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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

(2012) 3 MLJ 159

J. Samuel and Ors
Vs
Gattu Mahesh and Ors

Specific Relief Act (47 of 1963), Section 16(c) - Code of Civil Procedure (5 of 1908), Order 6, Rule 17 – Amendment of pleadings – Specific performance – Contract of sale – Order of High Court allowing application seeking amendment of plaint, challenged – Filing of amendment application after arguments concluded and matter posted for judgment – Reason for amendment given as “type mistake” – Omission with reference to specific plea mandated in terms of Section 16(c) – Mistake not come within purview of typographical error – Amendment not to be allowed after commencement of trial except when Court concludes that party could not have raised matter before commencement of trial despite ‘due diligence’ as per proviso to Rule 17 – Clear lack of ‘due diligence’ – Omission of mandatory requirement not a typographical error – Order of High Court allowing amendment, set aside – Appeal allowed.

RATIONES DECIDENDI:

- I. No application for amendment of pleadings can be allowed under Order 6, Rule 17 of the Code of Civil Procedure, 1908 after the commencement of trial, except when the Court comes to a conclusion that the party could not have raised the matter before commencement of trial inspite of due diligence as per proviso to Rule 17.

- II. When the omission is with reference to a specific plea which is a mandatory requirement, it cannot come within the purview of typographical error and such plea of typographical error cannot be entertained for allowing the amendment as there is a clear lack of ‘due diligence’.

(2012) 3 MLJ 166

National Seeds Corporation Ltd.
Vs
M. Madhusudhan Reddy and Anr

Consumer Protection Act (68 of 1986), Section 2(d)(i) – Seeds Act (54 of 1996), Sections 10, 19 read with 21 – Consumer complaint – Sale and supply of defective seeds – Cause of loss to growers due to failure of crops – Filing of complaint before District Forum – Maintainability of – Plea of appellant that only remedy available to respondents, to file a complaint under Seeds Act – Seeds Act thought a special legislation, silent on payment of compensation to aggrieved farmer – Farmers/growers who buy seeds for a price for earning livelihood by self employment and not for commercial purpose, covered by definition of ‘consumer’ under Section 2(d)(i) of Consumer Act – Relief under Consumer Act cannot be denied to respondents on ground of availability of remedy under Seed Act – Held, consumer complaint maintainable.

(2012) 5 Supreme Court Cases 355

SHALEEN KABRA
Vs
SHIWANI KABRA

- A. Family and Personal Laws – Child Custody – Paramount consideration, reiterated, should be welfare of child – Adherence to – Separation of siblings – When not warranted – Parent who is better disposed to provide for needs of children, depending on their age – Determination of

- Appellant father, an IAS officer, involved in various litigations with respondent mother – He had filed petition for custody of their two sons of 15 and 9 years age – Trial court granted custody of sons to appellant father – High Court separated two boys and custody of elder son was given to appellant father and of younger son was given to respondent mother – Propriety of – Held, it is an admitted fact that the two boys are indeed very much attached to each other – Welfare of both children would be best served if they remain together – Respondent mother was not in a position to look after educational needs of elder son, and as it was not desirable to separate the brothers, hence custody of two boys given to appellant father – As appellant father is an IAS officer and a well-groomed person, he can take very good care of his children with help of his father, who was a Professor – Their education would not be adversely affected – Normally grandparents spend much time with their grandchildren, thus, father of appellant can also look after these boys and can infuse good values in them – At the same time, respondent mother would have right to visit her children once in a month – Appellant father would make all necessary arrangements for her travel and accommodation when she visits her children – Whenever vacations are for more than two weeks, appellant father would send the boys to respondent mother – Guardians and Wards Act, 1890 - Ss. 17 and 7- Hindu Minority and Guardianship Act, 1956, S. 13.

- B. Family and Personal Laws – Child Custody – Paramount consideration should be welfare of child – Separation of emotionally attached siblings while granting custody – Propriety – Held, when siblings are attached to each other their welfare would be best served if all of them remain together.

(2012) 3 MLJ 370

Jagan Singh (Dead) Through LRs.
Vs
Dhanwanti and Anr

- (A) Hindu Succession Act (30 of 1956), Section 14 – Zamindari Abolition and Land Reforms Act (1951), Sections 152 and 169 – Bequest by Bhumidhar – Bequeathing of land by will in favour of a female Hindu – Life estate given to a female Hindu under a will cannot become an absolute estate under Section 14(2) of Act of 1956 – Bequest made under Section 169(1) of Act of 1951 in favour of female Hindu, if a restricted one, would remain as a restricted one in view of Section 14(2) – Order of High Court holding that bequest in favour of 1st respondent not a restricted one, set aside – Appeal disposed of.
- (B) Transfer of Property Act (4 of 1882), Section 52 – Transfer of property pending suit – Doctrine of lis-pendens – Applicability of – Sale of disputed land pendent lite – Execution of sale at a time when second appeal had not been filed, but which came to be filed afterwards within period of limitation – Such sale until period of limitation for second appeal is over, covered under Section 52 – Held, 1st respondent not entitled to sell disputed parcel of land – Suit filed by appellant decreed to the extent – Appeal disposed of.

RATIO DECIDENDI: Bequest made under Section 169(1) of Zamindari Abolition and Land Reforms Act, 1951 in favour of a female Hindu, if a restricted one, would remain as a restricted one in view of Section 14(2) of the Hindu Succession Act, 1956.

(2012) 6 Supreme Court Cases 430

A. Shanmugam

Vs

Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Ors

- A. Civil Suit – Abuse of process of court – Delayed administration of civil justice – Frivolous litigation to gain undue benefits – Watchman’s suit seeking permanent injunction against his dispossession by owner of the premises – Such non-maintainable suit protracted for long by resorting to falsehoods, concealment, distortion, obstruction and confusion in pleadings and documents, thereby avoiding ejectment – This reflects delayed administration of civil justice prevalent in present judicial system – Principles of improving the system, reiterated – Appeal of appellant watchman dismissed with costs and vacant possession of premises directed to be handed over to respondent owner within two months, by police force, if required**
- B. Specific Relief Act, 1963 – Ss. 38, 39 and 6 – Injunction – Suit for – Maintainability – Gratuitous possessee/Permissive possessee – Suit for injunction by watchman/caretaker/agent/servant, all of them being persons in gratuitous possession/permissive possession, against dispossession by owner of the premises, reiterated, not maintainable – Such person holds property on behalf of principal (owner) and acquires no right or interest therein irrespective of long possession – Protection of court can be granted or extended only to a person who has valid subsisting rent agreement, lease agreement or licence agreement in his favour – Transfer of Property Act, 1882 – Ss/ 55(1)(f), 58(d) and 108(b) – Easements Act, 1882 – Ss. 52 and 60 – Property Law – Possession – Gratuitous possessee/Permissive possessee – Extremely limited entitlement of, if any**
- C. Property Law – Adverse Possession – Locus stand/standing – Gratuitous possessee/Permissive possessee – Claim by watchman/caretaker/agent/servant, all of them being persons in gratuitous possession/permissive possession – Such person being permitted by owner to occupy the property holds it on behalf of owner and acquires no right or interest therein irrespective of his long stay or occupation – Mere production of ration card or house tax receipts by such person would not establish his claim of adverse possession – Limitation Act, 1963, Art. 65**
- D. Courts, Tribunals and Judiciary – Generally – Courts – Duty of courts – To discern truth from pleadings, documents and arguments of parties – Emphasised**
- E. Civil Procedure Code, 1908 – Or. 6 Rr. 2 & 9 and Or. 30 – Pleadings – Importance – Pleadings must set forth sufficient factual details so as to dispel false or exaggerated claim or defence – Court should ensure discovery and production of documents and proper admission/denial – It should scrutinise properly pleadings and documents before dealing with the case**
- F. Civil Procedure Code, 1908 – Or. 15 Rr. 1 & 3 and Or. 10 R. 2 – Proper framing of issues, necessary – Court must critically examine pleadings before framing of issues – It should have recourse to procedure under Or. 10 R. 2 and orally examine party concerned**
- G. Specific Relief Act, 1963 – Ss. 38 and 39 – Grant or refusal of injunction – Principles laid down in Maria Margarida Sequeria Fernandes, (2012) 5 SCC 370, reiterated – Civil Procedure Code, 1908, Or. 39 Rr. 1,2,3 & 3-A, Or. 20 R. 12 and S. 144**

- H. **Civil Procedure Code, 1908 – Ss. 144, 35, 35-A, 35-B and Or. 20 R. 12 – Restitution and mesne profits – Realistic costs – Restitutionary costs – Undue benefits derived by unscrupulous litigant from frivolous litigation by abusing judicial process should be neutralized by court – When court finds falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, it should, in addition to full restitution, impose actual or realistic costs**

2012 (3) CTC 850

Badami (Deceased) by her L.R.

Vs

Bhali

Law of Torts – Fraud – Suit for relief of declaration and permanent injunction – Defendant entered appearance and filed Written Statement on same day of presentation of Plaint – Trial Court passed decree within 3 days from date of presentation of Plaint – Defendant, a rustic and illiterate woman, taken to Court by relation on plea of creation of Lease Deed – Decree passed by Trial Court is vitiated by fraud.

SUPREME COURT CITATIONS CRIMINAL CASES

(2012) 6 Supreme Court Cases 204

JITENDER KUMAR
Vs
STATE OF HARYANA
With
SUNIL KUMAR AND ANOTHER
Vs
STATE OF HARYANA

- A. Criminal Procedure Code, 1973 – S. 154 – FIR – Omission of name of one of the accused from FIR – Effect – It would not always result in acquittal of accused person whose name was omitted from FIR – Various factors which court should examine – Even though accused is not named in FIR, if a definite role is attributed to him and same is proved beyond reasonable doubt, he is liable to be convicted – When FIR was lodged on basis of only a part of the incident seen by informant in which one of the accused (appellant) was not present, non-mention of appellant's name in FIR adds credibility to prosecution case – Penal Code, 1860, S. 120-B r/w S. 302.
- B. Criminal Procedure Code, 1973 – S. 154 – FIR – Object – Evidentiary value – FIR, itself is not proof of a crime but it is a piece of evidence which can be used for corroborating prosecuting case – It should contain basic case, not all facts and circumstances on which prosecution relies.
- C. Criminal Trial – witnesses – Natural witness – Husband and brother of deceased – On facts, could not be said to be planted witnesses - Incident narrated by them corroborated by expert evidence on record – On facts, held even if husband's behaviour was found to be immature, he was a natural and reliable witness.
- D. Evidence Act, 1872 – S. 27 – Disclosure statement of accused containing admissible and inadmissible parts – One part relating to use of a motorcycle in commission of crime while the other part relating to place where the motorcycle was kept and could be recovered from – Motorcycle recovered in furtherance of the disclosure statement – recovery of motorcycle, a fact providing link between recovery and its use by accused in commission of crime – Reiterated, part of statement of accused relating to commission of crime is not admissible under S. 27 as it was made to police – However, this part can be segregated from the other part relating to recovery of motorcycle which is admissible under S. 27 – There was no infirmity which would vitiate very recovery of motorcycle in terms of S. 27.
- E. Penal Code, 1860 – S. 120-B and S. 120-B r/w S. 320 – “Punished in the same manner as if he had abetted such offence” – Accused –appellant charged under S. 120-B for conspiring with co-accused persons to commit murder without being separately charged under Ss. 302/34 – Held, conviction of appellant under Ss. 120-B/302 by trial court proper, and confirmed.
- F. Criminal Procedure Code, 1973 – S. 154 – FIR – Delay in filing – By itself not fatal to prosecution case – Explanation for delay, if found by court to be satisfactory, then prosecution case cannot fail on ground of mere delay – Incident (murder) took place between 1 to 1.30 a.m. in a village and FIR lodged at 4.30 p.m. at police station which was 150 m away from house of occurrence – Informant (brother of deceased woman), who came from another village, after witnessing a part of the incident (i.e. accused persons trying to hold and strangle deceased with a rope), went to his own village and came back with his family members and friends to place of occurrence and finding deceased already dead, went to police station where FIR was then lodged – Version given in FIR corroborated by deceased's husband – Having regard to facts and circumstances of the case, held, delay in lodging FIR was not inordinate though conduct of informant was somewhat strange – Penal Code, 1860, S. 120-B r/w S. 302.

- G. Criminal Trial – Medical Jurisprudence/Evidence – Time of death – Contents of stomach of deceased not always determinative test – It is one of the relevant considerations – Normally stomach becomes empty within 2-3 hours of taking meals, but, held, no absolute rule of universal application can be laid down in this regard – It depends upon various factors – Determination of time with reference to food contents found in stomach would require corroboration from other evidence and cannot itself form basis of discrediting prosecution case which is proved beyond reasonable doubt – Court should examine collective or cumulative effect of prosecution evidence along with medical evidence to arrive at a conclusion.
- H. Criminal Trial – Appreciation of Evidence – Credibility of witness – Presence of witnesses at place of occurrence – Presence of deceased’s husband, who was brought under threat by accused to his house to get the door opened so that accused could murder his wife and presence of deceased’s brother who had come from another village to meet deceased, not doubtful in normal course – Statements of said two witnesses, corroborated by medical evidence, were not only plausible but completed the chain of events in prosecution case – Courts below though commented adversely upon conduct of these witnesses but not with regard to material events of prosecution case – Held, presence of said witnesses at place of occurrence was natural and their statements believable.
- I. Criminal Trial – Defence – Alibi – Presence of accused at place of occurrence – Mere fact that accused persons were residents of a village at some distance would be inconsequential when accused were seen by PWs in the house of occurrence.
- J. Criminal Trial – Defence – Plea of alibi – Burden on accused to prove with certainty – Accused examined witnesses and adduced documents to establish their presence at another place at the time of occurrence – Trial court held that none of those documents related to presence of accused at another place – Instead, statements of PWs showing accused’s participation in crime, believed by courts below – In the circumstances, held, plea of alibi was not established – Accused failed to discharge the burden – Evidence Act, 1872, S. 11.
- K. Criminal Procedure Code, 1973 – S. 313 – Statement of one of the accused recorded under, admitting material parts of prosecution case – Held, cannot be used against other co-accused – But statement having become part of judicial record could be used against the accused himself for convicting him, if prosecution had proved its case in accordance with law – However, that accused having died during pendency of proceedings, part of his statement that supports prosecution case as well as statements of PWs can be relied upon by prosecution to a limited extent – Evidence Act, 1872, Ss. 30 and 22.
- L. Penal Code, 1860 – Ss. 120-B/302 – Murder of woman by strangulation – Appreciation of evidence – Conviction by courts below whether based on suspicion – Prosecution established its case beyond reasonable doubt by ocular, documentary and medical evidence – Bangles recovered from place of occurrence and injuries that were inflicted upon the body of deceased clearly showed that she struggled for life and was murdered at the hands of the accused – Held on facts, it was not a case of mere suspicion – Evidence Act, 1872 – S. 3 – “Proved”.
- M. Constitution of India – Art. 136 – Summary dismissal of SLP – Effect of.

2012 (4) CTC 322

Mayawati

Vs

Union of India and Ors

Constitution of India, Article 32 – Directions of Court – Execution of - FIR lodged against former CM & MP not in scope of directions issued by Court – Validity of – Apex Court in series of judgments in ‘M.C. Mehta v. Union of India’, was concerned with release of amount of ₹ 17 crores for Taj Corridor Project by State Government, without proper sanction – CBI was directed to inquire and find out whether there was any illegality or irregularity in action of officials/persons concerned with release of funds – No direction was given to consider alleged

disproportionate assets of Petitioner separately from 1995 to 2003, when ₹ 17 crores was released only in September 2002 – In such circumstances, lodging of a separate FIR against Petitioner, not warranted – Method adopted by CBI in conducting a roving inquiry against assets of petitioner is without jurisdiction – Consequently, said FIR and any investigation pursuant thereto, quashed – Code of Criminal Procedure, 1973, Section 157 – Delhi Special Police Establishment Act, 1946, Section 6.

(2012) 6 Supreme Court Cases 477

**Nagesh
Vs
State of Karnataka**

- A. Penal Code, 1860 – S. 302 – Murder trial – Circumstantial evidence – Death due to administration of poison – Conviction confirmed.
- B. Criminal Trial – Proof – Generally – Whether case established beyond reasonable doubt or whether accused entitled to benefit of doubt – Duty of court regarding, while appreciating evidence – Held, it is neither possible nor prudent to state a straitjacket formula or principle which would apply to all cases without variance – Every case has to be appreciated on its own facts and in light of evidence led by parties – It is for court to examine the cumulative effect of evidence led by parties – It is for court to examine the cumulative effect of evidence in order to determine whether prosecution has been able to establish its case beyond reasonable doubt or that accused is entitled to benefit of doubt
- C. Criminal Procedure Code, 1973 – S. 154 – Delay in lodging FIR – If properly explained – Murder trial – Death due to administration of poison – Defence submission that FIR was an afterthought as it was lodged after deliberation and planning, that too, after a considerable time – Tenability – Held, herein court cannot ignore fact that young daughter of PWs 4 and 9 had died allegedly by consuming poison – No other details were brought to their notice – They had other daughters present in the house and dead body of deceased was cremated against their wish – After cremation, FIR was lodged – Therefore, delay, if any, in such circumstances of case, thus, stands properly explained – Hence, submission rejected
- D. Criminal Trial – Circumstantial evidence – Generally – Benefit of doubt – Theory of – Undue advantage of, not to be given to accused – Duty of court to examine evidence in its entirety – Held, court has to examine evidence in its entirety – Particularly in case of circumstantial evidence, court cannot just take one aspect of entire evidence led in case, like delay in lodging FIR, in isolation to other evidence placed on record, and give undue advantage of benefit of doubt for accused
- E. Criminal Procedure Code, 1973 – S. 313 – Examination of accused under – Purpose of – Adverse inference, when may be drawn against accused – Reiterated, the purpose of a statement under S. 313 is to put to accused material evidence appearing in case against him as well as to provide him an opportunity to explain his conduct or his version of the case – It is also possible and permissible that an accused may remain silent but in that circumstance and with reference to facts and circumstances of a given case, court may be justified in drawing an adverse inference against accused – Evidence Act, 1872, S. 106 and S. 114 III. (g)
- F. Constitution of India – Art. 136 – Scope of interference – Interference with concurrent findings of fact – General rule of non-interference – Interference when warranted – Principles reiterated
- G. Penal Code, 1860 – S. 302 – Murder trial – Death due to administration of poison – Police officers/officials present at place of occurrence, failing to take appropriate action and register case – Later, besides those present when body was cremated, police further failed to take charge of dead body and proceed in accordance with law, it being an unnatural death – Held, police officers/officials concerned did not discharge their public duty and mandatory obligations – Hence, DGP of State directed that disciplinary action be taken against them and said proceedings to be completed within six months from date of this order – Police – Misconduct – Dereliction of duty.

R. Mohan
Vs
A.K. Vijaya Kumar

- (A) Negotiable Instruments Act, 1881(26 of 1881)-Sec.138-Code of Criminal Procedure, 1973(2 of 1974)-Sec.357,421,431-Indian Penal Code, 1860(45 of 1860)-Sec.64-Cheque dishonor-Conviction-Compensation-Default sentence-When the cheque issued by the accused had been dishonoured, he was prosecuted and convicted and was also directed to pay compensation-On default in paying compensation, sentence of imprisonment was also imposed which was reversed by the High Court by holding that default sentence could not be imposed for failure to pay compensation-In the appeal by both the parties, while the accused challenged the conviction, complainant challenged the reversal of default sentence-Complainant contended that the Court could impose default sentence for default in paying the compensation-Held, in criminal trial, when directing the payment of compensation by the accused, the Court could impose default sentence upon him-Order of the High Court was reversed and that of the trial Court was restored-Appeal by the complainant was allowed.
- (B) Negotiable Instruments Act, 1881(26 of 1881)-Sec.138-Code of Criminal Procedure, 1973(2 of 1974)-Sec.357,421,431-Indian Penal Code, 1860(45 of 1860)-Sec.64-Cheque dishonor-Conviction-Compensation-Default sentence-In criminal trial, when ordering the payment of compensation by the accused, the Court could impose default sentence upon him.

Ratio: In criminal trial, when ordering the payment of compensation by the accused, the Court could impose default sentence upon him.

HIGH COURT CITATIONS CIVIL CASES

(2012) 4 MLJ 1

K.R. Chandrasekaran and Ors
Vs

Union of India rep. by the Secretary to Government, Finance Department, New Delhi and Ors

- (A) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), Section 14 – Power of Chief Metropolitan Magistrate or District Magistrate in assisting bank or financial institution to secure secured assets – Validity of Section 14 of Act – Held, Section 14 of SARFAESI Act is valid – Guidelines issued.
- (B) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Sections 13 and 14 – Recovery proceedings – Steps taken under Section 13(4) of Act by secured creditor – Order of assistance passed by Chief Metropolitan Magistrate or District Magistrate under Section 14 of Act at instance of secured creditor – Writ petition – When it relates to borrower or guarantor, as against steps taken by secured creditor under Sections 13(4) and 14 of SARFAESI Act, Section 17 of SARFAESI Act provides an effective alternative remedy – In such cases, it is not possible for Court to entertain writ petition – Cases where bona fide tenant sought to be evicted either by steps taken under Section 13(4) of Act by secured creditor or by order of assistance passed by Chief Metropolitan Magistrate or District Magistrate under at the instance of secured creditor – In such cases, in order to render substantial justice, no bar for Court to entertain writ petition under Article 226 of Constitution of India.

RATIO DECIDENDI:

I. Even against an order of possession taken through the administrative fiat from the Chief Metropolitan Magistrate or District Magistrate an application under Section 17 of the SARFAESI Act can be filed by any person affected, which includes a tenant in lawful occupation, to the Debts Recovery Tribunal.

II. In addition to the enforcement of the object of the SARFAESI Act, the Chief Metropolitan Magistrate or District Magistrate has to necessarily be guided by the consideration of doing justice, even though it is said that while passing order under Section 14 of the SARFAESI Act, the Chief Metropolitan Magistrate or District Magistrate is only assisting the bank or financial institution for enforcing the security of the secured asset.

III. The power of the Debts Recovery Tribunal under Section 17 of the SARFAESI Act even though it enables any person affected by an order under Section 13(4) or consequently under Section 14 of the SARFAESI Act to approach it, is restricted to the confirmation to the provision of the SARFAESI Act alone.

(2012) 3 MLJ 34

P. Leelarathinam, W/o. P. Venkata Gopala Rathinam and Anr
Vs

P.E. Srinivasan and Ors

Code of Civil Procedure (5 of 1908), Order 7 Rule 11 – Rejection of plaint – Suit for permanent injunction – Application filed to reject plaint, dismissed – Revision – Suit not only barred by res judicata but also clear abuse of process of law – Order of trial Court dismissing application for rejection of plaint, not proper and is set aside – Revision allowed.

RATIO DECIDENDI: A suit cannot be thrown out at the threshold, but when the suit filed is barred by law and is a clear abuse of process of law, the suit has to be thrown out even at the inception.

2012 (5) CTC 37

Minor Balakumaran, through his Natural Guardian, next friend and father, Gnanasoundiran
Vs
Gunasekaran

Code of Civil Procedure, 1908 (5 of 1908), Proviso to Order 6, Rule 17 – Suit for Declaration filed – Plaintiff sought to add a relief of Recovery of Possession – Petition dismissed – Revision filed – Amendment Application was filed after trial – Petitioner has not made out a case that in spite of his diligence he could not file Application before trial – Ingredients of Proviso to Order 6, Rule 17, not satisfied – Held, Application rightly dismissed.

Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 17 – Amendment Application filed at the time of arguments – Held, not maintainable – Ratio in J. Samuel v. Gattu Mahesh, 2012 (2) SCC 300, applied.

Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 17 – Suit for Declaration contending that the Petitioner was in possession of property – However, Petitioner sought to amend Plaint to include Recovery of Possession – Contradictory stand taken – Amendment Application, held, rightly dismissed.

2012 (3) CTC 41

Royal Sundaram Allianz Insurance Company Ltd., through its Manager, Sundaram Towers,
No.46, Whites Road, Royapettai, Chennai 600 014.
Vs
Rajendran, and Ors

Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rule 2 – Motor Vehicles Act, 1988 (59 of 1988), Sections 166 & 168 – Motor Accident – Claim Petition made on account of death of family member allowed – Subsequently compromise entered into between Claimant and Insurance Company outside Court for full and final settlement of amount – Trial Court refused to record said Compromise Memo on account that same could not be entertained unless Court was invoking powers under Order 21 – Held, approach of Trial Court highly technical – Always open to parties to a dispute to arrive at compromise towards its settlement – Memo filed by parties in instant case, established depositing of agreed amount before Tribunal – In such circumstances, duty of Trial Court is to record execution of decree – Order of Trial Court set aside.

(2012) 4 MLJ 77

Himayam Engineers and Builders, rep. by its Proprietor P. Ramana Reddy
Vs
S. Ravichandran and Ors

Code of Civil Procedure (5 of 1908), Order 2 Rule 2 – Suit for specific performance – Contract in question does not prescribe sufficient details – Held, contract cannot be specifically enforced – Plaintiff not entitled to equitable relief of specific performance as he has not come with clean hands – Plaintiff not entitled to relief of specific performance of contract – Suit hit by provisions of Order 2 Rule 2 Code of Civil Procedure, 1908 also – Suit dismissed.

RATIO DECIDENDI: Where the suit is filed for the enforcement of a contract for the construction of any building or execution of any other work on land, the contract should sufficiently prescribe the details to enable the Court to determine the exact nature of the building or work, otherwise the contract cannot be specifically enforced.

(2012) 4 MLJ 98

P.R. Ramanathan
Vs
M.K. Ranganathan

Specific Performance – Suit for specific performance of sale agreement – Time is essence of contract in question – Plaintiff was not ready and willing to perform his part of contract – Held, plaintiff not entitled to discretionary relief of specific performance of contract – Suit dismissed with respect to specific performance of contract – Suit decreed with respect to alternate prayer of recovery of refund of advance amount to specified extent.

RATIO DECIDENDI: When the time is the essence of the contract and the plaintiff is not ready and willing to perform his part of contract, the plaintiff is not entitled to seek for the specific performance of the sale agreement.

(2012) 3 MLJ 199

Pan Resorts Limited Chennai – 18, rep. by its Director K. Subbiah
Vs
H.H. Karthika Thirunal Lakshmi Bayl and Ors
And
H.H. Aswathi Thirunal Rama Varma and Anr
Vs
Pan Resorts Limited, Chennai – 18 rep. by its Director K. Subbiah and Ors

Code of Civil Procedure (5 of 1908), Order 6 Rule 14, Proviso – Order 17 Rule 6 and 7 of Original Side Rules – Words “any stage” indicated in Order 17 Rule 6 and 7 of Original Side Rules of Madras High Court – Same would only mean period prior to trial – Once trial is over plaintiff or defendant stopped from marking any document to substantiate his claim.

RATIO DECIDENDI: The words “any stage” indicated in Order 17 Rule 6 and 7 of Original Side Rules would only mean the period “prior to the trial” and once trial is completed, the plaintiff/defendant are stopped from marking any document to substantiate their claim.

2012 (4) CTC 247

P. Baskaran
Vs
P. Soundarajan and Ors

Specific Relief Act, 1963 (47 of 1963), Section 28 – Powers of Court to consider extension of time for payment of consideration after passing of decree – Court does not become functus officio on passing of decree for Specific Performance and dismissal of Application seeking extension of time on ground of functus officio is bad – Trial Court after trial rendered finding that Purchaser had proved readiness and willingness to perform his part of contract right through and after passing of decree and sought extension of time for payment of consideration as directed by Court – Trial Court in backdrop of such finding ought to have exercised its discretion to extend time.

2012 (4) CTC 600

D. Pradeep Kumar Rao
Vs
D. Lathabai

Hindu Marriage Act, 1955 (25 of 1955), Section 24 – Maintenance, Pendent lite – Trial Court ordered ₹ 4,000/- towards interim maintenance, ₹ 10,000/- towards delivery expenses, and ₹ 5,000/- towards litigation

expenses – Challenged – Contention of Husband that Wife in suffering from mental illness and is awaiting Doctor's Report does not merit consideration – Mental illness is a factor to be adjudicated during trial – Fact remains that Wife and Child are living separately – Order of Trial Court granting interim maintenance, held, justified.

2012 (4) CTC 603

Chandran and Ors
Vs
K.M. Muthusamy and Anr

Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rules 36, 97 & 98 – Suit for Specific Performance decreed and Sale Deed executed – At time of seeking delivery of possession, tenants filing Application under Order 21, Rule 36 that they should not be evicted except in accordance with law – Tenants in occupation, who are not parties to decree, could certainly file an Application under Order 21, Rule 97 causing obstruction to effect that in event of ordering delivery, there could be symbolic delivery and not actual physical dispossession – Order passed under Rules 97 & 98 should be deemed to be a decree, over which Appeal lies – Present Application filed under Order 21, Rule 36, ought to have been returned for making necessary rectification, but it was not done – Matter was proceeded like an Interlocutory Application, without treating it like a Suit – In such a case, Executing Court should have directed Application to be rectified and be re-presented as one under Order 21, Rule 97 – Impugned order set aside – Matter remitted to Lower Court with liberty to make necessary correction and amendments to Petition – Civil Revision Petition disposed off.

2012 (4) CTC 639

Valliammal and Ors
Vs
Sokkammal

Evidence Act, 1872 (1 of 1872), Section 69 – Proof of Settlement Deed – Suit for Partition – Defendant claimed absolute right under a Settlement Deed – Defendant neither examined attesting witnesses nor gave particulars about their existences to satisfaction of Court – Held, Settlement Deed not proved – Suit rightly decreed.

Evidence Act, 1872 (1 of 1872), Sections 68 & 69 – Suit for Partition – Defendant claimed right under a Will – Attesting witness to Will did not turn for examination, in spite of summons – Defendant examined Scribe (DW-3) and son of an Attestor (DW-4) to prove attestation – Evidence show that Scribe had seen Testator for first time only at Registered Officer and he brought Attestors to identify him – Requirements of law not met – Animo attestendi not made out – Will, held, not proved – Suit rightly decreed.

Code of Civil Procedure, 1908 (5 of 1908), Order 20, Rule 6 – Appellate Court found Plaintiff in possession and granted Permanent Injunction – While drafting decree, it wrongly included that Defendants were directed to hand over possession and also to relegate mesne profits through separate proceedings – Decree should agree with judgment – Decree of Appellate Court modified accordingly.

2012 (4) CTC 743

Essaki Ammal @ Chitra
Vs
Veerabhadra @ Kumar

Indian Evidence Act, 1872 (1 of 1872), Sections 7, 65-A & 65-B – Compact Disc – Admissibility in evidence – Procedure to be followed – Divorce proceedings – Husband seeking to produce Compact Disc containing recording of conversation of Husband and Wife over phone, wherein Wife had used filthy and unparliamentary language against him – Application filed by Husband allowed by Trial Court – Held, a contemporaneous tape-record of a relevant conversation is a relevant fact and is admissible in evidence as per Section 7 of 1872 Act – However, for use of tape-recorded statement, proper identification of taped voice a sine qua non for use of earlier tape-recording, especially in case where voice is denied by alleged maker – Held, before admitting tape-recording of alleged

telephone conversation between Husband and Wife, it is for Husband to prove by competent witnesses, time, place and accuracy of said tape-recordings and proper identification of voice to be done – Order of Trial Court set aside – Trial Court directed to call upon Husband to produce cell phone in which alleged conversation was recorded, and if conversation was recorded on memory card, direct Husband to produce memory card along with cell phone – Trial Court to call upon Petitioner-Wife to allow tape-recording of her voice in Court for comparison by an expert with voice on compact disc – Held, in case Petitioner-Wife does not submit to tape – Recording of her voice in Court to provide standard recording of voice, Court may draw adverse inference against her.

(2012) 3 MLJ 1057

P.S. Veerappa
Vs
Palaniammal and Anr

Civil Rules of Practice, Rule 75 – Summoning of Register – Suit for permanent injunction – Order of dismissal of application by trial Court, challenged – Proper reasons not assigned by trial Court – Dismissal on ground that revision petitioner has not taken steps to file an application for appointment of Advocate Commissioner, to send Will for examination by expert and not informed that he is ready to meet expenses to be incurred – As per Rule 75(3), trial Court to record just and equitable reasons either in allowing or disallowing application – No finding rendered by trial Court as to whether summoning of Register book containing Will is very much required for arriving at a just decision – Trial Court not dealt with point of maintainability of application – Dismissal of application without going into merits and by not giving proper reasons – Order of dismissal of trial Court, set aside – Revision petition allowed.

(2012) 3 MLJ 1072

Karupayee @ Vellaithayee Ammal and Anr
Vs

Kathariya Tharka Trust, Khajiman Street, Madurai Town through its President M.Syed Khader Meher Ali Sahib

Transfer of property Act (4 of 1882), Section 106(4) – Issuance of notice to quit – Suit filed for recovery of possession – Suit filed without issuing any notice as per Section 106 of Transfer of Property Act, 1882 – Suit not maintainable in law.

RATIO DECIDENDI:

In view of Section 106 of Transfer of Property Act 1882 Suit filed for recovery of possession without issuance of notice to quit is not maintainable.

2012 3 MLJ 1089

C. Nagamanickaya and Ors
Vs
K. Syamanthakamma and Ors

(A) Limitation Act (36 of 1963), Section 10 – Indian Trusts Act (2 of 1882), Sections 3, 73 and 75 – Suit for declaration and permanent injunction – Sale deed executed in favour of third party/18th defendant challenged as null and void – Suit decreed by trial Court – Appeal – Suit property trust property – Plaintiffs, legal representatives of original trustee – Seeks injunction to protect occupation of tenants in suit property – Plea of bona fide purchase for value without notice of trust, by D18 – Prudent purchasers required to make enquiries about title of property – Failure by purchasers to make diligent enquiries – No good faith in purchase of property – Held, D18 not a bona fide purchaser – Trial Court justified in applying Section 10 of Limitation Act as against defendants – Grant of injunction, justified – Judgment and decree of trial Court, confirmed – Appeals dismissed.

- (B) Suit for declaration and permanent injunction – Prayer for declaring sale deeds as null and void, as suit property allegedly trust property – Defendants contend, suits bad for want of prayer for declaration of title – Held, prayer for declaration of title of trust over suit property embedded in first prayer – Suits not bad for want of a separate prayer for declaration of title – Judgment and decree of trial Court confirmed – Appeals dismissed.
- (C) Adverse Possession – Pleas of absolute ownership and adverse possession made by defendants, inconsistent – Person pleading adverse possession cannot also plead absolute ownership – Biological son of a trustee can never inherit property over which his father was trustee – Biological son of a trustee who enters into possession of Trust property under his father or on father’s death, is to protect trust property and cannot plead adverse possession – No trustee or his legal representative can plead prescription – No acquisition of title by prescription over suit property – Judgment and decree of trial Court, confirmed – Appeals dismissed.

RATIO DECIDENDI:

I. A prudent purchaser is expected to make enquiries as contemplated in the Transfer of Property Act and a person who refrains from making diligent enquiries and keeping himself well informed about title relating to property going to be purchased, cannot press the plea of good faith in his favour and therefore cannot be termed as a bona fide purchaser.

II. Biological Son of a trustee can never inherit property over which his father was trustee and where the biological son of a trustee enters into possession of Trust property under his father or on father’s death, he being the legal representative of the trustee is enjoined to protect such trust property and cannot also plead adverse possession.

III. Plea of adverse possession presupposes admission of ownership of real owner and in such a case, the person who pleads adverse possession cannot also plead that he is the absolute owner.

(2012) 3 MLJ 1228

**Thangaraju Padaiyatchi and Anr
Vs
Sundararajan and Ors**

Code of Civil Procedure (5 of 1908), Order 41 Rule 31 – Negotiable Instruments Act (26 of 1881), Section 118 – Suit for recovery of money – Suit decreed by Courts below – Second Appeal – Held, Exhibit A-1/suit promissory note is supported by consideration and 1st defendant has executed Exhibit A-1/promissory note – No misreading or misappreciation of evidence by Courts below in regard to presumption to be drawn as per Section 118 of Negotiable Instruments Act – Plaintiff has not established that suit loan taken by 1st defendant as joint family loan – 2nd defendant not liable to pay suit amount – Judgment and decree of lower Appellate Court not liable to be set aside for non-compliance with Order 41 Rule 31 CPC – Second appeal partly allowed.

RATIO DECIDENDI: Even in the absence of necessary points for determination being framed or formulated by the First Appellate Court, the High Court in second appeal is empowered to look into the entire gamut of pleadings, oral and documentary evidence available on record and to arrive at an independent conclusion.

HIGH COURT CITATIONS CRIMINAL CASES

2012-2-L.W.(Cri.) 144

Donatus Tony Ikwanusu
Vs
Investigation Officer, Chennai

Narcotic Drugs and Psychotropic Substances (NDPS) Act (1985), Sections 8(c) r/w 21(b),23,28,29,67,
Default sentence whether can run concurrently,

Criminal Procedure Code, Sections 30, 427,428, Default sentence whether can run concurrently,

Tamil Nadu Prison Rules (1983), Rule 242(1).

Question whether the default sentence imposed for one offence can be ordered to run concurrently either with the substantive sentence or default sentence imposed for a different offence.

Disagreeing with 2012-1-L.W. (Cri.) 249, matter referred to Full Bench to decide whether there is any prohibition or not for the court to order the default sentence of imprisonment imposed for the non-payment of fine also to run concurrently.

2012 (3) CTC 309

P. Shinu
Vs
P. Perumal

Code of Criminal Procedure, 1973 (2 of 1974), Sections 204 & 258 – Non-supply of copy of Complaint along with summons – Dropping of Criminal proceedings – Whether warranted? – Private Complaint made under Section 138 of NI Act – Summons issued by Magistrate under Section 204 of Code – Petition under Section 258 of Code filed by accused to drop proceedings in Complaint on ground that summons was not accompanied by a copy of Complaint – Held, Section 258 applies to cases instituted otherwise than on Complaint and said Section does not get attracted to a case instituted on private Complaint – Moreover, duty of issuing process is that of Court – Complainant cannot be found fault with for any lapse or failure on part of Court to annex copies of documents necessary to accompany summons – Accused cannot take advantage of Section 259 to penalize Complainant for omission on part of Court – Moreover, defect of non-supply of copy of Complaint, is a curable defect and same would not vitiate proceedings – Thus, order of Judicial Magistrate dismissing Application under Section 258, not interfered with – Negotiable Instruments Act, 1881, Section 138.

2012 (3) CIJ 480

Ramachandran & Ors etc
Vs
State

(A) Code of Criminal Procedure, 1973(2 of 1974) – Sec. 154-Indian Evidence Act, 1872(1 of 1972)-Sec.3-Criminal trial-Appreciation of evidence-Relatives-FIR-Forwarding-Delay-Appellants were accused of murder and based upon the evidence of the wife and brothers of the deceased, they were convicted

against which they had preferred appeal-While the appellants contended that the main witnesses were relatives to the deceased and they could not be believed, there was a delay in registering and also forwarding FIR and statements which pleas were resisted by the respondent-Held, relationship of the witnesses with the victim of a crime would not be a sole ground to reject their evidences but their evidence had to be appreciated carefully-On registration of FIR and statement of the witnesses, they had to be forwarded to the Court immediately – There was an enormous delay in sending those documents to the Court which were not explained-Conduct of the witnesses were ununual-Version of the prosecution was disbelieved-Appeals were allowed and the appellants were acquitted.

- (B) Indian Evidence Act, 1872 (1 of 1972)-Sec.3-Criminal trial-Appreciation of evidence-Relatives-Relationship of the witnesses with the victim of a crime would not be a sole ground to reject their evidences but their evidences have to be appreciated carefully.
- (C) Code of Criminal Procedure, 1973(2 of 1974)-Sec.154-Indian Evidence Act, 1872(1 of 1972)-Sec.3-Criminal trial-FIR-Statements-Forwarding-Delay-Explanation-Every delay in registering or forwarding FIR to the Court has to be satisfactorily explained by the prosecution – Right from the moment FIR was registered under Section 154 Cr.P.C. the FIR, the documents seized, the case-properties recovered and statement of witnesses recorded under Section 161 Cr.P.C. must reach the concerned Court with least delay.

RATIOS:

- a. Relationship of the witnesses with the victim of a crime would not be a sole ground to reject their evidences but their evidences have to be appreciated carefully.
- b. Every delay in registering or forwarding FIR to the Court has to be satisfactorily explained by the prosecution.
- c. Right from the moment FIR was registered under Section 154 Cr.P.C the FIR, the documents seized, the case-properties recovered and statement of witnesses recorded under Section 161 Cr.P.C. must reach the concerned Court with least delay.

2012 (4) CTC 499

K. Niranjani

Vs

R.T. Dinesh and Anr

Code of Criminal Procedure, 1973 (2 of 1974), Section 256 – Matrimonial Dispute – Complaint filed under Domestic Violence Act, 2005 – Interim Order passed – However, Complaint dismissed subsequently as Complainant did not appear – Held, discretion of Magistrate under provision has to be exercised judicially – In instant case, as Complainant residing away from matrimonial home, Magistrate ought to have given her one more opportunity to put forth her case – Considering gravity of Complaint, discretion exercised by Magistrate not legally sustainable – Matter remanded back to Magistrate – Appeal allowed.

2012 (3) CIJ 513

Karuppa Gounder etc
Vs
D. Sekar & Ors.

- (A) Code of Criminal Procedure, 1973 (2 of 1974)-Sec.11, 14-Private complaint-Cognizance-Magistrate-Chief Judicial Magistrate-Jurisdiction-Police-Restriction – High Court-Circular-Validity-Petitioners had filed private complaint against police personnel before the Magistrate of the area which was returned by the Magistrate by holding that as per circular issued by the High Court, such complaints could be filed only before the Chief Judicial Magistrate which was challenged by the complainants-While the complainants contended that took place within their local limit and an order directing them to approach CJM was not valid, the High Court justified it by contending that it was issued in pursuant to the direction issued by the Supreme Court-Held, directing the complainants to file their complaints against the police personnel only before the CJM was not valid and the circular issued by the High Court in that regard was invalid-Order of return of the complaint on the above ground was set aside and the complaints were directed to be disposed only by the concerned judicial Magistrates-Petitions were ordered accordingly.
- (B) Code of Criminal Procedure, 1973(2 of 1974)-Sec.11, 14-Private Chief Judicial Magistrate-Jurisdiction-Police-Restriction-High Court-Circular-Validity-Judicial Magistrates of any local area are empowered to take cognizance of the private complaints in respect of the offences that take place in their respective areas and any restriction on their powers in respect of any person or class of persons like police is not valid.

Ratio: Judicial Magistrates of any local area are empowered to take cognizance of the private complaints in respect of the offences that take place in their respective areas and any restriction on their powers in respect of any person or class of persons like police is not valid.

2012 (3) CIJ 561

Santhanagopal
Vs
State

- (A) Indian Penal Code, 1860(45 of 1860)-Sec.498A, 304-B-Indian Evidence Act, 1872(1 of 1872)-Sec.3, 103-Code of Criminal Procedure, 1973(2 of 1974)-Sec.176-Criminal trial-Dowry death-Magisterial enquiry-Report-Appreciation of evidence – Burden of proof – A married woman had committed suicide by consuming poison-Initially, police registered FIR under Sec.174 Cr.P.C., forwarded it to RDO and later it was altered-Based upon the evidences of her relatives, the husband and others were prosecuted and convicted against which they had preferred appeal-While the appellants contended that the RDO had reported that there was no dowry demand and that report was not marked which was fatal mistake, FIR had reached the magistrate with delay and the witnesses were close relatives, the State had justified the conviction and sentence-Held, R.D.O. report was not a substantial piece of evidence, and it could be used only for corroboration and contradiction-As the FIR was dispatched to RDO immediately who had dispatched it to the magistrate with his report, the delay was explained-The evidences of the relatives were natural and believable – Husband had failed to offer his explanation for the death though the death took place in his house-Charges were held as proved and the conviction and sentence of the appellants were upheld-Appeal was dismissed.
- (B) Indian Penal Code, 1860(45 of 1860)-Sec.498A, 304B-Code of Criminal Procedure, 1973(2 of 1974)-Sec. 176-Criminal trial-Dowry death-Magisterial enquiry-Report-Appreciation of evidence-Report of the R.D.O. prepared under Sec.176 Cr.P.C. is not a substantial piece of evidence, and it can be used only for corroboration and contradiction.

Ratio: Report of the R.D.O. prepared under Sec. 176 Cr.P.C. is not a substantial piece of evidence, and it can be used only for corroboration and contradiction.

(2012) 1 MLJ (CrI) 625

J. Joseph Raj

Vs

Baby Jeroma

Code of Criminal Procedure 1973 (2 of 1974), Section 397 read with 401 – Negotiable Instruments Act (26 of 1881), Section 138 – Return of cheque – Criminal Proceeding – Ad interim order of injunction passed by civil Court – Interim order of civil Court does not debar the complainant from taking up the matter in the criminal Court for punishing the accused for return of cheque – Revision petition dismissed.

RATIO DECIDENDI: Ad-interim order passed by civil Court is not a legal bar for the complainant to proceed against the accused in the criminal proceeding.

2012 (3) CIJ 629

S. Balasubramanian & Anr. etc

Vs

State of T.N. & Ors. Etc.

(A) Code of Criminal Procedure, 1973 (2 of 1974)-Sec.399, 401-Criminal trial-Sentence-Adequacy-Appeal-Sessions Court-Jurisdiction-As against the sentence of fine imposed for failure to implement the award of a Labour Court, respondents/workmen had preferred revision to enhance the sentence and the management had also filed appeal against the conviction-On the endorsement made by the counsel for the workmen, the High Court had forwarded the revision to the Sessions Court for its disposal alongwith the appeal preferred by the management-When the Sessions Court dismissed the appeal and enhanced the fine, both parties approached the High Court-While the management contended that revision for enhancement of sentence could be filed only before the High Court and the enhancement of the sentence ordered by the Sessions Court was bad in law, workmen sought for further enhancement of sentence-When the single judge had entertained doubt regarding the jurisdiction of the Sessions Court to entertain revision for enhancement of sentence, he had requested for reference to a larger bench-Parties stood by their stands-Held, Sessions Court had jurisdiction to entertain revision for enhancement of sentence passed by the lower Courts - Reference was answered accordingly.

(B) Code of Criminal Procedure, 1973(2 of 1974)-Sec.399, 401-Criminal trial-Sentence-Adequacy-Appeal-Sessions Court-Jurisdiction-Sessions Court has jurisdiction to entertain revision for enhancement of sentence passed by the lower Courts.

Ratio: Sessions Court has jurisdiction to entertain revision for enhancement of sentence passed by the lower Courts.

(2012) 1 MLJ (CrI) 689

Sanjeevan @ Reghu

Vs

State of Tamil Nadu rep. by its Inspector of Police, Puthukadai Police Station, Puthukadai, Kanyakumari District

Indian Penal Code (45 of 1860), Sections 377 and 302 – Conviction and Sentence – Appeal – Chain of circumstances woven by prosecution is found broken not forming complete chain unerringly implicating accused with charge framed – None of the circumstances projected by prosecution proved – Order of conviction set aside – Accused acquitted - Criminal appeal allowed.

RATIO DECIDENDI: When none of the circumstances projected by the prosecution has been proved and the chain of circumstances woven by prosecution is found broken, order of conviction cannot be sustained.

(2012) 1 MLJ (Crl) 746

Costa & Co., rep. by its Director
Vs

State rep. by Inspector of Police, Spe: CBI/ACB/Chennai and Ors

Code of Criminal Procedure 1973 (2 of 1974), Section 305 – Abatement of charges – Contention that on account of death of its former director the charges leveled against the accused company have been automatically abated cannot be countenanced and is not tenable – Petition dismissed.

RATIO DECIDENDI: On account of death of the former Director of the Company, it cannot be said that the charges leveled against the Company have become automatically abated.

(2012) 1 MLJ (Crl) 764

Seema Mehra and Ors
Vs

Ms. Amitha and Ors

Code of Criminal Procedure 1973 (2 of 1974), Section 482, 173(8) – Order for further investigation – Petition filed to set aside order – No document produced by prosecution to show that notice was served on defacto complainant with regard to dropping of other accused form charged – De facto complainant not examined under Section 161 Code of Criminal Procedure, 1973 – Order of Magistrate maintainable – Petition dismissed.

RATIO DECIDENDI: When no document has been produced by the prosecution to show that notice was served on the defacto complainant with regard to the dropping of other accused from the charges, Order of Magistrate to conduct further investigation is justified.

2012 – 3 – L.W. 770

K.U. Prabhu Raj
Vs.
State

I.P.C., Section 415,420/Promise to marry, whether cheating,

Criminal Procedure Code, Section 482.

Case was instituted on a police report submitted by the first respondent alleging that the petitioner has committed offences punishable under Sections 417 and 420 I.P.C. – Seeking to quash the same, the petitioner is before this Court.

Mere promise to marry and later on withdrawing the said promise will not amount to an offence of cheating at all - On such false promise to marry, the person to whom such promise was made should have done or omitted to do something that he would not have done or omitted to do but for the deception.

2012 (4) CTC 733

Parameswaran

Vs

The Inspector of Police, N-1 Royapuram Police Station, Chennai

Code of Criminal Procedure, 1973 (2 of 1974), Sections 436, 482 & 483 – Constitution of India, Article 21 – Bail – Right to – Petitioner charged for an offence under Section 304-A, IPC – Application for Bail filed by petitioner, rejected by Magistrate holding that offence under Section 304(I), IPC was also mentioned in Alteration Report and thus, Petitioner not entitled for bail – Held, approach of Magistrate erroneous – Police had categorically stated that offence committed by Petitioner was only Section 304-A thus, purely bailable – In lieu of Section 436, it is mandatory for Magistrate to grant bail and he has no order to deny bail – Right to bail not only a statutory right but also a Constitutional right under Article 21 – Order of Magistrate denying bail in instant case, held, without jurisdiction and illegal and set aside.
