respondent did not have knowledge about consequences of having Physical relationship with Petitioner – Second respondent subsequently had sexual relationship on several occasions which itself shows that she had given her consent freely, voluntarily and consciously – No evidence to prove conclusively that Petitioner never intended to marry second respondent – Cannot be said that it was intention of Petitioner to have physical relationship with second respondent and subsequently deceive by not marrying her and thus, offence under Section 375 and Section 417, not made out – Offences under Sections 294(b) and 506(i) also not made out as against Petitioner – Petition allowed.

**2018 (2) MLJ (CrI) 124**

**Poomalai Vs. State**

**Date of Judgment: 01.03.2018**

Prevention of Corruption – Fabrication of Revenue Records – Indian Penal Code, 1860 (Code), Sections 109, 120-B, 420, 465, 466, 467 – Prevention of Corruption Act, 1947 (Act), Sections 5(1) (d), 5(2) (d) – Accused entered into criminal conspiracy to fabricate revenue records and created entries in Government records – Trial Court convicted 3<sup>rd</sup> and 4<sup>th</sup> accused / Appellants under Sections 120-B, 420, 465, 466, 467 and Sections 5(1) (d), 5(2) (d) of Act read with section 109, hence this appeal – Pending appeal, 3<sup>rd</sup> accused died – Whether prosecution evidence spoken through PW-7, PW-8 and PW-32 is sufficient to hold Appellant guilty – Held, evidence of PW-7 and PW-8 / former Revenue inspectors state that Appellant abused his rapport with them and misled them to sign in alleged documents – PW-32/ Tahsildar during relevant point had spoken in detail how fabrication of revenue records were done by accused – Government land grabbed by individual in connivance of public servants – Trial Court rightly came to conclusion that they are guilty of offences for fabricating revenue records – No ground to interfere with judgment of Trial Court – Appeal dismissed.

**2018 (1) MWN (Cr.) 563 (DB)**

**Subbaiah Vs. State**

**Date of Judgment 13.03.2018**

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 (56 of 2000) – Domestic Violence – One spouse done to death by other spouse – Children of prisoners – “Children in need of care and protection” – Protected by Child Welfare Committee – Sessions Judge rightly referred children to Child Welfare Committee – High Court constituted Committee in each place where there is Central Prison and Special Prison for women to identify vulnerable children of Prisoners for rehabilitation measures.

**2018 (1) MWN (Cr.) 388 (DB)**

**Ramesh Vs. State**

**Date of Judgment: 22.11.2017**

EVIDENCE ACT, 1872 (1 of 1872), Section 63 – Secondary evidence – Admissibility – Carbon copy of Ex.P2/Extra-Judicial Confession statement filed alongwith Complainant as per PW18, who registered FIR – Original document not produced before Court – Carbon copy, a piece of secondary evidence – Neither PW1, who recorded Ex.P2 nor PW18, who received Complaint alongwith Ex.P2 stated anything about copy made from original by mechanical process or compared with such a copy – Section 63(2) contemplates that copies made from original by mechanical process and copies compared with such copies can be taken as secondary evidence – Carbon copy also a piece of secondary evidence – No foundation laid by Prosecution for leading secondary evidence in form a Carbon copy – Prosecution failed to establish that copy in question made from original by mechanical process – Ex.P2, *held*, not legally admissible as secondary evidence.

**2018 (1) MWN (Cr.) 423**

**S. Madhiyazhagan Vs. State**

**Date of Judgment: 20.08.2015**

CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Sections 156(3) & 2(j) – POLICE STANDING ORDER, PSO 493(1) – CBCID MANUAL, Chapter V – Power of Magistrate under Section 156(3) to direct investigation – Scope of – Whether Magistrate empowered under Section 156(3) to direct CBCID to investigate offence – Magistrate can order only Officer-in-charge of Police Station falling within his Territorial jurisdiction to investigate an offence – Expression “Such an investigation as above mentioned” in Section 156(3) does not confer wholesome power to Magistrate to direct Officer-in-charge of any Police Station to investigate an offence – Magistrate not empowered to direct another Investigating Agency to investigate – CBCID, an elite force within Police Department, constituted to investigate cases on Order of Supreme Court, High Court, Government and Director General of Police – Therefore, Magistrate not empowered to direct CBCID to investigate – Impugned direction to CBCID, *held*, not sustainable.

TAMIL NADU DISTRICT POLICE ACT, 1859 (T.N. Act 24 of 1859) – POLICE STANDING ORDER, PSOs, 483, 493(1) & 486 – CBCID MANUAL, Chapter V, Para 1 – CBCID – Constitution and role of – Originally CID constituted vide G.O. Ms. 1862, dated 16.11.1912 bifurcated in year 1929 into SPCID and CBCID – PSO 486 catalogues categories of cases that can be dealt with CBCID and omnibus power given to DGP and Government to entrust cases to CBCID – Headquarters of CBCID notified as Police Station with jurisdiction over entire State – Police Officers in CBCID above rank of Inspector of Police/DSP notified to have powers of Officer-in-charge of Police Station under Section 2(s), Cr.P.C. – As per CBCID Manual, Chapter I, Para 1, CBCID can investigate cases on Orders of Supreme Court, High Court, State Government and DGP – CBCID Manual approved by Government vide G.O. 185, dated 16.2.2004.

CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Sections 2(j) & 156(3) – Local Jurisdiction – Local area over which Magistrate has jurisdiction – Magistrate empowered under Section 156(3) to only direct Officer-in-charge of Police Station that falls within his Territorial jurisdiction to investigate case – Expression “such an investigation as above mentioned” in Section 156(3) does not empower Magistrate to direct Officer-in-charge of any Police Station to investigate offence.

**2018 (2) MWN (Cr.) DCC 12 (Mad.)**

**S. Rajamanickam Vs. M. Balasubramanian**

**Date of Judgment: 31.01.2018**

NEGOTIABLE INSTRUMENTS ACT, 1881 (26 of 1881), Sections 138 & 139 – Acquittal – Sustainability – Case of Complainant that Accused taken Hand Loan on 10.10.2009 and issued a Cheque dated 10.11.2009 to pay back same – Accused denied such borrowal – Defence taken by Accused that in respect of a different transaction with Complainant's son, Complainant obtained 2 blank Cheques and unfilled signed papers under threat and coercion on 28.4.2009 – That he lodged Police Complaint on 29.9.2009 for recovery of same – Copy of Police Complaint and Receipt given by Police marked as Exs.D2 & D3 – Since Police directed Accused to work out remedy under Civil law, Accused issued a Legal Notice to Complainant on 8.10.2009 requesting to return said Cheque and document – When Police Complaint given against Complainant on 29.9.2009 and Legal Notice issued on 8.10.2009, case of Complainant that he lent money to Accused on 10.10.2009 cannot be believed – There needed to be normal relationship between parties to give Hand Loan that too without any document – When relationship between Accused and Complainant fully strained in view of serious allegations against Complainant in Police Complaint and Legal Notice, no scope for lending Hand Loan to Accused – Even in Reply to Statutory Notice under Section 138, Accused made statement as made in Police Complaint and Legal Notice – Case of acceptable rebuttal made out – Acquittal upheld.

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