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## **IMPORTANT CASE LAWS**

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**SUPREME COURT CITATIONS  
CIVIL CASES**

2012 - 4 -L.W 613

Vishwanath S/o Sitaram Agrawal  
Vs  
Sau. Sarla Vishwanath Agrawal

Hindu Marriage Act (1955), Section 13(1)(ia)'Mental Cruelty', Alimony, interim orders,

Respondent-wife had made allegation that the husband had an illicit relationship – Whether such an allegation has actually been proven by adducing acceptable evidence.

She had publicized in the news-papers that he was a womanizer and a drunkard.

Respondent-wife had humiliated him and caused mental cruelty – Evidence establish a sustained attitude of causing humiliation and calculated torture on the part of the wife to make the life of the husband miserable – His brain and the bones must have felt the chill of humiliation – He is entitled to a decree for divorce.

Amount that has been paid to the respondent-wife towards alimony is to be ignored as the same had been paid by virtue of the interim orders passed by the courts.

(2012) 6 MLJ 755 (SC)

Bhau Ram  
Vs  
Janak Singh and Ors

Code of Civil Procedure (5 of 1908), Order 7 Rule 11 – Application under – While considering an application under Order 7 Rule 11 Code of Civil Procedure, 1908 Court has to examine averments in the plaint – Pleas taken by defendants in written statements would be irrelevant.

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## SUPREME COURT CITATIONS CRIMINAL CASES

(2012) 4 MLJ (Crl) 311 (SC)

P. Sanjeeva Rao  
Vs  
State of A.P.

Prevention of Corruption Act (49 of 1988), Section 7 and 13 (1) read with Section 13(1)(d) – Code of Criminal Procedure 1973 (2 of 1974), Section 242 and 311 – Recall of witness for cross examination – Dismissal by trial Court – Appeal – Denial of opportunity to recall witnesses for cross examination would amount to condemning the accused without giving opportunity to challenge the correctness of the version and credibility of the witness – Held, witnesses recalled by trial Court and an opportunity given to cross examine the said witness – Appeal allowed.

**RATIO DECIDENDI:** Denial of an opportunity to recall the witnesses for cross examination would amount to condemning the accused without giving opportunity to challenge the correctness of the version and credibility of the witnesses.

(2012) 2 MLJ (Crl) 402 (SC)

Vasanti Dubey  
Vs  
State of Madhya Pradesh

Code of Criminal Procedure, 1973 (2 of 1974), Section 200 – Prevention of Corruption Act (45 of 1988), Section 13(1) (d) read with Section 13(1)(2) – Closure report – Order of Special Judge refused to accept closure report – Criminal revision – Dismissal – Appeal – Special judge not justified in proceeding with the matter without sanction for prosecution, and could not have ordered for reinvestigation of the case for the third time by refusing to accept Closure Report – Abuse of process of law – Order of Special Judge set aside – Appeal allowed.

**RATIO DECIDENDI:** The enquiry under Section 200 Cr.P.C. cannot be given a go-bye if the Magistrate refuses to accept the closure report submitted by the investigating agency as this enquiry is legally vital to protect the affected party from the vexatious prosecution.

2012 -2-L.W.(Crl.) 408

Amar Pal Singh  
Vs  
State of U.P. & Anr

Practice/Investigation, Issue of direction, Comments on Judicial Officer, expunging of, language used, 'Locus Parentis'; Comments by Superior Judges, temperate language in judgments, need of,

Criminal Procedure Code, Section 156(3)/direction for investigation; language used in judgment against judicial officer.

Appellant, a judicial officer, aggrieved by the observations passed by the learned Single Judge of Allahabad High Court preferred the present appeal.

Concept of 'loco parentis' has to take a foremost place in the mind to keep at bay any uncalled for, unwarranted remarks.

Use of intemperate language should be avoided in judgments.

A judge is required to maintain decorum and sanctity which are inherent in judicial discipline and restraint – Unwarranted comments on the judicial officer creates a dent in the said credibility, leads to some kind of erosion and affects the conception of rule of law.

Sanctity of decision making process should not be confused with sitting on a pulpit and delivering sermons which defy decorum because it is obligatory on the part of the superior Courts to take recourse to correctional measures – A reformatory method can be taken recourse to on the administrative side.

Observations, comment and the eventual direction were wholly unwarranted and uncalled for – Learned Chief Judicial Magistrate had felt that due to delay and other ancillary factors there was no justification to exercise the power under Section 156(3) of the Code.

2012 -2-L.W.(CrI.) 417

V.D. Bhanot  
Vs  
Savita Bhanot

Protection of Women from Domestic Violence Act (2005), Sections 3/'domestic violence', 12, 18, 19, 20.

If a wife, who had shared a household in the past, but was not doing so when the Act came into force, would still be entitled to the protection of the above Act.

Situation comes within Section 32 of the PWD Act – Respondent be provided with a right of residence where the Petitioner is residing, by way of relief under Section 19 of the PWD Act, and we also pass protection orders under Section 18 thereof.

2012 -2-L.W.(CrI.) 430

R. Mohan  
Vs  
A.K. Vijaya Kumar

Criminal Procedure Code, Section 357(3), 421, 431/Compensation, payment, default, enforcing by sentence;  
Scope of,

I.P.C., Section 64,

Negotiable Instruments Act (1881), Section 138/Compensation, Payment, default, enforcing by sentence;  
Scope of.

Whether the court can award a sentence in default of payment of compensation – Under Section 357 of the Code of Court can pass order to pay compensation.

There is no specific provision in the Code which enables the court to sentence a person who commits breach of the order of payment of compensation.

Purpose of giving relief to the complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to S.421 of the Code – Order under S.357(3) must have potentiality to secure its observance – Order to pay compensation may be enforced by awarding sentence in default.

High Court was in error in setting aside the sentence imposed in default of payment of compensation.

**2012 (4) CIJ 490**

**M. Sarvana @ K.D. Saravana  
Vs  
State of Karnataka**

- (A) Indian Evidence Act, 1872 (1 of 1872) – Sec.3, 32 – Code of Criminal Procedure, 1973 (2 of 1974) – Sec. 154 – Criminal trial – Appreciation of evidence – Hostile witness – Dying declaration – FIR – Informant – Appellant was accused of committing murder and was found guilty by the trial Court and convicted and his appeal was also dismissed by the High Court against which he preferred appeal – While the appellant contended that the FIR was not lodged by an eye witness, dying declaration recorded by the police was not admissible, and the evidence of a hostile witness could not be relied on which plea was resisted by the State – Held, even in case of hostile witness, that part of the statement which was reliable could be relied on by the Court-FIR could be lodged by anyone and the FIR lodged by the doctor who had admitted the deceased in the hospital was perfectly valid – Dying declaration was properly recorded by the police and found reliable and could be acted upon for convicting the appellant – Appeal was dismissed.**
- (B) Code of Criminal Procedure, 1973 (2 of 1974) – Sec.154 – Criminal trial – Investigation – FIR – Informant – FIR can be lodged by any person, even by telephonic information. It is not necessary that an eyewitness alone can lodge the FIR.**
- (C) Indian Evidence Act, 1872 (1 of 1872) – Sec.3 – Criminal trial – Appreciation of evidence – Hostile witness – In criminal trial, the court can take into consideration the part of the statement of a hostile witness which supports the case of the prosecution.**
- (D) Indian Evidence Act, 1872 (1 of 1872) – Sec.3, 32 – Criminal trial – Appreciation of evidence – Dying declaration – The dying declaration, if found reliable, could form the sole basis of conviction.**
- (E) Indian Evidence Act, 1872 (1 of 1872) – Sec.3, 32 – Criminal trial – Appreciation of evidence – Dying declaration – Corroboration – Dying declaration is the last statement made by a person at a stage when he in serious apprehension of his death and expects no chances of his survival – Once dying declaration has been made voluntarily, it is deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction.**

**RATIOS:**

- a) FIR can be lodged by any person, even by telephonic information. It is not necessary that an eyewitness alone can lodge the FIR.**
- b) In criminal trial, the court can take into consideration the part of the statement of a hostile witness which supports the case of the prosecution.**

- c) The dying declaration, if found reliable, could form the sole basis of conviction.
- d) Dying declaration is the last statement made by a person at a stage when he in serious apprehension of his death and expects no chances of his survival.
- e) Once dying declaration has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction.

(2012) 2 MLJ (Cri) 525(SC)

Lalita Kumari and Ors  
Vs  
Government of U.P. and Ors

Code of Criminal Procedure, 1973 (2 of 1974), Section 154 – Information to the police and their power to investigate – Non registration of FIR Challenged – Whenever information relating to cognizable offence is received by the police, he has no option but to register the FIR – However it is also open to the SHO to hold preliminary enquiry to ascertain whether there is prima facie case of commission of cognizable offence or not – Held, Matter referred to a Constitutional Bench of at least five Judge for an authoritative judgment.

2012 (5) CTC 526

Gian Singh  
Vs  
State of Punjab and Anr

Code of Criminal Procedure, 1973 (2 of 1974), Section 482 – Quashing of non-compoundable offence/proceedings – Inherent jurisdiction of High Court – Non-compoundable offences having overwhelmingly and predominantly Civil flavor, wherein wrong is basically to victim, and offender and victim have settled all disputes between them, High Court may in such cases quash Criminal proceeding/Complaint/FIR if satisfied that there is no likelihood of offender being convicted or by not quashing Criminal proceedings, justice shall be a casualty and ends of justice shall be defeated – However, in cases of crimes of serious and heinous nature, settlement between parties would have no legal sanction at all – Offences under Special statutes also cannot be quashed merely on basis of settlement between parties – Securing ends of justice is ultimate guiding factor for exercise of inherent power of High Court – If continuation of Criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between victim and wrongdoer and where Criminal case ought to be closed for securing ends of justice, High Court shall be within its jurisdiction to quash Criminal proceeding.

Code of Criminal Procedure, 1973 (2 of 1974), Sections 320 & 482 – Quashing of offence vis-à-vis Compounding of offence – Power of Court to compound offences under Section 320 materially different from quashing of Criminal proceedings under Section 482 in exercises of its inherent jurisdiction – Power of Court under Section 320 circumscribed by provision – On other hand, exercise of power under Section 482 based on formation of opinion with regard to material on record to determine whether ends of justice would be served – Held, there is distinction between compounding of offence under Section 320 and quashing of criminal case under Section 482, although ultimate consequence may be same i.e. acquittal of accused or dismissal of indictment.

Code of Criminal Procedure, 1973 (2 of 1974), Section 320 – Compounding of offence – Nature and scope of provision, discussed.

(2012) 3 MLJ (Crl) 563 (SC)

Om Kr. Dhankar  
Vs  
State of Haryana and Anr

Code of Criminal Procedure, 1973 (2 of 1974), Section 197 – Prevision of Corruption Act (49 of 1988), Section 13 (1) (d) – Indian Penal Code (45 of 1860), Sections 427, 420, 409 and 427 – Summoning order challenged – Absence of Sanction by the competent authority – For prosecuting accused for the offences for which summoning order has been issued, sanction of the competent authority is required – Appeal Allowed.

**RATIO DECIDENDI:** In view of Section 197, Criminal Procedure Code 1973 in order to prosecute the accused for which summoning order has been issued, Sanction of the competent authority is required.

(2012) 2 MLJ (Crl) 567 (SC)

Senior Intelligence Officer  
Vs  
Jugal Kishore Samra

Narcotic Drugs and Psychotropic Substance Act (61 of 1985), Offence under Section 21 and 29 – Presence of advocate at time of interrogation of a person in connection with a case – Scope of – Order of trial Court directing interrogation of accused to take place only in presence of his lawyer having regard to his medical records – Appeal – On special facts and circumstances of case, held, interrogation of accused may be conducted within sight of his advocate or any other person duly authorized – Advocate or person authorized by accused may watch proceeding from distance – It will not be open to accused to have consultation with him in course of interrogation – Appeal allowed.

**RATIO DECIDENDI:** On special facts and circumstance of case, interrogation of the accused may be held within the sight of his advocate or any other person duly authorized and it will not be open to the accused to have consultation with him in course of the interrogation.

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## HIGH COURT CITATIONS CIVIL CASES

(2012) 7 MLJ 23

Chrome Leather Company Ltd., rep. by its Manager A. Selvakumar  
Vs  
Q. Dawson and Ors

Indian Succession Act (39 of 1925), Section 263 – Probation of Will/Grant of Letters of Administration – Revocation - Locus Standi – Caveatable interest – Appellant filed an application to revoke the order probating the Will – Single judge dismissed the application on the ground that appellant has no caveatable interest and locus standi to seek remedy – Appeal – Held, as the appellant has acquired the property at an auction sale, the appellant has caveatable interest and locus standi to seek revocation of the order probating the Will – Original petition directed to be treated as Testamentary Original Suit and to be disposed of on merits and in accordance with law – Appeal allowed.

2012 (4) TLNJ 106 (Civil)

M/s. Surana Vijay Finance Rep. by its Proprietor Heerachand Surana  
Vs  
D.B. Prakash Chand Jain and Ors

Civil Procedure Code 1908 as amended, Order II Rule 2(3), Order VI Rules 17 of CPC read with Order XIV Rule 8 of Original Side Rules – Amendment of pleadings – amendment not permissible since the prayer for mandatory injunction/specific performance as prayed for alternatively on the direction for return of the advance is legally prohibited – amendment is not permissible, since the proposed amendments would alter the character and nature of the suit and cause of action – Application dismissed.

2012 (4) CIJ 154

Sumathi Devi (deceased) & Ors.  
Vs  
Basanti Bai & Ors.

- (A) Code of Civil Procedure, 1908 (5 of 1908) – Sec.11 – Partition – Preliminary decree – Res judicata – Final decree – Limitation – Plaintiffs had sought for partition of a property by alleging that it was a joint property of the parties – Respondents resisted it by contending that earlier, one of them had filed a partition suit in which exparte preliminary decree was already passed and so present suit was barred by res judicata – Plaintiffs replied by saying that in the earlier suit some of them were not parties and their shares were not determined – Held, as the shares of the plaintiffs were not determined in the earlier partition suit, the present suit was maintainable-As the suit for partition concluded only on passing final decree and in the earlier suit there was only a preliminary decree, the principle of Sec.11 was not applicable-Preliminary decree was passed in favour of the plaintiffs and regarding the claim of mesne profit, as the quantum of income was disputed, separate enquiry thereon was directed-Suit was decreed accordingly.
- (B) Code of Civil Procedure, 1908 (5 of 1908) – Sec.11 – Partition – Preliminary decree – Res Judicata – Final decree – Partition suit filed by one party against another would not bar the opposite party from filing a separate suit to claim his share in that property.

- (C) Code of Civil Procedure, 1908 (5 of 1908) – Sec.11 – Partition – Res Judicata – Final decree – Limitation – In a suit for partition, there is no limitation for filing a final decree application and any number of final decree applications could be filed until the suit is finally disposed of.

**RATIOS:**

- a) Partition suit filed by one party against another would not bar the opposite party from filing a separate suit to claim his share in that property.
- b) In a suit for partition, there is no limitation for filing a final decree application and any number of final decree applications could be filed until the suit is finally disposed of.

(2012) 7 MLJ 173

Y. Jesu  
Vs  
S. Velayutham and Anr

Limitation Act (36 of 1963), Article 54 – Specific Relief Act (47 of 1963), Sections 16 and 20 – Specific performance – Sale agreement entered into between appellant, plaintiff and Respondent No. 1, Power of Attorney of Respondent No. 2 – Advance amount out of total sale consideration was paid – Plaintiff filed suit for performance of contract – Whether suit was barred by limitation – whether conduct of plaintiff did not fall within mandates of Sections 16 and 20 – Held, plaintiff had only three years as per Article 54, and five months as period for performance stipulated in agreement, to file suit for specific performance – Plaintiff presented long after expiry of required period – Suit was barred by limitation, even though specific issue not framed by trial Court – Plaintiff was dormant during entries limitation period – No evidence indicating that Plaintiff was ready and willing to perform his part of contract – Plaintiff's act and conduct falls foul of Sections 16 and 20 – Appeal dismissed.

2012 (4) CIJ 193

D. Murali  
Vs  
S. Kanagaraj & Ors

- (A) Specific Relief Act, 1963 (47 of 1963) – Sec.5 – Possession – Recovery of possession – Tenant – Eviction – Animus – Adverse possession – Appellant sought for recovery of possession from the defendants by stating that he was the owner of the property and the respondents were permitted to put their huts temporarily when their huts were burnt in fire-Respondents denied the title of the appellant and also contended that they were in adverse possession of the property and perfected their right and also claimed right under City Tenants Protection Act-When the trial Court had dismissed the suit by holding that the title of the appellant was not proved and the respondents had also perfected their title by adverse possession, appellants preferred appeal-Parties stood by their stands-Held, the appellant had proved his title by producing documents and the respondents had also admitted it in their pleadings-As the respondents had admitted that they were tenants, their possession could not become adverse and they could not claim title by adverse possession-Appeal was allowed and the respondents were directed to be evicted.
- (B) Specific Relief Act, 1963 (47 of 1963) - Sec.5 – Possession - Recovery of possession – Eviction –Animus - Adverse possession-In order to claim title by adverse possession, person claiming it has to assert that the property has been in his possession with knowledge of the true owner



over the statutory period-Person pleading title by adverse possession has to indicate the period from which his possession became adverse to the true owner.

- (C) Specific Relief Act, 1963 (47 of 1963) - Sec.5 – Possession - Recovery of possession – Animus -Adverse possession - Burden of proof – To succeed in the defence of title by adverse possession, the person claiming it has to prove his long uninterrupted, continuous and unobjectionable real possession over the property against the true owner with his knowledge, with intention to hold the property as his own over the statutory period.

**RATIOS:**

- a) In order to claim title by adverse possession, person claiming it has to assert that the property has been in his possession with knowledge of the true owner over the statutory period.
- b) Person pleading title by adverse possession has to indicate the period from which his possession became adverse to the true owner.
- c) To succeed in the defence of title by adverse possession, the person claiming it has to prove his long uninterrupted, continuous and unobjectionable real possession over the property against the true owner with his knowledge, with intention to hold the property as his own over the statutory period.

2012 (4) CIJ 211

V.D.S.R. Re.Rolling Mill

Vs

Spl.Commissioner and Commissioner of Land Administration

- (A) Government Grants Act, 1895 (15 of 1895) – Sec.3 – Constitution of India – Art. 14, 21, 38, 38(b), 46, 300A – Property – Panchami land – Scheduled caste – Assignment – Transfer – Restriction – Validity – Natural Justice – Time limit – Expiry – Petitioner had purchased lands, built up factory in it and had been enjoying them – At that time, the RDO had issued a notice stating that a part of the land was a panchami land that was allotted to a member of the Scheduled caste with a condition prohibiting alienation to others and the sale to the petitioner had violated the condition and sought for its cancellation – Petitioner had represented that it had acquired the land without notice of its nature and after the expiry of 10 years from the date of assignment and so requested the RDO to recommend to the Government to assign it to the petitioner which plea was rejected by the RDO and the land was reclassified as Tharisu which was challenged by the petitioner – While the petitioner contended that it had purchased it after 10 years and without notice of the nature of the assignment and the order was passed by violating the principles of natural justice, respondents resisted the same-Held, lands allotted to the members of the Scheduled caste had to be in their hands forever and even after the expiry of 10 years from the date of assignment, it could not be alienated to persons other than the members of the Scheduled caste – When the facts were unassailable which would lead to only one conclusion, the violation of the principles of natural justice could not be raised as a ground to perpetuate the wrong – As the petitioner had pleaded that it had purchased it without notice and the land in question was assigned with condition restraining alienation to members of other communities, the purchase by the petitioner was against the grant and the order of the Government resuming the land was correct – Necessity of legislation to protect the proprietary interest of the members of the Scheduled caste was emphasized – Legal position governing the panchami lands were discussed – Order under challenge was upheld as valid and the writ petition was dismissed.
- (B) Government Grants Act, 1895 (15 of 1895) – Sec.3 – Constitution of India – Art. 14, 21, 38, 38(b), 46, 300A – Property – Panchami land – Scheduled caste – Assignment – Transfer – Restriction –

**Validity – Time limit – Expiry – Alienation of the land assigned by the Government to a member of the Scheduled caste with a condition restraining alienation would be void ab initio even if such alienation is made after the expiry of 10 years from the date of such assignment.**

- (C) Government Grants Act, 1895 (15 of 1895) – Sec.3 – Constitution of India – Art.14, 38, 38(b), 46, 300A– Property – Panchami land – Scheduled caste – Assignment – Transfer – Restriction – Validity – Natural justice – Third party who purchases the land assigned to a member of the Scheduled caste with restriction regarding alienation could not plead ignorance of such condition as defence when the Government takes action to resume the land for breach of the condition regarding alienation.**
- (D) Government Grants Act, 1895 (15 of 1895) – Sec.3 – Constitution of India – Art.14, 300A– Property – Panchami land – Scheduled caste – Assignment – Transfer – Restriction – Validity – Challenge – Third party – Third party could not challenge the condition imposed by the Government while assigning its land to another.**

**RATIOS:**

- a) Alienation of the land assigned by the Government to a member of the Scheduled caste with a condition restraining alienation would be void ab initio even if such alienation is made after the expiry of 10 years from the date of such assignment.**
- b) Third party who purchases the land assigned to a member of the Scheduled caste with restriction regarding alienation could not plead ignorance of such condition as defence when the Government takes action to resume the land for breach of the condition regarding alienation.**
- c) Third party could not challenge the condition imposed by the Government while assigning its land to another.**

**(2012) 4 MLJ 369**

**S. Annapoorna and Ors  
Vs  
A.M. Ravichandran**

**Negotiable Instruments Act (26 of 1881), Section 118 – Suit based on promissory note – Promissory note assigned to plaintiff/respondent by original promise – Plaintiff/respondent filed suit based on promissory note against heirs of the deceased promisor – Defendants/appellants’ contention that suit pro note forged – Prima foacie doubt about financial ability of promise and endorsee of promissory note raised – Trial Court found in favour of plaintiff/respondent –On appeal – Original parties to promissory note are not litigants before Court – Suit is between respective representatives, who stepped into shoes of original promise and promisor – Trial Court in error in holding suit as simple suit for pro-note – Trial Court in error in holding original promise had financial ability without referring to any evidence – Petitioner/respondent bound to prove factum of pro-note, endorsement supported by consideration – Opportunity to be given to plaintiff/respondent to adduce additional evidence – Matter remitted back to Trial Court – Appeal disposed of.**

**RATIO DECIDENDI: In doubtful matters when evidence is lacking, it is the negative that should be presumed and not the affirmative.**

2012 (3) TLNJ 371 (Civil)

Saradammal alias Saradambal  
Vs  
G.S. Srinath

Civil Procedure Code 1908 as amended, Order 2, Rule 2 – Agreement for sale when the final suit was filed for permanent injunction the plaintiff ought to have prayed for specific performance of the agreement – the letter suit can be filed only if the plaintiff had obtained leave of the court for filing a comprehensive suit for specific performance the latter suit barred under order 2 Rule 2 of CPC. – Appeal Suit allowed.

2012 (3) TLNJ 388 (Civil)

D. Sellamuthu  
Vs  
K.N. Venkatachalam

Evidence Act 1972, Section 45 Suit on the basis of a pro note – expert opinion report filed – not marked in trial court – suit dismissed – appeal in 1st appellate Court – decreed the suit on the basis of the expert opinion – second appeal filed in High Court held, it is incorrect for the 1st appellate Court to base its judgment by looking in the expert opinion / report, when the same has not been marked as a document in the trial court – case remanded to the trial court – directed to examine the hand writing expert and to mark the expert opinion / report – SA allowed with direction.

2012 (5) CTC 395

G. Sivaprakasam  
Vs  
G. Dhandapani

Negotiable Instruments Act, 1881 (26 of 1881), Section 118 – Presumption of execution of Pro-Note – Defendant in Suit admitting signature of Pro-Note – Defendant also admitting receipt of lawyer Notice from Plaintiff – No denial of execution of Pro-Note – Consequently, presumption under provision as passing of consideration, would arise - Defendant to dislodge said presumption either by independent evidence or from evidence let in by Plaintiff – Defendant failing to dislodge said presumption – Judgment and decree to Trial Court decreeing Suit, restored – Decree and judgment of First Appellate Court dismissing Suit, set aside.

Jurisprudence – Civil Case – Suit based on Pro-Note – Suit would be based on probabilities of case established in evidence – Said case not to be tried as Criminal case – Approach of First Appellate Court giving weightage to inconsistency of evidence of PW 2 and virtually ignoring positive evidence of PW1 and admissions of Defendant in his evidence, erroneous – Negotiable Instruments Act, 1881 (26 of 1881), Section 118.

(2012) 6 MLJ 436

M.M.Yusuf  
Vs  
R.L. Jadhav (deceased) and Ors

Specific Relief Act (47 of 1963) – Suit for specific performance – Trial Court decreed suit – First appellate Court reversed judgment of trial Court and dismissed suit – Second appeal – Held, Exhibit A-1 sale agreement was mere fabricated one as found by first appellate Court which was countenanced by Court - Plaintiff did not put forth correct particulars and uttered lie in plaint filed before Court which would brand him as person with unclean hands – Plaintiff not entitled to specific relief as sought for by him as he approached Court with false pleas and unclean hands – Second appeals filed by plaintiff against judgment of first appellate Court dismissed with costs.

**RATIO DECIDENDI:** The specific relief is an equitable relief, to be granted on exercising its discretion by the Courts under Section 20 of the Specific Relief Act and the provisions have to be complied with for the grant of such a relief.

(2012) 4 MLJ 450

M. Madhu  
Vs  
L. Mahalingam

Code of Civil Procedure (5 of 1908), Order 9 Rule 13 – Setting aside ex parte decree – Impugned order of lower Court allowing application subject to condition that entire suit claim should be deposited by defendant along with cost a condition precedent for participating in proceedings – Revision – Held, taking into account the relationship between parties and that without any delay application was filed, lower Court need not have passed such onerous condition – Onerous condition imposed by lower Court set aside – Revision petition disposed of.

2012 (3) TLNJ 462 (Civil)

V. Durairaj and Ors  
Vs  
P. Arangantham Pillai (died) and Ors

Civil Procedure Code 1908 as amended, Order 22, Rule 2 – Suit right to sue – one of party died – suit not abated – application to bring LR's allowed.

Constitution of India 1950, Article 227 – Suit – abetment – See Civil procedure Code 1908 as amended, Order 22, Rule 2.

(2012) 6 MLJ 472

Kanakeswari  
Vs  
Arulmigu Bava Oudishwararswamy Devasthanam rep. by his executive Officer, Thiruthuraipoondi and Ors

Suit for permanent injunction – Suit property owned by temple (Respondent) leased out to lessee – After demise of lessee, legal heirs were in enjoyment of suit property – Rental receipts issued by temple to original lessee – Appellant not lease holder or any other contract of tenancy, started unauthorized construction on suit property – Trial Court dismissed suit filed by temple – First Appellate Court reversed order of Trial Court – Second Appeal – Exhibit A-1 is lease arrangement and original lessee was given leasehold right over suit property for three years to reside therein by raising construction – Authenticity of said document not refuted by appellant – Appellant accepted status of temple as owner of suit property – Evidence that appellant never submitted any document before Commissioner of HR & CE for change of lease in her name – Lease standing in name of original lessee never transferred to anyone else's name after his demise – Though Appellant claimed absolute ownership initially and thereafter projected as lessee, not even single document was produced before Courts below to substantiate that she had purchased suit property from actual owner/plaintiff or entered into lease with temple or authority administering affairs of temple/HR & CE Board – Second Appeal dismissed.

(2012) 6 MLJ 492

Kaliappan (Died) and Ors  
Vs  
A.K. Somasundaram (Died) and Ors

Transfer of Property Act (4 of 1882), Section 13 – Indian Succession Act (39 of 1925), Sections 113, 114 and 115 – Perpetuity – Suit for declaration and recovery of possession – Suit property originally belonged to maternal grand – mother of plaintiffs/respondent – She executed registered will in respect of properties including suit property – In terms of Will, properties were to be enjoyed for life by her husband and her three daughters (including plaintiffs' mother) and subsequently to be enjoyed by her grand-sons and their heirs in male line generation after generation without power of alienation – Appellants / defendant obtained Sale Deeds from respondents/plaintiffs mother in regard to suit property and were in possession and enjoyment – Held, appellants/defendants are entitled to hold and enjoy properties as per Sale Deeds till life-time of mother of plaintiff – Till life-time of respondents/plaintiffs' mother they cannot claim recovery of possession in respect of suit properties from appellants/defendants because of fact that mother during her life-time having conveyed suit properties – Respondents/plaintiffs cannot seek recovery of possession in view of fact that as vested remainders they are to wait till the exclusion of life interest holder or her demise – Appeal disposed of.

RATIO DECIDENDI: In an instrument of Will, any number of life interests can be created, but a vested remainder cannot be passed on beyond one generation.

2012 (3) TLNJ 514 (Civil)

Sakthivelu @ Ramesh  
Vs  
Datchayani @ Tamizh

Constitution of India 1950, Article 142 – See Hindu Marriage Act, 1955, Section 28(1) Section 13(1) (ia).

Family Courts Act, 1984 Sections 19 and 19 (1) – See Hindu Marriage Act 1955, Section 28(1) Section 13(1) (ia).

Hindu Marriage Act, 1955, Section 28(1), Section 13(1)(ia) – Husband filed petition for divorce on ground of adultery, cruelty and desertion – Wife filed counter claim for Maintenance and Restitution of conjugal rights – OP Dismissed – allowing wife's claim – on appeal filed by the husband High Court held that doubting the fidelity of the wife subjecting her to DNA Test and not living with her even after the proof of paternity would amount to desertion – argument that marriage has been irretrievably broken down is not the ground for divorce provided under the Hindu Marriage act, only the Supreme Court under Article 142 has the power to allow the petition on that ground CMA Dismissed on ground of cruelty and desertion.

2012 (3) TLNJ 584 (Civil)

Parvathi and Ors  
Vs  
Sappani Gounder

Easementary Rights – When the Defendants 2 to 4 have not proved to the subjective satisfaction of this Court that they possess a vacant land on east of their wall on the eastern side of the portion and moreover – When the 2<sup>nd</sup> Defendant in evidence has clearly deposed before the trial Court that the roof of the property purchased by

them through Sale Deed is situated on south –north side and originally they have drained the drainage water inside their house and they have no right to construct a ditch and to let out the roof rain water in 'D1' portion by placing the metal sheet for the purpose of letting out the water in the land of the plaintiff – as such plaintiff are entitled to Declaration, Permanent Injunction and Mandatory Injunction – SA dismissed.

**(2012) 5 CTC 596**

**K. Vairavan  
Vs  
Selvaraj**

**Indian Evidence Act, 1872 (1 of 1872), Section 45 – Opinion of Expert – Age of ink – Complaint against Revision Petitioner under Section 138 of 1881 Act – Contention of Petitioner that signature on cheque not his signature – Opinion of Expert that signature on concerned cheque that of Revision Petitioner – Application by Revision Petitioner for opinion of Expert on age of ink – Held, no such expert available in India to determine age of ink on document – Moreover, Application by Revision Petitioner for forwarding document to ascertain age of ink, only an afterthought to drag proceedings – Criminal Revision Petition, thus, dismissed – Negotiable Instruments Act, 1881 (26 of 1881), Section 138.**

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## HIGH COURT CITATIONS CRIMINAL CASES

(2012) 4 MLJ 5

Pavithra @ Swathi  
Vs

Inspector of Police, J8 Neelankarai Police Station, Chennai and Anr

Immoral Traffic (Prevention) Act (104 of 1956) – Code of Criminal Procedure 1973 (2 of 1974), Section 482 – Petition filed to set aside proceeding and release victim from protective home – Victim was kept in protective home for more than 2 years and 10 months without there being any order made under Section 17(4) of the Immoral Traffic(Prevention) Act authorizing detention – Inherent power under Section 482 Code of Criminal Procedure to be invoked to secure justice and liberty to the victim – Order of magistrate is set aside – Petition allowed.

(2012) 4 MLJ 11

Theiveegan Financiers, No. 732-B, Jawhar Bazaar, Karur, rep. by its Partner K. Mohanasundaram and Ors  
Vs

Competent Authority and District Revenue Officer, Karur District, Karur and Ors

Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997, Section 5 – Compoundable offence – Petition filed for discharge – Dismissal of discharge petition – Criminal revision – Even though case was compoundable, subsequently disputes has arisen regarding settlement of the payment to the depositors dispute can be sorted out only on merits – Dismissal of discharge petition, proper – Criminal revision dismissed.

(2012) 4 MLJ (CrI) 214

Ms. Anuj Jermi  
Vs

State by Inspector of Police, T-14, Mangadu Police Station, Mangadu, Chennai and Anr

Indian Penal Code (45 of 1860), Sections 304(ii), 96 and 100 – Code of Criminal Procedure 1973 (2 of 1974), Section 482 – Petition filed to quash proceeding – Accused has acted only in exercise of right of private defense to save her modesty and life – Nothing is an offence which is done in exercise of right of private defence – Proceeding quashed – Petition allowed.

(2012) 2 MLJ (CrI) 348

Tamilarasi  
Vs

State represented by the Superintendent of Police, P.C.R. Cell, Pondicherry and Anr

Code of Criminal Procedure, 1973 (2 of 1974), Section 482 – Issuance of process – Complainant statement of found trust worthy – Order issuing process challenged – Evidence of supporting witness and statement of the complainant have to be decided before the Court – Order of issuance of summons is quite in consonance with settled principles – Revision petition dismissed.

**RATIO DECIDENDI:** The magistrate is empowered to apply his mind independently.

(2012) 3 MLJ (CrI) 352

S. Balamurgan  
Vs  
Ragunatha and Ors

Code of Criminal Procedure, 1973 (2 of 1974), Section 156 (3) – Further investigation – Impugned order rejecting request of investigation – Criminal revision – Material on records pertaining to the investigation leads to conclusion that no re-investigation needs to be ordered – Protest petition treated as private complaint – Judicial Magistrate has judicially exercised his jurisdiction – Criminal revision dismissed.

(2012) 3 MLJ (CrI) 434

Chella Basker  
Vs  
Ganesan and Ors

Indian Penal Code (45 of 1860), Sections 406 and 420 – Code of Criminal Procedure Code, 1973 (2 of 1974), Section 203 – Dismissal of complaint – Criminal Revision – No supporting document to make out a criminal case of alleged cheating – No prima facie material to proceed further – No error or illegality in impugned order – Complaint dismissed.

**RATIO DECIDENDI:** If the complaint has not been supported by the statements on oath of the complainant and of the witnesses and there is no prima facie material to proceed further, it would be considered only as a vexatious complaint, liable for dismissal.

(2012) 3 MLJ (CrI) 438

Nataraj and Ors  
Vs  
State rep. by Inspector of Police, CBI/SCB/Chennai, Camp at Tindivanam and Ors

Code of Criminal Procedure, 1973 (2 of 1974), Section 167(2) – Application for bail – Rejection of Application challenged – When an application is filed before the trial Court for grant of bail, the same will have to be considered on merits without being influenced by any of the observation made by the High Court – Accused directed to be released on bail subject to condition.

**RATIO DECIDENDI:** An observation made by Superior Court cannot be binding precedent that too in the teeth of specific provision of law and when an application is filed before the trial Court for grant of bail, the same will have to be considered on merits without being influenced by any of the observation made by the High Court.

(2012) 2 MLJ (CrI) 449

Rajagopal  
Vs  
Forest Range Officer, Jamunamarathur

Code of Criminal Procedure 1973, (2 of 1974), Section 325(3) – Remand of case – Order of Chief Judicial Magistrate remanding back case to the referral of Special Judicial Magistrate, challenged – Once case is referred by Magistrate to Chief Judicial Magistrate he alone has to take further action as per procedure and power conferred under Section 325(3) of Code of Criminal Procedure – Criminal Original Petition allowed.

**RATIO DECIDENDI:** While exercising power under Section 325(3) of Code of Criminal Procedure 1973, the Chief Judicial Magistrate is not obliged to follow the conclusion/finding arrived at by the referral Magistrate. He alone has to take further action as per the procedure and the power conferred upon him under Section 325 (3) of Code of Criminal Procedure 1973.



2012 (5) CTC 476

Galaxy Anaze Kingdom Ltd  
Vs  
Union of India and Ors

Code of Civil Procedure, 1908 (5 of 1908), Section 20- Negotiable Instruments Act, 1881 (26 of 1881), Section 138 – Territorial jurisdiction of Courts – Criminal cases – Contract between parties – Contract between parties can be relied upon in Civil cases in order to oust Civil Court's jurisdiction under Section 20 of Court – However, in Criminal cases, viz., under Section 138 of 1881 Act, statute itself enables party to sue defaulter in any Court where jurisdiction arose – Said jurisdiction cannot be curtailed by private agreement.

Constitution of India, Article 226 – Negotiable Instruments Act, 1881 (26 of 1881), Section 138 – Writ Petition impleading Magistrates as party Respondents from various parts of country on account of pending proceedings under Section 138 of 1881 Act before said Magistrates – Held, in respect of each process issued by learned Magistrate, a separate cause of action would arise and a consolidated Writ Petition cannot be filed challenging all kinds of processes issued.

(2012) 5 CTC 605

Joy Mon  
Vs  
C. Sasit Lovely

Negotiable Instruments Act, 1881 (26 of 1881), Sections 25, 138 & 142 – 30 days' delay in filing Complaint under Section 138 – Delay on account of Counsel being hospitalised – Factum of hospitalisation, sufficiently proved – Nonetheless, Application for Condonation of Delay dismissed on ground that acknowledgement of debt was after period of limitation – Held, while considering reason for delay, Courts ought not to analyse merits of case – Moreover, under Section 25(3) even a time barred debt can be promised to be paid – As reason of delay sufficiently explained, order of Metropolitan Magistrate dismissing Application for Condonation of Delay, set aside.

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