



TAMIL NADU STATE JUDICIAL ACADEMY

Vol: XIV

Part: 2

February, 2019

IMPORTANT CASE LAW



HEADQUARTERS, CHENNAI

No.30/95, P.S.K.R. Salai, R.A. Puram, Chennai – 600 028

Phone Nos. 044– 24958595 / 96 / 97 / 98 Fax: (044) 24958595

Website: www.tnsja.tn.nic.in E-Mail: tnsja.tn@nic.in/tnsja.tn@gmail.com

REGIONAL CENTRE, COIMBATORE

No.251, Scheme Road, Race Course, Coimbatore - 641 018.

Telephone No: 0422 - 2222610/710

E-Mail:tnsja.rc.cbe@gmail.com

REGIONAL CENTRE, MADURAI

Alagar Koil Road, K.Pudur, Madurai - 625 002.

Telephone No: 0452 - 2560807/811

E-Mail:tnsja.rc.mdu@gmail.com

INDEX

S. No.	IMPORTANT CASE LAW	PAGE No.
1.	Supreme Court – Civil Cases	1
2.	Supreme Court – Criminal Cases	4
3.	Madras High Court – Civil Cases	7
4.	Madras High Court – Criminal Cases	13

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Dr. S.K. Jhunjhunwala v. Ms. Dhanwanti Kumar	(2019) 1 MLJ 236 (SC)	1.10.2018	Consumer Protection – Negligence by Surgeon – Patient’s consent – Section 10 of Consumer Protection Act, 1986	1
2	Salem Municipality v. P. Kumar	(2019) 1 MLJ 244 (SC)	15.11.2018	Property Laws – Suit for Declaration – Grant of Patta – Section 11 of Tamil Nadu Estates Land Act (Abolition and Conversion into Ryotwari) – Sections 3 (15) and 3 (16)	1-2
3	Vimal Devi v. National Insurance Co.LTD.	(2019) 2 SCC 186	16.11.2018	Motor Vehicles – Accident claims – Section 166 of Motor Vehicle Act, 1988 – Non-exhibition of documents – Procedural lapse – Not to disentitle a claim when otherwise sufficient evidence is adduced and documents established the identity of the offending vehicle	2
4	Sushil kumar agarwal v. Meenakshi sadhu	(2019) 2 SCC 241	09.10.2018	Contract and Specific Relief Act – Section 14 (3)(c) Specific Relief Act – Specific performance of a development agreement	2-3
5	L&T-Scomi v. MMRDA	(2019) 2 SCC 271	3.10.2018	Arbitration – International commercial arbitration – Sections 11, and 2(1)(f)(iii) of Arbitration and compilation Act – Requirements of section 2(1)(f)(iii)	3

SUPREME COURT - CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1	State rep. by the Drugs Inspector v. Manimaran	(2019) 1 MLJ (CrI) 24 (SC)	30.11.2018	Sale of drugs – Drug licence – Section 18, 27(b)(ii) and 28 of Drugs and Cosmetics Act, 1940	4
2	Babasahen Maruti Kamble v. State of Maharashtra	(2019) 1 MLJ (CrI) 75 (SC)	1.11.2018	Death Sentence – Review – Reference by session Judge to High Court for confirmation of death sentence – Upheld by High Court – SLP dismissed by the Supreme Court – Hence review	4
3	Jitendra @ Kalla v. State of Government of NCT of Delhi	(2019) 1 MLJ (CrI) 137 (SC)	25.10.2018	Modification of Sentence – Jurisdiction of High Court	5
4	Surendra Singh v. State of Uttarakhand	(2019) 1 MLJ (CrI) 193 (SC)	04.12.2018	Murder – Evidence of witnesses – Sections 34, 302, 380 and 457 IPC	6
5	Dashrath Singh v. Central Bureau of Investigation	(2019) 1 MLJ (CrI) 207 (SC)	09.10.2018	Prevention of Corruption – Bribery – Sections 7 and 13 of Prevention of Corruption Act	6

MADRAS HIGH COURT – CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg.No.
1	Aladi Mariamman Temple v. Govindasamy Chettiar	(2019) 1 MLJ 9	19.11.2018	Trust and Charities – Temple and – Eviction – Section 34 of Tamil Nadu Hindu Religious and Charitable Endowment Act – Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971	7
2	R. Selvam v. N. Vasudevan	(2019) 1 MLJ 50	09.10.2018	Civil Procedure – First appeal – Reception of additional documents – Order 41 Rules 23-A and 27 CPC	7-8
3	Santhanam Mariyammal v. Felix	(2019) 1 MLJ 71	27.09.2018	Succession Laws – Partition – Limitation	8
4	QD Seatamon Designs Private Limited v. P. Suresh	(2019) 1 MLJ 163	20.11.2018	Intellectual Property Laws – Infringement of copyright – Groundless threat – Section 60 of Copyright Act 1957	9
5	Thimma. V. Saradha Ammal (Died) v. M.N. Kumareshbabu	(2019) 1 MLJ 204	05.09.2019	Succession Laws – Lifeinterest in will – Enlargement to absolute ownership – Section 14 of Hindu Succession Act 1956	9-10
6	Chinnaswamy v. Nagalingam	(2019) 1 MLJ 212	14.11.2018	Civil Procedure – Res Judicata – Ex parte decree – Section 11 CPC	10
7	Ellammal v. Shanmugham	(2019) 1 MLJ 215	11.09.2018	Property Laws – Possession of Title – Cancellation of Power of Attorney	10-11
8	C.R. Ramachary v. Indian Overseas Bank	(2019) 1 MLJ 257	31.10.2018	Banking and Finance – Loan – Banker's Right of Lien – Section 171 of Indian Contract Act	11
9	K. Kuppusamy v. Commissioner, H.R. and C.E.	(2019) 1 MLJ 289	05.10.2018	Trust and Charities – Religious Endowment – Annual contribution – Sections 6(18), 6(19) and 92 (1) of Tamil Nadu Hindu Religious and Charitable Endowments Act	11-12
10	Tamil Nadu Electricity Board v. Nagarajan	(2019) 1 MLJ 310	19.09.2018	Utilities – Electricity – Sanctioned scheme – Suit filed for relief of mandatory injunction directing defendants to remove low tension electric power line passing through the plaintiff's property	12

MADRAS HIGH COURT – CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	John v. State	(2019) 1 MLJ (CrI) 1	31.10.2018	Murder – Appreciation of evidence – Sections 302 and 341 IPC	13
2	R. Ravikumar v. Central Bureau of Investigation	(2019) 1 MLJ (CrI) 14	31.10.2018	Transfer of Case – Final Report – Sections 6, 10 and 12 of Protection of Children from Sexual Offences Act – Sections 342, 328, 376(AB), 376(DB) and 506(ii) IPC	13
3	L. Anthony Raj v. State by the Inspector of Police	(2019) 1 MLJ (CrI) 20	10.12.2019	Robbery – Sentence – Sections 394, 397, and 452 IPC	14
4	Jeevanandham v. State	(2019) 1 MLJ (CrI) 36	20.09.2018	Quashing of final report – Disobedience of public servant order – Sections 41, 195(1)(a)(i) and 482 Cr.P.C – Sections 172 to 188 IPC	14
5	G.Sithivinayagamoorthy v. State	(2019) 1 MLJ (CrI) 61	2.11.2018	Illegal Gratification – Demand and acceptance – Sections 7 and 20 of Prevention of Corruption Act	15
6	S. Vinayagam v. State by Inspector of Police	(2019) 1 MLJ (CrI) 67	10.12.2018	Culpable homicide – Sudden quarrel – Sections 302, 304(II) and 498A IPC	15
7	K. Ravichandran v. Inspector of Police	(2019) 1 MLJ (CrI) 82	19.09.2018	Recalling of witness – Discretion of Court – Section 311 Cr.P.C.	16
8	Karal Marks v. State rep by the Inspector of Police	(2019) 1 MLJ (CrI) 88	23.10.2018	Murder – Exception – Sections 300,302 and 304 IPC	16
9	Chakra Compactors v. D, Vijaya Kumar	(2019) 1 MLJ (CrI) 104	14.11.2018	Negotiable Instruments – Statutory notice – Authorisation to file complaint – Sections 138 and 139 of Negotiable Instruments Act	17
10	Charles Shayaraj v. State represented by The Inspector of Police	(2019) 1 MLJ (CrI) 153	19.09.2018	Counterfeit Currency – Confession statement – Sections 489-B and 489-C of Indian Penal Code – Sections 27 and 30 of Indian Evidence Act	17-18

SUPREME COURT – CIVIL CASES

(2019) 1 MLJ 236 (SC)

Dr. S.K. Jhunjunwala v. Ms. Dhanwanti Kumar

Date of Judgment: 01.10.2018

Consumer Protection – Negligence by Surgeon – Patient's Consent – Consumer Protection Act, 1986, Section 10 – Complainant / 1st Respondent suffered from gall bladder pain and on Appellant / doctor's advice got admitted in 2nd Respondent's hospital – Appellant performed surgery – On discharge, 1st Respondent filed Complaint under Section 10 against Appellant and 2nd Respondent claiming compensation for loss, mental suffering, pain after surgery due to negligence in performing surgery – State Commission dismissed Complaint and appeal preferred before National Commission – National Commission awarded compensation to 1st Respondent on account of negligence in performing surgery – Present appeal filed challenging same – Whether National Commission Justified in holding Appellant negligent in performing Surgery – Whether National Commission justified in awarding compensation to 1st Respondent – Held, clause 4 of Consent Form duly signed by 1st Respondent empowers performing doctor to perform additional operation that he may consider necessary in event of any emergency discovered during course of operation – No need to have another Consent Form to do conventional surgery because substitute operation was of same organ – Only after consent given by 1st Respondent's husband, Appellant proceeded to do conventional surgery – 1st Respondent not able to prove that ailments which she suffered after she returned home were as result of faulty surgery performed by Appellant – Appeal allowed.

(2019) 1 MLJ 244 (SC)

Salem Municipality v. P. Kumar

Date of Judgment: 15.11.2018

Property Laws – Suit for Declaration – Grant of Patta – Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Act 1948), Section 11 – Tamil Nadu Estates Land Act, 1908 (Act 1908), Sections 3 (15) and 3 (16) – Original Plaintiff claimed that predecessor in title continued in possession of land when Act came into force and applied for ryotwari Patta which was rejected – Office Memorandum issued by State Government in respect of alleged land for construction of new bus stand – Plaintiff filled suits for declaration and permanent injunction – Suits were decreed by Trial Court – Appeals preferred and allowed by 1st Appellate Court, reversing order of Trial Court – Challenging same, 2nd appeals preferred and allowed restoring order of Trial Court – Hence, present appeals – Whether High Court justified in restoring orders of Trial Court, allowing claim of Plaintiff – Held, definition of 'ryot' as defined under Section 3 (15) of Act 1908 means person who holds land for purpose of agriculture – Necessary for such

'ryot' to hold 'ryoti Land' in estate – Ryoti land has been defined in Section 3 (16) of Act 1908 as cultivable land in estate other than private land but does not include beds and bunds of tanks of supply, drainage, surplus or irrigation channels – Area in question formed part of tank was clearly not ryoti land – Predecessor in interest or Plaintiff could not be said to be 'ryot' holding 'ryoti' land – Not only vendor of Plaintiff applied for grant of patta under provisions of Section 11 of Act 1948 but same prayer unsuccessfully made four times by original plaintiff – Once claim of original Plaintiff had been rejected, it was incumbent upon him to file suit for establishing his rights – Vendor of Plaintiff did not hold land for 12 continuous years and no right, title or interest accrued to him or to Plaintiff – Trial Court and High Court committed patent illegality in ignoring prohibition contained in provisions of the Act 1908 as well as of Act 1948 – No hesitation in setting aside judgment and decree passed by High Court and restoring that of First Appellate Court – Appeals allowed.

(2019) 2 SCC 186

Vimla deve v. National Insurance Co, Ltd

Date of Judgment: 16.11.2018

Motor Vehicles Act, 1988 – Section 166 Non-exhibition of documents i.e. a procedural lapse – Not to disentitle a claim, when otherwise sufficient evidence is adduced and documents established the identity of the offending vehicle

(2019) 2 SCC 241

Sushil Kumar Agarwal v. Meenakshi Sadhu

Date of Judgment: 10.09.2018

A. Contract and Specific Relief – Specific Relief Act, 1963 – Section 14(3)(c) – Specific performance of a development agreement – Non-grantable to a developer, when such contract is a pure construction agreement – Requirements to be satisfied by a developer for grant of specific performance against owner – Explained in detail – Giving a purposive interpretation to Section 14(3)(c)(iii), held where the developer brings a suit for specific performance against the owner, he will have to satisfy the two conditions laid out in sub-clauses (I) and (ii) of S. 14(3)(c) – However, when a pure construction contract is entered into, the contractor has no interest in either the land or the construction which is carried out – Held, the terms of the agreement are crucial in determining whether any interest has been created in the land or in respect of rights in the land in favour of the developer and if so, the nature and extent of the rights

B. Contract and Specific Relief – Specific Relief Act, 1963 S. 14(3)(c)(iii) – Specific performance of a development agreement – Requirements to be satisfied by a developer for grant of specific performance against owner – Held, if the rule of literal

interpretation is adopted it would lead to a situation where a suit for specific performance can only be instituted at the behest of the owner against a developer, denying the benefit of the provision to the developer despite an interest in the property having been created since an anomaly is created by the use words “the defendant has by virtue of the agreement, obtained possession of the whole or any part of the land”

(2019) 2 SCC 271

L&T-Scomi v. Mmrda

Date of Judgment: 03.10.2018

Arbitration and Conciliation Act, 1996 – Ss. 2(1)(f)(ii) and (iii) 11 – “International commercial arbitration” – Requirements of – S. 2(1)(f)(iii), as opposed to S. 2(1)(f)(ii) – Applicability of, to a Consortium comprising of an Indian and a foreign company – Requirements of S. 2(1)(f)(iii), namely (I) that at least one of the parties is a company or an association or a body of individuals, and (ii) whose central management and control is exercised in any country other than India – Non-satisfaction of

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SUPREME COURT – CRIMINAL CASES

(2019) 1 MLJ (CrI) 24 (SC)

State Rep. By the Drugs Inspector v. Manimaran

Date of Judgment: 30.11.2018

Sale of drugs – Drug licence – Drugs and Cosmetics Act, 1940 Sections 18, 27(b)(ii) and 28 – High Court set aside conviction and sentence of Respondent/accused under Sections 27(b)(ii) and 28 of Act, hence this appeal against acquittal – Whether High court justified in setting aside conviction of Respondent – Held, in Exs.P-4 and P-7, Respondent stated that he was not aware of obtaining licence in his own name, apologized for mistake and requested for issuance of licence in his name – High Court did not keep in view Exs.P-4 and P-7 – When Respondent had stocked drugs and sold same without licence, there was violation of Section 18(c) which is punishable under Section 27(b)(ii) – Act provide for checks and balances so that drugs were sold strictly only by licence-holder and that adulterated drugs were not sold – From evidence of PW-1 and admission on Respondent in Exs. P-4 and P-7, prosecution established that Respondent did not have licence for sale of drugs – High Court was not right in interfering with concurrent finding of fact arrived at by lower Courts – Appeal allowed.

(2019) 1 MLJ (CrI) 75 (SC)

Babasaheb Maruti Kamble v. State of Maharashtra

Date of judgment 01.11.2018

Death Sentence – Review – Sessions Judge made reference to High Court for confirmation of death sentence awarded to Petitioner and Petitioner challenged his conviction – High Court upheld conviction and confirmed death sentence – Special leave petition filed by Petitioner dismissed in limine by this Court, hence this review – Whether special leave petition filed in cases where death sentence was awarded by lower Courts could be dismissed without giving reasons – Held, special leave petition filed in those cases where death sentence was awarded by lower Courts should not be dismissed without giving reasons, at least qua death sentence – There may be cases where at Special Leave Petition stage itself, court might find that there was no scope for interference insofar as conviction was concerned – If death penalty was to be affirmed even while dismissing special Leave Petition in limine, it should be by reasoned order on aspect of sentence, at least – Special leave petition filed by Petitioner was dismissed in limine with on e word and without giving any reasons – Earlier order recalled – Petition allowed.

(2019) 1 MLJ (CrI) 137 (SC)

Jitendra @ Kalla v. State of Govt. of NCT of Delhi

Date of Judgment: 25.10.2018

Modification of Sentence – Jurisdiction of High Court – Trial court by common judgment convicted Appellant to rigorous imprisonment for life with direction that he shall not be considered for grant of remission till he undergoes actual sentence of 30 years – High Court modified punishment by removing cap of 30 years and sentenced Appellant to period already undergone – High Court rectified typographical error in its order and removed words 'period already undergone', hence these appeals – Whether Appellant rightly convicted for offences mentioned in two charge-sheets – Whether Appellant could raise such a plea when it was not pressed before High Court – Whether order of High Court modifying sentences was proper and justified – Whether High Court could pass 'correction' orders on ground that typographical error had been noticed in main judgment – Held, court record had to be believed – If according to aggrieved party there is some error, only option with aggrieved party was to approach that very court, seeking correction of that order which was not done – Counsel for Appellant had made statement not to press case on merits on instructions from Appellant – Notwithstanding said statement, High Court went through record to satisfy as to whether conviction was properly recorded – Deleting two lines from main judgment could not be treated as typographical error – For offence of murder, minimum sentence was 'life imprisonment' – High Court could not have modified sentence to one already undergone – Modification was erroneous – High Court made amends by correcting this mistake, however, that step taken by High court was beyond jurisdiction – It could have been done only in appeal – Correction order set aside – Conviction and sentences recorded by one common judgment – High Court correctly concluded that there was no question of giving consecutive sentences and sentences had to be concurrent – Order of High Court removing cap of 30 years was not correct and that portion set aside – Appeals of Appellant dismissed – Appeals of Complainants and State partially allowed.

(2019) 1 MLJ (CrI) 193 (SC)

Surendra Singh v. State of Uttarakhand

Date of Judgment: 04.12.2018

Murder – Evidence of Witnesses – Indian Penal Code, 1860 (Code 1860), Sections 34, 302, 380 and 457 – Trial Court convicted accused under Sections 34, 302 380 and 457 of Code 1860 for murder and same confirmed by High Court, hence this appeal – Whether lower courts justified in convicting Appellants for murder – Held, no reason to disbelieve evidence of four prosecution witnesses – All four witnesses knew each other including accused persons because all were residents of one village and of nearby area – No good reason to discard their evidence and same was rightly believed by two lower Courts for finding of fact on question of motive against Appellants – Circumstances proved by prosecution with aid of oral evidence beyond all reasonable doubt, which led to commission of crime – All circumstances point finger of guilt towards Appellants and their complicity in commission of crime – Proved that with such idea in mind. Appellants entered in shop on intervening night, brutally assaulted deceased with aid of wheel on his head, looted his shop and threw away body of deceased – No perversity, arbitrariness or illegality in reasoning and conclusion of lower Courts – Appeal dismissed.

(2019) 1 MLJ (CrI) 207 (SC)

Dashrath Singh v. Central Bureau of Investigation

Date of Judgment: 09.10.2018

Prevention of Corruption – Bibery – Prevention of Corruption Act, 1988, Sections 7 and 13 – Appellant / Electric Inspector along with 2nd accused demanded bribe from P.W.1. for installation of electric connection and was caught receiving same – Trial Court acquitted 2nd accused of all charges, however, convicted Appellant under Sections 7, 13(1)(d) and 13(2) of Act and same confirmed by High court, hence this appeal by special leave – Whether conviction of Appellant by Trial Court and confirmed by High Court, sustainable – Held, charge against both accused in relation to conspiracy, not proved – same resulted in clean acquittal of 2nd accused from all charges ;under Act – Case of prosecution was that Appellant did not accept bribe money but same was accepted and recovered from possession of co-accused – No evidence to prove that Appellant directly accepted money from Complainant – Plea of conspiracy against Appellant and 2nd accused failed, it cannot be held that money recovered from 2nd accused's possession was bribe money meant for Appellant – Prosecution was under legal obligation to prove twin requirements of “demand and acceptance of bribe money by accused”, proving of one alone but not other was not sufficient – Appellant entitled for acquittal from charges framed against him under Act – Appeal allowed.

MADRAS HIGH COURT – CIVIL CASES

(2019) 1 MLJ 9

Aladi Mariamman Temple v. Govindasamy Chettiar

Date of Judgment: 19.11.2018

Trust and Charities – Temple land – Eviction – Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (Act 1959), Section 34 – Tamilnadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971 (Act 1971) – Property belonging to Appellant / Plaintiff Temple was leased to Respondents / Defendants for annual rent – On failure of Defendants to pay annual rent, Plaintiff temple filed suits – Defendants contested suits on ground that they were in possession based on Kudiyiruppu Patta in their favour – Lower Courts dismissed suits, hence these appeals – Whether Civil Court does not have jurisdiction to incidentally go into question of whether defendant is entitled to benefit of Act 1971 – Held, Defendants failed to establish that they were lawful leaseholders and were promptly paying annual rent as per lease agreement – Defendants did not establish that lease between Plaintiff and Defendants were renewed with reference to Section 34 of Act 1959 – In absence of such renewal of lease in accordance with law, Defendants were to be construed as unlawful occupants and liable to be evicted by following procedures as contemplated – Trial Court proceeded only on ground that defendants were in continuous and long possession of property and therefore, their right to continue in property was to be protected – Such proposition adopted by lower Courts was not in consonance with established legal principles of law – Appeals allowed.

(2019) 1 MLJ 50

R. Selvam v. N. Vasudevan

Date of Judgment: 09.10.2018

Civil Procedure – First appeal – Reception of additional documents – Code of Civil Procedure, 1908, Order 41 Rules 23-A and 27 – Suit filed by 1st to 3rd Respondents / Plaintiffs for declaration that Plaintiffs and their male decendants alone should perform Kattalais as trustees of trust, was dismissed by Trial Court – Plaintiffs filed appeal along with application for reception of additional documents – First appellant court set aside judgment and decree passed by trial Court without any specific findings and remanded matter to trial Court for marking of additional documents and for retrial, hence this appeal – Whether First appellate court was right in remanding matter to trial Court for retrial by marking of additional documents, in absence of any finding to invalidate judgment and decree passed by trial court – Held, lower appellate court itself could record evidence by

permitting parties to mark additional documents and afford opportunity to other side to cross examine witness, as appeal was continuation of original proceedings – If first appellate court comes to conclusion that retrial was necessary, it should give finding that decree and judgment of lower court was vitiated and thereafter, remand matter – In absence of such finding, order of remand passed by First appellate court liable to be set aside as it was against Order 41 Rule 23-A – First appellate court remanded matter back to trial court for fresh consideration summarily for reception of additional documents and marking of said documents and retrial – Judgment and decree passed by first appellate Court set aside – Appeal allowed.

(2019) 1 MLJ 71

Santhanam Mariyammal v. Felix

Date of Judgment: 27.09.2018

Succession Laws – Partition – Limitation – Plaintiff filed suit for partition against her brother's wife and children claiming that properties allotted to her father were administered by her brother – Defendants claimed that Plaintiff was party to registered partition deed, entered into by Plaintiff along with her brother and father's brothers – Suit decreed by trial Court, Hence these appeals – Whether there had been earlier partition under Ex-B2 – Whether there was relinquishment of rights pursuant to Ex-B2 by Plaintiff under Ex-B3 / stamped receipt – Whether Ex-B2 and Ex-B3 were void or voidable documents and specific relief should have been sought to set aside them – Whether suit was bad for non-joinder of parties – Whether suit was barred by limitation – Held, suit itself was speculative in nature – Ex-B2 and Ex-B3 were binding documents and could not have been obtained through misrepresentation – They had been acted upon and not been complained of for more than sixty years – They had not been complained of for nearly fourteen years, after death of brother – Suit had been cleverly drafted without seeking relief to set aside documents – Suit filed without impleading legal heirs of Plaintiff's father's brothers was bad for non-joinder of necessary parties – There had been earlier partition as evidenced by Ex-B2 and Plaintiff had relinquished her share as evidenced by Ex-B3 – Two documents were binding on plaintiffs, and they were not void – Even if they were voidable, suit was bad for not including relief to set them aside – Suit had been innocently framed as if it was suit for partition – It was actually suit for recovery of possession and it should have instituted within 12 years from date of Ex-B2 – Even if period was extended to date of death of Plaintiff's brother, suit was barred by limitation – Plaintiff was paid consideration and it had been reflected in both Ex-B2 and Ex-B3 – Suit dismissed – Appeals allowed with costs.

(2019) 1 MLJ 163

QD Seatamon Designs Private Limited v. P. Suresh

Date of Judgment: 20.11.2018

Intellectual Property Laws – Infringement of copyright – Groundless threat – Copyright Act, 1957 (Act), Section 60 – Respondent / Plaintiff who was rendering service as Product Developer in Defendant / Applicant Company chose to terminate his engagement with company – Plaintiff's termination had not been accepted as he was handling sensitive and valuable information relating to copyright – Barrage of mails and communications were sent by Defendant, hence Plaintiff filed suit (Senior suit) under Section 60 of Act for declaration that he had not infringed suit copyright and for injunctive reliefs – Defendant, thereafter, filed suit (junior suit) under Section 51 and 55 of Act for injunctive relief qua suit copyright, damages for alleged mental agony owing to alleged infringement of suit copyright and also filed application in senior suit with prayer for dismissal of senior suit – Whether suit for groundless threat could be rendered infructuous when suit for infringement of copyright was commenced after suit for groundless threat was filed – Held, proviso to section 60 makes position clear that Section 6- would have no application, if person who had made threats commences and prosecutes with due diligence action for infringement of copyright claimed by him – Once suit was filed for infringement of copyright by person who had given threat, suit under Section 60 becomes infructuous, as Section ceases to apply in such situation – Prayer acceded to by applying above principle and holding that senior suit has become infructuous owing to filing of junior suit – If law permits counter claim of this nature to be made in junior suit, this order would not come in way and this order would not become impediment – Senior suit dismissed as infructuous in light of junior suit being filed – Application allowed.

(2019) 1 MLJ 204

Thimma. V. Saradha Ammal (Died) v. M.N. Kumareshbabu

Date of Judgment: 05.09.2018

Succession Laws – Life-interest in Will – Enlargement to absolute ownership – Hindu Succession Act, 1956, Section 14 – Plaintiff / widow with four young children was maintained by her parents – Suit property, allotted to her fater in partition among her father and two brothers – Plaintiff's father executed registered Will giving life-interest of said property to Plaintiff and her mother and after their death to his grandson / 1st Defendant – Suit filed by Plaintiff seeking declaration of title claiming that her life-interest had enlarged to absolute ownership was dismissed, hence this appeal – Whether widowed daughter could be

termed as dependent of her father – Whether property bequeathed as life-interest in Will would blossom into full ownership – Whether claim of Plaintiff was covered under Section 14(1) or 14(2) – Held, widowed daughter could be termed as dependent of her father depending upon surrounding circumstances – Section 14(1) intended to enlarge limited interest vested in a female Hindu into an absolute estates when she has been given a property in recognition of her pre-existing right to maintenance – Right of Plaintiff covered under Section 14(1) – Limited right of possession when she became widow recognized by DW-1 himself by permitting very property to be allotted to father in partition deed – She was put in possession of suit property in lieu of maintenance and by terms of Will granting her limited life interest – This right enlarged to absolute right – Appeal allowed with costs.

(2019) 1 MLJ 212

Chinnaswamy v. Nagalingam

Judgment: 14.11.2018

Civil Procedure – Res Judicata – Exparte decree – Code of Civil Procedure, 1908, Section 11 – Plaintiff filed suit for permanent injunction on ground that he was in possession and enjoyment of suit property – Defendants defended that he had already filed suit and obtained ex-parte decree which had become final – Trial Court dismissed suit – First appellate Court reversed judgment on ground that theory of res judicata was not applicable to expart decree, hence this second appeal – Whether finding of lower appellate Court that ex-parte decree in earlier suit was not binding upon Plaintiff was correct – Whether lower appellate Court ought not to have known ex-parte decree was as good as contested one and would operate as res judicata – Held, Plaintiff was aware of ex-parte decree and had filed Interlocutory Application to set aside ex-parte decree which was dismissed for default – When parties to earlier suit and this suit and suit properties were one and same, findings of First Appellate Court with reference to principles of res judicata was perverse and could not be accepted – Section 11 enumerates that if former suit was between same parties and in respect of same relief, then subsequent suit was to be dismissed on ground of principles of res judicata – Appeal allowed.

(2019) 1 MLJ 215

Ellammal v. Shanmugham

Date of Judgment: 11.09.2018

Property Laws – Possession of Title – Cancellation of Power of Attorney – Plaintiffs filed suit for declaration that sale deeds executed by 1st Defendant as their power agent in favour of 2nd and 3rd Defendants were null and void as they had already cancelled power in favour of 1st Defendant – 2nd Defendant denied knowledge of cancellation of Power of Attorney – Lower Courts dismissed suit, hence this appeal – Whether Lower Courts correct

in drawing adverse inference as against Plaintiffs for failing to examine material witness – Whether notice of cancellation of power / Ex.A5 was mandatory when power deed / Ex. A3 was not coupled with interest – Held, Plaintiffs failed to establish factum of passing of information about cancellation of power of attorney deed to 1st Defendant or other Defendants – Plaintiffs miserably failed to examine 1st Defendant with reference to same – Lower Courts justified in holding that Plaintiffs failed to establish that 1st Defendant had been put on notice about cancellation of power of attorney deed – As per terms of power of attorney, 1st Defendant given full authority to alienate suit property – Plaintiffs without putting 1st Defendant on notice about cancellation of power of attorney deed could not be allowed to sustain reliefs sought for – Appeal dismissed.

(2019) 1MLJ 257

C.R. Ramachary v. Indian Overseas Bank

Date of Judgment: 31.10.2018

Banking and Finance – Loan – Banker's Right of Lien – Indian contract Act, Section 171 – Petitioners had three loans with Respondent / Bank out of which two accounts were settled but one account not settled – 1st Petitioner approached Respondent to release documents in relation to properties mortgaged in relation to loans settled, however, Respondent refused and sent communication that it had exercised its general lien and retained properties mortgaged by 1st Petitioner in respect of settled loans for unsettled loan – Petition filed against said communication – Whether Respondent/Bank can retain properties mortgaged by 1st Petitioner, in exercise of general lien – Held, Section 171 states that bank in absence of contract to contrary, have lien over security for general balance of account – Bank created lien over Petitioner's property which was mortgaged in respect of other two loan accounts – Respondent is well within its rights to retain documents furnished by way of collateral security in relation to earlier two loan accounts, as third loan was not settled – Petition dismissed.

(2019) 1MLJ 289

K. Kuppusamy v. Commissioner, H.R. and C.E.

Date of Judgment: 05.10.2018

Trust and Charities – Religious Endowment – Annual contribution – Tamil Nadu Hindu Religious and Charitable Endowments Act 1959, Sections 6(18), 6(19) and 92(1) – Plaintiff endowment offered Annathanam and collected donations known as “MaathuPanam” – Civil Court confirmed orders of Authorities and held that it was specific endowment – Defendants demanded and collected contribution under Section 92 (1) of Act, as annual contribution for past several years – Plaintiff filed suit for refund of contribution and for declaration – Department contended that they got every right to demand and collect annual

contribution along with Audit Fees – Lower Courts dismissed suit, hence this appeal – Whether character of endowment was determined by civil Court as specific endowment as one falling within category of religious endowment – Whether Section 92 of Act could be applied against Plaintiff endowment – Held, determination by Deputy Commissioner to effect that Plaintiff was Specific Endowment within meaning of Section 6(19) of Act had become final – Once, it was found that Plaintiff was “Specific Endowment” within meaning of Section 6(19), Section 92 of Act empowers department to levy and collect contribution and audit fee from religious institutions depending on income – Plaintiff was collecting monies by way of voluntary contribution from devotees, who take part in Annathanam, conducted by decendants of ancestor on particular day in Temple – It could not be said that Plaintiff Kattalai was doing any act, which was totally disassociated from temple – In view of inclusive definition of religious institution, under Section 6(18) of Act, it would be liable to pay contribution under Section 92(1) – Appeal dismissed.

(2019) 1 MLJ 310

Tamil Nadu Electricity Board v. Nagarajan

Date of Judgment: 19.09.2018

Utilities – Electricity – Sanctioned scheme – Suit filed by Plaintiff for relief of mandatory injunction directing Defendants to remove low tension electric power line passing through their property – Defendants / Appellants herein contended that based on sanctioned scheme, overhead low tension wire had been taken and civil suit was not maintainable – Lower Courts decreed suit, hence this appeal – Whether lower Courts were justified in granting relief on basis of Ex.B1 without referring to Annexure to Ex.B1, which indicates sanction scheme – Whether in view of sanction scheme, Civil Court had jurisdiction to come to different conclusion – Held, in absence of prior intimation and consent of Plaintiff, Defendants had pulled power line across suit property – Plaintiff entitled to maintain suit for removal of same in civil Court – Defendants were liable to remove same as they failed to establish that work with reference to same had backing of valide sanctioned scheme as contemplated under Electricity Act – Lower Courts justified in granting relief in favour of Plaintiff as Ex.B1 did not indicate that work in question had backing of sanctioned scheme – Appeal dismissed with costs.

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MADRAS HIGH COURT – CRIMINAL CASES

(2019) 1 MLJ (Cr) 1

John v. State

Date of Judgment: 31.10.2018

Murder – Appreciation of evidence – Indian Penal Code, 1860, Sections 302 and 341 – Trial Court convicted accused for offence under Sections 341 and 302 for restraining victim, attacking him and causing his death, hence this appeal against conviction – Whether conviction of Appellant for murder justified – Held, discrepancies with regard to distance between Church and place of occurrence and manner in which complaint was given to Police were minor in nature and did not discredit or shake case of prosecution – Undue importance should not be attached to omission, contradiction and discrepancies, which do not go to root of matter and shake basic version of prosecution witnesses – By the time PW.1/brother of deceased rushed towards deceased, he saw him lying dead and PW.1 did not see any reason to rush deceased person to hospital – He therefore, chose to call Ambulance – This conduct exhibited by PW.1, was not unnatural – PW.1 immediately after incident, chose to go to Police Station along with PW.2 and gave complaint against Appellant – Prosecution proved guilt of Appellant beyond reasonable doubts – Appeal dismissed

(2019) 1 MLJ (Cr) 14

R. Ravikumar v. Central Bureau of Investigation

Date of Judgment: 31.10.2018

Transfer of Case – Final Report – Protection of Children from Sexual Offences Act 2012 (Act), Section 6,10 and 12 – Indian Penal Code 1860 (Code), Sections 342, 328, 376(AB), 376(DB) and 506(ii) – Complaint given by 3rd Respondent / defacto complainant, alleging that her daughter, a minor girl was sexually assaulted by fifteen men, multiple times – Complaint registered on file of 2nd Respondent for offence under Sections 341, 342, 328, 376(AB) and 376(DB) and under sections 6, 10, 12 of Act against accused / Petitioners – Petitioners were arrested and remanded to judicial custody – Petition filed by Accused seeking transfer of investigation – Whether petition is maintainable and whether Petitioners have made any extraordinary or special grounds for transfer – Held, no specific material fact has been averred in petition regarding mala fide exercise of power by 2nd Respondent – All grounds raised in petition are matter for trial – No assertion has been made by way of affidavits – Investigation has been completed, final report has been filed and case has been taken up on file of Sessions Judge – Petitioners have not made out any extraordinary or special grounds for transfer of investigation or further investigation – Petition dismissed.

(2019) 1 MLJ (Cr) 20

L. Anthony Raj v. State by the Inspector of Police

Date of Judgment: 10.12.2018

Robbery – Sentence – Indian Penal Code 1860, Sections 394, 397 and 452 – Trial Court convicted Appellants / 1st and 3rd accused under sections 452, 394 r/w 397 for entering into houses, committing robbery and causing hurt to inmates of house, hence these appeals – Whether conviction and sentence of Appellants under sections 452, 394 and 397, justified – Held, defense was not able to shake testimony of inmates of houses / PW1, PW3, PW4, and PW5 in cross-examination – No reason for these witnesses to foist case on accused – No satisfactory evidence regarding seizure of weapons – Evidence of Investigating Officer with regard to seizure of weapons, not very clear – Conviction under Section 397 could not be sustained – Appellants do not deserve same indulgence as their coaccused, in view of manner in which they removed ring / MO-2 that was worn by child – Conviction and sentence against Appellants under Section 394 r/w 397 set aside but convicted for offence under Section 394 (2 counts) each – Sentence of Rigorous Imprisonment reduced to 5 years for each count under Section 394 for each Appellant – Conviction and sentence for offence under Section 454 confirmed – Appeals partly allowed.

(2019) 1 MLJ (Cr) 36

Jeevanandham v. State

Date of Judgment: 20.09.2018

Quashing of final report – Disobedience of Public servant order – Code of Criminal Procedure, 1973 (Code 1973), Sections 41, 195(1)(1)(i) and 482 – Indian Penal Code, 1860 (Code 1860), Sections 172 to 188 – Petitioners filed petitions to quash final reports as cases were registered against them under Section 188 of Code 1860 along with other offences – Whether guidelines to be followed by Police while dealing with offences under Section 188 of Code 1860 – Held, Police Officer could not register FIR for any of offences falling under Section 172 to 188 of Code 1860 – Police Officer would have authority to take action under Section 41 of Code 1973, when cognizable offence under Section 188 of Code 1860, committed in his presence – Role of Police Officer confined only to preventive action and thereafter, he had to inform to public servant concerned – To attract Section 188 of Code 1860, written complaint of public servant concerned should reflect following ingredients – There must be order promulgated by public servant who was lawfully empowered to promulgate it – Person with knowledge of such order had disobeyed – Such disobedience causes or tends to cause obstruction, annoyance or risk of it to any person lawfully employed, danger to human life, health or safety or riot or affray – Promulgation must be done openly and in public – Order must be notified or published by beat of drum or in Gazette or published in newspaper with wide circulation – No Judicial Magistrate should take cognizance of Final Report when it reflects offence under Section 172 to 188 Code 1860 – Final Report could be taken cognizance insofar as offences not covered under Section 195(1)(1)(i) of Code 1973 – Final Report filed in each of case quashed – Petitions allowed.

(2019) 1 MLJ (Cr) 61

G. Sithivinayagamorthy v. State

Date of Judgment: 02.11.2018

Illegal Gratification – Demand and acceptance – Prevention of Corruption Act, 1988, Sections 7 and 20 – Trial Court convicted Appellants / accused, working in Commercial Tax Officer for demand and acceptance of bribe from defacto Complainant / P.W.3, hence this appeal – Whether lower Court was right in considering prosecution evidence sufficient to hold accused guilty – Held, prosecution at all stages failed to prove beyond doubt that 1st accused demanded bribe on certain date or 1st accused demanded and obtained bribe on subsequent date through his assistant/2nd accused – Prosecution had to prove that 2nd accused had in his possession consciously the tainted money – When prosecution evidence was defective right from proving factum of demand, acceptance and recovery, merely by invoking Section 20 of Act, Appellants could not be convicted – Trial Court had not tested prosecution witnesses properly – Contradictions and lapse in case of prosecution enures benefit of doubt in favour of Appellants – Appeals allowed.

(2019) 1 MLJ (Cr) 67

S. Vinayagam v. State by Inspector of Police

Date of Judgment: 10.12.2018

Culpable homicide – Sudden quarrel – Indian Penal Code, 1860, Sections 302, 304(II) and 498A – Trial Court found Appellant / accused guilty under Section 304 (II) for murder of his wife and acquitted him of charged offences under Sections 498-A and 302, hence this appeal against conviction – Whether Trial Court justified in convicting Appellant for offence under Section 304(II) on reasoning that incident occurred on account of sudden quarrel – Held, in dying declaration, victim stated that on fateful day, it was accused who quarrelled with her while he was searching for his motor bike key – Accused took kerosene can, poured kerosene on victim, thereafter, took matchbox, ignited matchstick and set her ablaze by throwing matchstick at her – One could not say that all these three acts were done in heat of passion – Dying declaration of victim shows that accused suspected her fidelity and quarrelled with her – She also stated that accused would come home drunk and abuse her – This act of accused would fall within definition of work “cruelty” under Explanation (a) to Section 498-A – Acquittal of accused by Trial Court under Section 498-A was incorrect – Appeal dismissed.

(2019) 1 MLJ (Cr) 82

K. Ravichandran v. Inspector of Police

Date of Judgment: 19.09.2018

Recalling of witness – Discretion of Court – Code of Criminal Procedure, 1973, Section 311 – Trial Court allowed petition filed by prosecution under Section 311 to recall certain witnesses and mark certain documents, hence this petition – Whether trial Court rightly exercised its discretion by allowing petition filed by prosecution – Held, charge against accused persons was that they fabricated bogus sale deed by impersonation and by committing forgery – In order to substantiate this charge, prosecution had to necessarily prove case beyond reasonable doubts against accused persons – Case of this nature was not private dispute between parties, but crime involving moral turpitude which involved public interest – Very wide discretion given to Court under Section 311 to recall and re-examine witness – Lower Court rightly exercised its discretion by allowing petition filed by prosecution – Accused person would not be put to any prejudice since they would have opportunity to cross examine witness and rebut documents sought to be relied upon by prosecution – Petition dismissed.

(2019) 1 MLJ (Cr) 88

Karal Marks v. State rep by the Inspector of Police

Date of Judgment: 23.10.2018

Murder – Exception – Indian Penal Code, 1860, Sections 300, 302 and 304 – Trial Court convicted Appellant under Section 302 for assault of his wife which led to her death, hence this appeal – Whether conviction of Appellant for murder justified – Held, victim was cooking food and was unarmed – Appellant was armed with deadly weapon, with which he assaulted his wife on back of head with great force and caused deep cut – All muscles, blood vessels, neck bone, bronchial and spinal cord were found fully cut – Nature of weapon, part of body on which injury was inflicted, nature of injury and amount of force used by Appellant, show that Appellant had taken undue advantage of situation and acted in cruel manner – Appellant would not be entitled to benefit of Exception 4 to Section 300 – Appellant could not get benefit of his case falling under Section 304(ii) or even under 304(i) – Weapon was so deadly and blow was so forceful that neck was almost severed from body – Appeal dismissed.

(2019) 1 MLJ (Cr) 104

Chakra Compactors v. D. Vijaya Kumar

Date of Judgment: 14.11.2018

Negotiable Instruments – Statutory notice – Authorization to file complaint – Negotiable Instruments Act, 1881, Sections 138 and 139 – Cheque give by Respondent / accused to Appellant / Complainant firm from his personal account to settle dues of his firm, got dishonoured – Complainant filed complaint under section 138 of Act – Trial Court convicted accused, however, first Appellate Court set aside conviction, hence this appeal – Whether statutory notice under Section 138(b) of Act had been properly effected – Whether statutory notice under Section 138(b) of Act had been properly effected – Whether Manager-cum-Power of Attorney Holder of Complainant firm / P.W.1 was not supposed to maintain complaint on behalf of Complainant firm and he could not have deposed before trial Court without any authorization – Held, notice under Section 138(b) issued to correct address of accused – Though it was returned as addressee left, it could be presumed that notice was issued to correct address of accused and therefore, served – Complaint filed by Complainant through P.W.1 could be maintained and his evidence before trial court could be taken on record – Even though accused claimed that he was not one of the partner of firm, he issued cheque in question and not denied his signature – Initial presumption established in favour of Complainant not rebutted by accused – Execution of cheque established – Statutory presumption by decree of proof of preponderance of probability could be safely drawn in favour of Complainant – Accused in order to pay legally enforceable debt, issued cheque, which was dishonoured for want of funds, hence offence punishable under Section 138 of Act established – Impugned Judgment of first appellate court set aside – Appeal allowed.

(2019) 1 MLJ (Cr) 153

Charles Shayaraj v. State represented by The Inspector of Police

Date of Judgment: 19.09.2018

Counterfeit Currency – Confession statement – Indian Penal Code, 1860 (Code), Sections 489-B and 489-C – Indian Evidence Act, 1872 (Act), Sections 27 and 30 – Trial Court convicted Appellants / accused under Sections 489-B and 489-C of Code for alleged offence of possessing counterfeit notes, hence these appeals – Whether fake currency alleged to have been recovered from 1st and 2nd accused while they attempted to exchange it as genuine and from 3rd accused residence in presence of 3rd and 4th accused residence in presence of 3rd and 4th accused proved in manner known to law – Held, prosecution proved that 1st and 2nd accused possessed forged counterfeit currency knowing and reason to believe same to be forged and used it as genuine by tendering to P.W.1 – They procured said counterfeit currency notes from 3rd accused which was disclosed by confession statement

admissible under Section 27 of Act – Offence under Section 489-B and 489-C proved against 1st and 2nd accused – Recovery of bundles of counterfeit currency from possession of 3rd accused proved through mahazar – He has sold currency notes to 1st and 2nd accused proved through their confession statement as well as from recovery of M.O.1 series from their possession – Except confession statement of 3rd accused that 4th accused came to his house to receive counterfeit currency, no other evidence to implicate 4th accused – Conviction of 1st, 2nd and 3rd accused partly allowed – Appeal of 4th accused allowed.

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