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IMPORTANT CASE LAW



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SUPREME COURT – CIVIL CASES

(2019) 2 SCC 192

Ramla v. National Insurance Co. LTD. (Santhangaunder)

Date of Judgment: 30.11.2018

A. Motor Vehicles Act, 1988 – Section 166 – Compensation – Determination of – Deceased victim working in foreign country – Salary certificate adduced by claimants – Need to compute compensation based on salary certificate

B. Motor Vehicles Act, 1988 – Sections 166 and 168 – Compensation – Grant of amount in excess of the claimed – Reiterated, is permissible

(2019) 2 SCC 338

Sri Ram mandir, Jagtial v. S. Rajyalaxmi (Ramana, J.)

Date of Judgment: 10.12.2018

Specific Relief Act, 1963 – Sections 34 and 38 – Declaration of ownership and title – Matters to be established and proved

(2019) 1 MLJ 379 (SC)

Municipal Corporation of Greater Mumbai v. Pratibha Industries Ltd.

Date of Judgment: 04.12.2018

Alternative Dispute Resolution – Appointment of arbitrator – Recall of order – Arbitration and Conciliation Act, 1996 (Act), Sections 9 and 11 – Constitution of India, 1950, Article 215 – Petition filed by Respondent under Section 9 of Act of interim injunction restraining encashment of bank guarantees given by them, allowed by High court and also, Sole arbitrator appointed by Respondent on no objection given by Assistant Engineer of Appellant – On notice of motion filed by Appellant against appointment of Sole Arbitrator, Single Judge recalled order of appointment – Division bench allowed appeal filed by Respondent holding that there is no provision in Part I of Act, for any court to review its own order, hence this appeal – Whether High Court had jurisdiction to recall its own order – Held, clauses referred to as arbitration clauses could not, prima facie, be regarded as such – Assistant Engineer was not empowered to take any decision regarding appointment of Arbitrator – Oral agreement between parties de hors Clauses could not have been arrived at – High Courts were courts of record, set up under Article 215 of Constitution – Jurisdiction to recall their own orders was inherent by

virtue of fact that they were superior courts of record – Having held that there is no arbitration agreement, Act will not apply – Impugned judgment of Division Bench set aside – Appeal disposed of.

(2019) 2 SCC 455

Simplex Infrastructure LTD. v. Union of India

Date of Judgment: 05.12.2018

A. Arbitration and Conciliation Act, 1996 – Section 34 – Extension of limitation period/Condonation of delay beyond the period/Condonation of delay beyond the period prescribed – Impermissibility of, even when applicant is the State and delay is owing to administrative difficulties – Held, Section 5 of the Limitation Act, 1963 has no application to an application challenging an arbitral award under Section 34 of the 1996 Act

B. Arbitration and Conciliation Act, 1996 – Section 34 – Exclusion of time for proceeding bona fide in a court/forum without jurisdiction – Permissibility of – Condonation of delay – Not grantable, when petition otherwise barred even after extending benefit of Section 14 of Limitation Act, 1963

2019) 2 SCC 476

Mahabir Prosad Choudhary v. Octavius Tea & Industries LTD. (Ashok Bhushan, J.)

Date of Judgment: 04.12.2018

Labour Law – Labour Court/Industrial Tribunal – Recall of ex parte award – Jurisdiction of Tribunal – Power to entertain application for recall of ex parte award beyond prescribed period – When available – When prescribed conditions for exercise of ex parte power are not satisfied/sufficient cause shown for non-appearance – Violation of principles of natural justice – Effect – Copy of written statement not sent to opposite party

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SUPREME COURT – CRIMINAL CASES

(2019) 2 SCC 303

State of U.P. v. Wasif Haider

Date of Judgment: 10.12.2018

A. Criminal Trial – Identification – Test Identification Parade – Delay – Effect – Proper mode of conduct of – Offence of rioting and firing at police personnel causing death of senior official and injuring others – Out of seven eyewitnesses who participated in TIP, five of them identifying accused with 100% precision – Credibility of

B. Criminal Procedure Code, 1973 – Sections 378 and 386 – Appeal against acquittal – Powers of appellate court – Scope – Reiterated – Interference warranted only when there is perversity of fact and law – Presumption of innocence further reinforced against acquitted accused

C. Criminal Trial – Injuries, Wounds and Weapons – Firearm/Gunshot injuries/wounds/Ballistics/Ballistic expert – Discrepancy in post-mortem and FSL report – Post-mortem report stating that there were only two wounds on body of deceased viz. Entry and exit wound – FSL report stating that bullet allegedly recovered from ashes of deceased was charred and blistered

D. Criminal Trial – Witnesses – Injured witness – Non-examination – Effect

E. Criminal Trial – Investigation – Defective or illegal investigation – Held, benefit of doubt arising out of faulty investigation accrues in favour of accused

(2019) 2 SCC 311

Viran Gyanlal Rajput v. State of Maharashtra

Date of judgment 05.12.2018

A. Crimes Against Women and Children – Death Sentence – Kidnapping, rape and murder of minor, and causing disappearance of evidence – Sentence – Death Sentence – Principles on basis of which justification for death penalty need to be considered, reiterated – Commutation of death sentence to fixed minimum term of imprisonment – When warranted

B. Crimes Against Women and Children – Protection of Children from Sexual Offences Act, 2012 – Sections 10 and 4 r/w Sections 302 & 201 IPC – Kidnapping, rape and murder of minor and causing disappearance of evidence – Conviction – Sustainability

C. Criminal Trial – Conduct of accused, complainant, witnesses, etc. – Conduct/Reaction/Behaviour of witnesses – Pws 4 and 5 along with other villagers searching nearby settlement for a person in red T-shirt when it was discovered that victim had gone missing

D. Criminal Trial – Identification – Identification of accused – Identification of accused on basis of clothes worn without conduct of TIP – Validity

E. Evidence Act, 1872 – Section 27 – Recovery of dead body and articles belonging to deceased at behalf of accused after 5 days

(2019) 2 SCC 393

Deepu v. State of M.P. (Shantanagoudar, J.)

Date of Judgment: 14.12.2018

Criminal Procedure Code, 1973 – Section 319 – Supplementary charge sheet ignored by trial court while discharging appellant-accused – No bar to proceed against him under Section 319 CrPC based on supplementary charge sheet, particularly when sufficient material is brought on record against him during course of trial

(2019) 2 SCC 466

State of Punjab v. Rakesh kumar (Ramana, J.)

Date of Judgment: 03.12.2018

A. Narcotic Drugs and Psychotropic Substances Act, 1985 – Objective of, reiterated – Drugs and Cosmetics Act, 1940 – Objective of, reiterated

B. Narcotic Drugs and Psychotropic Substances Act, 1985 – Section 80, 8, 21 and 22 – Offences in relation to manufactured drugs – Provisions of NDPS Act can be applied in addition to provisions of Drugs and Cosmetics Act and are not in derogation of Drugs and Cosmetics Act – Additionally, it is prerogative of State to prosecute offender in accordance with law – Order of High Court, allowing suspension of sentence of respondent accused, convicted under NDPS Act, observing that manufactured drugs, be it containing narcotic drugs or psychotropic substances, if manufactured by a manufacturer, must be tried, if violation is there, under Drugs and Cosmetics Act and not under NDPS Act, held erroneous, hence, set aside

(2019) 1 MLJ (CrI) 326 (SC)

State of Kerala v. Rasheed

Date of Judgment: 30.10.2018

Trial – Deferral of cross-examination – Code of Criminal Procedure, 1973, Sections 231(2) and 309(1) – Charge-Sheet filed against 8 persons, including Respondent/2nd accused for alleged commission of certain offences – Application filed under Section 231(2) by Respondent to defer cross-examination was dismissed by Sessions Judge which was reversed by High Court, hence this appeal – Whether exercise of discretion under Section 231(2) by Sessions Judge was valid and legally sustainable – Held, guiding principle for Judge under Section 231(2) was to ascertain whether prejudice would be caused to party seeking deferral, if application was dismissed – While deciding application under Section 231(2), balance must be struck between rights of accused, and prerogative of prosecution to lead evidence – Certain factors must be kept in consideration – Possibility of undue influence on witness(es) – Possibility of threats to witness(es) – Possibility that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent defence strategy – Possibility of loss of memory of witness(es) whose examination-in-chief had been completed – Occurrence of delay in trial, and non-availability of witnesses, if deferral was allowed, in view of Section 309(1) – Bald assertion made by Counsel for Respondent that defence of Respondent would be prejudiced if cross-examination was not deferred – High Court had given no reasons for reversal of order of Sessions Judge, particularly in light of possibility of undue influence and intimidation of witness(es) since Respondent and 7th accused were highly influential political leaders – appeal allowed.

MADRAS HIGH COURT – CIVIL CASES

2019) 1 MLJ 177

Sun Pharma Laboratories Limited V. Saviour Drugs Pvt Ltd.

Date of Judgment: 04.12.2018

Intellectual Property Laws – Trademark – Infringement – Trademarks Act, 1999 (Act 1999), Section 134(1) – Commercial Courts Act, 2015 (Act 2015), Sections 2 and 7 – Plaintiff filed present suit for injunctive reliefs pertaining to complaint of infringement of suit trademark and passing off qua suit trademark – Whether Plaintiff entitled to injunctive reliefs pertaining to infringement of registered trademark and passing off of suit trademark – Whether Plaintiff entitled to damages, costs and compensatory costs – Held, Commercial Division saw suit trademark / Exs.P7 and P8, took it away from sweep of its eyes – Little later, saw Defendant's alleged offending mark / Ex.P9 and asked itself question as to whether man of average intelligence with imperfect recollection and ordinary prudence

would be lulled into belief that what he was seeing now / alleged offending mark / Ex.P9 was what he had seen earlier / Plaintiff's mark / Exs.P7 and P8 – Answer was in affirmative – Plaintiff proved its case, hence, entitled to decree of injunctive reliefs as sought for – With regard to prayer for damages, no evidence had been let-in, therefore, Plaintiff had not proved its case qua damages – Defendant did not enter appearance in spite of being served with suit summons leaving Plaintiff to carry this suit through for period of three years in this Court to its logical end – Plaintiff entitled to costs as well as compensatory costs – Suit decreed with costs and compensatory costs.

(2019) 1 MLJ 297

Akilandam Ammal v. S. Varadarajan

Date of Judgment: 25.10.2018

Civil Procedure – Execution Proceedings – Set aside application – Code of Civil Procedure, 1908 (Code), Order 21 Rule 89 and Section 151 – Limitation Act, 1963 (Act), Article 127 – Judgment Debtors / Defendants were directed to pay mesne profits in final decree proceedings – Decree Holders / Plaintiffs filed Execution Proceedings to execute order by attaching schedule property – Judgment Debtor filed application for setting aside sale under Order 21 Rule 89 and Section 151 of Code – Prior to filing of this application, Judgment Debtor deposited amount due towards mesne profits together with poundage and commission charges – Executing Court dismissed application on ground that amount had not been deposited within period of 30 days which was confirmed in appeal, hence this revision – Whether amounts were deposited within period of limitation for filing application to set aside sale – Held, Article 127 of Act prescribes period within which application to set aside sale should be made – Earlier, this was 30 days now it had been enhanced to 60 days – Judgment Debtor had made deposit on 56th day after sale – Order passed by lower Courts set aside – Revision allowed.

(2019) 1 MLJ 315

Parvathi v. Gowri Ammal

Date of Judgment: 22.11.2018

Tenancy Laws – Eviction – Impleadment of Parties – On death of landlord, Petitioners were made as party Respondents before this Court in revision proceedings that arose out of eviction petition – Right of Petitioners over demised premises determined by way of preliminary and final decree in partition suit – Applications filed by Petitioners to implead them as necessary parties in execution proceedings and for stay of further execution proceedings dismissed by Execution Court, hence these revision petitions – Whether Petitioners were necessary parties to eviction proceedings in view of final decree

passed in their favour determining their title over demised premises and whether any remedy available to Petitioners – Held, rights of Petitioners over suit property were protected – Right to seek for possession of demised premises was always available to them by separate independent proceedings – Their impleadment in present execution proceedings was not warranted – No infirmity in order of Execution Court, rejecting prayers for impleading Petitioners as necessary parties in execution proceedings and for staying execution proceedings – Revision Petitions dismissed.

(2019) 1 MLJ 332

Emsar MGF Land Limited v. S.P. Velayutham

Date of Judgment: 04.12.2018

Civil Procedure – Commercial division – Determination of Jurisdiction – Commercial Courts Act, 2015, Section 2(1)(c)(vii) – Suit property identified by Defendants for Plaintiff for development of business / Commercial Centre – Certain sums of money paid by Plaintiff to Defendants towards clearance of encumbrances – Defendants could not get suit property conveyed in favour of Plaintiff free of encumbrances, hence this suit by Plaintiff for recovery of monies paid to Defendants – Whether this suit will qualify under sub-clause (vii) of Section 2(1)(c) and whether Commercial Division had jurisdiction to entertain suit – Held, four agreements which constitute nucleus of this suit relate to suit property to be used exclusively in trade or commerce, for development of business / commercial centre in city – Literal and strict interpretation of 'used' as occurring in sub-clause (vii) of Section 2(1)(c) of Act necessarily refers to past, present and future – If intention of Parliament was to restrict it to any one of three, term used would have been suitably prefixed – Intention of Parliament was to leave it open to be made applicable to all three situations, namely past, present and future depending on factual matrix of each case – Sub-clause (vii) should receive wide and broad connotation without restricting it to immovable properties (subject matter of suits) used in praesenti alone – It was better to keep this avenue broad and wide enough to accommodate suits wherein suit property was likely to be used exclusively in trade and commerce in future also – Commercial Division would have jurisdiction to entertain instant suit – Jurisdiction determined.

(2019) 1 MLJ 339

S. Thiyagaraja Gurukkal v. T.A.S.S. Sangam

Date of Judgment: 30.10.2018

Civil Procedure – Suit for bare injunction – Additional documents – Civil Procedure Code, 1908, Order 41 Rule 27 – Plaintiff / sangam filed suit for permanent injunction

claiming title to suit property based upon settlement deed – Trial court dismissed suit which was reversed by appellate court, hence this appeal and application for reception of additional documents by defendants – Whether additional documents were required to be received – Whether Appellate Court justified in going into question of title, in absence of prayer for declaration of title – Whether finding rendered by appellate Court regarding possession of Plaintiff on basis of property tax receipts was justified in law – Whether appellate Court correct in law in decreeing suit by not reversing finding of fact rendered by trial court – Held, application preferred by defendants for reception of additional documents, has not satisfied parameters governing principles of law provided under Order 41 Rule 27 – Sufficient cause not shown by Defendants as to why they had not endeavored to produce projected additional documents before lower Courts – Additional documents could not be received without adducing oral evidence – Additional documents were not required for sustaining defence version – Appellate court erred in going into question of title in absence of prayer for declaration of title by Plaintiff – Plaintiff's title to suit property was under challenge in toto by Defendants – Appellate court erred in accepting Plaintiff's case based upon tax receipts and service connection documents which did not establish Plaintiff's legal possession and enjoyment of suit property – Projected documents came into existence after institution of lis – Appellate court failed to give valid and acceptable reasons for setting aside well-considered reasoning of trial court – Appellate Court erred in indirectly upholding claim of Plaintiff's title to suit property – Appeal allowed with costs.

(2019) 1 MLJ 406

Mohala v. Siva

Judgment: 22.11.2018

Civil Procedure – Rejection of plaint – Non-Disclosure of cause of action – Code of Civil Procedure, 1908, Order 7 Rule 11 – Plaintiffs / Respondents filed suit for permanent injunction restraining Petitioners / 1st and 2nd Defendants / owners of A Schedule property from putting up construction in B Schedule property, for which Plaintiffs entered into sale agreement with vendor – Petition filed by Petitioners for rejection of plaint on ground that plaint averments did not disclose cause of action was dismissed by trial Court, hence this revision – Whether Plaintiffs can maintain relief of permanent injunction against statutory authority from granting planning permission for construction in B Schedule property to defendants 1 and 2 on ground that Plaintiffs holds a sale agreement for said property – Held, Plaintiffs entered into sale agreement with vendor in connection with B Schedule Property – Agreement of Sale, not being Deed of Conveyance, would not confer any title to Plaintiffs or transfer any interest in B Schedule Property – Plaintiffs clearly indicated that their title over B Schedule property was yet to be conferred, hence, cause of action yet to arise – In absence of any cause of action, no scope for trial in present suit – Trial Court ought to have considered these aspects with regard to Plaintiffs' claim of title over Sale Agreement – Plaintiffs' claim rejected – Revision allowed.

(2019) 1 MLJ 423

Commissioner v. Srikanth

Date of Judgment: 26.10.2018

Trust and Charities – Private Temple – Purview of Act – Hindu Religious and Charitable Endowments Act, 1959 – Plaintiffs filed suit for declaration that suit property / institution was not religious Institution or temple falling within purview of Act and for consequent injunction – Defendants / Commissioner claimed that institution was temple – Trial Court decreed suit, hence this appeal – Whether institution was private Institution or temple / religious Institution under provisions of Act – Whether there had been dedication of Institution to public – Whether institution had trappings of temple / religious Institution – Held, no stipulation for public to make any contribution on occasions and no endowment made to temple by any outsider – Control and management of temple at all times was with family of Plaintiffs even as admitted by D.W.1 – There were no Hundial, Gopuram, Prakaram and Moorthies – Worship by public was encouraged – Merely because there was public visit to temple, worship would not give institution character of public temple – Institution was not public temple and there was no dedication for benefit of general public – Merely because public used to worship in place, it could not be categorized as public temple – Appeal dismissed with costs.

(2019) 1 MLJ 445

Commr., H.R. & C.E. Admn. Dept. v.A. Krishna Iyer

Date of Judgment: 03.10.2018

Trust and Charities – Private Temple – Non Production of Inspection Report – Tamil Nadu HR and CE Act 1959, Section 70 – Indian Evidence Act, 1872, Section 114(g) – Plaintiffs / Trustees filed suit under Section 70 of Act 1959 seeking to set aside order passed by 1st Defendant / Commissioner, HR and CE and declare that temple in issue is private temple belonging to 1st Plaintiff – Suit decreed by Trial Court – Present appeal preferred challenging same – Whether non-production of inspection report is fatal to the case of the appellant / defendant – Whether the temple is a private temple or a public temple – Held, Section 114(g) of Act 1959, states that adverse inference can be drawn against party for non-production of any vital document – Ingredient required to declare a temple as a public temple is that there must be dedication for the benefit of the Hindu community as a place of public religious worship – There is no evidence of such dedication – Travancore Samasthanam have given a specific grant to the community and the management of the Temple had been vested with the members of the Temple had been vested with the members of the Brahmin community in the village – It is clear that the temple is a private temple –

Seen from evidence that temple does not have Rajagopuram, Hundial, Kodimaram and Balipeedam which are necessary ingredients for public temple – Defendants have not produced any evidence contradicting facts established by Plaintiffs – Presumed that report had not been produced only because it was adverse to stand of Defendants – Appeal dismissed with costs.

(2019) 1 MLJ 449

NLC India Limited v. SICAL Logistics Limited

Date of Judgment: 31.10.2018

Alternative Dispute Resolution – Arbitration – Exparte interim orders – Arbitration and Conciliation Act, 1996 (Act), Section 9 – Code of Civil Procedure, 1908 (Code), Order 39 Rule 3 – Disputes arose between Petitioners and Respondent with regard to contractual arrangement for transportation of coal – Respondent filed petition under Section 9 of Act and interim applications – Ex-parte interim orders granted, hence these revisions – Whether orders impugned to be set aside on ground of want of jurisdiction – Whether principles underlying Order 39 Rule 3 of Code had to be borne in mind while considering application under Section 9 of Act – Held, Principal District Judge was on leave and Additional District Judge was discharging duties in in-charge capacity – He was holding full additional charge and whatever power and jurisdiction that vested in Principal District Judge could also be exercised by Additional District Judge – Orders impugned could not be set aside on ground of want of jurisdiction – Lower court nowhere recorded reasons as to why it did not order notice to opposite party before granting interim relief and also, as to why it felt constrained to grant exparte relief – Reasons must be set out justifying departure from general approach and since no reasons assigned as to why exparte interim order was being passed, there was non-application of mind – Principles underlying Rule 3 to Order 39 of Code had to be borne in mind while considering application under Section 9 of Act but same had been lost sight of totally in this case, therefore, orders impugned set aside – Petitions allowed.

(2019) 1 MLJ 473

Saraswathi Ammal v. V. Vadamalai Rengappan (died)

Date of Judgment: 25.10.2018

Property Laws – Possession of title – Service inam land – Transfer of Property Act, 1882 (Act 1882), Section 43 – Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 1959), Section 41 – Tamil Nadu Minor Inam Abolition Act 30 of 1963 (Act 1963) – Respondent / Plaintiff filed suit seeking declaration of title and permanent injunction having purchased suit property from original inam holder – Appellant / Defendant claimed that sale deed in favour of Plaintiff was set aside by Inam Settlement Thasildar – Trial Court dismissed suit which was reversed by first appellate Court, hence this appeal – Whether

Respondent could take benefit of Section 43 of Act 1882, when sale of service inam land was void as opposed to public policy – Whether lower appellate Court was right in allowing appeal when land was vested with Government under Act 1963 – Held, sale deed in favour of Plaintiff was void abinitio by statute and not by act of one of parties – Transaction done in defiance of law laid down under statute – Section 41 of Act 1959 declares any sale of inam land as null and void – Sale barred by statute since nature of lands was service inam for providing garlands to Deity – Benefit under Section 43 of Act 1882 would never enure to Plaintiff – On introduction of Act 1963, service inam lands converted into ryotwari patta by Government Inamthars exercised option as fixed under Act 1963 and paid amount determined – They were also granted ryotwari patta – As they opted to release land from Katalai of service inam, they had right to sell land and therefore, sold land to Defendant who acquired perfect title – Plaintiff had not challenged earlier order – Judgment and decree passed by Appellate Court set aside and that of trial Court confirmed – Appeal allowed with cost.

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MADRAS HIGH COURT – CRIMINAL CASES

(2019) 1 MLJ (Cr) 161

P.L. Jayaraj v. State rep. By The Inspector of Police

Date of Judgment: 12.11.2018

Statutor bail – Conditions – Code of Criminal Procedure, 1973, Section 162(2) – Petitioner filed petition for grant of statutory bail under Section 167(2) – Magistrate ordered bail on condition that Petitioner shall deposit sum of Five crores to credit of case, hence this petition – Whether condition imposed for grant of bail liable to be modified – Held, only condition that could be imposed while granting anticipatory bail under Section 167(2) was that accused persons shall be released on bail, if he was prepared to and does furnish bail – Apart from that no other requirement was necessary for grant of statutory bail as per Section 167(2) – Charge sheet had not been filed by Respondent police – Petitioner entitled to be released on statutory bail under Section 167(2) – Right to be released under Section 167(2) was indefeasible right and such right could not be extinguished by imposition of onerous conditions – Condition imposed by Magistrate set aside – Petition allowed.

(2019) 1 MLJ (Cr) 166

P. Dhanam v. G. Arjunan

Date of Judgment: 11.10.2018

Negotiable Instruments – Dishonor of Cheque – Legally enforceable debt – Negotiable Instruments Act, Sections 138 and 139 – Magistrate found Respondent guilty under Section 138 of Act, however, Sessions Judge set aside conviction, hence this appeal by Complainant – Whether acquittal of accused for offence under Section 138, justified – Held, though Respondent admitted signature, Complainant gave two different versions for source to lend money – Complainant had not explained as to why she had given huge amount in six different dates even without getting any documents – Subject cheque was obtained only after three months – No prudent lady would lend such huge amount without getting any documentary proof – She had not examined her son to prove source – Doubt arose for lending money by Appellant to Respondent as stated in complaint and in evidence – Benefit of doubt extended to Respondent by Sessions Judge – Appeal dismissed.

(2019) 1 MLJ (CrI) 171

Anthoniammal v. State

Date of Judgment: 11.10.2018

Murder – Provocation – Indian Penal Code, 1860, Sections 304(ii) and 342 – Trial Court found Appellant / accused guilty for offences under Sections 304(ii) and 342 for pouring petrol on her husband and setting him ablaze, hence this appeal – Whether conviction of accused under Sections 304(ii) and 342, justified and whether prosecution proved guilt of accused beyond reasonable doubt – Held, evidence of P.W.2 / neighbour and P.W.3 / mother of deceased show that deceased had attacked accused on particular day and that deceased used to beat accused repeatedly in drunken stage – P.W.3's evidence further indicate that deceased had affair with sister of accused as result of which child was born and also, affair with another lady – All these facts would have been lingering in her mind and caused serious mental cruelty on accused – On date of occurrence accused was subjected to physical violence and only on such persistent provocation, accused took extreme step of pouring petrol and set deceased ablaze – Considering that occurrence took place due to provocation and continuous torture and that accused had one daughter, reduction of sentence would meet ends of justice – Conviction under Sections 342 and 304(ii) confirmed – Substantive sentence of imprisonment imposed by trial Court modified and accused directed to undergo rigorous imprisonment for two years and to pay fine – Appeal partly allowed.

(2019) 1 MLJ (CrI) 176

Saraswathy v. State through Additional Superintendent of Police

Date of Judgment: 23.10.2018

Illegal gratification – Reverse burden of proof – Prevention of Corruption Act, 1988, Sections 7 and 13 – Trial Court convicted Appellant / accused, noon meal Supervisor for receiving illegal gratification from defacto Complainant for forwarding his application for Female Child Protection Scheme, hence this appeal – Whether reverse burden of proof case upon accused discharged by accused – Held, P.W.3 / shadow witness said that, immediately on seeing trap team, he saw accused throwing tainted money through window – Case of prosecution was that only after conducting Phenolphthalein test in hands of accused and collecting samples, they went out and collected tainted money lying on open space outside just below window near of accused seat – This version of prosecution did not appear to be true as it was in open public place for long time – When P.W.3 had seen accused throwing money through window, trap laying officer immediately should have acted upon and recovered same – Instead he completed Phenolphthalein test and thereafter went in search of tainted money – There was lapse and contradiction – Consistent case of accused that she did not demand or receive any illegal gratification and recovery of money was not recovered from her possession required due consideration – There was inconsistency and contradiction

in case of prosecution in respect of demand, acceptance and recovery – Appellant entitled for benefit of doubt – Appeal allowed.

(2019) 1 MLJ (Cr) 185

S. Anbazhagan v. Sub Inspector of Police

Date of Judgment: 19.11.2018

Quashing of Final Report – Cheating – Code of Criminal Procedure, 1973 (Code 1973), Section 482 – Indian Penal Code, 1860 (Code 1860), Section 420 – Petitioner / accused caused wrongful loss to 2nd Respondent – Final report filed by Police under Section 420 of Code 1860 against accused, hence this petition for quashing of report – Whether final report filed under Section 420 of Code 1860 against Petitioner, sustainable – Held, Complainant is required to show that accused had fraudulent or dishonest intention at time of making promise or representation – From failure of accused to keep up promise, culpable intention right at beginning when promise was made, cannot be presumed – Grievance of 2nd Respondent is that Petitioner promised to install Solar Power but same was never done by him – 2nd Respondent has not paid entire amount for Solar Power Plant and what was paid was only advance – Material available on record does not satisfy ingredients of Section 420 of Code 1860 – Prosecution has completely failed to establish offence of cheating against Petitioner and continuation of proceedings before lower Court will amount to abuse of process of Court – Petition allowed.

(2019) 1 MLJ (Cr) 280

Manicka Udayar v. State rep. By The Inspector of Police

Date of Judgment: 03.10.2018

Rioting – Genesis of occurrence – Indian Penal Code, 1860, Sections 148, 149, 307, 324 and 326 – Trial Court convicted Appellants / 1st to 6th accused on allegation that accused came with deadly weapons and indiscriminately cut prosecution party, hence this appeal – Whether prosecution proved guilt of 1st to 6th accused beyond all reasonable doubt – Held, only prosecution party went to accused place and attacked them and as a result, accused exercised right of private defence – “Trial Court found this aspect relying upon evidences of D.W.1 and D.W.2 and Exs. D.1 to D.6 – Entire genesis of occurrence was suppressed and further, witnesses suppressed even injuries sustained by accused – Even the place of occurrence was totally shifted by witnesses during trial – All these facts create serious doubt about entire genesis of prosecution case – Unsafe to convict accused solely on basis of one version of prosecution – Accused entitled to benefit of doubt – Appeal allowed.

(2019) 1 MLJ (CrI) 333

Duraisamy v. Kumarasamy

Date of Judgment: 13.11.2018

Negotiable Instruments – Dishonor of cheque – Appeal against acquittal – Negotiable Instruments Act, 1881 Sections 138 and 139 – Trial Court convicted accused under Section 138 of Act, however, Appellate court set aside conviction, hence this appeal – Whether acquittal of accused for offence under Section 138 of Act, justified – Held, Complainant had stated that accused was his friend, but, in cross-examination, he pleaded ignorance when he was asked as to whether he knew about family size of accused – From earliest point of time in reply notice, accused had been taking stand that account was closed three years earlier and there was no borrowal as alleged by Complainant on certain date and that impugned cheque was not issued to Complainant – Post-dated cheque for five lakh was given on certain date – Complainant had not even taken any step to verify from bank of accused about very validity of cheque, especially, when he was giving huge loan of five lakh without any documentation – When all aforesaid factors were cumulatively appraised together with general tenor of evidence of Complainant, no reason found to upset order of acquittal – Appeal dismissed.

(2019) 1 MLJ (CrI) 352

G. Logeswaran v. State represented by. Inspector of Police

Date of Judgment: 06.12.2018

Quashing of Proceedings – Women Harassment – Code of Criminal Procedure, 1973 (Code 1973), Section 482 – Indian Penal Code, 1860 (Code 1860), Sections 292 (a) and 506(i) – Tamil Nadu Prohibition of Harassment of Women Act, 1998 (Act 1998), Section 4 – de facto Complainant gave complaint on Petitioner under Sections 292 (a), 506(i) of Code 1860 and Section 4 of Act 1998 that he sent threatening messages to her cellphone, pressuring her to marry him – Charges framed by Trial Court, hence this petition – Whether proceedings before Trial Court, to be quashed – Held, requirements of Section 4 of Act 1998 have not been fulfilled – Message sent through mobile phone will not attract requirements of said provision – Proceedings on file of Trial Court, quashed – Petition allowed.

(2019) 1 MLJ (CrI)357

G. Kothandan v. State

Date of Judgment: 05.10.2018

Illegal gratification – Demand and acceptance – Prevention of Corruption Act, 1988, Sections 7, 13 and 20 – Trial Court convicted Appellant / accused / Conservation Inspector for offence under Sections 7, 13(1)(d) and 13(2) for demand and acceptance of illegal gratification from P.W.2 / de-facto Complainant / conservation worker, hence this appeal – Whether explanation offered by Appellant was probable and plausible and rebuts

presumption under Section 20 of Act – Held, PW2 was interested witness in trap and had previous enmity and motive against Appellant – Her evidence regarding demand and acceptance could not be believed without corroboration – Evidence of PW3 and PW4 were in total contradiction to evidence of PW2 regarding demand and acceptance – PW3 was stock witness and contradictions in evidence of PW3 and PW4 made their presence doubtful – Circumstances under which money had been received explained by Appellant – By letting in evidence of DW1 to DW3 in defence and marking Ex.D1 and Ex.C1, Appellant proved that amount handed over by PW2 was only balance loan amount – Reason given by Appellant for receipt of amount was probable and plausible – Benefit of doubt extended to Appellant – Appeal allowed.

(2019) 1 MLJ (CrI)385

Anil Pathak v. Larsen and Toubro Limited

Date of Judgment: 17.12.2018

Quashing of Proceedings – Directors of company – Code of Criminal Procedure, 1973 (Code 1973), Section 482 – Negotiable Instruments Act, 1881 (Act), Section 138 and 141 – Petitioners filed petitions to quash complaints filed by Respondent under Section 138 of Act on ground that they were only Investor Directors / Non-Executive Directors and complaint did not contain sufficient allegations against them to satisfy requirements under Section 141 of Act – Held, in order to make Director of Company liable for offence committed by Company under Section 141 of Act, there must be specific averment against Director to show as to how and in what manner Director was responsible for conduct of business of Company – If it was enough to mechanically repeat requirement under Section 141[1] of Act, any number of Directors could be made as accused in complaint filed under Section 138 of Act – This might lead to abuse of process of court and any person shown as Director would be made to undergo ordeal of trial – Allegations made in complaint did not satisfy requirements of Section 141 of Act – Proceedings quashed insofar as Petitioners are concerned – Petitions allowed.

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