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IMPORTANT CASE LAW



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INDEX

S. No.	IMPORTANT CASE LAW	PAGE No.
1.	Supreme Court – Civil Cases	1
2.	Supreme Court – Criminal Cases	4
3.	Madras High Court – Civil Cases	6
4.	Madras High Court – Criminal Cases	11

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Apollo Zipper India Ltd. Vs. W.Newman and Co. Ltd.	(2018) 6 MLJ 99 (SC)	20.04.2018	Tenancy Laws –Eviction – Transfer of Property Act	01
2	National Highways Authority of India Vs. G.J.E. Ltd	(2018) 7 MLJ 202 (SC)	13.07.2018	Alternative Dispute Resolution – Arbitration – Tender process – Section 17 of Arbitration and Conciliation Act	01
3	Uma Pandey Vs. Munna Pandey	(2018) 5 SCC 376	09.04.2018	Civil Procedure – Second Appeal – Substantial question of law – Suit for partition and separate possession – Unregistered partition deed	01
4	Bhartiben Nayabha Ker Vs. Sidabha Pethabha Manke	(2018) 5 SCC 716	05.04.2018	Motor accident claim – Sections 166 and 168 of Motor Vehicles Act – Fatal accident – Compensation and interest – Computation	02
5	Shivawwa Vs. National India Insurance Co. Ltd	(2018) 5 SCC 762	28.03.2018	Compensation claim – Sections 149 and 166 of Motor Vehicles Act – Third-party insurance – Principle of pay-and-recover	03

SUPREME COURT - CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1	Yashwant Vs. State of Maharashtra	(2018) 4 MLJ (CrI) 10 (SC)	04.09.2018	Custodial torture – Death – Section 330 IPC	04
2	T.P. Murugan (Dead) Thr. Lrs. Vs. Bojan	(2018) 4 MLJ (CrI) 71 (SC)	31.07.2018	Negotiable instruments – Dishonour of cheque – Rebuttal of presumption – Sections 138 and 139 of Negotiable Instruments Act	04
3	Motiram Padu Joshi Vs. State of Maharashtra	(2018) 4 MLJ (CrI) 79 (SC)	10.07.2018	Murder – Reversal of acquittal – Sections 147, 148, 149 and 302 IPC	04
4	Sonvir @ Somvir Vs. State of NCT of Delhi	(2018) 4 MLJ (CrI) 91 (SC)	02.07.2018	Murder – Circumstantial evidence - Forensic expert report – Sections 34, 302 and 392 IPC – Sections 3, 4, 5 and 8 of Identification of Prisoners Act, 1920	05
5	Mohan Lal Vs. State of Punjab	(2018) 4 MLJ (CrI) 244 (SC)	16.08.2018	Narcotics – Fair Investigation – Section 18 of NDPS Act	05

MADRAS HIGH COURT – CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Harsha Estates Vs. Dr.P.Kalyana Chakravarthy	(2018) 7 MLJ 281	23.07.2018	Contract – Specific Performance – Suit for land	06
2	Delphine Mary Vs. Saleth Mary	(2018) 7 MLJ 737	12.09.2018	Succession Laws – Partition – Self-acquired property	06
3	E. Shanmugam Vs. State of Tamilnadu	(2018) 7 MLJ 747	27.08.2018	Civil Procedure – Execution proceedings – Powers of executing court – Order 21 Rule 32(5) CPC – Article 136 of Limitation Act	07
4	Dia Health Foods Pvt. Ltd. Vs. Diabliss Consumer Products Pvt. Ltd.	(2018) 7 MLJ 775	06.09.2018	Intellectual property laws – Copyright – Infringement	07
5	Balakrishnan Chettiar Vs. Rajeswari	(2018) 7 MLJ 849	16.08.2018	Property laws – Possession of title – Boundary recitals	08
6	Abraham @ Daveed Nadar (Died) Vs. Santhakumar	(2018) 8 MLJ 8	12.09.2018	Limitation – Redemption of mortgage – Discharge of debt – Article 61(a) of Limitation Act – Section 9 of Debt Relief Act, 1979	08
7	Karaikal Port Pvt. Ltd. Vs. Marg Limited	(2018) 8 MLJ 58	06.08.2018	Alternative dispute resolution – Arbitration agreement – Jurisdiction – Sections 9 and 42 of Arbitration and Conciliation Act	09
8	Joint Director of Health Services Vs. Palaniammal	(2018) 8 MLJ 145	11.08.2018	Civil laws – Compensation – Failure in sterilization operation	09
9	Chandrasekaran Vs. Marimuthu	(2018) 8 MLJ 240	19.09.2018	Tenancy laws – Eviction – Denial of title – Section 10(2)(vii) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960	10
10	Amilal Ramkishan Dass Vs. Ashok Kumar Sethi	(2018) 8 MLJ 160	27.09.2018	Rejection of plaint – Territorial jurisdiction – Order 7 Rule 11 CPC	10

MADRAS HIGH COURT – CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Lakshmanan Vs. State	(2018) 4 MLJ (CrI) 116	23.08.2018	Murder – Circumstantial evidence – Sections 201, 302 and 304(I) IPC	11
2	Nagendran Vs. State	(2018) 4 MLJ (CrI) 129	31.08.2018	Murder – Common intention – Sections 34, 302 and 342 IPC	11
3	Subair Vs. Union of India	(2018) 4 MLJ (CrI) 257	12.10.2018	Bail – Entitlement – Sections 16 and 18 of Unlawful Activities (Prevention) Act, 1967	12
4	T. Kamaraja Pandian Vs. State	(2018) 4 MLJ (CrI) 273	11.08.2018	Illegal gratification – Demand and acceptance – Sections 13(1)(d) and 13(2) of Prevention of Corruption Act	12
5	S.P. Mayandi (died) Vs. State by the Inspector of Police	(2018) 4 MLJ (CrI) 278	24.08.2018	Illegal gratification – Presumption – Sections 13(1)(d) and 13(2) of Prevention of Corruption Act	13
6	Murugan Vs. State	(2018) 4 MLJ (CrI) 286	09.08.2018	Murder – Circumstantial evidence – Sections 302 and 392 IPC	13
7	Rasu @ Puliamarathu Rasu Vs. State	(2018) 4 MLJ (CrI) 444	18.09.2018	Prevention of atrocities – Hurt – Section 3(1)(x) of SC and ST Act – Sections 323 and 342 IPC	14
8	Balamurugan Vs. State	(2018) 4 MLJ (CrI) 448	03.10.2018	Abetment to Suicide – Incitement – Section 306 IPC	14
9	Karthick @ Kartheeswaran Vs. State	(2018) 4 MLJ (CrI) 492	05.10.2018	Counterfeiting – Possession of forged notes – Section 489-C IPC	15
10	G.Prabakaran Superintendent of Police Vs. of	(2018) 4 MLJ (CrI) 513	20.09.2018	Registration of complaint – Direction to police – Sections 154, 156 and 482 CrPC – Judicial magistrates to keep in mind the narratives in Supreme Court case – Eschewing Section 156(3) only on exceptional and rarest of rare cases	15

SUPREME COURT – CIVIL CASES

(2018) 6 MLJ 99 (SC)

Apollo Zipper India Ltd. Vs. W.Newman and Co. Ltd.

Date of Judgment: 20.04.2018

Tenancy Laws – Eviction – Leave to defend – Transfer of Property Act, 1882 – Appellant/Plaintiff/owner filed summary eviction suit against Respondent/Defendant/tenant claiming arrears of rent, vacant possession of suit premises and mesne profits – Respondent raised three grounds to oppose Appellant’s suit and sought leave to defend suit on said grounds – Single Judge declined to grant leave and decreed suit – Division Bench granted unconditional leave to defend suit and remanded suit for its trial on merits, hence this appeal – Whether grant of leave to Respondent to defend summary eviction suit filed by Appellant against them in relation to suit premises, sustainable – Held, Appellant was prima facie able to prove their title over suit premises and factum of “attornment” made by Respondent in relation to suit premises in Appellant’s favour – It thereby entitled Appellant to determine contractual tenancy which was devolved upon them by operation of law – Neither any dispute nor confusion nor any ambiguity over question of title over suit premises which needed any elaborate inquiry – Appellant was well within their right to file summary suit against tenant’s eviction by taking recourse to Act read with Rules applicable to suits filed on original side jurisdiction of High Court – Respondent failed to raise any arguable and substantial defense as required under Rules – Grounds raised for seeking leave to defend suit were only for sake of raising and had no factual or/and legal foundation to stand for trial in suit – No leave could be granted to Respondent – Impugned judgment set aside – Appeal allowed.

(2018) 7 MLJ 202 (SC)

National Highways Authority of India Vs. G.J.E. Ltd

Date of Judgment: 13.07.2018

Alternative Dispute Resolution – Arbitration – Tender process – Arbitration and Conciliation Act, 1996, Section 17 – Appellant entered into Concession Agreement with Respondent for works of widening National Highway – Alleging that Respondent failed to undertake project work at requisite pace, Appellant issued Cure Period Notice failing which Appellant be forced to initiate further action to terminate contract – Appellant filed application before Tribunal seeking permission to complete balance works of project – Respondent filed application seeking direction to Appellant to allow Respondent to exercise option to match lowest bid and to exercise Right of First Refusal (ROFR) – Tribunal dismissed application of Appellant but allowed Respondent’s prayer – Appellant issued tender for balance work – Application filed by Respondent under Section 17, seeking permission of Tribunal to complete balance work at its risk and cost was allowed and same confirmed on appeal, hence this appeal – Whether High Court justified in dismissing appeal filed by Appellant seeking to quash order passed by Arbitral Tribunal under Section 17 – Held, Respondent was obliged to comply with terms and conditions of tender documents publicly notified by Appellant – Respondent failed to participate in bidding process and lost opportunity granted to match lowest bid or to exercise ROFR – Any other view would fall foul of fundamental policy of Indian law – Entity who stays away from bidding process and

fails to comply with express terms and conditions of tender documents could not claim any right to match lowest bid or exercise ROFR – Only responsive bidder could do so – Third parties were likely to be prejudiced by allowing Respondent to match lowest bid or exercise ROFR, without participating in bidding process – Order passed by Tribunal and High Court quashed and set aside – Application preferred by Respondent under Section 17, dismissed – Appeal allowed.

(2018) 5 SCC 376

Uma Pandey Vs. Munna Pandey

Date of Judgment: 09.04.2018

Civil Procedure Code, 1908 – S. 100 – Second appeal – Substantial question of law – Suit for partition and separate possession – Unregistered partition deed (document) relied on by defendants – Questions relating to admissibility and contents thereof, held, substantial questions of law

(2018) 5 SCC 716

Bhartiben Nayabha Ker Vs. Sidabha Pethabha Manke

Date of Judgment: 05.04.2018

Motor Vehicles Act, 1988 – Ss. 166 and 168 – Fatal accident – Compensation and interest – Computation – High Court not computing income towards future prospects and reducing interest from 12% to 9% – Claimants of deceased, held, entitled to additional compensation of 25% towards future prospects – Further amount of Rs 70,000 computed under conventional heads – Award of interest at 9% p.a. by the High Court, upheld – Accordingly total compensation re-computed and enhanced to Rs 12.67

(2018) 5 SCC 762

Shivawwa Vs. National India Insurance Co. Ltd

Date of Judgment: 28.03.2018

A. Motor Vehicles Act, 1988 – Ss. 149 and 166 – Third-party insurance – Liability of Insurance Company to satisfy judgments and awards in respect of third-party risks – Principle of pay-and-recover, even in absence of liability to pay compensation, reiterated

B. Motor Vehicles Act, 1988 – Ss. 173 and 166 – Compensation – Quantum awarded by Tribunal not challenged by claimants in forum below – Raising said issue for first time before Supreme Court, not tenable

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SUPREME COURT – CRIMINAL CASES

(2018) 4 MLJ (CrI) 10 (SC)

Yashwant Vs. State of Maharashtra

Date of Judgment: 04.09.2018

Custodial Torture – Death – Indian Penal Code, 1860 (Code), Section 330 – Accused/Appellants/Police officials took custody of deceased in his house, beat him, molested his wife and locked him up in cell – Deceased found dead in custody – Trial Court convicted Appellants under provisions of Code – Appeal filed – High Court dismissed appeal preferred by State and partly allowed appeals preferred by Appellants, acquitting them under other sections, however, upheld conviction under Section 330 – 10th accused acquitted – Appeals filed by Appellants against conviction and by State for enhancement of sentence and acquittal – Whether injuries caused by police officers be sufficiently imputed to be cause of death of deceased – Whether High Court justified in upholding conviction only under Section 330 – Held, deceased died of asphyxiation due to contents of his vomit, hours later from time when injury was inflicted and same is independent reason for cause of death – Injuries noted in post-mortem report indicate that nature of injuries were not grievous – Lower Courts inferred cause of death was due to asphyxiation – No reason for accepting different factual inference – Reasoning of High Court agreed on aspect the PW-1/wife of deceased not been completely honest in her statements, mandating to be cautious in accepting her evidence – Causal link between injuries caused by erring officers and death is not connected – Statements of all accused as well as evidence of witnesses show that there exists reasonable doubt as to presence of 10th accused during patrolling party – No material found to interfere with conviction of accused under Section 330, except for quantum of punishment – Term of sentence increased to maximum period under Section 330 and fine imposed maintained – Appeals ;by State, partly allowed – Appeals by Appellants, dismissed.

(2018) 4 MLJ (CrI) 71 (SC)

T.P. Murugan (Dead) Thr. Lrs. Vs. Bojan

Date of judgment: 31.07.2018

Negotiable Instruments – Dishonour of Cheque – Rebuttal of presumption – Negotiable Instruments Act, Sections 138 and 139 – Respondent failed to return share of Appellants in company after their resignation as Directors – Respondent issued Promissory Note which records that it was being issued against loan in favour of one Appellant – Respondent also issued two cheques on same date, in favour of Appellants towards discharge of their liability for investments made in Company – Cheques presented for encashment by Appellants, dishonoured – On complaints filed by Appellants Court ordered conviction of Respondent, however, High Court set aside conviction order, hence these appeals – Whether Respondent failed to rebut presumption by adducing any cogent or credible evidence – Held, under Section 139, once cheque had been signed and issued in favour of holder, there was statutory presumption that it was issued in discharge of legally enforceable debt or liability – This presumption was rebuttable one, if issuer of cheque was able to discharge burden that it was issued for some other purpose like security for loan – Respondent failed to produce any credible evidence to rebut statutory presumption – Appellants proved their case by overwhelming evidence to establish that two cheques were issued toward discharge of existing

liability and legally enforceable debt – Respondent having admitted that cheques and Pronote were signed by him, presumption under section 139 would operate – Respondent failed to rebut presumption by adducing any cogent or credible evidence – Impugned order of High court set aside – Order of Conviction passed by Trial Court restored – Appeals allowed.

(2018) 4 MLJ (CrI) 79 (SC)

Motiram Padu Joshi Vs. State of Maharashtra

Date of Judgment: 10.07.2018

Murder – Reversal of acquittal – Indian Penal Code, 1860, Section 147, 148, 149 and 302 – High Court reversed judgment of acquittal of Appellants/ 3rd, 5th, 7th and 8th accused and convicted them under Sections 147, 148, 302 read with 149, hence this appeal – Whether reversal of order of acquittal liable to be interfered – Held, trial court had not properly appreciated evidence and its findings were perverse – In appeal against order of acquittal, duty was cast upon High Court to re-appreciate evidence – Deceased had sustained as many as twenty-six injuries – PWs 1 to 3 had consistently spoken about incident and that Appellants were armed with deadly weapons – Overt acts of Appellants corroborated by medical evidence and by recovery of weapons from Appellants – Trial court gave importance to insignificant aspects and conduct of witnesses as to why they had not reacted in particular manner – Trial court failed to appreciate substratum of prosecution case – High Court on being satisfied that conclusion reached by trial court was erroneous reversed order of acquittal recorded by trial court – No good ground to interfere with judgment of High Court – Conviction of Appellants under Section 302 read with 149 Code 1860 confirmed – Appeal dismissed.

(2018) 4 MLJ (CrI) 91 (SC)

Sonvir @ Somvir Vs. State of NCT of Delhi

Date of Judgment: 02.07.2018

A. Murder – Circumstantial evidence – Indian Penal Code, 1860, Sections 34, 302 and 392 – Appellant/2nd accused along with other accused convicted for offences punishable under Sections 302, 392 read with Section 34, hence this appeal – Whether prosecution has proved case for offences under Sections 302, 392 read with Section 34 against Appellant beyond reasonable doubt – *Held*, alleged recovery of jewellery and cash from Appellant could not be taken as piece of incriminating evidence – Weapon of offence allegedly recovered from Appellant and used in commission of crime, could not be taken as piece of incriminating evidence against him – Mere matching of blood group of blood samples taken from bed sheet at scene of crime, and blood-stained shirt recovered from Appellant could not lead to conclusion that Appellant had been involved in commission of crime – Prosecution had not proved that room from where blood-stained knife and shirt were allegedly recovered, was in exclusive possession of Appellant and/or was in his exclusive custody – Absence of independent witness of alleged recoveries, and discrepancy in statements of police officers, makes prosecution case doubtful – Judgment and order passed by High Court set aside – Appeal allowed.

B. Murder – Forensic Expert report – Identification of Prisoners Act, 1920 (Act), Sections 3, 4, 5 and 8 – Whether report of Forensic Expert was admissible in evidence, in light of provisions of Act since no rules had been framed prescribed by State Government – *Held*, non-framing of rules under Section 8 by State Government did not prohibit exercise of

powers given under Sections 3 and 4 of Act – Exercise of power under Sections 3 and 4 was hedged by conditions as prescribed – In case where no rules had been framed, authorities empowered under Sections 3 and 4 were not denuded of their powers to act under Sections 3 and 4 – Even if, this Court accept that fingerprints of Appellant's, chance print Mark Q5 (taken from iron safe) was identical to specimen of left palm impression of Appellant, it does not complete chain of circumstances unerringly pointing out fingers to Appellant.

(2018) 4 MLJ (CrI) 244 (SC)

Mohan Lal Vs. State of Punjab

Date of Judgment: 16.08.2018

Narcotics – Fair investigation – Narcotic Drugs and Psychotropic Substances Act, 1985 (Act), Section 18 – Appellant convicted under Section 18 of Act for recovery of opium in bag carried by him, hence this appeal – Whether it would be in consonance with principles of justice, fair play and fair investigation, if informant and investigating officer were to be same person – Whether it was necessary for accused to demonstrate prejudice – *Held*, Sarpanch was illiterate person stated to have been accompanying PW-1/Sub-Inspector of police in police vehicle while on official duty along with Assistant Sub-Inspector (ASI) – This was not in normal course of events – Consent memo signed by Sarpanch, despite being illiterate, along with PW-1 – Seal sample, prepared by PW-1, signed by Sarpanch and ASI and then handed over to ASI – Case property retained by PW-1 in his possession and not deposited in malkhana nor entered in roznamcha and no explanation for same – Sample was retained by PW-1 in his private custody in rented accommodation – No explanation for non-examination of Sarpanch and ASI despite service of summons – In their absence, neither consent memo nor seal had been proved – Nine days' delay in sending sample for chemical analysis was not explained – Recovery memo was not signed by accused – Copies of documents were not supplied to accused nor any memo in this regard prepared in his presence – Fair investigation, foundation of fair trial, postulates that informant and investigator must not be same person – Any possibility of bias or predetermined conclusion had to be excluded – Prosecution was vitiated because of infraction of constitutional guarantee of fair investigation – Appeal allowed.

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MADRAS HIGH COURT – CIVIL CASES

(2018) 7 MLJ 281

Harsha Estates Vs. Dr. P. Kalyana Chakravarthy

Date of Judgment: 23.07.2018

Contract – Specific performance – Suit for land – Letters Patent, Clause 12 – Plaintiffs filed three suits for Specific Performance and Permanent Injunction based on three independent agreements of sale entered into with Defendants – Defendants filed applications for revocation of leave granted to Plaintiff to file suits and for rejection of plaints – Single Judge allowed all applications, hence these appeals – Whether suits filed by Plaintiffs fell within four corners of “suit for land” as contemplated under Clause 12 of Letters Patent – *Held*, Plaintiff specifically pleaded that it was in possession of suit property – Defendant refuted it and took specific stand that possession was never given to Plaintiffs – Apart from other issues, this Court must necessarily frame issue on possession since parties were at variance on material fact regarding possession – Moment this issues gets framed, suit automatically would fall within ambit of “suit for land”- Main relief of Specific Performance fell within ambit of “suit for land”- Court would not have territorial jurisdiction to try suit – Relief of perpetual injunction sought for by Plaintiffs fell within ambit of “suit for land”- Interest or control of Defendants over suit property would be restricted, if such relief was granted – Present suit was “suit for land” under clause 12 of Letters Patent – Single Judge after concluding that leave granted had to be revoked, should not have proceeded to consider other applications – Single Judge decided applications for rejection of plaint and allowed those applications – Single Judge went wrong in adopting such procedure – Said applications shall be decided by Court of competent jurisdiction – Orders passed by Single Judge in application for revocation of leave upheld – Appeals filed as against orders passed in application for revocation of leave dismissed – Appeals filed as against orders passed in applications for rejection of plaint allowed.

(2018) 7 MLJ 737

Delphine Mary Vs. Saleth Mary

Date of Judgment: 12.09.2018

Succession Laws – Partition Self Acquired Property – Respondents/Plaintiffs, wife and daughter of deceased filed suit for partition against Appellant/Defendant/another daughter of deceased – At instance of Appellant, “D” schedule property purchased in name of 1st Respondent was included in plaint – Trial Court decreed suit with regard “A”, “B” and “C” schedule properties but dismissed suit with regard to “D” schedule property, hence this appeal – Whether decree passed by Trial Court denying share to Appellant in “D” schedule property was justified – *Held*, from funds as well as jewellery provided by 1st Respondent/wife, deceased had purchased “D” Scheduled property – Said property had already been settled in favour of 2nd Respondent, elder daughter of 1st Respondent – If really Appellant had any right, she would have initiated proceedings, especially, when property was settled years before – From evidence as well as pleadings “D” Schedule property never acquired character of joint family property at any point of time – Appellant did not know

whether her mother was living and where she was living – When that was concern and care, Appellant had for her mother, she could not claim any right over “D” Schedule property, standing in name of her mother – Finding of Trial Court that “D” Schedule property was independent property of 1st Respondent, confirmed – Appeal dismissed.

(2018) 7 MLJ 747

E. Shanmugam Vs. State of Tamilnadu

Date of Judgment: 27.08.2018

Civil Procedure – Execution Proceedings – Powers of executing Court – Code of Civil Procedure 1908 (Code), Order 21 Rule 32(5) – Limitation Act, 1963 (Act), Article 136 – Petitioner/Decree holder/Plaintiff filed suit for declaring his right and title to Schedule property or in alternative declaring classification of schedule property as Anadeenam as null and void and permanent injunction – Suit decreed – After decree, Tahsildar gave effect to decree by granting Patta to Plaintiff but in respect of lesser extent – First execution petition filed was rejected – Plaintiff filed second execution petition within two years of earlier execution Petition under Order 21 Rule 32(1) and 32(5) of Code – Petition dismissed, hence this revision – Whether execution petition barred by limitation and what were powers of Executing Court under provisions of Order 21 Rule 32(5) of Code – *Held*, purport of Rule 32(5) was to give effect to order of Court by directing act required to be done be done as far as practicable by decree holder or by some other person appointed by Court – District Munsif had decreed suit by declaring Plaintiff’s right to entire extent and also restraining Respondents from interfering with Petitioner in possession and enjoyment of his property – By not granting Patta for certain extent and declaring it as ‘Anadeenam’ land, Respondents were in effect attempting to interfere in possession and enjoyment of extent of suit property – It was clear disobedience of decree for permanent injunction – Applying provisions of Order 21 Rule 32(5), order passed by Executing Court was erroneous – It was decree for permanent injunction which decree holder was seeking to enforce – As per Article 136 of Act, there was no period of limitation for enforcing decree for perpetual injunction – Respondents directed to rectify Patta – Revision allowed.

(2018) 7 MLJ 775

Dia Health Foods Pvt. Ltd. Vs. Diabliss Consumer Products Pvt. Ltd.

Date of Judgment: 06.09.2018

Intellectual Property Laws – Copyright – Infringement – Respondent/Plaintiff, carrying on business in manufacture and distribution of various foods products, created artistic design for its pouch Distributorship agreement entered into between Plaintiff and Appellant/1st Defendant – Plaintiff became aware of act of infringement of its trade mark and his rights under copyright and filed suit for infringement of its copyright – Plaintiff filed application for grant of injunction in its favour restraining Defendants from in any manner infringing their copy right – Defendants filed application to vacate interim order granted – Single Judge allowed application filed by Plaintiff for injunction and dismissed application filed by Defendants for vacating interim order, hence these appeals – Whether order of Single Judge in granting injunction in favour of Plaintiff was perverse on basis of no evidence –

Held, 1st Appellant was very well aware of clause of distributorship agreement including alleged right of Plaintiff in respect of food products marketed under specific name – 1st Appellant, being distributor of Plaintiff's products had knowledge of packing pouches and artistic design of Plaintiff and inspite of that Appellants got registration of similar design as their trade mark to market their products – Act of Defendants, especially 3rd Defendant, inspite of being aware of artistic design of Plaintiff products through distributor/dealership agreement prima facie did not appear to be bonafide – Single Judge rightly reached conclusion to grant injunction – Appeals dismissed.

(2018) 7 MLJ 849

Balakrishnan Chettiar Vs. Rajeswari

Date of Judgment: 16.08.2018

Property Laws – Possession of Title – Boundary recitals – Plaintiff was absolute owner of property in specific survey number along with disputed lane portion – 1st Defendant dumped rubbish materials in suit property and created nuisance – 1st Defendant claimed that disputed lane was in her possession and enjoyment – Suit filed by Plaintiff for declaration and permanent injunction dismissed by Lower Courts, hence this second appeal – Whether boundaries of any property shown in documents of title would prevail over extent shown thereon – Whether 1st Defendant who was only mortgagee of adjacent property was not entitled to dispute title of Plaintiff to suit property – Held, boundary recitals in Exs. A1 and A2 and extent purchased by Plaintiff by way of said sale deeds in conjunction with commissioner's report and plan disclose that Plaintiff had purchased property inclusive of lane portion in dispute – Defendants failed to place any material worth acceptance for laying any claim of title, right or interest in respect of disputed lane portion – Plaintiff established his claim of title to property inclusive of lane portion in dispute and was in possession and enjoyment of same – Judgment and decree of lower Courts set aside – Appeal allowed.

(2018) 8 MLJ 8

Abraham @ Daveed Nadar (Died) Vs. Santhakumar

Date of Judgment: 12.09.2018

Limitation – Redemption of mortgage – Discharge of debt – Limitation Act, 1963 (Act 1963), Article 61 (a) – Tamil Nadu Debt Relief Act, 1979 (Act1979), Section 9 – Original owners of property created usufructuary mortgage with respect to their undivided share in favour of mortgagee – She assigned mortgage in favour of Defendant – Plaintiff purchased property with right of redemption from owners – Plaintiff claiming to be debtor filed suit for declaration that he was entitled to benefit of Act 1979 and for recovery of possession – Defendant claimed that suit was barred by limitation – Lower Courts dismissed suit on ground of limitation, hence this second appeal – Whether suit instituted within period of limitation – Held, under Explanation (5) (a) to Section 9, if mortgagee was in possession for aggregate period of 10 years or more, then deed shall be deemed to have been wholly discharged with effect from expiry of 10 years and when such period had expired before date when Act 1979 came into effect, with effect from said date – Mortgagee was in possession

for more than 10 years – Period of 10 years expired before date when Act 1979 came into effect – Mortgage deemed to have been discharged as on date when Act 1979 came into effect – Under Article 61 (a) of Act 1963, period of limitation begins from date, when right to redeem starts – Right to redeem started from date when Act 1979 came into effect – Period of limitation was 30 years – Suit had been filed well within period of limitation – Plaintiff shall be entitled to decree for redemption with respect to undivided share out of larger area – Judgment and decree of lower Courts set aside and suit decreed – Appeal allowed.

(2018) 8 MLJ 58

Karaikal Port Pvt. Ltd. Vs. Marg Limited

Date of Judgment: 06.08.2018

Alternative Dispute Resolution – Arbitration agreement – Jurisdiction – Arbitration and Conciliation Act, 1996, Sections 9 and 42 – Appellant appointed 1st Respondent as contractor under Employer Principal Agreements, to build port who in turn subcontracted to 2nd Respondent – 1st and 2nd Respondents entered into Contract Agreements pursuant to Employer Principal Agreements – To ensure that work was completed, Appellant entered into Tripartite Agreement and supplementary agreement with Respondents – Disputes arose between parties regarding payments to 2nd Respondents – 2nd Respondent filed application under Section 9 of Act before High Court at another State in which issue of jurisdiction raised by Appellant was yet to be decided – Appellant filed Application under Section 9 of Act before this Court for interim relief – 2nd Respondent filed Application stating that in view of Section 42 of Act, application filed by Appellant was not maintainable – Single Judge dismissed Section 9 application on ground that there was bar under Section 42 of Act, hence this appeal – Whether inclusion of work ‘place in another State’ in Supplementary Agreement results in conferring jurisdiction upon place in another State – Held, parties had conferred exclusive jurisdiction upon Courts at this State and had fixed venue of Arbitration also at this place – Mention of work ‘place in another State’ in Clause of Supplementary Agreement would not confer jurisdiction upon Courts at that place – Order of Single Judge set aside – Since Single Judge had only dealt with issue of maintainability, matter remanded back to Single Judge for deciding application on merits – Appeal allowed.

(2018) 8 MLJ 145

Joint Director of Health Services Vs. Palaniammal

Date of Judgment: 11.08.2018

Civil Laws – Compensation – Failure in sterilization operation – Plaintiff filed suit claiming compensation on account of negligent acts of Defendants in performing family planning operation – In spite of operation, Plaintiff became pregnant again and delivered female child – Defendants claimed that Plaintiff had been informed possibilities of failure of such operations – Suit decreed by lower Courts, hence this appeal – Whether lower Courts failed to appreciate rarest possibility as result of medical miracle while imposing compensation to Plaintiff – Whether Plaintiff entitled for compensation when she voluntarily

participated medical camp for purpose of Family Planning Operation – Whether civil suit was barred as effective remedy was available to Plaintiff under Consumer Protection Act – Held, lower courts failed to appreciate that there is also possibility of failure of sterilization operation – Plaintiff, only after gaining knowledge about such failures, had given consent and volunteered to undergo sterilization operation – Plaintiff had not taken steps to consult Government hospital on coming to know of conceivment again after operation – Plaintiff failed to establish any negligence on part of doctor in performing operation – It had not been shown that civil action would be barred in seeking compensation, therefore, civil action was maintainable – Judgment and decree passed by lower courts set aside – Appeal allowed.

(2018) 8 MLJ 240

Chandrasekaran Vs. Marimuthu

Date of Judgment: 19.09.2018

Tenancy Laws – Eviction – Denial of title – Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 Section 10(2) (vii) – Respondents / Landlords filed petition for evicting Revision Petitioner / tenant from petition premises on grounds of willful default and demolition and reconstruction – Petitioner filed counter denying title of landlord over superstructure – Rent Controller dismissed petition, however, Appellate authority allowed appeal, hence this revision – Whether landlord was obliged to have filed eviction petition by invoking Section 10(2) (vii) – Whether there was bonafides on part of tenant in matter of denial of title – Held, landlord had consciously chosen not to file petition under Section 10 (2) (vii) notwithstanding prior denial of title by tenant – He had waived right to seek eviction of tenant on that ground – As landlord had not invoked Section 10(2)(vii), denial of title of landlord by tenant would not have consequence of forfeiture of lease – Landlord must satisfy court that case for eviction had been made out on other grounds – Issue regarding ownership over superstructure did not arise directly and substantially in earlier suit – Finding rendered in said suit could not constitute as res judicata – Superstructure belonged to landlord and Petitioner would fall under definition “tenant” – Appellate authority after coming to conclusion that denial of title of landlord by tenant was not bonafide also noted that Petitioner had not paid rent – Willful default made out – Failure to pay rent during pendency of rent control proceedings would also amount to willful default – Appellate authority order confirmed – Revision dismissed.

(2018) 8 MLJ 160

Amilal Ramkishan Dass Vs. Ashok Kumar Sethi

Date of Judgment: 27.09.2018

Rejection of plaint – Territorial jurisdiction – Code of Civil Procedure, 1908 Order 7 Rule 11 – Letters Patent, Clauses 12 and 14 – Plaintiff filed suit with prayers for injunctive reliefs qua infringement of suit copyright and passing off qua suit copyright – Defendant filed present application to reject plaint on ground that Plaintiff had not obtained leave to sue prior to institution of suit under Clause 12 of Letters Patent as Defendant was not residing or carrying on business within territorial jurisdiction of this Court – Whether suit was liable for rejection – Held, plaint prayers, copyright infringement qua suit copyright and passing off

qua suit copyright were not two parts of one cause of action, but were two causes of action – Prayer limb pertaining to copyright infringement of suit copyright was statutory remedy – Prayer limb pertaining to passing off qua suit copyright was common law remedy – Degrees of proof required were also different – This was composite suit for two causes of action, wherein this Court had jurisdiction with regard to one cause of action and jurisdiction might not be readily available with regard to other cause of action – In light of Clause 14 of Letters Patent application had been taken out by Plaintiff and same had been ordered as prayed for – Aforesaid order had been given complete legal quietus and attained finality – Defendant could not now be heard to contend that leave under Clause 12 of Letters Patent was sine qua non for this suit – Acceptance to prayer in application under Clause 14 of Letters Patent, saves composite suit – Suit was not liable for rejection – Application dismissed.

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MADRAS HIGH COURT – CRIMINAL CASES

(2018) 4 MLJ (Crl) 116

Lakshmanan Vs. State

Date of Judgment: 23.08.2018

Murder – Circumstantial Evidence – Indian Penal Code, 1860, Sections 201, 302 and 304(1) – Accused/Appellants assaulted deceased with weapon during quarrel between them and deceased died on spot – Trial Court convicted accused under Sections 201 and 304(1), hence this appeal against conviction – Whether Trial Court justified in convicting accused – *Held*, P.W.1/Panchayator and PW.2/daughter, PW.4/wife of deceased had spoken about motive of accused in evidence – Juvenile accused gave confession statement before panchayatars that he along with Appellant killed deceased, took his body in gunny bag and thrown it – Body of deceased recovered in presence of witnesses – Prosecution proved case through circumstantial evidence – Oral and documentary evidences prove accused committed offence under Sections 302 and 201 – No reason to interfere with judgment of Trial Court – Appeal dismissed.

(2018) 4 MLJ (Crl) 129

Nagendran Vs. State

Date of Judgment: 31.08.2018

Murder – Common intention – Indian Penal Code, 1860, Sections 34, 302 and 342 – Appellant/accused convicted for offences punishable under Sections 342 and 302 read with 34 on allegations that Appellant caught hold of victim while juvenile stabbed deceased on his stomach, hence this appeal – Whether common intention as required in law had been proved by prosecution – *Held*, P.W.2/mother of deceased in her evidence said that Appellant was in good terms with her – If that was case, there was no reason for Appellant to come along with deceased with prior intention to commit offence – No material to hold that there was prior meeting of mind or act in concert between accused – At time of first occurrence, even according to prosecution, Appellant was not available – In order to attract Section 34, common intention as required in law had not been proved by prosecution – There was prior incident which was discussed by deceased, P.Ws.1 to 3 along with friends of deceased at time of occurrence – No material available to implicate Appellant within ambit of Section 34 and even, if there was any, same was not proved in accordance with law – Conviction and sentence imposed on Appellant set aside – Appeal allowed.

(2018) 4 MLJ (Crl) 257

Subair Vs. Union of India

Date of Judgment: 12.10.2018

Bail – Entitlement – Unlawful Activities (Prevention) Act, 1967 (Act), Sections 16 and 18 – Case registered against Appellant/3rd accused for offences under Indian Penal Code and Sections 16 and 18 of Act – Application filed by Appellant for bail dismissed, hence this appeal – Whether detention of Appellant justified beyond period of 180 days, as ordered by trial court – *Held*, Magistrate cannot extend period of remand over period stipulated under Act which is 180 days – On expiry of such period, accused person shall be entitled for bail – Further, charge sheet/final report, if any, should also be filed within the said period – Custody of person beyond period prescribed under Act ought not to be guided by mere suspicion that he may have committed an offence – On completion of extended period upto 180 days, there being no charge sheet/final report, accused entitled for statutory bail – Main accused/1st and 2nd accused already granted statutory bail by lower Court – Investigating agency had not taken any further steps after addition of offences under Act – Rejecting bail for Appellant could not be countenanced – Appeal allowed.

(2018) 4 MLJ (Crl) 273

T. Kamaraja Pandian Vs. State

Date of Judgment: 11.08.2018

Illegal gratification – Demand and acceptance – Prevention of Corruption Act, 1988 (Act), Sections 13(1)(d) and 13(2) – Appellant/accused, Inspector of Police convicted under Section 13(1)(d) read with 13(2) of Act for demanding and accepting certain sum as illegal gratification from Complainant/P.W.2 to run his wine shop peacefully without any interruption – Being aggrieved, Appellant filed present appeal – Whether demand and acceptance of amount from P.W.2 by accused was proved by prosecution – *Held*, accused offered inconsistent explanation for receipt of tainted notes – When same question was put forth to P.W.2 by way of suggestion during cross-examination he denied same – Initially accused stated that he asked hand loan from P.W.2 – Immediately changed his version by saying that P.W.3 had received hand loan from him some time back, which was given back while demanded on day of trap – Allegations made in Ex.P2/complaint given by P.W.2 corroborated and proved in evidence of P.W.2 and P.W.3, who wrote contents narrated by P.W.2 – Explanation offered by accused immediately to Trap Laying Officer, after seizure of M.Os.1 and 2 series, was not only inconsistent, but also unbelievable – P.W.2 had admitted that he did not operate tape recorder during conversation between accused and P.W.2, on day of trap – P.W.1/Sanctioning Authority had considered all those materials placed before him and accorded sanction – Illegal demand and acceptance of amount from P.W.2 by accused proved – Prosecution established case and guilt of accused beyond reasonable doubt – Appeal dismissed.

(2018) 4 MLJ (Crl) 278

S.P. Mayandi (died) Vs. State by the Inspector of Police

Date of Judgment: 24.08.2018

Illegal gratification – Presumption – Prevention of Corruption Act, 1988 (Act), Sections 7, 13(1)(d) and 13(2) – Appellant/accused, former Superintendent at Customs Department was found guilty for demand and acceptance of illegal gratification from Complainant/P.W.2 to facilitate his nephew to get bail in case registered against him, hence this appeal – Whether explanation adduced by defence fell within scope of preponderance of probability to shuttle prosecution case – *Held*, there was discrepancy and contradiction regarding whether tainted money was received by accused – Chemical Analysis Report indicated presence of phenolphthalein in both hand was as well as wash collected from chair – Presence of phenolphthalein in both hands of Appellant, could not be conclusive indication that it was due to handling of tainted currency – Micro cassette, which should contain conversation between Appellant and Complainant, had not been transcribed and placed before Court – Best evidence omitted to be placed before Court – Reason to demand gratification was to record no objection for bail application likely to be filed in future – No bail petition was pending or filed, after dismissal of earlier bail petition till day of trap – Ex.D.3 was letter of Assistant Commissioner of Customs/P.W.7 addressed to Commissioner of Customs complaining about conduct of Special Public Prosecutor – It indicated some special care had been bestowed by Commissioner to see that nephew of P.W.2 was released on bail – Accused, who was investigation officer and Special Public Prosecutor and dealing with case, did not fall in line with Commissioner – Prosecution failed to prove beyond doubt demand and acceptance through acceptable evidence – Presumption was rebutted through defence exhibits – Conviction and sentence set aside – Appeal allowed.

(2018) 4 MLJ (Crl) 286

Murugan Vs. State

Date of Judgment: 09.08.2018

Murder – Circumstantial evidence – Indian Penal Code, 1860, Sections 302 and 392 – Appellant/1st accused convicted for offence under Sections 302 and 392 along with 2nd to 4th accused for smothering victim and taking away her jewels, hence this appeal – Whether conviction of Appellant for offence under Sections 302 and 392 justified – *Held*, in Ex.P.1/complaint lodged before police, no mention made about jewels – Material contradiction in evidence adduced on behalf of prosecution – Cause of death not proved and so was case of recovery – As case build on circumstantial evidence, necessary link between events creating chain unerringly pointing to accused, missing – Order of conviction and sentence passed by Sessions Judge set aside – Appeal allowed.

(2018) 4 MLJ (Crl) 444

Rasu @ Puliamarathu Rasu vs. State

Date of Judgment: 18.09.2018

Prevention of atrocities – Hurt – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act), Section 3(1) (x) – Indian Penal Code, 1860 (Code), Sections 323 and 342 – trial Court found Appellants/1st to 3rd accused guilty under Sections 323 and 342 of Code and Section 3(1)(x) of Act, hence this appeal – Whether prosecution proved guilty of 1st to 3rd accused beyond all reasonable doubt – Held, P.W.1 has sustained some abrasion as result of some occurrence between accused and P.W.1 at relevant point of time – No evidence to show that Appellants intended to cause death of P.W.1 – Trial Court rightly found that offence under Section 323 Code alone would be attracted – No motive attributed against P.W.1 for false implication of Appellants in alleged occurrence – Evidence of P.W.1 with regard to alleged use of abusive language was highly improved one and same found missing in Ex.P.1 – No other evidence available on record to show that others also viewed such abuse – Offence under Section 3(1)(x) of Act would not be attracted – Conviction imposed by trial Court under Section 323 of Code against 1st and 2nd accused and 342 of Code against 3rd accused sustained – Considering nature of injuries sustained by P.W.1 and strangulation also ruled out, in view of medical evidence, sentence of one year rigorous imprisonment was excessive – Substantive sentence of imprisonment imposed by trial Court reduced to period already undergone by Appellants, however, fine amount confirmed – Appeal partly allowed.

(2018) 4 MLJ (Crl) 448

Balamurugan Vs. State

Date of Judgment: 03.10.2018

Abetment To Suicide – Incitement – Indian Penal Code, 1860, Section 306 – Trial Court convicted Appellants / 1st and 2nd accused under section 306 for suicide committed by wife and children of 1st accused by consuming poison – Appeal against conviction – Whether act of 1st and 2nd accused would constitute offence, under Section 306 – Held, 1st accused, being husband of 1st deceased, keeping concubine, committed cruelty on her – Considering evidence of P.W.1, P.W.3 and P.W.4 to P.W.8, act of 1st accused keeping concubine and harassing 1st deceased forced her to take extreme step of committing suicide along with her two minor children – Such act of 1st accused would amount to act of incitement – Evidence of P.W.1, before whom, 1st deceased gave first statement, when she was lifted to hospital, show that only her husband used to torture her – In suicide letter, she spoke about her husband's torture – P.W.7 and P.W.8 though eye witnesses had not stated what was quarrel between 2nd accused and 1st deceased – No evidence to show that 2nd accused had actually uttered any word, which destroyed mental frame work of 1st deceased at particular point of time – Merely because of petty quarrel, 2nd accused could not be convicted under Section 306 – Finding of Trial Court convicting 2nd accused set aside – Conviction recorded against 1st accused confirmed – Appeal partly allowed.

(2018) 4 MLJ (Crl) 492

Karthick @ Kartheeswaran Vs. State

Date of Judgment: 05.10.2018

Counterfeiting – Possession of forged notes – Indian Penal Code, 1860, Section 489-C – Trial Court found Appellants/1st to 5th accused guilty under Section 489-C for possession of counterfeit notes, hence this appeal – Whether prosecution proved guilt of Appellants beyond reasonable doubt – Held, all accused were in possession of huge quantity of counterfeit notes – Such possession itself constitutes sufficient ground for drawing inference that they had sufficient knowledge and reason to believe that notes were forged or counterfeit – On search from house and their pant packets, such large number of counterfeit notes were recovered – Absence of any reasonable explanation gives rise to presumption that possession of such notes were only for purpose of using same as genuine or it might be used as genuine – Explanation by 1st to 5th accused, not convincing – All witnesses spoke about recovery and seizure – No necessity for prosecution to take risk in planting such huge quantity of counterfeit notes to foist false case against 1st to 5th accused – In view of seizure of huge quantity, prosecution established charge under Section 489-C as against 1st to 5th accused – Judgment and Sentence of Trial court did not require any interference – Appeal dismissed.

(2018) 4 MLJ (Crl) 513

G. Prabakaran Vs. Superintendent of Police

Date of Judgment: 20.09.2018

Registration of complaint – Direction to police – Code of Criminal Procedure, 1973, Sections 154, 156 and 482 – Petitions filed to direct police to register complaint of Petitioners lodged before police – Contradictory views of two single judges available on issue of maintainability of such petitions, hence this reference – Whether inherent jurisdiction of this Court could be invoked as and when station house officer (SHO) fails to record information furnished on cognizable offence – Held, Section 482 could not be invoked in all circumstances – It was not alternative remedy to Section 156(3) but repository of inherent power – Remedy on failure or refusal to record information was Section 156(3) after due compliance of Section 154(3) – Petition could be filed invoking inherent jurisdiction of this Court only after completion of 15 days from date of receipt of information by SHO – Registry shall not receive petition before expiry of 15 days – No petition shall be entertained without exhausting remedy under Section 154(3) – Informant could send information to Superintendent of Police on knowing decision of SHO in not registering case – After conducting preliminary enquiry, SHO's decision to be intimated to informant immediately – Once such decision was made, Informant could not invoke Section 482 as remedy lies elsewhere – Directions issued by Director General of Police in circulars to be strictly complied with by SHOs – Affidavit to be filed shall contain particulars – Registry shall not number any petition without due compliance – Judicial Magistrates while dealing petitions under Sections 156(3) directed to keep in mind narratives in Supreme Court case – Eschewing Section 156(3) was only on exceptional and rarest of rare cases – Monstrosity of offence, extreme official apathy and indifference, need to answer judicial conscience, existence of hostile environment were few factors to bring case under rarest of rare one – References ordered accordingly.

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