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IMPORTANT CASE LAW



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SUPREME COURT – CIVIL CASES

(2019) 4 SCC 367

Pawan Kumar v. Babulal

Date of Judgment: 02.02.2019

The suit was filed for declaration and ownership of the property. Petition filed under Order 7 R 11(d) C.P.C., by the defendant for rejection of plaint on ground of being barred by law. (In this case Benami Transaction (Prohibition) Act 1988) and it was allowed by the trial court.

The High Court dismissed the appellant appeals affirming the view of the trial court and observing that it was not the case of the appellant that the property was held by defendant for joint benefit of the property.

The Supreme Court allowed the appeal accepting the submission made on behalf of the appellant and decided that the transaction was completely saved from section 4 of the Benami Transactions(Prohibition) Act,1908 by reason of the section 4 (3) of the Act and the suit was not barred under the Act.

(2019) 3MLJ 44(SC)

LNIND 2019 SC 177

Union of India v. Ankur Gupta

Date of Judgment: 25.02.2019

Adoption under Juvenile Justice (Care and Protection of Children) Act 2015, Section 57,58 and 59. 1st Respondent / husband and 2nd respondent / wife / American citizen submitted application to adopt child as Indian Prospective Adoptive Parents. While they were waiting for adoption, 1st Respondent acquired American citizenship. They registered themselves as Overseas Citizens of India (OCI) residing in India. One baby referred for adoption accepted by 1st and 2nd respondents. Their request for permission to continue first application was declared invalid and they were informed to wait for referral of another child as OCI-1st and 2nd respondents filed petition impugning said decision. Supreme Court held that as per Section 57, 1st and 2nd respondents were eligible and competent to adopt child under statutory procedure and statutory regime prevalent as on date applicable to Indian prospective adoptive parents for inter – country adoption, by virtue of Section 59(2). They could at best be given priority in inter – country adoption.

(2019) 3MLJ 468(SC)

LNIND 2019 SC 204

Varun Pahwa v. Ms. Renu Chaudhary

Date of Judgment: 01.03.2019

Amendment of plaint, under Code of Civil Procedure. Application filed by Plaintiff for amendment of Plaint dismissed by the Trial Court and confirmed by High Court. Supreme Court held that it was an inadvertent mistake in the plaint which trial court should have allowed to be corrected and the order declining correction of the plaint cannot be justified in law.

2019) 3MLJ 377(SC)

LNIND 2019 SC 248

Raghwendra Sharan Singh v. Ram Prasanna Singh(Dead)BY LRs

Date of Judgment: 13.03.2019

Rejection of plaint, on the ground of Limitation. Both trial court as well as High Court held that question with respect to the limitation, being mixed question of law and facts, can be decided only after the parties lead the evidence. Supreme Court, on considering the averments in the plaint held that the case is clearly barred by law of limitation and the same can be rejected under order 7 Rule 11(d) of CPC

(2019) 3 MLJ 875 (SC)

LNIND 2019 SC 313

Ramalingeswara Rao v. N. Madhava Rao

Date of Judgment: 05.04.2016

Suit filed by 1st to 3rd Respondents/Plaintiffs against Appellants/1st and 2nd Defendants and others seeking perpetual injunction restraining them from interfering with their peaceful possession over suit properties. Dismissed by Lower courts but decreed by High Court. It was held that 1st and 2nd Defendants were purchasers of suit land from one of co-sharers by registered sale deed and Plaintiffs were sons of another co-sharer. 1st and 2nd Defendants being purchasers stepped into shoes of their vendor / co-sharer and had right to defend their title and possession against other co-sharer. Plaintiffs had no case to claim injunction against 1st and 2nd Defendants in relation to suit property. High Court failed to appreciate factual and legal controversy in its proper perspective and erred in interfering in concurrent findings of fact without recording as to why concurrent findings of fact were bad in law and why it requires interference in its second appellate jurisdiction. Appeal allowed.

SUPREME COURT – CRIMINAL CASES

2019 (3) SCC 770

Ashish Jain v. Makrand Singh

Date of Judgment : 14.01.2019

In this Case under Sections 302/34, 394/34 and 449, robbery with murder of deceased on the basis of circumstantial evidence, last seen evidence theory and recovery of stolen property, are the two main aspects on which case primarily rests. Not established. Discrepancies and contradictions in statement of chance witness, present. Acquittal of all respondents by High Court, confirmed.

(2019) 3 SCC 318

Narendra Kumar Srinivastava v. State of Bihar

Date of Judgment : 04.02.2019

Cognizance of offence punishable under S. 193 IPC on basis of private complaint. Prosecution can be initiated only by sanction of court under whose proceedings offence referred to in Section 195 (1) (b) Cr.P.C was allegedly committed. The object of Section 340 is to ascertain whether any offence affecting administration of justice was committed in relation to any document produced or given in evidence in court during the time when document or evidence was in custodia legis and it is also expedient in interest of justice to take such action. Court has not only to ascertain prima facie case but also to see whether it is in public interest to allow criminal proceedings to be instituted.

(2019) CRL.L.J.1582

Gagan Kumar V.State of Punjab

Date of Judgment: 14.02.2019

It is Mandatory for Magistrate to specify as to whether sentences awarded to accused would run concurrently or consecutively. Accused convicted for two offences under Section 279 and S.304-A of Indian Penal Code. Order inflicting separate punishments for each offences without ensuring its compliance under Section 31 of Indian Penal Code, is unsustainable. On facts and circumstances, both sentences awarded to accused directed to run concurrently.

(2019) 4 SCC 271

Sicagen (India) Ltd. v. Mahindra Vadineni

Date of Judgment : 08.01.2019

Prosecution based on second default in payment of cheque amount should not be impermissible. When there is no prosecution based on first default which was followed by second statutory notice and failure to pay under Section 138, of NI Act. Applying the ratio of *MSR Leathers v. S. Pananiappan*, The complaint filed based on second notice is not barred and the impugned judgment of the High Court are set aside

(2019) 4 SCC 354

Bhagyan Das v. State of Uttarakhand

Date of Judgment : 11.03.2019

The offence compoundable with permission of court under Section 320 Cr.P.C., discretion can be exercised by court having regard to nature of offence. Thus, it is rightly held in impugned judgment of High Court rejecting application for compounding, that offence of convicted and sentenced appellant will have its own effect on society at large. Alleged incident happened during 1991-1992 and complaint was lodged belatedly on 05.11.2004, nearly 12 years after occurrence of incident. On facts, and considering age of appellant, while confirming conviction recorded by courts below, modifying judgment of trial court, as confirmed by appellate court and High Court, sentence modified to period already undergone, amount of fine affirmed.

MADRAS HIGH COURT – CIVIL CASES

(2019) 1 MLJ 306
LNIND 2018 MAD 5906

Director, Geology and Mining, Villupuram District v. S.Raj Ganesh

Judgments: 05.10.2018

In this case petitioners lorry was seized by Tahsildar on allegation of transportation of black granites without valid permit under Section 4 (1A) of Tamil Nadu Mines and Minerals (Development and Regulation) Act, 1957 and Rule 36-A of Tamil Nadu Minor Mineral Concession Rules, 1959. District Collector passed order directing Petitioner to pay certain sum as penalty. On challenge by Petitioner, single Judge set-aside impugned order imposing penalty on owner of lorry. Held, Lorry owner had not been given sufficient opportunity. Issue to be decided as to who was actual transporter of granite. There was no factual finding on that. No notice issued to owner of granite and his statement was also not known. Order of Single Judge confirmed. Appeal dismissed.

(2019) 3 MLJ 517
LNIND 2019 MAD 1081

S.Sarvothaman v. Sub-Registrar, Oulgaret

Date of Judgment : 07.02.2019

On challenge, Single Judge held that decree was presented beyond time limit prescribed under Section 23 of Registration Act, 1908 whether law of Limitation as prescribed under Section 23 of Registration Act, 1908 would apply to court decree and, whether there was any delay in presentation of decree. It was held that in case of court decree not compulsorily registerable, option lies with party. Limitation prescribed under Act would not stand attracted. Presentation of decree from date of obtaining certified copy was well within period of limitation prescribed under Section 23 of Act even assuming that said provision would apply, time limit stipulated under Section 23 of Act would have no application to court decree, appeal allowed.

(2019) 3 MLJ 333

LNINDORD 2019 MAD 2584

K.Gopalasamy v. Govindammal

Date of Judgment : 28.02.2019

Petition filed for the rejection of the plaint under Order 7 Rule 11 of the C.P.C. on the ground that the one of the defendant was a party to an earlier partition suit and therefore, the present suit instituted by the same defendant for the relief of partition is barred under Section 11 of C.P.C. It can be construed that the retrospective application of daughter's rights in co-parcenary property was not available when the earlier suit in O.S. No.1180 of 2004 came to be decreed and therefore, the first respondent herein/plaintiff may be justified in filing the subsequent suit. In view of the above said findings, it would not be proper to strike off the plaint at this stage on the ground that it is barred under the provisions of Section 11 of C.P.C.

(2019) 3 MLJ 827

LNIND 2019 BMM 55

K.Saravanan v. Subbulakshmi

Date of Judgment : 07.01.2019

In this case first Respondent filed suit against second Respondent for recovery of money along with application for attachment before judgment. Trial Court closed application as trial commenced and suit decreed.

First respondent filed execution petition for sale of property and property attached as per procedure. Appellant third party filed application for raising order of attachment on ground that he had purchased property from purchaser of second Respondent. Executing Court dismissed application, hence this appeal.

Held that court had not passed any order as per Order 38 Rule 6, either accepting security furnished by second defendant or order attachment. Court closed application on ground that trial commenced.

In view of no attachment before judgment ordered, second respondent sold property to another person, pending suit. First respondent did not take any proceedings against second respondent for alleged violation of undertaking given by him as not to alienate suit property. Second Respondent's buyer had sold property to applicant long before filing of execution.

Order of attachment effected was invalid as second Respondent was not owner of property on that date and property belong to judgment debtor alone could be attached. Executing Court without considering Order 38 Rules 5, 6 and 7, and Order 21 Rules 54 and 54 (2) erroneously ordered attachment and without properly appreciating above Rules erroneously dismissed the application. Hence, the appeal is allowed.

(2019) (2) CTC 564

R.Gnana Arulmoni v. R.S. Maharajan

Date of Judgment : 24.01.2019

Specific Performance of Sale Agreement under Specific Relief Act, 1963 (47 of 1963), Section 16(c). Readiness and willingness must be specifically pleaded and proved from date of Suit. Plaintiff partially performed his part of Contract. No evidence to establish Plaintiff is ready and willing to perform remaining part of Contract in terms of Agreement, when suit was filed. Held, conduct of Plaintiff most important factor for grant of equitable relief of Specific Performance. Readiness and willingness to perform essential terms of Contract not proved. Plaintiff not entitled to relief of Specific Performance. Decree of Trial Court set aside.

Moulding of Relief under Specific Relief Act, 1963, (47 of 1963), Section 21 and 22 Code of Civil Procedure, 1908 (5 of 1908), Order 7, rule 7. Equity Jurisdiction suit for Specific Performance. Plaintiff has not sought alternative relief for refund of money paid towards sale agreement. Whether entitled Court may mould and grant relief. Court of equity entitled to grant appropriate relief in such case to render justice.

MADRAS HIGH COURT – CRIMINAL CASES

(2019) 2 MLJ (Crl) 270

C. Vaiyapuri v. Rajathi

Date of Judgment: 27.02.2019

In this case the respondent/wife has failed to show any records to prove the marriage between them except oral evidence of the neighbours the Magistrate though appreciated the fact that the petitioner has denied the marriage and any form of association with the respondent. Erroneously concluded that it is upto the petitioner to disprove the case of the respondent, which is against the principles of Indian Evidence Act, which clearly stipulates that the burden of proof of proving the case lies upon the person making the allegation or filing the case.

Thus, it is clear that without affording sufficient opportunity, the learned Magistrate passed the impugned order. Moreover, the financial capacity of the petitioner has not been discussed while determining the maintenance amount. Therefore, on the sole ground of violation of principles of natural justice, the order impugned in this Criminal Revision Case is liable to be set aside.

(2019) 2 MLJ (Crl) 121

K. Kausika v. State by Inspector of Police

Date of Judgment: 04.03.2019

Petitioner/first accused, warden of college charged under Section 306 of IPC on the ground that during study hours, deceased was using cell phone which was seized by Petitioner. Thereafter, second accused and Petitioner both conducted enquiry and thereby said to have instigated or abetted deceased to commit suicide, hence this petition. Whether criminal proceedings against Petitioner could be sustained Held, Petitioner being monitor of students, had taken mobile phone only in interest of student Act of Petitioner would not amount to abetment of suicide. Abetment involves mental process of instigation, instigating person or intentionally aiding person on doing of thing. Without positive act on part of accused to instigate or aid in committing suicide, charge could not be sustained. No clear *mens rea* to instigate the commission of suicide. It also required active act or direct act which led the deceased to commit suicide. Criminal proceedings against Petitioner could not be sustained and hence quashed. Petition allowed.

2019) 2 MLJ (CrI) 211

A. Manohar Prasad v. Integrated Finance Company Ltd.

Date of Judgment: 07.03.2019

In this case of recall of judgment under inherent powers of Hon'ble High Court under Section 482 of Cr.P.C. 1973 discussed. When a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court, which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity. In such eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power to recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alternation has to establish that it was not at fault.

This court held that the orders of the other learned judge of this court in the above appeals are final and hence all these appeal have to be transferred to the court of Sessions. Since the earlier orders of this court in the above appeals are final, this court's common judgment in the above appeals are without jurisdiction and is hence recalled.

(2019) 2 MLJ (CrI) 217

S. Kannan v. State

Date of Judgment: 20.03.2019

Trial Court framed charges against all accused persons pursuant to order passed by this Court and Supreme Court, under Sections 211, 212, 213. Petitioners/3rd to 7th accused filed present petitions for quashing of proceedings. Whether prima facie materials available for purpose of framing charges against Petitioners. Whether ground exist to interfere with charges framed by trial Court. Held, Magistrate obliged to record his reasons, if he decides to discharge accused, but, no such requirement if he forms opinion that there was ground for framing charge. Framing of charge itself was prima facie order that trial Judge formed opinion upon considering Police Report and other materials collected during course of investigation. Lower Court satisfied requirements of Section 211 to 213 and applied its mind to all materials collected by prosecution, sufficiently read and explained charges to accused persons in writing. From answers given by them it was clear that they perfectly understood charges framed against them. Supreme Court and this Court merely directed trial Court to look into materials and satisfy itself. Court could not interfere with proceedings of trial Court at each and every step in exercising its jurisdiction under Section 482. Petitions dismissed.

(2019) 1 L.W. (CrI) 481

**State represented by the Inspector of Police CBI/SCB, Chennai vs. V.P. Pandi @
Attack Pandi & others**

Date of Judgment: 21.03.2019

Scope of Section 65-B (4) of Indian Evidence Act and Section 313 of Cr.P.C. questioning scope procedure and effect. Further test identification parade effect also discussed. When photographers were taking videos of a scene of crime by using roll film camera, the photographer will have to be examined and the negative should be marked as primary evidence and the print developed therefrom, should be marked as secondary evidence. But, when photographs are taken in digital cameras and transmitted electronically, the question of examining the photographer for proving the digital record would not arise and it would suffice if the certification is given by the person, who has the management of the device which generated the electronic record. This is popularly alluded to as the Section 65-B (4) certification.
