



# TAMIL NADU STATE JUDICIAL ACADEMY

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## IMPORTANT CASE LAW



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# **SUPREME COURT – CIVIL CASES**

**(2018) 7 MLJ 332(SC)**

**Reliance Cellulose Products Ltd. Vs. Oil and Natural Gas Corporation Ltd**

**Date of Judgment: 20.07.2018**

Alternative Dispute Resolution – Arbitrator – Power to grant interest – Arbitration Act, 1940 (Act 1940) – Interest Act, 1978 (Act 1978) – Notice inviting tender floated by Corporation – Offer of Company accepted – Disputes arose with regard to price for two supplies – On reference to arbitration, Arbitrators fixed price of two supplies and awarded pre-reference, pendent lite and future interest – Objections filed by Corporation rejected, however, interest reduced for all three periods which was confirmed by High Court, hence these appeals by both parties – Whether arbitrator had power to grant pre-reference, pendent lite interest and future interest under Act 1940 – Whether clause concerned in agreement would amount to contractual bar to payment of any interest – Whether reduction of interest awarded by arbitrators justified – Held, under Act 1940, arbitrator had power to grant pre-reference interest under Act 1978 as well as pendent lite and future interest – Arbitrator constricted only by agreement between parties which contain express bar to award of pre-reference and/or pendent lite interest – Specific clause in contract confined itself only to delay in payment and not to any other amounts payable to contractor under contract – Clause did not contain language that would interdict arbitrator from granting pendent lite interest – It was only after Company filed petition, it became clear that higher price would be payable – No delay on account of higher price ever took place as it became payable only on and from date of award – Even if clause were to have application, both preresference and pendent lite interest were not barred – Reason given for reducing interest that corporation was Public Sector Undertaking would not suffice to set aside what was within Arbitrator’s discretion – Discretion had not been exercised perversely – Grant of interest at rate fixed by arbitrator for pre-reference and pendent lite interest upheld – Appeal of Corporation dismissed – Appeal of Company allowed

**(2018) 7 MLJ 837 (SC)**

**Mathews Mar Koorilos (Dead) Vs. M.Pappy (Dead)**

**Date of Judgment: 28.08.2018**

Trust and Charities – Trust – Administration of Church – 1<sup>st</sup> Defendant as per Ext.-A3/assignment-cum-gift deed assigned plaint properties along with church and cemetery situated thereon to Appellant/Metropolitan of Diocese – Respondents/Defendants representing Parishioners of church claimed that they were entitled of conduct religious services and to manage church and its properties – Appellants filed suit against Respondents/Parishioners of Church for declaration that they had exclusive right to conduct religious services in plaint church and Cemetery and for prohibitory injunction – Respondents filed separate suit challenging validity of Ext,-A3 – Trial court dismissed suit filed by Respondents and decreed Appellants’ suit – Respondents filed appeals challenging common judgment – Single Judge dismissed both appeals and appointed observers to oversee process of election – On appeals filed by Respondents, Division bench set aside finding of Single Judge, hence these appeals – Whether plaint Church was constituents of Metropolitan and power to appoint Vicar, Priests was vested with Metropolitan or his representatives – Held, prime jurisdiction with respect to temporal,ecclesiastical and spiritual administration of Church was vested with Metropolitan and other authorities appointed by Metropolitan –

Constitution/Ext.-A1 had been adopted by plaintiff church and was in force – No question of requesting authorities to repudiate it – Plaintiff church had accepted Constitution and spiritual authority of Catholics – Finding of Division Bench that Metropolitan had no authority to appoint Vicar was opposed to Constitution and recitals in Ext.-A3 and number of other documents adduced by Appellants – Appeals allowed.

**(2018) 8 MLJ 21 (SC)**

**Shriram EPC Limited v. Rioglass Solar SA**

**Date of Judgment: 13.09.2018**

Alternative Dispute Resolution – Foreign award – Enforceability – Arbitration and Conciliation Act, 1996 (Act 1996), Sections 47, 48 and 49 – Indian Stamp Act, 1899 (Act 1899) – Single Judge of High Court allowed petition filed to enforce foreign award, hence this appeal on ground that as award has not been stamped, it cannot be enforced under Sections 48 and 49 of Act 1996 – Whether foreign award which has not been stamped, could be enforced under Act 1996 – Held, under Act 1899, expression “award” had never included foreign award from very inception till date – Foreign award not being includible in Schedule I of Act 1899, not liable for stamp duty – All that Section 47 deals with was production before Court of proof of fact that foreign award was sought to be enforced – In no manner did Section 47 interdict payment of stamp duty if it was otherwise payable in law – Single Judge of High Court was Correct – Fact that foreign award had not borne stamp duty under Act 1899 would not render it unenforceable – Appeal dismissed.

**(2018) 8 MLJ 32 (SC)**

**PSA M. I. PTE.Ltd.v. Board of Trustees of the J.N.P. Trust**

**Date of Judgment: 11.09.2018**

Alternative Dispute Resolution – Arbitration Clause – Concluded contract – Arbitration and Conciliation Act, 1996 Section 16 – 1<sup>st</sup> Respondent issued Global Invitation of Request for qualification (RFQ) for development of Container Terminal Project – Consortium formed between Appellant and 2<sup>nd</sup> Respondent qualified in first stage of eligibility and were entitled to be considered under second stage of Request for Proposal (RFP) floated by 1<sup>st</sup> Respondent – Letter of Award given by 1<sup>st</sup> Respondent to Consortium but Consortium failed to perform its part of bid – 1<sup>st</sup> Respondent withdrew letter of Award and claimed damages and sent arbitration notice – Application filed by Appellant and 2<sup>nd</sup> Respondent under section 16 before Sole Arbitrator that there was no arbitration clause was allowed, however, on appeal, High Court held that there was concluded contract between parties and arbitration clause formed part of bid, hence this appeal – Whether there was concluded contract between parties as Letter of Award had been accepted by Appellant – Whether arbitration clause would govern parties, since arbitration clause formed part of bid document between parties – Held, disclaimer at forefront of RFP makes it clear that there was only bid process that was going on between parties – There was no concluded contract between same – There was no absolute and unqualified acceptance by Letter of Award – Two or three very important steps had to be undergone before there could be said to be agreement which would be enforceable in law as contract between parties – No agreement between parties – Arbitration clause contained in draft Concession Agreement would not apply – High Court judgment incorrect in holding that Letter of Award would constitute binding contract between parties – Appeal allowed.



**K. Kishan v. Vijay Nirman Company Pvt. Ltd.**

**Date of Judgment: 14.08.2018**

Company Law – Insolvency process – Pendency of Proceedings – Insolvency and Bankruptcy Code, 2016 (Code), Sections 8, 9 and 238 – Arbitration and Conciliation Act, 1996 (Act), Sections 34 and 37 – Arbitral Tribunal passed award by which few claims were allowed in favour of Respondent – Respondent sent notice under Section 8 claiming amount due under award – After notice and reply, Petitioner filed petition challenging award – Respondent filed petition under Section 9 of Code before Company Law Tribunal that amount due under awards had become ‘Operational Debt’ to be paid by Petitioner – Tribunal admitted petition and same confirmed by Appellate Tribunal, hence these appeals – Whether Code could be invoked in respect of operational debt where Arbitral Award had been passed against operational debtor, which had not yet been finally adjudicated upon – Held, operational creditors could not use Code either prematurely or for extraneous considerations or as substitute for debt enforcement procedures – Result of operational debt contained in arbitral award for small amount could not jeopardize otherwise solvent company worth several crore of rupees – For operational debt under Code, it had to be seen whether said debt could be said to be disputed – Filing of a Section 34 petition against an Arbitral Award shows that a pre-existing dispute which culminates at first stage of proceedings in an Award. Continues even after Award, at least till the final adjudicatory process under Sections 34 and 37 has taken place – Award passed under Act together with steps taken for its challenge would only make it clear that operational debt, in present case, happens to be a disputed one – If there be record of operational debt, it was important that said debt be not disputed – If disputed, insolvency petition could not be proceeded with further – Judgment of Appellate set aside and reversed – Appeals allowed.

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# SUPREME COURT – CRIMINAL CASES

**(2018) 4 MLJ (Crl) 338 (SC)**

**SK Raju @ Abdul Haque @ Jagga v. State of West Bengal**

**Date of Judgment: 05.09.2018**

Narcotics – Search and seizure – Narcotic Drugs and Psychotropic Substances Act 1985 (Act), Sections 42, 43 and 50 – High Court upheld conviction of Appellant under Section 20 (b) (ii) (C) of Act, hence this appeal – Whether Section 42 was attracted to facts of present case – Whether Section 50(1) was required to be complied with when charas was re-covered only from bag of Appellant and no charas found on his person – Held, Appellant was walking along Road – He was intercepted and detained immediately by raiding party in front of Club, which was not buildings, conveyance or enclosed place – Place of occurrence was accessible to public and fell within ambit of “public place” in explanation to Section 43 – Section 42 had no application – PW-2 conducted search of bag of Appellant as well as his trousers – Search conducted by PW-2 was not only of bag, but also of Appellant’s person – Section 50 would be attracted in this case – Before Appellant’s search was conducted, both PW-2 and PW-4 on different occasions apprised Appellant of his legal right to be searched either in presence of gazetted officer or magistrate – Options given by both PW-2 and PW-4 were unambiguous – Merely because Appellant was given option of searching PW-2 before latter conducted his search, would not vitiate search – Search of Appellant was conducted in presence of PW-4, gazetted officer, in consonance with voluntary communication made by Appellant to both PW-2 and PW-4 – There was strict compliance with requirements of Section 50 (1) – Appeal dismissed.

**(2018) 4 MLJ (Crl) 369 (SC)**

**Joseph Shine v. Union of India**

**Date of judgment: 27.09.2018**

A) Adultery – Constitutional Validity – Indian Penal Code, 1860 (Code 1860), Section 497 – Code of Criminal Procedure, 1973 (Code 1973), Section 198 – Constitution of India, 1950, Articles 14, 15 and 21 – Petition filed challenging constitutional validity of Section 497 of Code 1860 which makes adultery as criminal offence – Whether Section 497 Code 1860 Articles 14 and 21 of Constitution and liable to be struck down as unconstitutional – Whether adultery should be treated as criminal offence – Held, Section 497 of Code 1860 treats married woman as property of husband and did not bring within its purview extra-marital relationship with unmarried woman or widow – Section 198(2) of Code 1973 treats husband of woman as deemed to be aggrieved by offence under Section 497, however, did not consider wife of adulterer as aggrieved person – Section 497 curtails conceptual equality of woman and essential dignity by creating invidious distinctions based on gender stereotypes which creates dent in individual dignity of women – Emphasis on element of connivance or consent of husband tantamount to subordination of women – Section 497 offends Article 21 of Constitution – Adultery did not fit into concept of crime – If it was treated as crime, there would be immense intrusion into extreme privacy of matrimonial sphere – To treat adultery as crime would be unwarranted in law – Section 497 Code 1860 held unconstitutional – Section 198 Code 1973 which deals with procedure for filing complaint in relation to offence of adultery declared as unconstitutional – Petition allowed.

B) Adultery – Constitutional Validity – Indian Penal Code, 1860 (Code 1860), Section 497 – Code of Criminal Procedure, 1973 (Code 1973), Section 198 – Constitution of India, 1950, Articles 14, 15 and 21 – Whether Section 497 Code 1860 offends Articles 14 and 21 of Constitution and liable to be struck down as unconstitutional – Held, ostensible object of Section 497 being to protect and preserve sanctity of marriage was not in fact object of Section 497 – Sanctity of marriage could be destroyed by married man having sexual intercourse with unmarried woman or widow – If husband consents or connives at such sexual intercourse, offence was not committed – Section 497 was discriminatory and therefore, violative of Article 14 and Article 15(1) – In treating woman as chattel for purposes of this provision, such provision discriminates against women on grounds of sex only – Section 198 Code 1973 was discriminatory provision – It was husband alone or somebody on his behalf who can file complaint against another man for this offence – Section 497 of Code 1860 and Section 198 of Code 1973 held violative of Articles 14, 15(1), and 21 of Constitution and struck down as being invalid.

C) Adultery – Constitutional Validity – Indian Penal Code, 1860 (Code 1860), Section 497 – Constitution of India, 1950, Articles 14, 15 and 21 – Whether Section 497 Code 1860 offends Articles 14, 15 and 21 of Constitution and liable to be struck down as unconstitutional – Held, law on adultery enforces construct of marriage where one partner was to cede her sexual autonomy to other – Being antithetical to constitutional guarantees of liberty, dignity and equality, Section 497 did not pass constitutional muster – Section 497 lacks adequately determining principle to criminalize consensual sexual activity and was manifestly arbitrary – Section 497 violates Article 14 of Constitution – Section 497 based on gender stereotypes about role of women, violates non-discrimination principle embodied in Article 15 of Constitution – Section 497 was denial of constitutional guarantees of dignity, liberty, privacy and sexual autonomy which are intrinsic to Article 21 of Constitution – Section 497, unconstitutional.

D) Adultery – Constitutional Validity – Indian Penal Code, 1860 (Code 1860), Section 497 – Code of Criminal Procedure, 1973 (Code 1973), Section 198 – Constitution of India, 1950, Articles 14, 15 and 21 – whether Section 497 Code 1860 offends Articles 14 and 21 of Constitution and liable to be struck down as unconstitutional – Held, under Section 497, only male-paramour was punishable for offence of adultery – Woman who was *pari delicto* with adulterous male was not punishable, even as an “abettor” – Adulterous woman was excluded solely on basis of gender, and could not be prosecuted for adultery – section only gives right to prosecute to husband of adulterous wife – Wife of adulterous man, had no similar right to prosecute her husband or his paramour – Section 497 read with Section 198(2) of Code 1973 only empowers aggrieved husband, of married wife who had entered into adulterous relationship to initiate proceedings for offence of adultery – Act of married man engaging in sexual intercourse with unmarried or divorced woman, did not constitute “adultery” under Section 497 – If adulterous relationship between man and married woman, takes place with consent and connivance of her husband, it would not constitute offence of adultery – Anomalies and inconsistencies in Section 497 as stated above would render provision liable to be struck down on ground of it being arbitrary and discriminatory.

**(2018) 4 MLJ (Crl) 426 (SC)**

**Social Action Forum For Manav Adhikar v. Union of India**

**Date of Judgment: 14.09.2018**

Writ – Mandamus – Cruelty to married woman – Indian Penal Code, 1860 (Code 1860), Section 498-A – Code of Criminal Procedure, 1973 (Code 1973), Sections 205, 317 and 482 – Petitions filed seeking directions to Respondents to create enabling environment for married women subjected to cruelty and to issue writ of mandamus to Respondents for

uniform policy of registration of FIR, arrest and bail in cases of Section 498-A Code 1860 – Pending these Petitions, judgment pronounced by this Court in another case conferring powers on Family Welfare Committee to be constituted to look into criminal complaints under Section 498-A Code 1860, hence prayer made for reconsideration of directions in earlier judgment – Whether Court in earlier judgment could by method of interpretation had issued such directions – Held, prescription of duties of Family Welfare Committees and further action, did not really flow from any provision of Code 1973 – Introduction of third agency had nothing to do with Code 1973 – Directions to settle case after it was registered was not correct expression of law – There were statutory provisions and judgments in field, therefore directions pertaining to constitution of Committee and conferment of power on aid Committee was erroneous – Other directions were protective in nature and did not sound discordant note with Code 1973 – So far as directions relating to clubbing of cases and personal appearance of all family members, application had to be filed either under Section 205 or 317 Code 1973 depending upon stage at which exemption was sought – Director General of Police of each State directed to ensure that investigating officers, in charge of investigation of cases of offences under Section 498-A of Code 1860 should be imparted rigorous training with regard to principles stated by this Court relating to arrest – Modifications made in directions – Petitions disposed of – Appeal disposed of.

**(2018) 4 MLJ (CrI) 502 (SC)**

**State of Madhya Pradesh v. Chhaakki Lal**

**Date of Judgment: 26.09.2018**

Murder – Solitary witness – Indian Penal Code, 1860, Section 302 – High Court allowed appeal filed by Respondents/accused thereby acquitting them under Section 302 and setting aside death penalty awarded to them, hence these appeals by State – Whether High court was right in reversing verdict of conviction of Respondents and acquitting them from charges under Section 302 – Held, High Court erred in doubting version of PW-1, sole eye witness whose evidence was corroborated by medical evidence and evidence of ballistic expert – Where evidence had not been properly analysed or High Court had acted on surmises and findings of impugned judgment was unreasonable, it was duty of appellate court to set right wrong – High court ignored credible evidence of PW-1 and unnecessarily laid emphasis on minor contradictions and omissions – Occurrence was many years before – Appeal against 2<sup>nd</sup> accused abated due to his passing away – Considering facts and circumstances of case and passage of time, awarding death penalty was not warranted – Imposing sentence of life imprisonment upon Respondents would meet ends of justice – Impugned judgment set aside – Judgment of trial court convicting Respondent under Section 302 restored – Appeals allowed.

**(2018) 4 MLJ (Crl) 637 (SC)**

**Ramvir v. State of Uttar Pradesh**

**Date of Judgment: 26.10.2018**

Murder – Unlawful Assembly – Indian Penal Code, 1860, Sections 148, 149 and 302 – Deceased killed by unknown persons – On complaint filed by Uncle of deceased, six named persons were arrested – Sessions Judge acquitted five accused persons (A-2 to A-6) but convicted Appellant (A-1) under Section 302 – Appeal filed by Appellant dismissed by High Court, however, was further convicted under Section 148 / 149 of Code – Whether High Court justified in upholding Appellant’s conviction in so far as it relates to offence punishable under Section 302 and whether High Court justified in convicting Appellant under Section 148/149 of Code – Held, Appellant already acquitted by Sessions Judge for commission of offence falling under Section 148/149 of Code – No occasion for High Court to go into question in an appeal filed by Accused as same had attained finality – No case made out against Appellant for his conviction under Section 148/149 of Code – No evidence to prove that Appellant was author of gun shot which killed deceased – Ballistic report did not support prosecution case inasmuch as it opined that cartridges fired and recovered from spot could not have been so fired from rifle belonging to Appellant – Alleged rifle was not taken in police custody immediately after incident but was surrendered by Appellant in Court – Appellant entitled for benefit of doubt – Appellant acquitted of charges framed against him under Section 302 and 148/149 of Code – Appeal allowed.

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## MADRAS HIGH COURT – CIVIL CASES

(2018) 8 MLJ 186

**Pitchaikaran @ Ayyanar v. Muniammal**

**Date of Judgment: 24.09.2018**

A) Limitation – Partition – Joint possession – Limitation Act, 1963, Article 110 – Plaintiffs, claiming to be children of deceased predecessor-in-interest through second wife filed suit for partition against children of predecessor-in-interest through first wife – Defendants denied that Plaintiff's mother was second wife and claimed another lady to be second wife of predecessor-in-interest – Trial Court dismissed suit, however, First appellate court granted preliminary decree of partition, hence this appeal – Whether lower appellate court was right in holding that Plaintiffs were in joint possession of suit properties along with Appellant and 6<sup>th</sup> Respondent – Whether suit was barred by limitation – Held, First Appellant court, without any basis, proceeded to hold that Plaintiffs should be deemed to be in joint possession and enjoyment of suit properties on footing that they were also legal representatives of deceased – Plaintiffs had been declared to be legal representatives of predecessor-in-interest in earlier suit – 1<sup>st</sup> and 2<sup>nd</sup> Defendants were also declared to be legal representatives of deceased – Plaintiffs had admitted that they had been totally excluded from enjoyment of suit properties right from long period – Since then, they had not placed any material to show that they had come into joint possession and enjoyment of suit properties – Despite dismissal of their suit, Plaintiffs had not endeavored to enforce their right of share in suit properties even thereafter within period of 12 years – Plaintiffs' suit for partition was clearly barred under Article 110 – Appeal allowed.

B) Succession Law – Partition – Non-Joinder of Necessary Parties – Whether suit was bad for non-joinder of necessary party – Held, predecessor-in-interest who lived with another lady at one point of time, had settled certain items of suit properties in her favour by way of Ex.B1 declaring her to be his wife – Legal character of said declaration could be adjudicated only in presence of another lady – If she was legally wedded wife of predecessor-in-interest, she would also be entitled to claim share in properties as legal representative of predecessor-in-interest – Earlier suit had been laid by Plaintiffs and their mother not only against mother of 1<sup>st</sup> and 2<sup>nd</sup> Defendants but also against another lady – As Plaintiffs and their mother had knowledge that another lady had also asserted title in suit properties as wife of predecessor-in-interest, she was also proper and necessary party for adjudication of issues – Plaintiffs had knowledge that predecessor-in-interest himself settled certain properties in favour of another lady – Ex. B1 settlement deed had been declared to be valid instrument in earlier civil suit – Plaintiffs had not thrown any challenge to said determination – Suppressing earlier suit laid by them and suppressing entitlement of another lady to suit properties, Plaintiffs had come forward with present suit – Plaintiff's suit was bad for non-joinder of another lady.

**(2018) 8 MLJ 198**

**A. Venkatesan v. B. Jareena**

**Date of Judgment: 29.08.2018**

Civil Procedure – Suit for Recovery of money – Promissory note – Respondent/Plaintiff filed suit for recovery of money based on promissory notes and for charge over suit property – Appellant denied borrowing from Respondent – Lower Courts decreed suit, hence this second appeal – Whether Ex.A1 to Ex.A4/promissory notes in view of material alteration enforceable – Whether burden enjoined on Respondent to substantiate case relying on Ex.A7 and Ex.A8 which according to Appellant brought into existence by way of coercion and duress – Whether Ex.A1 to Ex.A3 according to Respondent was executed on certain date but plea that after receiving consideration under Ex.A4 later date mentioned was proper and believable – Held, P.W.2 one of the witnesses of three promissory notes, in his cross-examination admitted that he did not know who wrote promissory notes – He said when he was in house of Respondent on certain date, no promissory note was written and executed by Appellant – There was material alteration in promissory note by correcting date – Statement of Appellant for acknowledgment letter was that he deposited title deeds with Respondent on that date – All would show that all four promissory notes, letter of acknowledgment and letter of compromise were executed by Appellant by threat and coercion by police and local Councilor – Lower Courts failed to consider material alteration in second promissory note on year of execution and discrepancy of averment made in plaint, evidence, promissory notes and acknowledgment – Lower Courts failed to properly appreciate pleadings, evidence on record and erroneous application of materials on record and decreed suit and dismissed First Appeal – Appeal allowed.

**(2018) 7 MLJ 794**

**Ondimuthu @ N.O. Muthu v. A.M.S.D.**

**Date of Judgment: 19.09.2018**

Civil Procedure – Execution Proceedings – Objections – Code of Civil Procedures, 1908 (Code), Sections 24 and 47 – Constitution of India, 1950, Article 227 – Suit filed by Respondent/temple for recovery of properties in respect of various door numbers decreed – Challenge to decree by 6<sup>th</sup> Defendant ended in compromise between him and temple – 6<sup>th</sup> Defendant defaulted in payment of installments – Temple filed execution petition – Prior to that, temple filed first execution petition in respect of other immovable properties in which Petitioner was 2<sup>nd</sup> Respondent – Petitioner filed application for setting aside ex parte order passed against him – Petitioner filed application under Section 47 of Code in second petition raising many objections – Petitions dismissed, hence these revision petitions – Temple filed petition to withdraw and transfer second execution petition on file of Subordinate Court – Whether this Court itself could order for delivery of possession to prevent frivolous applications and further delay – Held, judgment debtors took out various applications and same indicate that their only intention was to delay execution – Considering that decree holder was temple, Court was duty bound to protect and safeguard properties of Religious and Charitable Institution – If entire proceedings were again allowed to crop out in some applications, it would cause grave injustice to decree holder – Petition is mere pending for ordering delivery – Considering nature of lis involved in execution petition, this Court itself could very well order delivery – High Court also in appropriate cases by invoking Section 24

of Code could withdraw any cases from any of Court subordinate to it either on application or by own motion – To prevent further frivolous applications and further delay, in delivery of possession, this Court itself could order for delivery – Judgment-debtors in both execution petitions directed to quit and deliver possession to decree-holder – Revision petitions dismissed – Transfer petition disposed of.

**(2018) 7 MLJ 815**

**Lakshmi (Deceased) v. Unique Industrial Handlers(P) Ltd.**

**Date of Judgment: 14.09.2018**

Contract – Specific performance – Readiness and willingness – In suit filed by Respondent/Plaintiff for specific performance of Agreement of Sale, temporary injunction and mandatory injunction to put them in possession of suit property, Trial Court decreed prayer of specific performance but declined relief of mandatory injunction – Defendants resisted suit on ground that agreement for sale was fraudulent and brought about by forging their signatures and thereby filed appeal – Plaintiff filed cross-objection – Whether Defendants established plea of fraud/forgery – Whether Plaintiff proved their readiness and willingness to perform their part of contract – Whether Plaintiff entitled for relief of mandatory injunction – Held, no suggestion put to P.W.1 and P.W.2 at time of cross-examination by Defendants with regard to alleged fraud/forgery committed by Plaintiff – No necessity for Plaintiff to examine hand-writing expert to ascertain veracity of signatures found in documents – Admitted document, Ex. B.1/lease agreement was only Photostat copy – Comparison of signatures found in Ex.B.1 with signatures found in sale agreement-Ex.A.2 did not arise – No reply was sent to legal notices / Ex.A.3 and Ex.A.6, in which Plaintiff called upon Defendants to execute sale deed by receiving balance sale consideration – Except making bald allegations of fraud and forgery, Defendants had not adduced any particulars to support their defence – Ex.A.2 was genuine document – Defendants did not come forward to perform their part of contract to execute sale deed in favour of Plaintiff by receiving balance sale consideration – Plaintiff proved their readiness and willingness through legal notices – No need to pay separate court fee for relief of mandatory injunction – Court could grant relief of delivery of possession once suit decreed for specific performance – Plaintiff entitled for relief of specific performance, permanent injunction and mandatory injunction – Appeal dismissed – Cross-Objection allowed.

**(2018) 7 MLJ 831**

**Chinnasamy Gounder (died) v. Chellamuthu @ Selvaraj**

**Date of Judgment: 19.09.2018**

Civil Procedure – Final decree – Estoppel from challenge – 1<sup>st</sup> Respondent/3<sup>rd</sup> Plaintiff along with his mother and sister filed suit to declare that Court auction sale arising out of earlier decrees against his father/1<sup>st</sup> Defendant was not binding on them in respect of few items of suit properties and to allot half shares in favour of 3<sup>rd</sup> Plaintiff – 1<sup>st</sup> and 2<sup>nd</sup> Appellants/3<sup>rd</sup> and 4<sup>th</sup> Defendants, purchasers of few items of suit properties contested suit that debts incurred by 1<sup>st</sup> Defendant was for family necessity – Suit decreed for partition of 3<sup>rd</sup> Plaintiff's half share in all suit properties except properties that were sold by way of – On application by 3<sup>rd</sup> Plaintiff, lower Courts passed final decree by allotting shares in favour of 3<sup>rd</sup> Plaintiff in respect of other items, hence this appeal – Whether lower Courts were right in accepting Commissioner's report and plan, allotting certain property even though, it was not subject matter of suit – Held, 3<sup>rd</sup> Plaintiff had not included certain property purchased by 2<sup>nd</sup>



Appellant – It was on basis of Commissioner’s report, certain property, which was described as item 1 had now been identified as certain property – If this had been noticed at time of preliminary decree, 2<sup>nd</sup> Appellant would have contested suit and succeeded in establishing his title in certain property – Trial Court while passing preliminary decree, accepted case of purchaser of property in Court auction sale and dismissed suit for partition in respect of all items purchased by Appellants – Certain property was also purchased by Appellant – Judgment and decree of lower Courts insofar as certain item set aside – Appellants could not raise any objections at time of final decree proceedings, which had not been raised at time of passing preliminary – Appeal dismissed in respect of other items – Appeal allowed only in respect of certain item of property.

**(2018) 7 MLJ 870**

**Ranganathan (deceased) v. Viswanathan (Deceased)**

**Date of Judgment: 06.09.2018**

Property Laws – Sale of Immoveable Property – Conveyance of interest – 1<sup>st</sup> Respondent/Plaintiff purchased suit property from 1<sup>st</sup> Defendant and was cultivating casuarina trees in it – Defendants attempted to destroy casuarina crops raised by him – Plaintiff filed suit for declaration and permanent injunction – Appellants/Defendants defended that suit property was conveyed in favour of Plaintiff by 1<sup>st</sup> Defendant as dowry and there was no consideration for sale deed – Trial court dismissed suit which was reversed by First Appellate court, hence this second appeal – Whether sale transaction was invalid as it was only by way of dowry for daughter of 1<sup>st</sup> Defendant and that no interest was conveyed to Plaintiff – Held, merely because sale deed was executed day before marriage, it could not be presumed that transaction was made in lieu of dowry – Plaintiff proved passing of consideration for sale by adducing acceptable evidence and also produced original sale deed/Ex.A2 – Parent document of Ex.A2 namely partition deed also produced by Plaintiff – Mortgage deed/Ex.A5 executed by 1<sup>st</sup> Defendant in favour of his son-in-law and discharge receipt/Ex.A4 were also produced from custody of Plaintiff – Intention of parties to convey title of property was clear from all these circumstances – Possession follows title – First appellate court had analysed evidence on record and decreed suit as prayed for by Plaintiff – Appeal dismissed.

**(2018) 8 MLJ 15**

**S. Sudhakar v. Udayam Marketing**

**Date of Judgment: 12.09.2018**

Intellectual Property Laws – Trademark – Passing off – 2<sup>nd</sup> Plaintiff company was engaged in business of marketing food and allied products under suit trademark – Plaintiffs found out that in some parts of State, Asafoetida Powder with mark identical to suit trademark originated from Defendant, hence this suit pertaining to complaint of passing off qua suit trademark treating it as unregistered mark – Whether suit pertaining to complaint of passing off qua suit trademark liable to be decreed – Held, this Court saw mark of Plaintiffs/Ex.P5 and little later, saw alleged offending mark of Defendant/Ex.P7 – Man of average intelligence with imperfect recollection and ordinary prudence would be lulled into belief that what he was seeing now was that he saw earlier – This Court compared aforesaid two marks using time honoured principle for such comparison – First prayer pertaining to

injunctive relief qua infringement of suit trademark did not fall for consideration as suit was treated as complaint of passing off – In light of comparison of two marks, Exs. P5 and P7, second prayer pertaining to injunctive relief qua passing of answered in affirmative – Third and fourth plaint prayers decreed as matter of corollary – No evidence for actual loss that caused to Plaintiffs owing to marketing of Ex.P7 and therefore, prayer for damages could not be acceded to – Considering that Plaintiffs had to carry litigation through for period of one decade, compensatory costs awarded in addition to usual costs – Suit decreed with cost and compensatory cost.

**(2018) 8 MLJ 70**

**Tablets (India) Ltd. v. D.R. Johns Lab Pharma Pvt. Ltd.**

**Date of Judgment: 26.09.2018**

Intellectual Property Laws – Infringement of trademark – Commercial Court – Code of Civil Procedure, 1908 (Code 1908), Section 35-A, Order XV-A Rule 2 – Commercial Courts Act, 2015 (Act), Section 15 – Suit filed by Plaintiff with prayers for infringement of its one registered trade mark and passing off qua other two trade marks for which registration was pending – Sole Defendant was set ex parte – Whether Court / Commercial Division could hear oral submissions and dispose of suit before filing of written arguments where there is no contest and ex parte evidence had been recorded – Whether suit liable to be decreed as prayed for – Held, suit was transferred to this Commercial Division under Section 15 of Act – In case of transferred suits, Commercial Division could prescribe new time lines and issue further directions necessary for speedy and efficacious disposal of suit – Sole Defendant remained ex parte – Ex parte evidence had been recorded – No reasonable purpose would be served by directing Plaintiff to file written arguments – Plaintiff proved their case with regard to infringement and passing off qua trademarks and entitled to decree as prayed for – No evidence let in pertaining to damages which Plaintiff had suffered – Prayer for damages not acceded to – Defendant had stopped using offending cartons and wrappers – It might not be appropriate to decree for delivery of destruction of medicinal preparations, labels, raw materials, brochures – Plaintiff entitled to preliminary decree directing Defendant to render accounts of profit made by it using said marks – Plaintiff entitled to litigation costs and compensatory costs – Suit partly decreed with costs and compensatory costs.

**(2018) 8 MLJ 78**

**Rahmath Beevi (died) v. Mohideen Abdul Khadar**

**Date of Judgment: 25.09.2018**

Property Laws – Recovery of possession – Quit notice – Transfer of Property Act, 1882, Section 106 – Appellant/Plaintiff after purchase of second schedule property from original owner, issued quit notice to Defendants – Plaintiff filed suit for relief of mandatory injunction against 1<sup>st</sup> and 2<sup>nd</sup> Defendants to remove temporary structure made in fourth and third schedule property respectively which was part of second schedule property and for recovery of possession – 1<sup>st</sup> Defendant who purchased first schedule property from original owner filed suit for declaration and permanent injunction in respect of first schedule property and permanent injunction in respect of second schedule property – Lower Courts decreed Plaintiff's suit and partly decreed first Defendants suit hence these appeals – Whether quit notice issued under Section 106 of Act 1882 to Defendants was valid – Whether tenant Defendants was entitled to benefits of City Tenancy Protection Act – Whether Plaintiff could

have relief of recovery of possession of plaint schedule property – Held, after purchase of second schedule property from original owner, Plaintiff rightly issued quit notice under Section 106 of Act 1882 to Defendants – It was valid since Plaintiff stepped into shoes of original owner after having purchased second schedule property – After issuing quit notice, she terminated tenancy – 1<sup>st</sup> Defendant was not entitled to benefits under City Tenants Protection Act – Property shown as fourth schedule property purchased by Plaintiff from original owner and same was admitted by 1<sup>st</sup> Defendant – Notice issued canceling rent by Plaintiff and she was entitled to recovery of possession of fourth schedule property – Plaintiff entitled for relief sought by Plaintiff with regard to third schedule property – Plaintiff is entitled for recovery of possession and mesne profits from date of suit till date of judgment which is payable by Defendants – Appeals disposed of.

**(2018) 8 MLJ 95**

**Aascar Entertainment Private Limited v. A. Chandrasekaran**

**Date of Judgment: 05.10.2018**

Civil Procedure – Interim injunction – Nature of possession – Code of Civil Procedure, 1908 (Code), Order 7 Rule 11 – Constitution of India, 1950, Article 227 – Suit property/multiplex complex purchased by Appellants / 4<sup>th</sup> and 2<sup>nd</sup> Defendants – In order to make suit property operational, possession handed over to Plaintiff and document executed for this purpose – Defendants failed to assign licence to Plaintiff for exhibiting cinematography in suit property as consideration for Plaintiff making complex operational – 2<sup>nd</sup> Defendant attempted to take forcible possession of property – Plaintiff filed suit for declaration and mandatory injunction – Application filed for order of ad-interim prohibitory injunction for restraining Defendants from intervening with his peaceful possession and enjoyment of property allowed by trial Judge, hence this appeal – Whether order of interim injunction obtained with no legally recognizable right in him – Whether this Court could exercise its power under Article 227 of Constitution and withdraw suit to its file and reject same – Held, from nature of Plaintiff’s pleading, proximate description, or slot in which his claim of right of possession may be fitted in, was that of representative, agent, or caretaker but none of which clothe him with right to exclude owner of property from possessing it – Plaintiff with his own pleadings walked into zone of no-rights-in law voluntarily – Injunction granted deserves to be vacated – Application for interim injunction itself was ill-conceived and liable to be dismissed – Appellants had preferred application under Order 7 Rule 11 of Code and since they had preferred an alternate mode, statutorily prescribed, no need to visit this issue under Article 227 of Constitution – Order passed in application set aside – Appeal allowed.

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**(2018) 4 MLJ (CrI) 385**

**Dhanapal v. State**

**Date of Judgment: 29.08.2018**

Murder – Eye witness – Indian Penal Code, 1860, Sections 302 and 506(ii) – Appellant/sole accused cut victim repeatedly and threatened P.Ws.1 to 3/victim’s brother, his wife and their minor son during Temple festival in Village – Appellant convicted under Section 302 and 506(ii), hence this appeal – Whether prosecution proved guilt of accused beyond all reasonable doubt – Held, incriminating materials produced against accused, particularly, shirt, chappals and weapon seized from accused contained blood group of deceased – Evidence of P. Ws.1 to 3 proved specific overt act of accused chasing deceased and cutting him severely – P.W.4/independent witness had also seen accused chasing deceased – Evidence of eye witnesses proved that they had been threatened by accused with deadly weapon – Prosecution had established complicity of accused with crime – No infirmities in conviction and sentence imposed by Trial Court – Appeal dismissed.

**(2018) 4 MLJ (CrI) 546**

**Shakul Hammed v. State by the Superintendent of Police**

**Date of Judgment: 12.09.2018**

Remand of accused – Extension – Unlawful Activities (Prevention) Act, 1967, Sections 43-D(2)(b) – Case registered against Appellant/accused for acts of terrorism under Act – Public Prosecutor filed report and sought for extension of time for investigation and for continued detention of Appellant beyond period of 90 days – Appellant filed application for bail – Special Court allowed application for extension of time and dismissed application for bail, hence these appeals – Whether period of remand could be extended by 90 days in one single stretch – Whether there had been compelling reasons to seek extension of remand – Whether accused was entitled for release on bail – Held, legislative intent was that maximum permissible period of remand shall be up to 180 days – If progress of investigation required some more time, on report of Public Prosecutor and subject to its satisfaction, Court might extend period from 90 days to maximum of 180 days – “Up to” denotes maximum time upto which extension of remand could be granted – Nowhere proviso to Section 43-D(2) indicate that power of extension of remand in single stretch could not be exercised – Report of Public Prosecutor did not satisfy second limb of Section 43D(2)(b) of Act – Specific reasons that really necessitate extended remand of accused did not form part of report, which was basic requirement for extension of remand Report revealed general investigative procedures, which could not be termed as special reasons for grant of extension of remand – Legislative intent not satisfied – Rejection of bail was against provision of Act – Accused entitled for release on bail – Appeals allowed.

**(2018) 4 MLJ (Crl) 558**

**Abdulmuthaleep v. State**

**Date of Judgment: 27.09.2018**

Conspiracy – Circumstantial Evidence – Indian Penal Code, 1860 (Code), Section 120-B, 307, 392, 397 and 420 – Explosive Substance Act (Act), Sections 4 and 5 – Trial Court found Appellants/2<sup>nd</sup> to 4<sup>th</sup> accused guilty under Sections 120-B, 307, 392, 397 and 420 of Code and Sections 4 and 5 of Act, hence this appeal – Whether circumstances relied upon by prosecution to unearth conspiracy proved by chain of circumstances – Held, except seizure of one material object from one of accused, who was no more, pursuant to alleged confession of said accused, no other incriminating evidence found against any of the accused – Charges were grave in nature starting from Section 120-B of Code – Seizure of one of materials from one of accused, who was no more could not be ground to hold that other accused also present in place of occurrence – Explosive materials were seized from car but prosecution failed to prove that Appellants travelled in car at relevant point of time and caused injury to P.W.1 – P.W.1 had not supported prosecution in any manner – Identification parade also not conducted by prosecution – Conviction set aside – Appeal allowed.

**(2018) 4 MLJ (Crl) 564**

**Dr. Nelson Jesudasan v. State**

**Date of Judgment: 19.09.2018**

Grievous Hurt – Culpable state of mind – Indian Penal Code, 1860, Section 338 – Patients who were operated in eye Hospital in question lost their vision – Trial Court convicted Doctors/Petitioners/1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused who were administrating said Hospital for offence under Section 338 and granted compensation to victims – Sessions court dismissed appeals but enhanced compensation, hence these revision petitions – Whether ingredients of offence for which Petitioners were convicted and sentenced had been made out – Held, Petitioners had no culpability or desire to cause harm – It was not proved through evidence that act of omission on part of Petitioner was cause for incident – Cause of pseudomonas bacteria found in infected eyes not been fixed without any doubt – Lack of building permission, no consent letter from pollution control board, absence of pharmacy license could not be cause for presence of bacterias – No specific charge in this regard enabling accused to defend – Courts ought not to have relied upon these allegations to infer culpable state of mind – Prosecution failed to make out case against Petitioners regarding any expressed or implied state of mind to cause harm or danger to life – At most, failure to exercise due diligence could be inferred – Said failure and conduct of Petitioners though not up to standard did not fail within ambit of section 338 – Appellate Court had neither given opportunity to Petitioners before enhancing compensation nor basis upon which enhancement given or any logical reasoning – Enhancement set aside – Vicarious liability of management under law of torts could not be wiped of – Compensation fixed by Trial Court shall hold good – Prosecution failed to establish culpable state of mind of Petitioners – They were not criminally liable – Petitioners acquitted of charge under Section 338 – Revisions allowed.

**(2018) 4 MLJ (CrI) 617**

**R. Subramanian v. Assistant Director**

**Date of Judgment: 10.10.2018**

Supplementary Complaint – Money Laundering – Prevention of Money Laundering Act, 2002 (Act 2002), Sections 43, 44, 45 and 65 – Criminal Procedure Code, 1973 (Code 1973), Section 173 – Directorate of Enforcement had recorded Enforcement Case against Revision Petitioner herein and others and initiated investigations under Act 2002 and same is pending – Criminal Revision Case filed by Petitioner/second accused challenging order passed by Principal Sessions Judge, City Civil Court Special Court constituted under Section 43(1) of Act 2002 in taking cognizance of offence – Whether after obtaining necessary permission or leave from Special Court, Enforcement Directorate can file supplementary complaint and same is in consonance with Act 2002 – Held, section 173(1) of Code 1973 speaks about report to be filed after investigation without delay, however, does not provide for any limitation for same – Section 173(8) of Code 1973 provides for further investigation – No contrary provisions in Act 2002 – Further investigation can be carried out by Directorate of Enforcement even under Act 2002 – Supplementary complaint can be filed based upon further investigation and leave and libery sought for in present complaint cannot be termed as illegal and incomplete as claimed – After obtaining special permission for further investigation as provided under Code 1973 under Section 65 of Act 2002, Enforcement Directorate can complete further investigation and file supplementary complaint in consonance with Section 44 (1)(b) and 45 of Act 2002 – No illegality or irregularity in cognizance taken by Principal Sessions Judge, City Civil Court, designated Court under Act 2002 – Revision dismissed.

**(2018) 4 MLJ (CrI) 626**

**Mani v. State**

**Date of Judgment: 23.10.2018**

Dowry Demand – Presumption – Indian Penal Code, 1860, Sections 304(B) and 498(A) – Appellants/Accused Nos.1 and 3 convicted for offence under Section 498(A) and Section 304(B), hence this appeal against conviction – Whether conviction passed by Trial Court for offence under Sections 498(A) and 304(B), sustainable in law and whether sentence awarded by Trial Court is excessive – Held, no evidence available on record to show that deceased was subjected to cruelty or in connection with dowry demand soon before death – Finding given by Trial Court that prosecution proved charge under Section 304(B) is not sustainable warranting interference by Court for want of evidence – Prosecution has not let in any positive evidence in support of charge under Section 498(A) – Only vague and unqualified allegation was made by P.W.3 against A.2, who is no longer alive and died during pendency of trial – No evidence against A.1 and A.3, legally acceptable evidence for charge under Sections 498(A) and 304(B) – Conviction and sentence passed by Trial Court against A.1 and A.3 not sustainable and set aside – Appeal allowed.

**(2018) 4 MLJ (CrI) 631**

**Management Professionals Association v. State**

**Date of Judgment: 26.10.2018**

Cheating – Reduction in Sentence – Indian Penal Code, 1860, Section 120B, 420, 468 and 471 – Appellants alleged to have created company to conspire and cheat public – Aggrieved persons who ere cheated out of money filed complaint against company and persons involved – Trial Court convicted and sentenced 1<sup>st</sup> Appellant/A1 for offences punishable under Sections 420 and 471 read with 468 – 2<sup>nd</sup> Appellant/A3 and 3<sup>rd</sup> Appellant/A4 convicted under Sections 120B, 420 and 471 read with 468, hence this appeal for reduction of sentence – Whether sentence imposed by Trial Court on Appellants ought to be reduced in view of age and role played by them – Held, Appellants/Accused argued on question of sentence – Mitigating circumstances, particularly, age of Accused and role played by them and also long lapse of duration after offence considered – In order to balance aggravating and mitigating circumstances, Court inclined to show lenience in respect of sentence alone – In respect of conviction and payment of fine amount are concerned, impugned judgement confirmed – In respect of period of sentence alone, impugned judgement modified to period of imprisonment already undergone by Appellants 2 and 3/A3 and A4 – Appeal party allowed/.

**(2018) 3 MLJ (CrI) 540**

**R. Lakshmanan v. State by The Inspector of Police**

**Date of Judgment: 25.06.2018**

Illegal gratification – Demand and acceptance – Prevention of Corruption Act, 1988, Sections 7, 13 and 20 – Appellant/accused/village administrative officer held guilty for offences under Sections 7, 13(2) read with 13(1)(d) for demanding and receiving illegal gratification other than legal remuneration to execute revenue recovery order, hence this appeal – Whether trial Court erred in rejecting explanation given by accused and accepting prosecution evidence to convict accused – Held, explanation given by accused by way of suggestion in cross examination of prosecution witnesses and written statement assessed – There was possibility of entertaining grudge against Village Administrative Officer by defacto Complainant/PW-2 for delaying execution of revenue recovery order – Day on which revenue recovery order was passed, High Court had stayed execution of award – Accused knew executing recovery order was impossible – He would not dare to demand bribe from Union Leader promising recovery – Explanation of accused was that he and PW-2 went to premises of Company on two dates was probable – Grudge of PW-2 against Appellant for delaying process probable – Evidence of PW-2 regarding previous demand and partly unreliable evidence of PW-3/shadow witness coupled with hostility of PW-5 and PW-6 not supporting recovery of tainted money – Demand and acceptance of bribe money not proved beyond doubt by prosecution – Unless demands and acceptance is proved beyond reasonable doubt, the presumption under Section 20 cannot be drawn – Appeal allowed.

**(2018) 3 MLJ (Crl) 586**

**Venkatachalam @ Sakthi v. State**

**Date of Judgment: 06.07.2018**

Robbery – Voluntarily causing hurt – Indian Penal Code, 1860, Sections 323, 392, 394, 447 and 450 – Appellant/accused convicted under Sections 450, 392 and 394 for trespassing into house and voluntarily causing simple injuries to victim/P.W-1, hence this revision – Whether case for robbery had been made out – Held, accused was known to PW-1 for long period of time and were neighbours – Accused committed robbery in house of neighbor sounds unnatural – Confession made by accused and on such confession money being seized from accused, not established by prosecution – PW-2, PW-3, and PW-4 had not supported case of prosecution insofar as confession of accused was concerned – Not convinced that accused committed offence of robbery – There were sufficient materials to show that accused had trespassed into house of PW-1 and voluntarily caused hurt – Court had power to convict accused for minor offence although he was not charged with it – Accused had sufficient opportunity to defend himself insofar as offences of voluntarily causing of hurt as well as criminal trespass that was committed into property of PW-1 Ingredients of hurt and Trespass, formed part of major offence for which accused was charged and faced trial – Conviction and sentence passed by lower Courts for offence under Section 450, 392 and 394 set aside, however, convicted for offence under Section 323 and 447 – Revision partly allowed.

**(2018) 3 MLJ (Crl) 591**

**SP. Chidambaram Vs. State**

**Date of Judgment: 10.07.2018**

Illegal gratification – Demand and acceptance – Prevention of Corruption Act 1988, Sections 7 and 13 – Trial Court found Appellant guilty for receiving illegal gratification from PW-2 for issuing application form for registration as contractor, hence this appeal – Whether grounds raised by Appellant adequate to reverse finding of trial Court – Held, both PW-2 and PW-3 had in unison deposed that Appellant demanded money by raising his eye brow and shaking his head – This gesture was understood by PW.2 as demand of bribe in light of earlier demand which culminated in complaint – Gesture of Appellant, act of receiving money and keeping it in his pant pocket, considered along with content of complaint, clear that money received was only towards motive to do favour for PW.2 – Explanation as found in mahazar where Appellant had affixed his signature was different from explanation adduced during trial – Prosecution proved case beyond reasonable doubt through overwhelming evidence, demand and acceptance of illegal gratification of from PW.2 for issuing application form – Explanation offered by Appellant lack material facts to probabilise explanation – No error in judgment of Trial Court – Appellant trapped few months before his superannuation and had lost all his retirement benefits and been suffering for past 17 years – He was old with ailments relating to old age – Taking note of mitigating factors, period of sentence altered – Appeal dismissed.

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