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IMPORTANT CASE LAW



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1	Ravi Setia Vs Madanlal and others	2019 (4) TLNJ 241 (Civil)	04.10.2019	Suit for specific performance - Pendency of an appeal by the defendant will not preclude the plaintiff from depositing the amount in proof of his readiness - Failure to deposit will dis-entitle him to the relief claimed	1
2	Fazalullah Khan Vs M.Akbar	2019 (6) CTC 337	22.07.2019	Whether the Law laid down in Asian Resurfacing of Road agency Pvt. Ltd /vs /Central bureau of investigation reported in (2018) 16 SCC 299 is applicable to the Interim Orders granted by Supreme Court. Held- No. Once apex court granted interim order it will continue till the disposal of the main appeal.	1
3	Sopan (Dead) through his legal representative Vs Syed Nabi	(2019) 7 SCC 635	16.07.2019	Distinction between CSM and outright sale. Held: No transaction shall be deemed to be a Conditional Sale Mortgage (CSM) unless condition in respect thereof is embodied in the document which effects or purports to effect sale. If sale and agreement to repurchase are embodied in separate documents then it can't be CSM "A sale with mere condition of retransfer is not a mortgage".	2
4.	Magma General Insurance Company Limited Vs Nanu Ram alias Chuhru Ram and another	(2019) 3 SCC (Cri) 153 : (2018) 18 SCC 130	18.09.2018	<u>Absence of plea /claim as to certain head – Whether compensation can be awarded under that head ?</u> Held:- MV Act is a beneficial and welfare legislation, under which, court is duty-bound and entitled to award "Just compensation", irrespective of - whether any plea in that behalf is raised by the claimant.	2

SUPREME COURT - CRIMINAL CASES

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	State Vs M.R.Hiremath	2019 (6) CTC 95 : (2019) 3 SCC (Cri) 109 : (2019) 7 SCC 515	01.05.2019	<u>Discharge – Scope – Parameters</u> a) Court must proceed on the assumption that materials, which has been brought on record by prosecution is true – Probative value of material cannot be gone into in Discharge Application – Law does not permit any mini trial at stage of framing of charge. b) Regarding Electronic evidence - Failure to produce Certificate under section 65B of the Evidence Act at stage when Charge-sheet was filed is held not fatal to the prosecution.	3
2	Mallikarjun and others Vs State of Karnataka	(2019) 3 SCC (Cri) 563 : (2019) 8 SCC 359	08.08.2019	<u>Power of Sub –Inspector to investigate a murder case :-</u> Held that in the absence of Circle Inspector, Sub-Inspector of Police (PSI) in charge of police station have powers to investigate the murder case.	3
3	Guruviah Vs State	(2019) 3 SCC (Cri) 596 : (2019) 8 SCC 396	20.08.2019	<u>Prevention of Corruption Act, 1988 – S.12 r/w Ss.13 (1)(d) & (2) and 20 and S.7.</u> Whether there is need for direct evidence as to demand and acceptance? <u>Held:-</u> Absence of direct evidence for demand and acceptance or conspiracy is irrelevant if the circumstantial evidence establishes design for obtaining illegal gratification. In such a case presumption under S.20 would arise and in the absence of rebuttal evidence conviction confirmed.	3
4	Mohammed Fasrin Vs State	2019) 3 SCC (Cri) 684 : (2019) 8 SCC 811	04.09.2019	When a confession statement can be relied on: Held:- A confession, recorded when accused is in custody, even when admissible, is a weak piece of evidence and there must be some corroborative evidence. Even if confession is admissible, court has to be satisfied that it is a voluntary statement, free from any pressure and also that accused was apprised of his rights before recording the confession.	4

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
5	Ritesh Sinha Vs State of Uttar Pradesh and another	(2019) 3 SCC (Cri) 252 : (2019) 8 SCC 1	02.08.2019	Criminal Procedure Code, 1973 – Ss.53, 53-A and 311-A. Whether a Judicial Magistrate, has power to order a person to give his voice sample Held:- Yes, the JM has power to order a person to give his voice sample for the purpose of investigation of crime.	4
6	Sharad Hiru Kolambe Vs State of Maharashtra and others	(2019) 3 SCC (Cri) 419 : (2018) 18 SCC 718	20.09.2018	Whether Default sentence can run concurrently interse or with substantive sentence. Held- Default sentence must be in excess of or in addition to substantive sentence imposed to which the accused has to undergo or to which he has to undergo on commutation:- Further unless the court directs that the substantive sentences should run concurrently, the normal principle is that the sentences would commence only after the expiration of the other i.e. consecutively.	4
7	Kara Bhai Vs State of Gujarat	(2019) 3 SCC (Cri) 226 : (2018) 18 SCC 690	12.09.2017	Penal Code, 1860 – S.302 r/w S.34. Whether it is necessary to prove that any one particular accused caused fatal injury? Held - Once common intention is established, S.34 IPC will get attracted – It is not necessary to prove that any one particular accused caused fatal injury.	4
8	Dola alias Dolagobinda Pradhan and another Vs State of Odisha	(2019) 3 SCC (Cri) 239 : (2018) 18 SCC 695	29.08.2018	<u>Identification of the accused by his voice whether possible ?</u> <u>Held :-</u> Identification by voice of the accused may be possible if there is evidence to show that the witness was sufficiently acquainted with the accused in order to recognize him or her by voice.	5

HIGH COURT - CIVIL CASES

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Marikannu Vs Alagammal (died) and others	2019 (5) L.W. 170	18.10.2019	<p>Whether a 3rd party to the contract claiming independent title against the defendant be added as a party to the suit filed for specific performance.</p> <p>Held:- Subsequent purchaser may be a necessary party but a person, who claims adversely to the claim of a vendor will not become a necessary party.</p>	6
2	Motilal and another Vs B.K.Babu Sahib and others	2019 (5) L.W. 172	23.05.2019	<p>Whether suit can be filed to declare the compromise decree as null and void.</p> <p>Held- Once parties signed the compromise memo it will bind the parties. Suit to declare that decree as null and void will not lie in view of the specific bar created under Order 23 rule 3A of C.P.C.</p>	6
3	C.Kumarasamy Vs P.Thamayanthi and another	2019 (5) L.W. 128	23.05.2019	<p>Code of Civil Procedure, 1908 (CPC) - Order VIII Rule 3; Order VIII Rule 5; Order XVI Rule 10; Ss.60,63,65,68,69,71,90 and 114 of Indian Evidence Act, 1872; Section 63 Indian Succession Act, 1925 – Ss.17,34,47,48,49,50 and 57 Registration Act, 1908 - Specific Relief Act 1963 - Section 31; Transfer Of Property Act, 1882 - Section 123</p> <p>First defendant produced only a registration copy of the document – Both witnesses are alive – But after receipt of summons, they did not appear before the Court – First defendant has not taken any coercive steps for securing witnesses and examine them.</p> <p>Held:- Examination of scribe and identifying witness would not serve the purpose– Adverse inference has to be drawn against first defendant for non-examination of attestors.</p>	6

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
4	Indirani and another Vs Raja @ Annadurai	2019 (6) CTC 1	26.09.2019	When an application under section 12 (2) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 can be entertained Held: When a Defendant come forward with a pleading in the Written Statement questioning the correctness of the valuation of the Suit property and payment of Court-fee and asks the Court, by an Application under Section 12(2) to decide the objection, then the court shall decide it before deciding the Suit on merits. However, before proceeding to decide the objection the court shall from the pleadings and materials placed before it prima facie satisfy itself that the objection raised by the Defendant has substance.	7
5	Nataraja Naidu (Died) and others Vs Soundararajan and others	2019 (6) CTC 55	28.06.2019	Whether Order of Attachment passed by the court shall be communicated to Sub-Registry. Held:- Yes. As per Order 38, Rule 11-B order of Attachment has to be strictly communicated to the Registration Office, within whose jurisdiction immovable property is situate.	7
6	Rajagopal (deceased) and Others Vs Parthasarathy (died) and Others	(2019) 7 MLJ 741 LNIND 2019 MAD 4106	23.05.2019	Code of Civil Procedure - Order 41 Rule 27. Can an order for reception of Additional evidence be passed in the main judgment itself? Held:- No. If the Appellate court decides to allow the application for receiving additional evidence, separate order should be passed and the procedure laid down under Order 41 Rule 28 should be followed.	8
7	K.Rajendran Vs S.Chellamuthu and Anr	2019 (3) MWN (Civil) 478	30.04.2019	Whether post trial amendment can be allowed? Held:- Though amendment of Plaintiff is sought post-trial, reasonable opportunity must be given to Plaintiff particularly when the Amendment sought will not change character of Suit and no fresh Witnesses will be required - Revision allowed.	8

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
8	T.Vinayaga Mudaliar Vs Delhi Bai (died) and others	2019 (3) MWN (Civil) 500	16.07.2019	Suit for Specific Performance – Refund of Advance amount with Interest, ordered – Execution Petition filed against Purchaser of property – Rejected on ground that no Specific Decree was passed against Purchaser – Challenged in Revision. Held:- Separate order is not necessary. Decree-holder can file Execution Petition for refund against Purchaser of property in view of Statutory charge available to him – Civil Revision Petition allowed.	8
9	N.Rajaram Vs R.Murali and others	2019 (3) MWN (Civil) 554	03.07.2019	Effect of Section 52-of Transfer of Property Act, 1882, Whether a pendente lite purchaser who was not made as party to the suit is entitled to file an application to set aside the exparte decree Held:- Yes. His right will be subject to the result of the suit. Therefore he is entitled to be heard – and he has locus standi to file an application to set aside the exparte decree under Order 9 Rule 13 of C.P.C.	9
10	P.S.Govindaswamy Naidu & Sons' Charities and others Vs V.Prakash @ G.N.V.Prakash	2019 (6) CTC 154	18.09.2019	Diplomatic relations (Vienna convention) Act 1972 (43 of 1972) Section 8- Code of civil procedure 1908 Order 16 Rule 10 – Evidence Act 1872 Section 84. Whether summon can be served on foreign Diplomats? Held:- As Public servant is prohibited under Section 8 of Diplomatic relations (Vienna convention)Act 1972 Act from automatically entering premises of Diplomatic Mission, including Consular General Office – Court can serve Summons/Notice or communication to Diplomatic Mission via Post . Consular Office can exercise its discretion to respond on receipt of such Notices/Summons from Court through Post – <u>If Consular General Office does not respond, no consequential action can be taken by Court.</u> Any information received in response to such Notice/Summons will have evidentiary value.	9

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
11	The Executive Officer, Arulmighu Mariamman Temple Vs The Special Tahsildar, Pollachi and others	2019 (5) L.W. 400	24.10.2019	Whether private respondents /hereditary poojaris are entitled for compensation amount as awarded in the land acquisition proceedings? Held: Archakas are entitled to the perks attached to the office but they are not entitled to claim share in the property of the temple	9
12	K. Swaminathan Vs. M. Visalakshi and Ors.	2019 (5) L.W. 481	14.11.2019	<u>Tamil Nadu Court Fee and Suit Valuation Act</u> (Act 6 of 2017), Section 69, Refund of full court fee. <u>C.P.C.</u> , Section 89 :- Matter referred to Lok Adalat- it was not settled – It came back to the trial court. Latter on Joint memorandum of compromise filed– whether refund of full court fee permissible. Held :No .Only Half of the court fee can be refunded	10
13	M/s.Chandan Pharmaceuticals Corporation Vs P.K.Jalan and others	2019 (5) L.W. 552	16.10.2019	Whether execution petitions can be closed for non appearance of petitioner? Held :- As there is no provision to close the E.P., Execution courts shall not pass any order closing the E.P.	10

HIGH COURT - CRIMINAL CASES

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Mohamed Shiyam and another Vs State	(2019) 4 MLJ (CrI) 336 LNIND 2019 MAD 5361	26.08.2019	<p>NDPS Act 1985- sections 8 (c), 21 (c) 29,57.67- Evidentiary value of official witnesses:</p> <p>Held:-</p> <p>Merely because the Intelligence officers are official witnesses, that will not by itself create any doubt about creditworthiness in their evidences – Non examination of independent witnesses had not caused any prejudice to Appellants nor it affected credibility of case of the prosecution - Conviction affirmed.</p>	11
2	Shanthi.K. Vs District Collector, Dindigul District and Ors	2019 (2) TLNJ 433 (Criminal) : 2019 (6) CTC 139	27.09.2019	<p><u>Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016, Section 12 (4) – – F.I.R. Registered under section 294(b), 506 and 3(1)(s) of SCST Act – Trial pending- Compensation claimed – Representation by petitioner to the District Collector to grant her compensation – Rejected on the ground that even though the victim by birth belongs to the Scheduled Community, she followed Christianity as her husband belongs to Backward Class Christian.</u></p> <p>Held:- Caste of a person has to be determined only based on the birth and it cannot be changed by virtue of marriage. As such even if the husband of the petitioner following Christianity, that does not automatically make the petitioner a Christian</p> <p>– R.1 is directed to pay the compensation to the petitioner of a sum of Rs.1,50,000/-.</p>	11

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
3	Kaviarasan @ Raja Vs Deputy Superintendent of Police and others	2019 (3) MWN (Cr) 405 (DB)	09.08.2019	<p>When two different agencies are investigating whether Joint trial –is permissible?</p> <p>Held :- Code of Criminal Procedure, 1973 (2 of 1974), Section 220(1) speaks about series of offences committed in same transaction by same person, but not persons</p> <p>When 6 Accused persons involved in 3 cases, Section 220 Cr.P.C. cannot be invoked. Further, when two Agencies involved in investigation, cases cannot be clubbed together.</p>	12
4	Baleswar Roy Vs State of Bihar and others	2019 (6) CTC 353	01.11.2018	<p>Essential Commodities Act, 1955 (10 of 1955), Section 6-A – Whether Collector, who seized any conveyance used in carrying Essential Commodity, has jurisdiction to release same.</p> <p>Held:- No - Collector does not have power to release vehicle/ conveyance till conclusion of Criminal prosecution. If no prosecution is launched but order of confiscation is passed the affected party can approach the appellate authority for annulment of the order.</p>	12
5	Rangabashyam and another Vs Ramesh	2019 (6) CTC 392	23.07.2019	<p>Whether unregistered firm can file criminal complaint.</p> <p>Held:- Yes. The term “Suit” envisaged under Section 69(2) of Partnership Act cannot be stretched to Criminal prosecutions.</p> <p>Whether partner can be prosecuted without impleading the Firm as an accused.</p> <p>Held:- No. A Complaint cannot be maintained against Directors of Company without making Company as Accused – Same concept will extend even for Partnership Firm– Therefore complaint filed against partners without impleading the firm as accused is not maintainable and the Proceedings is quashed.</p>	13

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
6	Narayanamma and others Vs Chikka Venkateshaiah	2019 (3) MWN (Cr) 438	13.08.2019	Indian Penal Code, 1860 (45 of 1860), Sections 464, 465, 420 & 468. <u>Ingredients of “False document”.</u> Held:- To attract ingredients of “false document”, Accused should have either executed document claiming to be the Complainant or Accused should have altered or tempered with document by practicing deception – None of the ingredients is satisfied – Mere execution of document pertaining to a property for which a person is not Owner, will not amount to execution of false document under Section 464 I.P.C. – Criminal proceedings against Petitioners, being abuse of process of Court, liable to be quashed.	13
7	Veeran Vs State	2019 (3) MWN (Cr) 393 (DB)	25.10.2019	<u>Relevancy and reliability of evidence of a Child Witness</u> Held:- Evidence of a competent child deposing facts of a case could be basis of conviction, provided he/she is capable of understanding questions and give rational answers – Only precaution needed is that, the evidence of such Child Witness must be reliable one and his / her demeanour must be like other competent Witnesses – Precaution is necessary because Child Witnesses are amenable to tutoring, pliable and liable to be influenced easily.	14

SUPREME COURT CIVIL CASES

2019 (4) TLNJ 241 (Civil)

Ravi Setia Vs Madan lal and others

Date of Judgment: 04.10.2019

Specific Relief Act, 1963, Section 16 (1) (c) –Suit for Specific performance- Sub-Registrar issued a certificate evidencing the presence of the Plaintiff at the Sub-Registrar office for the purpose of execution of the sale deed, on 30-4- 1990.

Based on it the trial court held that the plaintiff is ready and willing to perform his part of the contract and decreed the suit, with instruction to the plaintiff to deposit the balance amount in the court. Plaintiff filed an application before the trial court for extension of time to deposit the balance of sale consideration contending that even if he deposit the money it would lie in the Bank without any interest and got extension of time till the disposal of the 1st Appeal and the first appeal was dismissed . But the 2nd appeal was allowed – Against which the plaintiff preferred this appeal and the Defendant sold the suit property during the pendency of the suit proceedings.

Held:- Readiness and willingness to be construed according to the facts and circumstance of each case – There can be no straight jacket formulae to decide it. Though the trial court extended the time for deposit of balance of sale consideration there is no special circumstances for the plaintiff for not making the deposit. That plaintiff shall always be ready and willing to perform his part of the contract and the Pendency of an appeal by the defendant will not preclude the plaintiff from depositing the amount in order to prove his readiness .Failure to deposit the balance sale consideration will evidence the incapacity on the part of the plaintiff to perform his part of the obligation under the sale agreement. Hence the Plaintiff is not entitled to decree for Specific performance – However the court directed the defendants to deposit the advance amount with in 1 month.

2019 (6) CTC 337

Fazalullah Khan Vs M.Akbar

Date of Judgment: 22.07.2019

Constitution of India, Articles 136 & 21.

In Asian Resurfacing of Road agency Pvt. Ltd –vs- Central Bureau of Investigation” reported in (2018) 16 SCC 299 after considering that proceedings are pending for long period by the operation of Stay orders, it has been held by the apex court that the Stay orders if any granted shall be deemed to be vacated after expiry of six months from the date of the stay order, unless extension is granted by a Speaking Order.

Applicability of the above said decision, to the Interim orders granted by the Apex court was called in question in this case and discussed.

Held:- That the above decision is not applicable to the Interim Orders granted by the Hon’ble Supreme Court – Interim Orders once granted by the Apex Court it will continue to be in force till Appeal is decided.

(2019) 7 SCC 635

Sopan (Dead) through his legal representative Vs Syed Nabi

Date of Judgment: 16.07.2019

Transfer of Property Act, 1882 – S.58(c) and proviso thereto and S.54 – Determination of Conditional sale mortgage (CSM) and absolute sale — Principles summarized.

Held:- No transaction shall be deemed to be a Conditional Sale Mortgage (CSM) unless condition in respect thereof is embodied in the document which effects or purports to effect sale.

If sale and agreement to repurchase are embodied in separate document then it can't be CSM as sale with mere condition of retransfer is not a Mortgage.

(2019) 3 SCC (Cri) 153 : (2018) 18 SCC 130

Magma General Insurance Company Limited Vs Nanu Ram alias Chuhru Ram and another

Date of Judgment: 18.09.2018

A. **Absence of plea /claim as to certain head – Whether a bar to grant further relief**

MV Act is a beneficial and welfare legislation, under which, court is duty-bound and entitled to award “Just compensation”, irrespective of whether any plea in that behalf is raised by claimant.

Funeral expenses could be awarded up to Rs.15,000 as per judgment in Pranay Sethi Case.

Deceased aged 24 yrs, a bachelor – His dependants are, old father and unmarried sister. – Held, entitled to Rs.50,000 each towards loss of **love and affection**.

B. Motor Vehicles Act, 1988 – Ss.168, 166 and 173 – **Meaning and scope of “filial consortium” – Explained –**

Held:- Parents losing their minor child or unmarried son/daughter in motor accident are entitled to be awarded loss of consortium under the head of filial consortium.

SUPREME COURT CRIMINAL CASES

2019 (6) CTC 95 : (2019) 3 SCC (Cri) 109 : (2019) 7 SCC 515

State Vs M.R.Hiremath

Date of Judgment: 01.05.2019

Code of Criminal Procedure, 1973 (2 of 1974) – Prevention of Corruption Act, 1988 (49 of 1988), Sections 13(1) & 13(2). Accused is discharged for want of certificate under section 65B -

Whether failure to produce Certificate under Section 65-B of Evidence Act, as to secondary evidence of Electronic record on Spy Camera at the stage of filing the charge sheet will entitle the accused to get discharged

Held:- No. -Requirement of producing Certificate arises when Electronic record is sought to be used as evidence – Failure to produce Certificate at stage when Charge-sheet was filed was not fatal to prosecution –Accused can't be discharged for that reason. (Principle laid down in Anvar P.V. case followed and applied).

Discharge – Scope – Parameters – Court must proceed on the assumption that materials, which has been brought on record by prosecution is true – Probative value of material cannot be gone into in Discharge Application – Law does not permit any mini trial at the stage of framing of charge.

(2019) 3 SCC (Cri) 563 : (2019) 8 SCC 359

Mallikarjun and others Vs State of Karnataka

Date of Judgment: 08.08.2019

Criminal Trial – Panch witnesses turned Hostile – Proof of Recovery of incriminating material/other articles.

Held:- It is fairly well settled that the evidence of the investigating officer can be relied upon to prove the recovery even when the panch witnesses turned hostile.

Power of Sub –Inspector to investigate a murder case:-

Held - that in the absence of Circle Inspector, Sub-Inspector of Police (PSI) in charge of police station have powers to investigate in murder case.

(2019) 3 SCC (Cri) 596 : (2019) 8 SCC 396

Guruviah Vs State

Date of Judgment: 20.08.2019

Prevention of Corruption Act, 1988 – S.12 r/w Ss.13 (1)(d) & (2) and 20 and S.7.

Abetment of or conspiracy for obtaining illegal gratification – Absence of direct evidence for demand and acceptance or conspiracy.

Held:- Absence of direct evidence for demand and acceptance or conspiracy is irrelevant, if the circumstantial evidence establishes design for obtaining illegal gratification .In such a case presumption under S.20 would arise and .In the absence of rebuttal evidence conviction confirmed.

In State of U.P. Vs. G.K.Ghosh : AIR1984 SC1453:(1984) 1 SCC 254 it was observed that in case of an offence of demanding and accepting illegal gratification the court, depending on the circumstances of the case, the court may feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent.

(2019) 3 SCC (Cri) 684 : (2019) 8 SCC 811

Mohammed Fasrin Vs State

Date of Judgment: 04.09.2019

Evidence Act, 1872 – Ss. 30 and 114 III. (b) — Confession of co-accused – recorded in police custody - Evidentiary value it.

Held :- A confession, recorded when accused is in custody, even when admissible, is a weak piece of evidence and there must be some corroborative evidence –Moreover, evidence of co-accused is also a very weak type of evidence which needs to be corroborated by some other evidence – Even if confession is admissible, court has to be satisfied that it is a voluntary statement, free from any pressure and also that accused was apprised of his rights before recording the confession – No such material has been brought on the record – Conviction reversed.

(2019) 3 SCC (Cri) 252 : (2019) 8 SCC 1

Ritesh Sinha Vs State of Uttar Pradesh and another

Date of Judgment: 02.08.2019

Criminal Procedure Code, 1973 – Ss.53, 53-A and 311-A – Voice sample – Power of Magistrate to direct giving of.

Held:- Fundamental right to privacy cannot be construed as absolute but must bow down to compelling public interest. Until Parliament makes appropriate law, Judicial Magistrate, held, has power to order a person to give his voice sample for purpose of investigation of crime.

(2019) 3 SCC (Cri) 419 : (2018) 18 SCC 718

Sharad Hiru Kolambe Vs State of Maharashtra and others

Date of Judgment: 20.09.2018

Criminal Procedure Code, 1973 – Ss. 30, 31, 427, 428 and 429(2).

Whether Default sentence can run concurrently interse or with substantive sentence.

Held :- Default sentence must be in excess of or in addition to substantive sentence imposed to which the accused has to undergo or to which he has to undergo on commutation. Further, unless the court directs that the substantive sentences should run concurrently, the normal principle is that the sentences would commence one after the expiration of the other i.e. consecutively.

(2019) 3 SCC (Cri) 226 : (2018) 18 SCC 690

Kara Bhai Vs State of Gujarat

Date of Judgment: 12.09.2017

Penal Code, 1860 – S.302 r/w S.34 –

Whether it is necessary to prove that any one particular accused caused fatal injury?

Held - Once common intention is established, S.34 IPC will get attracted – It is not necessary to prove that any one particular accused caused fatal injury. – The submission that there is no direct evidence to connect appellant (A-2) with fatal injuries is not tenable.

When Ocular evidence is corroborated by recovery of incriminating material (like bloodstained knives and clothes of accused) at instance of accused and when it matches with the blood group of the deceased then it will prove the offence – It is not necessary in such a case to establish motive for the commission of crime.

(2019) 3 SCC (Cri) 239 : (2018) 18 SCC 695

Dola alias Dolagobinda Pradhan and another Vs State of Odisha

Date of Judgment: 29.08.2018

Penal Code, 1860 – S. 376(2)(g) – Conviction on the basis of Sole testimony of the prosecutrix - when is it permissible – Principles summarised.

If from the version of the prosecutrix the basic truth is ascertainable and if it is found to be credible and consistent, then the same would form the basis of conviction. Corroboration is not a sine qua non for a conviction in a rape case. The evidence of a victim of sexual assault stands on par with the evidence of an injured witness and is entitled to great weight and there is no reason to insist on corroboration, except from medical evidence.

When a woman gives evidence on oath in court that she was raped, it is not the proper judicial approach to disbelieve her outright.

If, however, the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case as set up by the prosecutrix, then the court shall not act on the solitary evidence of the prosecutrix.

The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.

Decision rendered in Bharwada Bhoginbhai Hirjibha v. State of Gujarat (1983) 3 SCC 217 : 1983 SCC (Cri) 728; Sadashiv Ramrao Hadbe v. State of Maharashtra, (2006) 10 SCC 92 : (2007) 1 SCC (Cri) 161; Raju v. State of M.P., (2008) 15 SCC 133 : (2009) 3 SCC (Cri) 751, are relied on.

Identification of the accused by his voice:

Identification by voice of the accused may be possible if there is evidence to show that the witness was sufficiently acquainted with the accused in order to recognize him or her by voice. In the matter on hand, the prosecutrix herself has admitted that there was no acquaintance between the victim and the accused. In such a scenario, it would be difficult to accept the version that she recognized the accused from their voice.

MADRAS HIGH COURT CIVIL CASES

2019 (5) L.W. 170

Marikannu Vs Alagammal (died) and others

Date of Judgment: 18.10.2019

C.P.C. Order 1 Rule 10(2) proper and necessary party, who is.

Suit for specific performance – Petition filed by the 3rd party to implead her alleging that she is the real owner –Application dismissed on the ground that inter-se dispute to title cannot be decided. On appeal.

Held:- Subsequent purchaser may be a necessary party but a person, who claims adversely to the claim of a vendor will not become a necessary party. Any request to decide the inter-se title over the property between the defendants and a 3rd party if accepted it will go beyond the scope of the suit for specific performance.

If the defendants are acting against the alleged interest or title of the petitioner over the property it is left open to the petitioner to independently work out her remedy as against the defendants in a separate suit. Certainly, the Petitioner cannot work out his remedy in the present suit.

2019 (5) L.W. 172

Motilal and another Vs B.K.Babu Sahib and others

Date of Judgment: 23.05.2019

C.P.C. Order 7 Rule 11, Order 23 rule 3-A.

Suit filed to declare compromise decree is null and void and not binding upon the plaintiffs – Application filed to reject plaint – Whether maintainable.

Held:- Once parties signed the compromise memo it will bind the parties . Suit will not lie in view of the specific bar created under Order 23 rule 3A - Order of rejection of plaint is upheld.

2019 (5) L.W. 128

C.Kumarasamy Vs P.Thamayanthi and another

Date of Judgment: 23.05.2019

Code of Civil Procedure, 1908 (CPC) - Order VIII Rule 3; Order VIII Rule 5; Order XVI Rule 10; Sections 60,63,65,68,69,71,90 and 114 of Indian Evidence Act, 1872; Section 63 Indian Succession Act, 1925 – Sections 17,34,47,48,49,50 and 57 Registration Act, 1908 - Specific Relief Act 1963 - Section 31; Transfer Of Property Act, 1882 - Section 123.

A) Settlement deed – proof of.

Original settlement deed not produced – First defendant produced only a registration copy – Both witnesses are alive – But after receipt of summons, they did not appear before the Court – First defendant has not taken any coercive steps for securing witnesses and examine.

Held:- Examination of scribe and identifying witness would not serve the purpose– Adverse inference has to be drawn against first defendant for non-examination of attestors.

B) Secondary evidence when can be allowed

Held:- Unless it is established that the original document is lost or destroyed or is being deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot be accepted.

2019 (6) CTC 1

Indirani and another Vs Raja @ Annadurai

Date of Judgment: 26.09.2019

Constitution of India, Article 227 – Tamil Nadu Court Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1955), Section 12(2) – Code of Civil Procedure, 1908 (5 of 1908), Order 14, Rule 2

When a Defendant come forward with a pleadings in the Written Statement questioning the correctness of the valuation of the Suit property and payment of Court-fee and asks the Court, by an Application under Section 12(2) to decide the objection, then the court shall decide it before deciding the Suit on merits.

However, before proceeding to decide the objection with regard to valuation and Court-fee as provided under Section 12(2) of the State Act, the Court shall prima facie satisfy itself, on perusal of the pleadings of the parties and the materials brought on record, that the objection raised by the Defendant has substance.

If improper valuation of the Suit and insufficiency of the Court-fees paid was raised after the entire evidence was over by filing an application under section 12(2) of the court fees Act and the case at the stage of final arguments then such application ought not to have been entertained.

Division Bench Judgment in S.N.S.Sukumaran v. C.Thangamuthu, 2012 (5) CTC 705 (DB) is relied on.

2019 (6) CTC 55

Nataraja Naidu (Died) and others Vs Soundararajan and others

Date of Judgment: 28.06.2019

Code of Civil Procedure, 1908 (5 of 1908), Order 38, Rule 11-B – Order 38, Rule 11-B requires that the order of Attachment has to be to be communicated to Registration Officer, within whose jurisdiction immovable property is situate – Procedural compliance under Order 38, Rule 11-B is held mandatory for effecting Attachment – Default in compliance would save all alienations made by Defendants –

Held:- Order of Attachment passed one day prior to execution of Sale Deed by Defendant – .There is no evidence that Order of Attachment communicated to Sub-Registry – Hence execution of Sale Deed valid and maintainable – Ratio laid down in Vellapandi (died) v. K.S.Maheswari, followed.

Transfer of Property Act, 1882 (4 of 1882), Section 53 – Fraudulent Transfer.

Two significant components of fraudulent transfer are: (i) it must be done with intent to defeat or delay Creditor; and (ii) bona fide transferee for value is saved even if there was fraudulent intent behind transfer of property – Even if Seller intended fraudulent transfer to defeat/delay his creditor, purchase would be bona fide unless demonstrated that Purchaser was privy to fraud – Court cannot suspect transaction unless proved so – Presumption shall always be in favour of bona fide transaction.

(2019) 7 MLJ 741

LNIND 2019 MAD 4106

Rajagopal (deceased) and Others Vs Parthasarathy (died) and others

Date of Judgment: 23.05.2019

Order 41 Rule 27 CPC:- Can an order for reception of Additional evidence passed in the main judgment itself.

Held:- If Appellate court decides to allow application, separate order should have been passed and the procedure laid down under Order 41 Rule 28 should have been followed. Procedure adopted by Appellate court, not in conformity with scheme provided in Code for recording additional evidence in appellate stage – Matter remitted back to the Appellate court to record evidence following the procedure prescribed under Order 41 Rule 28 and thereafter, opportunity should be given to Defendants to let in rebuttal evidence and only thereafter, appeal had to be disposed of in accordance with law – Appeal allowed.

2019 (3) MWN (Civil) 478

K.Rajendran Vs S.Chellamuthu and Anr

Date of Judgment: 30.04.2019

Order 6, Rule 17 – Amendment of Plaintiff – Post-trial amendment.

Held:- Though amendment of Plaintiff is sought post-trial, reasonable opportunity must be given to Plaintiff particularly when the Amendment sought will not change character of Suit and no fresh Witnesses will be required - Revision allowed.

2019 (3) MWN (Civil) 500

T.Vinayaga Mudaliar Vs Delhi Bai (died) and others

Date of Judgment: 16.07.2019

Transfer of Property Act, 1882 (4 of 1882), Section 55(6)(b) – Suit for Specific Performance – Refund of Advance amount with Interest, ordered – Execution Petition filed against Purchaser of property – Rejected on ground that no specific decree was passed against Purchaser – Challenged in Revision.

Held:- Decree-holder can file Execution Petition for refund against Purchaser of property in view of Statutory charge available to him – Civil Revision Petition allowed.

2019 (3) MWN (Civil) 554

N.Rajaram Vs R.Murali and others

Date of Judgment: 03.07.2019

Transfer of Property Act, 1882 (4 of 1882), Section 52 – Suit for Specific Performance – Decreed ex parte – Sale Deed executed by Court – Application to set aside ex parte Decree filed by pendente lite Purchaser, who is not party to Suit – Collusion between Plaintiff and Vendor pleaded – Application allowed – Challenged in Revision – Whether lis pendens purchaser who is not party to Suit has locus standi to seek setting aside of ex parte Decree.

Held:- Mere pendency of Suit, not bar to deal with Suit property – Effect of Section 52 is only to make rights of lis pendens transferee subject to Decree – Pendente lite transferee, though not party to Suit, being one to claim under Defendant, is entitled to be heard – and has locus standi to file an application to set aside the ex parte decree under Order 9 Rule 13 of C.P.C.

2019 (6) CTC 154

P.S.Govindaswamy Naidu & Sons' Charities and others Vs V.Prakash @ G.N.V.Prakash

Date of Judgment: 18.09.2019

Vienna Convention on Diplomatic Relations, 1961, Article 31(2) – Code of Civil Procedure, 1908 (5 of 1908), Order 16, Rules 2 & 3 – Immunities and privileges available to Foreign Diplomats under Vienna Convention extendable to Foreign Consular General office and their staff also – They are not obliged to give evidence as Witness – But, no express bar in CPC prohibiting Court from issuing Summon/Subpoena.

Evidence Act, 1872 (1 of 1872), Section 84 – Public servant prohibited under Section 8 of 1972 Act from automatically entering premises of Diplomatic Mission, including Consular General Office – Court can serve Summons/Notice or communication to Diplomatic Mission via Post – Consular Office can exercise its discretion to respond on receipt of such Notices/Summons from Court through Post – If Consular General Office does not respond, no consequential action can be taken by Court – Any information received in response to such Notice/Summons will have evidentiary value.

2019 (5) L.W. 400

The Executive Officer, Arulmighu Mariamman Temple Vs The Special Tahsildar, Pollachi and others

Date of Judgment: 24.10.2019

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, (Act No.30 of 1963), Section 8(2)(ii).

Whether private respondents/hereditary poojaris are entitled for compensation amount as awarded in the land acquisition proceedings?

Held: Archakas are entitled to the perks attached to the office but they are not entitled to claim share in the Property of the temple.

2019 (5) L.W. 481

K. Swaminathan Vs. M. Visalakshi and Ors.

Date of Judgment: 14.11.2019

Tamil Nadu Court Fee and Suit Valuation Act (Act 6 of 2017), Section 69, Refund of full court fee.

C.P.C., Section 89, settlement of disputes outside court.

Specific performance – Matter was referred to Lok adalat for settlement, it was not settled – It came back to the trial court. Joint memorandum of compromise filed– whether refund of full court fee permissible.

Held :- No. Matter was not settled by any modes of settlement of dispute referred in section 89 of the code of civil procedure. Therefore Section 69 of the court fees Act will not apply to this case and hence the Plaintiff is not entitled to get full refund but only 50% of the court fee paid by him.

2019 (5) L.W. 552

M/s.Chandan Pharmaceuticals Corporation Vs P.K.Jalan and others

Date of Judgment: 16.10.2019

C.P.C., Order 21 Rules 105(2), 106.

Execution proceeding – Learned judge passed an order stating “Execution petition was closed” – Neither the counsel for decree holders nor the counsel for judgment debtors appeared – Procedure **contemplated under Order 21 rule 105 alone could have been invoked.**

Held :- ‘closure’ can only be construed as a dismissal within Order 21 rule 105(2).

If it is a dismissal of E.P. under Order 21 rule 105(2) decree holders can file a restoration petition under rule 106, where such application be made within a period of thirty days from the date of the order as per rule 106(3).

No petition was filed under Section 5 of the Limitation Act, to condone the delay – Order is defective and the Execution court ought not to have entertained the said E.A. without having condoned the delay in filing such application under section 5 of the Limitation Act – As there is no provision to close the E.P. Execution courts shall not pass any Order just closing the E.P.

HIGH COURT CRIMINAL CASES

(2019) 4 MLJ (Cr) 336

LNIND 2019 MAD 5361

Mohamed Shiyam and another Vs State

Date of Judgment: 26.08.2019

Narcotics – Independent witnesses – Narcotic Drug and Psychotropic Substances Act, 1985 (Act 1985), Sections 8[c], 21[c], 29, 57 and 67 – Evidence Act, 1872 (Act 1872) Sections 24 to 27 – Prosecution examined two independent witnesses, and recorded their statements under section 67 of Act 1985. However they were not examined before lower Court during trial – Trial Court convicted the accused – Whether evidence of Intelligence Officials was worthy of acceptance in absence of examination of any independent witnesses?

Held :- Merely because the Intelligence officers are official witnesses, that will not by itself create any doubt about creditworthiness in their evidences – Non examination of independent witnesses had not caused any prejudice to Appellants nor it affected credibility of case of the prosecution – Statements made by Appellants were prior to their arrest and based on their statements, Intelligence Official were satisfied that offences had been made out against them and only thereafter, they effected their arrest – Trial Court rightly convicted Appellants – Appeal dismissed.

2019 (2) TLNJ 433 (Criminal) : 2019 (6) CTC 139

Shanthi.K. Vs District Collector, Dindigul District and Ors

Date of Judgment: 27.09.2019

Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016, section 12 (4) – Compensation under – F.I.R. under section 294(b), 506 and 3(1)(s) of SCST Act – Trial pending – Representation by petitioner to the District Collector to grant her compensation – rejected because even though the victim by birth belongs to the Scheduled Community, she followed Christianity and therefore not entitled compensation as her husband belongs to Backward Class.

Held:- Petition against the caste of a person has to be determined only based on the birth and it cannot be changed by virtue of marriage – Even if the husband of the petitioner following Christianity, that does not automatically make the petitioner a Christian and her original status, wherein, she belongs to the Scheduled Case Community, will continue – R.1 is directed to pay the compensation to the petitioner of a sum of Rs.1,50,000/- – Petition allowed.

2019 (3) MWN (Cr) 405 (DB)

Kaviarasan @ Raja Vs Deputy Superintendent of Police and others

Date of Judgment: 09.08.2019

Code of Criminal Procedure, 1973 (2 of 1974), Section 220(1) – Clubbing of cases – Joint Trial – Permissibility – Six Accused allegedly involved in a series of offences in same transaction – Offences taken place at three different places, investigated by two Agencies.

Held:- Section 220(1) Cr.P.C. speaks about series of offences committed in same transaction by same person, but not persons – When 6 Accused persons involved in 3 cases, Section 220 cannot be invoked – Further, when two Agencies involved in investigation, cases cannot be clubbed together – Two cases investigated by Special Police and one case by National Investigation Agency [NIA] – Section 32, NIA Act, a Special Act, overrides General Act i.e. Cr.P.C. and Special Court under NIA Act alone could try offences investigated by NIA – Out of two other cases, one is pending before Sessions Court, Madurai and 20 out of 118 Witnesses already examined – Other case pending before Special Court for Bomb Blast cases, Poonamallee and trial yet to be commenced – Accused though common, stages of cases different – Witnesses in each case different – Clubbing of both cases would definitely cause delay in disposal – Earlier Petition for transfer of cases to Special Court, Poonamalle, dismissed by High Court holding that Section 220 Cr.P.C. not applicable to more than one Accused – Matter already decided by Division Bench of High Court, therefore very same issues cannot be reargued – Concept of Double Jeopardy under Article 22, Constitution cannot be invoked for offences distinct in nature committed in various places – H.C.P. dismissed.

2019 (6) CTC 353

Baleshwar Roy Vs State of Bihar and others

Date of Judgment: 01.11.2018

Essential Commodities Act, 1955 (10 of 1955), Section 6-A – Whether Collector, who seized any conveyance used in carrying Essential Commodity, has jurisdiction to release same.

Held:- Under Central Act, Collector has power to release vehicle/conveyance, if Owner opts to pay market price on date of seizure – No such corresponding provision in the State Act. Therefore Collector does not have power to release vehicle/ conveyance till conclusion of Criminal prosecution – In case no Criminal prosecution launched after the Order of Confiscation release of the vehicle is possible only by annulment of Confiscation Order by the Appellate Authority.

When State Law is repugnant to Central Law – what will be the effect

Both Parliament and State Legislature can enact any law in respect of Entry 33 of List III (Concurrent List) – All provisions in State Act in pari materia with Central Act – Only one provision in Central Act, regarding power of Collector to afford option to Owner to pay Fine in lieu of confiscation, absent in State Act.

Held:- Mere absence of one provision would not make State Act repugnant to Central Act – only if both enactment contain inconsistent & irreconcilable provisions and they cannot operate together in same field it can be said that the State Law is repugnant to Central Law, – If possibility exists for both Acts to operate in same field without collision then the State Act can't be said to be repugnant to the Central Act.

2019 (6) CTC 392

Rangabashyam and another Vs Ramesh

Date of Judgment: 23.07.2019.

Indian Partnership Act, 1932 (9 of 1932), Section 69(2) and Interpretation of - Section 141 of the Negotiable Instruments Act, 1881.

a) Whether unregistered firm can initiate criminal proceedings?

Held:- Bar of Suit in respect of unregistered Firm applies only to enforcement of right arising from Contract – Same is not applicable for enforcing common law right – the term “Suit” envisaged under Section 69(2) of Partnership Act cannot be stretched to Criminal prosecutions.

b) Cheque given in the name of Partnership Firm is dishonoured – No Statutory Notice issued to the Partnership Firm, and the Partnership Firm is not made Accused in the Complaint – Whether such complaint is maintainable without impleading the Firm as an accused?

Held:- A Complaint cannot be maintained against Directors of Company without making Company as Accused – Same concept will extend even for Partnership Firm– Therefore complaint filed against partners without impleading the firm as accused is not maintainable and the Proceedings is quashed.

2019 (3) MWN (Cr) 438

Narayanamma and others Vs Chikka Venkateshaiah

Date of Judgment: 13.08.2019

Indian Penal Code, 1860 (45 of 1860), Sections 464, 465, 420 & 468 – **Ingredients of “False document”**.

Held:- To attract ingredients of “false document”, Accused should have either executed document claiming herself to be wife of Complainant or Accused should have altered or tampered with document by practicing deception – None of the ingredients is satisfied – Mere execution of document pertaining to a property for which a person is not Owner, will not amount to execution of false document under Section 464 – Criminal proceedings against Petitioners, being abuse of process of Court, liable to be quashed.

Duty of the Magistrate when taking cognizance after filing of closure report:

Magistrate at time of taking cognizance, has to be necessarily apply his mind to Closure Report filed by Police and statements recorded by Police – Exercise having not been done while converting Protest Report into Private Complaint-taking of cognizance by Court below liable to be interfered with.

2019 (3) MWN (Cr) 393 (DB)

Veeran Vs State

Date of Judgment: 25.10.2019

Evidence Act, 1872 (1 of 1872), Section 118 – **Relevancy and reliability of evidence of a Child Witness.**

Held:- Evidence of a competent child deposing facts of a case could be basis of conviction, provided he/she is capable of understanding questions and give rational answers – Only precaution needed is that, the evidence of such Child Witness must be reliable one and his /her demeanor must be like other competent Witnesses – Precaution is necessary because Child Witnesses are amenable to tutoring, pliable and liable to be influenced easily – Child Witness, in the instant case, lost his mother and sister due to violent act of his father – Scope of tutoring him or making him to depose something untrue is practically improbable – Evidence of Child Witness/PW1 also found in consonance with Dying Declaration of deceased – Contention of the accused that the evidence of PW1 not reliable is rejected.
