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IMPORTANT CASE LAW



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

Phone Nos. 044– 24958595 / 96 / 97 / 98

Telefax: (044) 24958595

Website: www.tnsja.tn.nic.in

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

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SUPREME COURT CITATIONS CIVIL CASES

(2015) 9 SCC 62

T.N.Terminated Full Time Temporary LIC Employees Assn.
vs.
LIC

Date of Judgment : 18.03.2015

A. Labour Law – Industrial disputes act, 1947 – Ss. 18(3), 12 and 19 – Award passed by Labour Court or Industrial Tribunal – Binding effect of – Awards in question if substituted by settlement/compromise arrived at before court after passing of the awards – Determination of – Yet later award passed by Tribunal based on terms and conditions of the said earlier awards – Validity

- Held, award passed by Labour Court/Industrial Tribunal is binding till it is substituted by another award/court order/court compromise indicating such substitution, or is replaced by another settlement, or terminated by either party under S.19(6)

- Settlement/compromise/scheme in question arrived at before court after passing of awards concerned, held, did not amount to substitution of the awards in absence of any specific indication as to such substitution given in order passed by court pursuant to compromise

B. Labour Law – Industrial Disputes Act, 1947 – Ss.18(3), 12 and 19 – Settlement between management and some of the unions arrived at before court – Parties that were bound – Determination of

C. Labour Law – Industrial Disputes Act, 1947 – Ss.11, 11-A, 14, 15, 18 and 19 – Settlement/ Compromise arrived at before court – Overriding powers of Labour Court/Industrial Tribunal – Industrial Court/Tribunal while adjudicating an industrial dispute has the right to override contracts and create rights which are opposed to contractual rights – Held, in present case CGIT had rightly overridden earlier compromise/scheme/settlements in present case and passed a proper award

D. Industrial Disputes Act, 1947 – Ss.2(ra), 25-T and 35-U – Unfair labour practice – Employing workmen concerned as temporary, badli and part-time employees against permanent posts doing perennial nature of work and continuing them as such for number of years – Clear case of unfair labour practice as defined under S.2(ra) of the Act – Statutorily prohibited under S.25-T – Item 10 Sch.5

(2015) 7 MLJ 183 (SC)

Sharadamma
vs.
Mohammed Pyrejan (D) through LRs.

Date of Judgment : 23.09.2015

Civil Procedure – Continuation of Appeal – Release of Interest – Code of Civil Procedure, 1908, Order 22 Rules 10 and 11 – Appellant/Plaintiff filed suit for declaration of title and for restoration of possession on strength of registered sale deed, same dismissed – On appeal, High Court held that since Plaintiff released her interest in suit property in favour of her daughter, who, in turn, transferred property in favour of third party through sale deed, she lost her right to continue appeal against dismissal of suit – Appeal – Whether Plaintiff lost her right to continue appeal merely due to release of her rights in suit property during pendency of appeal – Held, Order XXII Rule 10 shows that legislature did not envisage penalty of dismissal of suit or appeal on account of failure of assignee to move application for impleadment and to continue proceedings – No dismissal of suit or appeal on account of

failure of assignee to file application to continue proceedings – Open to assignor to continue proceedings, although he ceased to have interest in subject-matter of dispute – Assignor can continue proceedings for benefit of assignee – High Court erred in dismissing appeal and its order being unsustainable set aside – Appeal remitted to High Court for deciding same afresh in accordance with law after hearing parties – Appeal allowed.

(2015) 7 MLJ 370 (SC)

State Bank of Hyderabad

vs.

Rabo Bank

Date of Judgment : 01.10.2015

Civil Procedure – summary Suit – Leave to defend Application – Code of Civil Procedure, 1908, Order 37 Rule 3 – Respondent/Plaintiff carried on business dealings with Appellant/Defendant – Dispute arose, when Appellant did not remit amount even after expiry of due date, Respondent sent telex message to remit proceeds along with interest – Appellant denied its liability – Respondent filed summary suit before High Court – Trial Judge fixed liability on Appellant and made summons for judgment awarding interest – On appeal, Division Bench held that Appellant agreed to pay amount due even de hors Bills of Exchange, which is sufficient to grant decree in favour of Respondent – Appeal with allegation that in absence of opportunity to Appellant to defend its case and file written statement, decision of High Court not correct – Whether Lower courts right in decreeing summary suit without granting relief of leave to defend to Appellant as envisaged under Order 37 Rule 3 – Held, materials indicated involvement of Chief Manager of Appellant – Acting at requests of representatives from Indian clients of Respondent's constituent, Chief Manager induced officers of Appellant to issue tested telex messages of co-acceptance – Further, alleged that those officers not authorized to issue such co-acceptances and motive behind their unauthorized action was to enable constituent of Respondent to get their bills discounted by jeopardizing interests of Appellant – Also, showed that trial of said case was at stage of evidence – Substantial revelations of Appellant in affidavit coupled with views expressed by Division Bench show that there are triable issues for adjudication and Appellant entitled to defend suit – Appellate side of High Court ought to have taken into consideration factual matrix of case before recording its finding – Appellant made out prima facie case of triable issues in suit which needs to be adjudicated – Defendant entitled to grant of unconditional leave to defend suit – Decree by Lower Courts set aside – Appeal allowed.

(2015) 5 MLJ 446(SC)

Indian Performing Rights Society Ltd

vs.

Sanjay Dalia

Date of Judgment : 01.07.2015

Intellectual Property Laws – Trademark – Infringement of – Jurisdiction of Court – Trade Marks Act, 1999 (Act 1999), Section 134(2) – Copyright Act, 1957 (Act 1957), Section 62 – Code of Civil Procedure, 1908 (Code 1908), Section 20 – 1st Defendant owns cinema halls in Mumbai where infringement alleged and entire cause of action arose in Mumbai – But, Appellant/Plaintiff filed suit in Court at Delhi against 1st Defendant to prevent infringement of rights of Plaintiff, as Branch Office of Plaintiff situated at Delhi – Objection raised by 1st Defendant with regard to territorial jurisdiction of Court at Delhi – Single Bench and Division Bench of High Court upheld objection and held that suit should have been filed in Court at Mumbai – Appeals – Whether High Court justified in holding that suit for infringement should have been filed in Court at Mumbai and not in Court at Delhi – Held, provisions of Section 62 of Act 1957 and Section 134 of Act 1999 to be interpreted in purposive manner – Suit can be filed by Plaintiff at place where he resides or carries on business or personally works for gain and he need not travel to file suit to place where Defendant resides or cause of action wholly or in part arises – But, if Plaintiff resides or carries on business at place where cause of action, wholly or in part, also arises, he has to file suit at that place – Plea that suit may be ordered to be transferred to Delhi raised by Appellant, but same cannot be ordered to be transferred – Parties are free to file appropriate application, but suit required to be presented in Court of competent jurisdiction only thereafter question of transfer would be germane – Orders by High Court not interfered – Appeals dismissed.

(2015) 5 MLJ 468(SC)

Shakuntala Bai

vs.

Mahaveer Prasad

Date of Judgment : 02.07.2015

Succession Laws – Succession Certificate – Issuance of – Validity of Will – Indian Succession Act, 1925, Section 372 – 1st Respondent filed application before Trial Court under Section 372 for issuance of succession certificate on basis of subsequent Will of Testator – Trial Court held that subsequent Will was not valid, but deceitfully obtained by converting blank papers, on which signatures of testator procured by fraud, same challenged – High Court reversed decision of Trial Court and directed issuance of succession certificate in favour of 1st Respondent – Appeals by non-applicants in succession certificate proceedings – Whether High Court justified in reversing decision of Trial Court and directing issuance of succession certificate in favour of 1st Respondent – Held, evidence shows that 1st Respondent adopted by Testator – Subsequent Will/Exh.2 by Testator would reveal that it superseded two earlier Wills of Testator – Property referred to bequeathed to 1st Respondent, who was also entrusted with responsibility of looking after Testator’s wife and daughter during their lifetime – Testator wrote and verified document in presence of and under signatures of two witnesses after considerable thought and voluntarily without pressure – Evidence of AW-3 and AW-4 shows that these witnesses able to prove execution of subsequent Will and attestation by two witnesses as required in law – Signature of Testator on these documents endorsed by handwriting experts and report of Forensic Science Laboratory also corroborates such finding – View by NAW-1 that though signatures genuine, those obtained on blank papers, which later on converted into Will, in face of overwhelming testimony of AW-3 and AW-4 rightly rejected – Recitals of subsequent Will also provide sufficient justification for bequest in favour of 1st Respondent – Wife and daughter of testator supported 1st Respondent in his initiatives to obtain succession certificate – Though earlier Will registered, no steps taken by non-applicants to obtain probate – Dispensation by Testator in favour of 1st Respondent cannot be repudiated to be in defiance of logic or unfair – No vitiating or suspicious circumstance found in invalidating bequest – Conclusions by High Court plausible and do not warrant interference – Findings of Trial Court rightly reversed – Appeals dismissed.

SUPREME COURT CITATIONS CRIMINAL CASES

(2015) 9 Supreme Court Cases 35

State of M.P.

vs

Anand Mohan

Date of Judgment 09.07.2015

Public Accountability, Vigilance and Prevention of Corruption – Prevention of Corruption Act, 1988 – S.19 and S.13(1)(d) r/w S.13(2) – Sanction for prosecution – Competent authority – Determination of – Interpretation of rules and circulars concerned

(2015) 8 Supreme Court Cases 395

K.L.Bakolia

vs

CBI

Date of Judgment 15.05.2015

A. Prevention of Corruption Act, 1988 – S. 7 and S. 13(2) r/w S.13(1)(d) – Ingredients of – Reiterated – Held, for coming to such finding of guilt, firstly, there must be demand and secondly, there must be acceptance in sense that accused received illegal gratification – Herein, courts below recorded concurrent findings, that there was evidence on record to substantiate fact that there was demand and complainant paid bride amount to appellant-accused, who accepted the same – Hence, conviction of appellant under S. 7 and S. 13(2) r/w S.13(1)(d), is unassailable

B. Criminal Trial – Sentence – Principles for sentencing – Sentence reduced – Long passage of time since incident and old age of accused along with prolonged agony of criminal proceedings – Taken into account for such reduction – Case of demand and acceptance of illegal gratification – Conviction of appellant-accused under S.7 and S.13(2) r/w S.13(1)(d), Prevention of Corruption Act, 1988, confirmed – Appellant was sentenced to undergo four years' RI on each count of conviction under S.7 and S.13(2) r/w S.13(1)(d) by courts below, which was to run concurrently – Held, incident took place about nineteen years ago and for all these years, appellant has undergone agony of criminal proceedings – Keeping in view passage of time and that appellant is now aged seventy-four years, while upholding conviction of appellant, interest of justice would be met by reducing sentence of four years' RI to one year's RI – Judgment of High Court is accordingly modified – Prevention of Corruption Act, 1988, S.7 and S.13(2) r/w S.13(1)(d)

(2015) 3 MLJ (CrI) 591 (SC)

Eshwarappa

vs.

State of Karnataka

Date of Judgment : 24.07.2015

Murder – Cruelty to Woman – Circumstantial evidence – Indian Penal Code, 1860, Sections 302, 498A and 201 – Appellant/accused convicted under Sections 302, 498A and 201, same affirmed on appeal – Accused filed appeal alleging that there was no eye witness to occurrence and circumstances relied upon do not form complete chain to lead Court to irresistible conclusion that death of deceased was homicidal and Appellant was responsible for same – Further, reliance placed by Appellant upon deposition of doctor to suggest that death could have been caused by hanging – Whether conviction of accused under Sections 302, 498A and 201 justified – Held, death of deceased occurred due to strangulation/constriction force around neck leading to asphyxia and shock as observed

by doctor which is possible not necessarily by hanging, although doctor opined it could be caused by hanging also – If death occurred due to hanging, deceased would have been discovered by witnesses in hanging position – Presence of rope and heap of stones before branch was make-believe situation created by Appellant, who was seen by witness – No immediate provocation for deceased to take step to commit suicide – Classic signs of death by hanging absent, as same evident from post-mortem report prepared by doctor – In totality of circumstances and having regard to nature of evidence, Lower Courts rightly found credible on material aspects of prosecution case – Both Trial Court and High Court rightly rejected story of suicide by deceased – No reason seen to interfere with view taken by Trial Court as affirmed by High Court – Only modification in facts and circumstances on record is setting aside of conviction of Appellant for offence under Section 498A – Conviction of accused under Section 498A set aside – Appeal partly allowed.

(2015) 3 MLJ (CrI) 624 (SC)

Mainuddin Abdul Sattar Shaikh

vs.

Vijay D. Salvi

Date of Judgment : 06.07.2015

Negotiable Instruments – Dishonour of Cheque – Personal Liability – Negotiable Instruments Act, 1881, Section 138 – Appellant filed complaint under Section 138 against Respondent/accused – But, Magistrate acquitted Respondent for reason that it was not proved that Respondent was person liable to make payment for Company in question, same challenged – High Court held that reasoning set out by Trial Court in its order did not call for reconsideration – Appeal – Whether Respondent can be made liable in his personal capacity, when Company in question was not made a party to complaint – Held, drawer of cheque was Respondent, who drew cheque on bank account maintained by him towards refund of booking amount – Going by strict interpretation of provision, Respondent as drawer is liable under Section 138, even though Company was not named in notice or complaint – No necessity for Appellant to prove that Respondent was in charge of affairs of Company by virtue of position he held – Respondent is liable for offence under Section 138 – Compensation to extent of twice the cheque amount and simple interest awarded to complainant – Respondent sentenced to undergo simple imprisonment for offence under Section 138 – Impugned orders passed by High Court and Magistrate set aside – Appeal allowed.

(2015) 8 Supreme Court Cases 774

Chandra Babu

vs

State

Date of Judgment 07.07.2015

A. Criminal Procedure Code, 1973 – Ss. 173(2), (8), 190(1)(b), 156(3) and 204 – Submission of final report by police after investigation – Powers available to Magistrate subsequent to – Scope of – Power to direct further investigation but not reinvestigation nor through a different investigating agency – Law that Magistrate in such a case can disagree with police report and take cognizance and issue process, reiterated – Magistrate, thus held, has power to ignore the opinion expressed by investigating officer and independently apply his mind to the facts that have emerged from the investigation – Magistrate in such matter, though cannot direct reinvestigation, has power to direct further investigation by the same agency, and that power must be exercised cautiously

B. Criminal Procedure Code, 1973 – Ss/ 173, 190, 397, 401 and 482 – Fresh/De novo investigation/Reinvestigation or investigation by a different agency – Reiterated, can be directed only by superior courts and not by Magistrate – Magistrate can only direct further investigation and that too by same agency – Constitution of India, Arts. 226 and 136

C. Criminal Procedure Code, 1973 – Ss. 397 and 401 – Revisional jurisdiction – Scope of – Revisional jurisdiction, reiterated, should normally be exercised on question of law – However, factual appreciation is permissible in case of perverse finding – Revisional power is basically exercised so that justice is done and there is no abuse of power by court

HIGH COURT CITATIONS CIVIL CASES

(2015) 7 MLJ 42

Kannadasan

vs.

Chinna Kolandaiammal

Date of Judgment : 13.08.2015

Property Laws – Adverse Possession – 1st Respondent/Plaintiff filed suit for declaration of title and for perpetual injunction restraining Defendants from interfering with peaceful possession and enjoyment of Plaintiff in respect of suit property – Trial Court dismissed suit holding that Plaintiff's claim of title based on alleged allotment of shares with in-equal extent not sustained – Also, held that claim of adverse possession negated, since ingredients to constitute adverse possession not proved – On appeal, Lower Appellate Judge set aside decree of Trial Court – Second appeal – Whether finding of Lower Appellate Court based on Exs.A9 to A11, which came into existence after filing of suit, that Plaintiff perfected title by adverse possession is vitiated – Whether finding of Lower Appellate Court that Plaintiff perfected title by adverse possession, in absence of positive and reliable evidence, is perverse in light of fact that suit filed within two years after purchase made by Plaintiff under Ex.A1 – Held, in light of admissions made by PW-1 and fact that there is absence of evidence to prove that Plaintiff and her predecessor-in-title were in possession of suit property for more than 12 years with necessary animus to constitute their adverse possession against real owners – Trial Judge, on proper appreciation of evidence, rendered correct finding and dismissed suit – But, Lower Appellate Judge, on misconception of scope of plea of adverse possession and without proper re-appreciation of evidence adduced by Plaintiff and disregarding fact that Plaintiff did not adduce sufficient evidence to prove perfection of title by adverse possession, rendered perverse finding – Decree of Lower Appellate Court infirm, defective and liable to be interfered with and set aside – Decree of Trial Court dismissing suit in entirety restored – Appeal allowed.

(2015) 7 MLJ 129

Dr.L.Ramachandran

Vs

K.Ramesh

Date of Judgment 07.09.2015

Limitation – Suit – Rejection of Suit – Limitation Act (Act), Article 59 – Code of Civil Procedure, 1908 (Code 1908), Order 15 Rule 1 and Order 7 Rule 11(d) – Plaintiffs/respondents had filed suit for partition against defendants/appellants – Appellants had filed application for dismissal of suit – Single judge dismissed application on ground that issue was to be decided by trial – Aggrieved by order and with contention that suit is barred by limitation, appellant have filed present appeal – Whether Suit was filed within period of limitation – Whether there was cause of action to file suit and whether suit was liable to be rejected on grounds of acquiescence and estoppels – Held, Judge in impugned order has recorded factual position that Suit was filed much after period of limitation had expired – This finding has not been questioned by plaintiffs either by way of separate Appeal or in Cross Appeal – Thus, on admitted facts, if Court is convinced that Judgment could be pronounced, it shall do so in terms of Order 15 Rule 1 of Code 1908 – It was recorded that from age of parties given in Plaint, youngest plaintiff attained age of majority in year 1992 – Time limit for questioning the transaction expired by 1995 – This finding is more than sufficient to hold that on date when plaintiffs sought permission to sue as indigent persons, Suit was barred by limitation against all plaintiffs as limitation for filing Suit by 6 plaintiff expired in 1995 and in respect of other plaintiffs it expired much earlier – Order 7 Rule 11 Code of 1908 being procedural is designed and aimed to prevent vexatious and frivolous litigation – Plaint is liable to be rejected on ground of limitation only where suit appears from statements in plaint to be barred by any law – Law within meaning of clause (d) of Order 7 Rule 11 of

Code 1908, shall include law of limitation – Thus, considering averments in instant case and by considering as to whether Plaintiff is liable to be rejected under clause (d) of Order 7 Rule 11, only conclusion could be is that plaintiff was barred by limitation – Accordingly, second and third issues are also answered in favour of defendant(s)/appellant(s) – Appeal allowed.

2015 (5) CTC 137

Sivaprakasam

vs.

Minor Venkatesan

Date of Judgment : 08.07.2015

Code of Civil Procedure, 1908 (5 of 1908), Section 11 – Res judicata – Applicability – Plaintiff inducted Defendant into possession of Suit property by executing Lease Deed – Plaintiff filed First Suit for declaration that Defendant is not entitled to obtain Licence from Local Authority to run business in Suit property – Defendant disputed title of Plaintiff in First Suit – Trial court dismissed Suit and on Appeal First Appellate Court decreed Suit – Plaintiff filed Second Suit for recovery of possession and removal of construction made in Suit property – Contentions of Defendant that Second Suit is barred by Res judicata – Parties have not filed Plea, Written Statement, Issues and Judgment of Trial Court to substantiate plea of Res judicata – Defendant is not entitled to raise plea of Res Judicata in Second Appeal.

(2015) 7 MLJ 164

Hari Baskar

Vs

Easther Arockia Mary

Date of Judgment 31.07.2015

Christian Law – Dissolution of Marriage – Desertion – Indian Divorce Act, 1869, Section 10(1)(x) – Appellant/Petitioner/husband filed petition for divorce under Section 10(1)(x) to dissolve marriage solemnized between him and Respondent/wife on ground of desertion, same dismissed – Present appeal – Whether Respondent deserted Appellant without reasonable cause – Whether Appellant entitled to decree of dissolution of marriage solemnized between Appellant and Respondent – Held, in Ex.P-3/notice, Appellant did not call upon Respondent to join in matrimonial home, but informed Respondent that he would take steps for judicial separation – Evidence of PW-2/father of Appellant rightly rejected as interested witness – Evidence of PW-3/Sub Inspector of Police also does not advance Case of Appellant – Trial Court rightly rejected Ex.P-5/complaint on ground that it is report of Sub Inspector of Police and it is not binding on civil Court – Appellant did not examine independent witness to show that in spite of repeated efforts, Respondent refused to join in matrimonial home – Appellant did not prove that Respondent deserted him without valid reason – But, Respondent stated that since civil dispute between father of Appellant and father of Respondent ended in favour of Respondent's father, Appellant did not take her to matrimonial home after birth of child – Appellant failed to take Respondent to matrimonial home only at instigation of his father – Trial Court considered materials on record in proper perspective and dismissed petition giving valid reasons – No infirmity or irregularity in Trial Court order warranting interference – Trial Court order confirmed – Appeal dismissed.

2015 (2) TN MAC 289 (DB)

New India Assurance Co.Ltd.

vs.

J.Sakunthala

Date of Judgment 24.07.2015

INCOME – Assessment – Deceased aged 39 yrs., employed as a Mazdoor in Tamil Nadu Generation and Distribution Corporation Limited [TANGEDCO], earning Rs.12,000 p.m. as per claim – Gross salary as per Salary Certificate found to be at Rs.11,879 p.m. – Tribunal taking salary at Rs.10,000 p.m. and adding 50% towards Future

Prospects following dictum in Sarla Verma (SC) and fixing monthly Income at Rs.15,000 p.m. – Deducting 10% as Income-tax, monthly income fixed at Rs.13,500 – Held to be proper.

INCOME – FUTURE PROSPECTS – Addition towards – If justified, when issue already been referred to Larger Bench of Apex Court and pending – Till Larger Bench resolves issue, existing law declared by Apex Court cannot be kept in suspended animation – Same can be followed till decision of Larger Bench – Apex Court in Sarla Verma and Santhosh Devi laid standardization in assessment of Future Prospects and same approved by Larger Bench in Reshma Kumari – In Pushpa, same referred to Larger Bench – However, in recent decision in Munna Lal Jain, Apex Court approved addition towards Future Prospects – Therefore, held, Tribunal justified in making addition towards Future Prospects.

LOSS OF CONSORTIUM – LOSS OF LOVE & AFFECTION – Award of Rs.1,00,000 and Rs.3,00,000 respectively, if excessive – Deceased aged 39yrs. – Claimants : Wife and three sons of deceased – Award of Rs.1,00,000 towards Loss of Consortium, held, cannot be said to be excessive in view of law laid down in Rajesh (SC) – However, Award of Rs.3,00,000 i.e. Rs.1,00,000 each to 3 sons of deceased, held, excessive – Awarding Rs.75,000 to each of them, Rs.2,25,000 awarded as against Rs.3,00,000

MOTOR ACCIDENT CLAIM – Compensation – Award of Rs.22,47,500 by Tribunal – If, proper, without deducting payment made by Employer/Department in which deceased was employed – Contention rejected in absence of any material to substantiate same.

(2015) 6 MLJ 300

P.K.Srikumar

vs.

Harshitha Gopinathan

Date of Judgment : 04.08.2015

Hindu Law – Custody of minor child – Foreign Court – Plaintiff/husband filed Original Petition for grant of custody of minor child from defendant/wife – Plaintiff also filed suit for declaration that order/judgment passed by Superior Court of California is conclusive and binding on defendant and enforceable within jurisdiction of Indian Courts – Whether Plaintiff is entitled to custody of minor child and if petition to enforce judgment of Foreign Court is maintainable – Held, Apex Court has held that matter is to be decided not on considerations of legal rights of parties but on sole and predominant criterion of what would best serve interest of minor – Paramount consideration is welfare and happiness of infant, mere desire of parent to have his child must be subordinate and can be effective only if it coincides with welfare of child – Conduct of parents in relation to child is relevant in determining what is in his best interest – Child has been brought up by defendant, mother – Defendant/mother would be proper person to have permanent custody of child – Judgment passed by Foreign Court not conclusive and binding on defendant and not enforceable against her within jurisdiction of Indian Courts – Petition dismissed.

2015 (5) CTC 406

Dhanalakshmi

vs.

Saraswathy

Date of Judgment : 02.06.2015

Code of civil Procedure, 1908 (5 of 1908), Order 33, Rule 5 & Order 7 Rule 11 – Limitation Act, 1963 (36 of 1963), Article 59 – Pauper Suit – Rejection of Application – Plaintiff filed Suit before District Munsif Court in year 1992 to set aside Decree passed by Civil Court which had been affirmed by High Court in Second Appeal in year 1992 before District Munsif Court – Suit to set aside Decree in former Suit should be filed within three years from date of Decree – Computation of Limitation – Munsif Court has found that valuation made by Plaintiff is incorrect and valued market value of property by appointing Commissioner – Trial court returned Plaint by holding that value of Suit exceeds jurisdiction of District Munsif Court and granted one month's time to present Plaint before Competent Court – Plaintiff presented Plaint before Sub-Court within stipulated time without paying proper Court-fee on

basis of valuation arrived by District Munsif Court along with Petition seeking permission to present Plaint as indigent persons – Plaint was not presented by Petitioner and Pauper Original Petition in proper form – Sub-Court returned Plaint for several occasions to represent Plaint by pointing out various defects – Proper Plaint and Petition was represented in year 2003 without any Petition for condoning delay in representation of Plaint – Plaint presented before Sub-Court was returned for presentation before District Court in view of Civil Court Amendment Act enhancing Pecuniary jurisdiction of Sub-Court – Defendant filed Application to reject Pauper Original Petition and Plaint on ground that Suit is barred by limitation – Pauper Original Petition was not filed with verification of Petitioners and Petitioners were not present at time of presentation of Pauper Original Petition – Plaint was represented by rectifying all defects in year 2003 – Presentation of Plaint along with Pauper Original Petition after rectification of Defects alone would be taken as fresh presentation and not continuation of Original proceedings initiated in year 1992 before District Munsif Court – Suit filed by Plaintiff with Pauper Original Petition is barred by limitation.

2015 – 4 – L.W.430

B.Banumathi

vs.

Rajkumar

Date of Judgment : 11.08.2015

Transfer of Property act, Section 122/settlement deed, challenge to, scope of,

Will/document, construction of.

Document whether to be treated as settlement or Will – No life interest was created by settler, in either of settlement deeds.

Reason cited for executing settlement, was that settlees were supporting settler and her husband and that she reposed confidence in them to continue their support till their lifetime as reason for making such Settlement.

Whether acted upon, entitled to revoke – Donee got possession of property – Donees were expected to use a part of the income derived from the gifted property for the welfare/maintenance of donor and her husband – Expectation was not made a condition so as to say that the settler reserved a right to revoke the settlement in case the settlees failed to fulfill – Cancellation deeds had no legal effect – Will will not affect right conferred.

2015 – 4 – L.W.509

Baby and Others

vs.

Kamalam Kumerasan and Others

Date of Judgment 05.08.2015

Hindu Law/Ancestral, self acquired properties, partition, illegitimate children, share, scope of,

Hindu marriage act (1955), Section 16, legitimacy of children,

Madras Hindu (Bigamy prevention and divorce) act (1949), illegitimate children, share, marriage, validity,

Evidence act, Section 114(a), presumption, long cohabitation,

Words and phrases, 'concubine', 'ஆண் சந்ததி' (Aan Sandhadhi).

Partition – Right of illegitimate children, long cohabitation – Presumption of marriage, drawing of – Illegitimate, children, whether 'ஆண் சந்ததி' (Aan Santhathi) – scope of – Proof of marriage – long cohabitation, burden of plaintiffs.

Because of prolonged cohabitation, cannot be presumed as husband and wife – Illegitimate children whether can claim share in properties of grandfather as ‘ஆண் சந்ததி’ (Aan Santhathi) - ‘சந்ததி’ (Santhathi) who is.

Properties in settlement deed belong to V – In the said deed, had given life estate to his three sons and the vested remainder and absolute right to their ‘ஆண் சந்ததி’ (Aan santhathi) – K, son of ‘V’.

K never consider his children through ‘C’ as his legal heir, cannot be considered as ‘ஆண் சந்ததி’ (Aan Santhathi), marriage between K and C not proved – C is a concubine of deceased K, so children born to them cannot be considered as legitimate as per section 16 – Illegitimate children entitled to share only in their parents property and not in the property of their grand-parents – appellants 2 and 4 cannot be construed as ‘ஆண் சந்ததி’ (Aan Santhathi) of deceased K, not entitled to any share.

Illegitimate children are entitled to share only in the properties of their father and not entitled to share in joint family properties.

Children born out of void and voidable marriage would be entitled to their father’s property alone, appellants are not entitled to any share in the separate property of V (grand father).

2015 – 4 – L.W.711

V.P.Venkatachalam

vs.

N. Venkatachalam

Date of Judgment 16.09.2015

Deficit Court fee – Payment of – Delay – Effect of – Sections 148 and 149 C.P.C.

C.P.C., Sections 148 and 149.

Deficit court fee, payment of – Delay, effect of, condonation, limitation, whether bar.

Plaintiff filed suit with deficit court fee and it was taken on file

Discretion of court to allow payment – Not necessary to make an application for the payment of deficit Court fee – power under Section 149 C.P.C. is procedural.

HIGH COURT CITATIONS CRIMINAL CASES

(2015) 4 MLJ (CrI) 5

Bavanandam

vs.

State

Date of Judgment : 18.06.2015

Prevention of Corruption – Illegal Gratification – Prevention of Corruption Act, 1988, Sections 7, 13(1)(d) and 13(2) – Appellant/accused charged for offences under Sections 7 and 13(2) read with Section 13(1)(d) – Trial Court found Appellant guilty under alleged charges, same challenged – Whether prosecution proved case against accused beyond reasonable doubts – Held, regarding alleged demand made by accused prior to registration of case, since prosecution does not have other evidence either substantive or corroborative in nature except evidence of PW-2, it is highly unsafe to act upon evidence of PW-2 – Prosecution bound to prove case beyond reasonable doubt – But, facts on record show that oral evidence of PW-2 during cross-examination making admission of facts in favour of accused and documentary evidence by way of Ex.D.3 destroyed case of prosecution – Benefit arising out of such documents should go only in favour of accused – Also, accused alleged that there was motive between him and PW-2, same known to him and PW-2 alone – Having failed to get favourable order from accused, PW-2 went to scheme office – As per accused, he prepared negative note declining to recommend for transfer of patta and that was seized by police and same suppressed – Facts on record create doubt in case of prosecution – Prosecution failed to prove case against accused beyond reasonable doubts – Conviction and sentence imposed on accused set aside – Appellant acquitted from charges leveled against him – Appeal allowed.

(2015) 4 MLJ (CrI) 13

M. Kalyani Mathivanan

vs.

M. Parthasarathi

Date of Judgment : 24.06.2015

Criminal Proceedings – Quashing of – Code of Criminal Procedure, 1973 (Code 1973), Sections 482, 202, 203 and 204 – Indian Penal Code, 1860 (Code 1860), Sections 120(b), 447, 448 and 34 – Scheduled Castes and scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 1989), Sections 3(1)(vii), 3(1)(viii), 3(2)(vii) and 3(1)(x) – Respondent filed private complaint against Petitioners for offences under Sections 120(b), 447 and 448 read with Section 34 of Code 1860 and Sections 3(1)(vii), 3(1)(viii), 3(2)(vii), 3(1)(x) of Act – Judicial Magistrate issued summons to Petitioners – Petitioners sought quashment of private complaint and summons issued to them – Whether proceedings initiated against Petitioners could be quashed – Held, action taken against Respondent for his alleged misconduct by transferring him, giving complaint to police and followed by orders of suspension and transfer – Respondent gave complaint after earlier complaint given by University – Complaint to Superintendent of Police by Respondent shows that allegations made in it is only to effect that 1st Petitioners insulted Respondent – But, perusal of complaint before Magistrate shows that certain new facts added – Records available not perused and appreciated properly by Magistrate – Neither procedure under Section 202 of Code 1973 followed nor Sections 203 and 204 of Code 1973 complied with – But, Magistrate acted in mechanical manner in issuing summons – Complaint shows that provisions of Act 1989 not made out against Petitioners – When evidence of shop carried out as per law and Respondent sought to be evicted in accordance with Rules and Regulations, Sections 447 and 448 of Code 1860 not attracted – No case made out against Petitioners – Proceedings against Petitioners could be quashed – Petition allowed.

(2015) 4 MLJ (Crl) 22

Parasmal Jain

vs.

M. Rajesh

Date of Judgment : 31.07.2015

Evidence - Additional Evidence – Appeal Stage – Code of Criminal Procedure, 1973 (Code 1973), Section 391 – Petitioners were convicted and sentenced by trial court – Pending appeal petitioners filed petitioner under Section 391 Code 1973 to submit additional evidence – Appellate Court dismissed petition – Aggrieved, petitioners have filed present revision – Whether additional evidence can be admitted during appeal stage under Section 391 of Code 1973 – Held, only in exceptional cases in order to meet ends of justice, additional evidence can be permitted to be let in evidence in Appellate Court – Petitions do not come under exceptional circumstance – Petitioners have not taken steps when case is pending before Trial Court – Section 391 Code 1973 to let in additional evidence cannot be pressed into service in order to fill up lacuna, when especially application for getting legal heir certificate was marked and in this regard, cross-examination of complainant was done in detail and rectified legal heir certificate was marked – Petitions were filed before Appellate Court only to drag on proceedings and it is delaying tactics adopted by petitioners –Revision dismissed.

(2015) 4 MLJ (Crl) 59

State

vs.

K.P. Sankar

Date of Judgment : 12.08.2015

Charge – Alternation of Charge – Additional Charge – Code of Criminal Procedure, 1973 (Code 1973), Sections 216 and 397 – Indian Penal Code, 1860 (Code 1860), Section 302 – Prosecution has come forward with Criminal Revision Case aggrieved by order passed by Sessions Judge dismissing application filed by them under Section 216 of Code 1973 to alter charges leveled against respondents/accused by including Section 302 of Code 1860 as additional charge – Whether prosecution has right to file an application under Section 216 of Code 1973 to include charge under Section 302 of Code 1860 and if such application is maintainable – Held, neither prosecution nor complainant or anyone interested in criminal case is entitled to file application under Section 216 of Code 1973 – Trial Code to decide about framing of additional charge or alter existing charge upon arriving at subjective satisfaction on basis of existence of materials available on records – Against order passed by Trial Court in application under Section 216 of Code 1973 Criminal Revision Case under Section 397 of Code 1973 is not maintainable as such an order did not finally determine prosecution case and it is interlocutory in nature – Trial Court right in dismissing application filed by prosecution under Section 216 of Code 1973 for inclusion of an additional charge under Section 302 of Code 1860 against respondents/accused – Revision dismissed.

2015 - 4- LW. (Crl.) 443

A.V. Bellarmin and others

vs.

Mr. V. Santhakumaran Nair

Date of Judgment : 13.08.2015

Bias/Types of, Pecuniary, Personal, official, distinction, what is.

Railways Act, Sections, 145/nuisance, 109, 180, bias, by investigating officer, scope,

Criminal Procedure Code, Sections 482, 154, 147, 174.

Bias, types of, real likelihood or reasonable apprehension of bias, what is, when arises, scope of.

Allegation of squatting on railway track – Case registered – Challenge to.

Court to decide whether there exists a likelihood or reasonable apprehension of bias warranting interference – Investigator's bias, what is, effect of.

Question is whether there would occur a real likelihood or reasonable suspicion of it when an officer, who registers the case, proceeds to investigate the case – Pre-determination and pre-disposition are two facets of bias.

Respondent sub-inspector who gave complaint, is authorized officer who did investigation, not an eye witness, whether bias, He recorded statements, but an enquiry was required.

Neither petitioners nor accused called for inquiry, though such power is available – Test of bias comes in depending upon role of an investigating officer – An eye witness cannot do role of an investigating official, personal bias would come in proceedings quashed.

2015 - 4- LW. (CrI.) 545

B. Prakash

vs.

Deepa and another

Date of Judgment : 28.07.2015

Protection of Women from Domestic Violence Act (2005), Sections 20, 36, 12, Section 2(k) 'monetary relief'; 2(a) 'aggrieved', Section 3 'Domestic violence' explanation 1(iv) 'economic abuse'.

Code of Criminal Procedure, Sections 125, 127.

Entitlement of maintenance, 'monetary relief', 'Economic abuse', domestic violence' – what is, effect of claiming maintenance.

Held : maintenance amount payable by husband is a financial resource for woman, denial of household necessities of wife is also an 'economic abuse' – Economic abuse will amount to domestic violence – Wife, victim of such domestic violence, is, entitled for monetary relief under Section 20.

Order for maintenance under Section 125 is not a bar to pass another order granting monetary relief section 20.

If the wife wants to modify an order made under Section 125 only option available for her is to file a petition under Section 127.

Monetary relief under Section 20 may be not in modification of the previous order for maintenance passed under Section 125 but it may be in addition to the said order for maintenance passed u/s 125.

For claiming order under Section 20, what it to be done, proof of acts, necessary, what are – Section 20 not in derogation of Section 125 of the Code.

Wife, has option to seek remedy under Section 125 or under Section 20 – She cannot, simultaneously, make a claim under Section 20 and vice versa – Respondents had approached two different forums, under Section 125 Cr.P.C. under Section 20 of the D.V. Act, on same set of allegations and cause of action, not legally permissible.

(2015) 3 MLJ (Crl) 648

J.P. Renin

vs.

Inspector of Police

Date of Judgment : 10.07.2015

Corruption – Quantum of Sentence – Prevention of Corruption Act, 1988 (Act 1988) – Appellant was charged under provisions of Act 1988 – Trial Court convicted and sentenced appellant – Appellant is now in appeal against conviction and quantum of sentence – Whether appellant is guilty of corruption and if sentence imposed is appropriate – Held, theory of appellant that he pushed tainted currency notes itself is not true – Explanation of appellant that his fingers got stained with phenolphthalein, when he pushed currency notes cannot be accepted – Presence of phenolphthalein powder on his fingers would clearly corroborate evidence of PWs.8 and 9 that he received currency notes in his right hand and changed it to his left hand and then went into bedroom to keep tainted currency notes underneath mattress – In light of view of Supreme Court regarding evil of corruption in public life, when all facts and circumstances, both aggravating and mitigating, are taken into account, sentence imposed on appellant is appropriate – Appeal dismissed.

(2015) 3 MLJ (Crl) 682

Sivashankar

vs.

State rep. by Inspector of Police

Date of Judgment : 31.07.2015

Suicide – Abetment of Suicide – Indian Penal Code, 1860, Sections 304B and 306 – Criminal prosecution launched against Petitioner/accused No.1/husband of deceased along with other accused at instance of complaint given by PW-1/father of deceased – Trial Court convicted accused for offence under Section 304-B – On appeal, First Appellate Court set aside conviction imposed on other accused but modified sentence imposed on Petitioner under Section 304B to Section 306 – Revision petition – Whether conviction imposed on Petitioner by First Appellate Court justified – Held, evidence to suggest that Petitioner and deceased led happy marriage life – Case of prosecution rests on phone call made by Petitioner to father of deceased during which Petitioner alleged to have abused, threatened and scolded him in bad language – As per prosecution, conversation between Petitioner and father of deceased made deceased to end her life, but there are inconsistencies in time of phone call as per evidence of PW-1 to 3 – Phone call by Petitioner to PW-1 by itself could not be reason to convict Petitioner for offence under Section 306, when Pw-6/independent witness deposed that deceased dejected for not giving birth to child, otherwise, she was happy in her matrimonial home – Deceased could have committed suicide in spur of moment without inducement or abetment of Petitioner – Benefit of doubt extended to Petitioner – Conviction imposed on Petitioner – Conviction imposed on Petitioner by First Appellate Court set aside – Petition allowed.

(2015) 3 MLJ (Crl) 690

R. Vinayagam

vs.

M. Prema

Date of Judgment : 01.07.2015

Domestic Violence – Civil Dispute – Petitioner and husband live in same house as respondents – Petitioner filed complaint against first respondent for domestic violence and misappropriation of sum collected on behalf of petitioner – Trial Court after hearing set aside imposed costs on respondent and allowed appeal regarding domestic violence in favour of petitioner – Petitioner challenges setting aside of costs – Respondents challenge holding of Trial Court regarding domestic violence – Whether respondents had committed domestic violence against petitioner – Held, there has been dispute regarding rival claim made by husband of petitioner and first

respondent for house in question – Dispute, regarding property right, which needs to be resolved before competent Civil Court, is given colour of domestic violence so as to abuse process of court – There is no evidence of domestic violence caused by respondents – Issue of husband of petitioner having undivided share in property in question is matter to be resolved only by competent Civil Court and Criminal Court cannot venture to resolve same – Since Court has held that case initiated by petitioner before Trial Court itself is clear abuse of process of law as well as Court, order of Trial Court setting aside direction for payment sum sustained – Petition by Petitioner dismissed – Petition by respondents allowed.

(2015) 3 MLJ (Crl) 704

Mohamed Anzer

vs.

State through the Inspector of Police

Date of Judgment : 24.07.2015

Complaint – Quashing of Complaint – Look Out Notice – Petitioners have filed petition for quashing of complaint – Writ petitioner has filed writ for quashing of look out notice to travel abroad – Police have strongly contested petitions – Main contention of petitioners is that complainant has withdrawn complaint – Whether complaint against petitioners can be quashed and writ petitioner allowed to travel – Held, apprehension of police that, if Writ Petitioner flees India, he can never be secured, is bona fide – Look out circular cannot be quashed – This is surely not a fit case to quash FIRs either on ground that, complainant and accused have arrived at settlement or on ground that there is no prima facie material against accused – With involved IPS officer continuing as Inspector General of Police, investigation by local police would not be free from interference – Police have collected sufficient materials against involved IPS officer incriminating him in offence – Very act of getting affidavit from Complainant is brazen attempt to impede course of investigation which will entail cancellation of bail – It will serve interest of justice if investigation in all three cases is transferred to CB CID, in order to find out if there was continuing conspiracy amongst accused in all three cases to perpetrate offences by previous concert – Accordingly, investigation is transferred to CB CID – Petition dismissed.
