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IMPORTANT CASE LAW



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SUPREME COURT – CIVIL CASES

(2018) 6 SCC 410

A.P. Industrial Infrastructure Corporation Ltd. Vs. S.N. Raj Kumar

Date of Judgment: 10.04.2018

A. Property law – Transfer of Property Act, 1882 – Ss.54, 55, 11 and 31 – Supersession of allotment letter/contract for sale by sale deed – Conditions imposed in allotment letter/contract for sale – Non-bindingness of, if not contained in agreement of sale/sale deed – Conditions imposed in the allotment letter, as in the present case to establish units within two years from the date of taking possession of the industrial plots – Non-bindingness of, once an agreement to sell/sale deed is executed and no such condition is stipulated therein – Thus, there could also be no demand for an additional sum to condone delay in complying with condition(s) contained in allotment letter but which were not present in sale deed.

B. Administrative Law – Administrative Action – Administrative or Executive Function – Proportionality – Doctrine of proportionality – What is

(2018) 6 MLJ 496 (SC)

B.C. Singh (D) By Lrs Vs. J.M. Utarid (D) By Lrs

Date of Judgment: 08.05.2018

Succession Laws – Intestate Succession – Preferential heir – Indian Succession Act, 1925, Sections 25, 33(b), 35, 42, 47 and 48 – Original owner purchased suit property with his wife and they had no issues – 1st Respondent/distant kindred of owner's wife came and lived in portion of suit property – Owner asked 1st Respondent/1st Defendant to vacate suit property and filed suit for possession and damages on ground that they were licensees and same terminated by notice – Trial Court dismissed suit, however, 1st Appellate decreed suit – High Court reversed judgment of 1st Appellate Court and confirmed judgment of Trial Court, hence this appeal – Whether High Court justified in reversing judgment of 1st Appellate Court and confirming judgment of Trial Court – *Held*, intestate has left behind her husband and kindred – No lineal descendants as defined under Section 25 – Sections 42 to 48 lay down rules of distribution of property of intestate where intestate died without leaving children or remoter lineal descendants and rules of distribution are in order of priority – Husband of intestate would succeed half of share in property as provided under Section 33(b) and Section 35 and holds 3/4th share in entire property – Section 47 provides for devolution of property where intestate has left neither lineal descendant nor father nor mother – Intestate left behind her sister and not any lineal descendant – Sister was only kindred and preferential heir of intestate and she would have succeeded to 1/4 share in property – 1st Defendant being distant kindred is not entitled to succeed share in property since intestate has left behind her real sister – Appeal allowed.

(2018) 7 SCC 646

Shyam Narayan Prasad Vs. Krishna Prasad

Date of Judgment: 02.07.2018

A. Family and Personal Laws – Hindu Law – Joint Hindu Family/Hindu Undivided Family (HUF)/Coparcenary/Co-owner/Survivorship – Concept of and Property held by – Coparcenary/Ancestral property under Mitakshara Law – Meaning, scope and essential features of – Share obtained on partition of ancestral property – Nature of

B. Registration Act, 1908 – Ss.17(1)(b) and 49 – Unregistered exchange deed – Admissibility in evidence – Exchange involving transfer of immovable property of value of Rs.100 and above and having the effect of creating and taking away rights in respect of such property – Registration of – Necessity – Having regard to provisions under Ss.118 and 54 of Transfer of Property Act, 1882 and S.17(1)(b) of Registration Act,1908, held, such exchange can be made only by a registered instrument

C. Property Law – Transfer of Property Act, 1882 – S.53-A – Claiming benefit under – Necessary pleadings with respect to

D. Civil Procedure Code, 1908 – Or.6 Rr.1, 2 & 4, Or.8 Rr.1 & 2, Or.7 Rr.1(e), (g), 7 & 8, Or.20 and S.33 – Pleadings – Purpose of, stated – Grant of relief in absence of pleadings relating to it – Held, not permissible – Practice and Procedure – Pleadings/New plea/Additional plea/Alternative plea

(2018) 7 SCC 664

Raveechee & Co. Vs. Union of India

Date of Judgment: 03.07.2018

Arbitration Act, 1940 – Ss.29 and 13 – Pendente lite interest – Grant of, in the absence of specific bar to such grant in the contract, as in the present case where the contract between the parties only barred the grant of interest on earnest money, security deposit and amounts payable to the contractor – Power to grant pendent lite interest – Vesting of, an arbitrator – Held, an arbitrator has the power to award interest unless specifically barred from awarding it; and the bar must be clear and specific

(2018) 5 MLJ 728 (SC)

Sucha Singh Sodhi (D) Thr. Lrs. Vs. Baldev Raj Walia

Date of Judgment: 13.04.2018

Civil Procedure – Withdrawal of Previous Suit – Inclusion of Whole Claim – Code of Civil Procedure, 1908, Order 2 Rule 2, Order 23 Rule 1 (3) and Order 39 Rule 1 (c) – 1st Defendant/1st Respondent agreed to sell suit premises to 1st Plaintiff/1st Appellant, received sale consideration and gave possession – As 1st Defendant tried to dispossess, 1st Plaintiff filed suit for permanent injunction – 1st Defendant transferred premises to 2nd Respondent/subsequent purchaser – 1st Plaintiff withdrew suit and filed suit for specific performance – Application filed by 2nd Respondent to be impleaded as Defendant and application to reject plaint as suit is hit by Order 2 Rule 2 was allowed and same confirmed on appeal, hence this appeal – Whether Plaintiff could claim relief of specific performance against Defendants in addition to claim of permanent injunction in instituted suit – Whether in absence of permission granted by Trial Court to Plaintiff at time of withdrawing previous suit, Plaintiff entitled to file suit for specific performance of agreement against Defendants in relation to suit property – *Held*, Plaintiff cannot claim relief of specific performance along with relief of permanent injunction in previous suit – Grant of injunction governed by Order 39 Rule 1 (c) and cause of action to file suit for claiming specific performance of agreement arises from date fixed for performance – Both reliefs are not identical, causes of action are separate, factual ingredients are different – Claiming both reliefs together on one cause of action is not possible – Suit for specific performance not barred by Order 2 Rule 2 – Statement of Plaintiff coupled with permission granted by Court to withdraw suit satisfies requirement of Order 23 Rule 1 (3) – Appeal allowed.

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SUPREME COURT – CRIMINAL CASES

(2018) 3 MLJ (CrI) 277 (SC)

Murugan Vs. State of Tamil Nadu

Date of Judgment: 02.05.2018

Murder – Circumstantial evidence – Indian Penal Code, 1860, Sections 34, 302 and 364 – Lower Courts convicted Appellant for commission of offences punishable under Sections 364 and 302 read with Section 34, hence this appeal – Whether concurrent findings were legally and factually sustainable or need to be reversed – *Held*, circumstances appearing led to draw strong conclusion against Appellant and co-accused for having committed murder of victim and also, established that both had common intention to eliminate victim – There could be no other person other than Appellant and co-accused, who committed crime in question – Theory of “accused last seen in company of deceased” was strong circumstance against accused while appreciating circumstantial evidence – Unless accused able to explain properly material circumstances appearing against him, he could be held guilty – Common intention of two accused persons to eliminate victim – Appellant one of the accused persons, found actively participating in crime till last along with other accused, who died – Lower Courts were right in holding appellant guilty of commission of offences in question by properly appreciating ocular evidence of prosecution witness – No good ground found to take different view than what was taken by lower Courts – Appeal dismissed.

(2018) 5 SCC 422

Vishnu Chandru Gaonkar Vs. N.M. Dessai

Date of judgment: 06.03.2018

Criminal Procedure Code, 1973 – S.195(1)(b)(ii) – Applicability of – Reiterated, S.195(1)(b)(ii) is applicable only in case the offences enumerated therein have been committed with respect to a document *after* that document has been produced or given in evidence in a proceeding in any court i.e. during the time when that document was in custodia legis, and not prior thereto – In present case, allegedly forged signature/thumb impression on document concerned was obtained *prior* to its submission in court – Hence, proceedings against appellant in respect thereof, rightly quashed

(2018) 5 SCC 734

Dev Kanya Tiwari Vs. State of Uttar Pradesh

Date of Judgment: 12.03.2018

A. Penal Code, 1860 – Ss.302/34 – Murder trial – Circumstantial evidence – Prosecution miserably failed to establish chain of events, which points out at guilt of accused – Two complaints (one by brother and other by accused wife, of deceased, respectively) filed – When accused wife in complaint pointed out that deceased committed suicide by consuming poison, doctor was expected to preserve viscera for chemical analysis, which was

not done – Doctor who conducted post-mortem, opined that cause of death was asphyxia due to strangulation of throat – Medical evidence in the form of post-mortem report though supports case of prosecution, non-preservation of viscera by doctor, remains fatal to prosecution case – Witnesses specifically support case of version of accused – No apparent injury on dead body of deceased at the time of panchnama present – Collective opinion of panch witnesses, that deceased expired due to eating some poisonous substance – No direct evidence, as to deceased consuming poison or having been done to death by throttling, available – Courts below gravely erred in not considering case in accordance with settled principles of law – Conviction reversed

B. Criminal Trial – Circumstantial Evidence – Generally – Duty of court while analyzing evidence and convicting accused – What is – Principles reiterated

(2018) 5 SCC 743

Pankaj Jain Vs. Union of India

Date of Judgment: 23.02.2018

A. Criminal Procedure Code, 1973 – S.88 – Power to release accused on bond upon his appearance in court, under S.88 – Nature of – Accused only appearing in court after being declared an absconder and issuance of non-bailable warrants – Nature of offences alleged – Relevance

B. Criminal Procedure Code, 1973 – Ss.437, 439, 82, 83 and 88 – Bail on humane and compassionate grounds – Ground of 60% disability – Conduct of appellant and other factors also relevant

(2018) 5 SCC 790

Bannareddy Vs. State of Karnataka

Date of Judgment: 12.03.2018

A. Penal Code, 1860 – Ss.326, 148, 341 and 504 r/w S.149 – Voluntarily causing grievous hurt by dangerous weapons – Incident taking place during ongoing village fair – Appellant-accused allegedly assaulted complainant victims with iron rods, clubs etc., thereby injuring them – Acquittal of appellants by trial court was reversed by High Court, thereby, convicting them under Ss.326, 148, 341 and 504 r/w S.149 IPC – Validity of

B. Criminal Procedure Code, 1973 – Ss.378 and 386(a) – Appeal against acquittal – Power and jurisdiction of High Court while interfering in such appeal

C. Criminal Trial – Acquittal – Generally – Presumption of innocence – When strengthened – Held, presumption of innocence is further reinforced, reaffirmed and strengthened against acquitted accused by judgment in his favour

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MADRAS HIGH COURT – CIVIL CASES

(2018) 7 MLJ 231

Mokkamaya Thevar Vs. Rajamani Pillai

Date of Judgment: 12.06.2018

Property Laws – Possession of Title – Revocation of power of attorney – 1st Plaintiff took possession and obtained patta for suit property which he got through registered gift deed from his mother – Appellant/Defendant claiming to have purchased suit property from Plaintiffs’ power of attorney trespassed into suit property – Suit filed by Plaintiff for declaration of title and recovery of possession was decreed by Lower courts, hence this appeal – Whether failure of lower Appellate Court in not framing proper points for consideration vitiated the ultimate outcome of appeal leading to its dismissal – Whether 1st Plaintiff was estopped from pleading case contrary to recitals of power of attorney deed – Whether revocation of power of attorney may not bind Defendant – Whether partial cancellation of power of attorney, by 1st Plaintiff and his sons alone, could not be valid – *Held*, lower appellate Court applied its mind and considered all issues in light of pleadings, evidence and oral evidence adduced on both sides – 1st Plaintiff was absolute owner of property by virtue of irrevocable gift deed executed by his mother – When Power of Attorney deed executed by him was revoked, by registered document, sale deed executed by agent long after cancellation of Power was invalid – Sale deed was void – Power of Attorney deed could not be source of title for executants – Other persons, who had joined execution of Power of Attorney deed had no title – Fact that they had not revoked power deed would have no legal consequences – Defendant, who obtained invalid sale, could not plead estoppels under pretext that he had no knowledge of its cancellation – By registration of cancellation of Power of Attorney deed, public notice could be inferred – Defendant could not sustain sale, which was after cancellation of power – Judgment and decree of lower Courts affirmed – Appeal dismissed.

(2018) 1 MLJ 403

Mycon Construction Ltd. Vs. Mecon Ltd.

Date of Judgment: 24.10.2017

Alternative Dispute Resolution – Arbitration – Applicability of arbitration clause – Arbitration and Conciliation Act, 1996, Section 11(6) – Memorandum of understanding entered into between Respondent and Petitioner recording mutual interest of parties to cooperate with one another in bidding for project of Corporation – Disputes arose between Petitioner and Respondent – Petitioner filed present petition to appoint arbitral tribunal to adjudicate upon disputes between them invoking clause for arbitration in agreement between Respondent and Corporation – Whether there was agreement between Petitioner and Respondent providing for arbitration – *Held*, alternate dispute resolution clause contains two options, one specific to Central Public Sector Enterprises (CPSE) and second, other contractors – First sub-clause would stand attracted as between Corporation and Respondent, seeing as Respondent was CPSE – As consequence, second sub-clause would, stand effaced from contract between Corporation and Respondent since it provides for Arbitration between

Corporation and private party which Respondent was not – Format of contract document include clause for arbitration both in cases of contractor being CPSE or private party – Clauses in contract draw their relevance only from their applicability to parties to contract and not as regards third parties – If at all parties intended to provide for dispute resolution by alternate means, clause for arbitration that would be workable *interse* would have been specifically incorporated in agreement or at least articulated in extended documentation, such as correspondences, however, this was not done – References to terms and conditions *interse* Respondent and Corporation in documentation between Respondent and Petitioner could refer only to terms of execution of works and did not constitute agreement for arbitration – No agreement as between parties providing for arbitration – Petition dismissed.

(2018) 1 MLJ 412

Lakshmi Devamma Vs. Chinnappa

Date of Judgment: 05.12.2017

Contract – Undue Influence – Validity of agreement – Misunderstanding arose between Plaintiff and his partner – Panchayat convened – Partner agreed to pay quantified outstanding amount – Panchayat Muchillika/Ex.A1 entered between parties signed by Plaintiff, partner and his son/6th Defendant – Postdated cheques issued by partner for fulfilling his obligations and promises under Ex.A1 – Plaintiff filed complaint for dishonor of cheques issued by partner and came to know about death of partner – Plaintiff obtained documents from criminal court and filed civil suit for recovery of amount against legal heirs of partner/Defendants – Defendants disputed validity of Ex.A1 – Lower Courts decreed suit – Whether Ex.A1 was true and valid document and binding on Defendants, as legal heirs of partner – *Held*, Defendants failed to establish that Ex.A1 had been obtained by Plaintiff by threat, duress and coercion – Ex.A1 had come to be executed by parties only in connection with debt due from deceased partner to Plaintiff, in connection with business transactions – Lower Courts had rightly come to the conclusion that Ex.A1 was true and valid document and binding on Defendants, as legal heirs of partner – Till date Defendants had not endeavored to lay any action against Plaintiff for obtainment of amount received by Plaintiff under said cheque – Appeal dismissed.

(2018) 1 MLJ 419

H. Santhanam Vs. S. Sampathkumar

Date of Judgment: 02.11.2017

Civil Procedure – Recovery of money – Promissory note – Defendant borrowed money from Plaintiff and executed two separate promissory notes but failed to pay amount either towards principal or interest – Suit filed by Plaintiff for recovery of money was decreed by Lower Courts, hence this appeal – Whether Lower Courts were right in ignoring admission of D.W.1 in his evidence as to validity of agreement/Ex.B1 and his admission in Ex.B3/compromise arrangement to decree suit – *Held*, Defendant had borrowed suit amount and in evidence thereof had executed promissory notes in favour of Plaintiff – Defendant found to be not in position, to place any materials satisfactorily to hold that suit promissory notes had been obtained by Plaintiff using unlawful methods as projected by him – Plaintiff was also not made party to suit proceedings by Defendant and also not party to

Ex.B3/compromise arrangement – Case of Defendant that suit promissory notes had been obtained using force, threat and criminal intimidation etc. by Plaintiff and therefore, suit promissory notes were bad for want of consideration did not merit acceptance – Lower Courts rightly appreciated materials on record in right perspective and decreed suit as prayed for – Appeal dismissed.

(2018) 1 MLJ 476

Muthukumara Swamy Vs. Valliammal

Date of Judgment: 02.11.2017

Succession Laws – Hindu Succession – Ancestral property of husband – Hindu Succession Act, 1956 – Marriage between Plaintiff and 1st Defendant solemnized many years before institution of suit, however due to some misunderstanding, Plaintiff moved back to her parents – Suit filed by Plaintiff for partition claiming that suit properties were ancestral property – Lower Courts held Plaintiff entitled to 2/3rd right in suit property, hence this appeal by legal heirs of deceased 2nd Defendant – Whether Courts below erred in law in holding that Plaintiff was entitled to 2/3rd right in suit property – *Held*, on date of filing of suit, Act had come into force – Only codified Act would apply and not contextual law – As per codified law in respect of joint family property of Defendant that devolved upon him through his father, Plaintiff being wife of 1st Defendant could not claim partition of property – Lower Courts erroneously took into consideration date of marriage between parties – On date of filing of suit, 1st Defendant was alive – There was no child either male or female alive – Cause of action for suit arose as per Ex.A2/legal notice, hence only codified Act applicable under which wife could not seek partition from husband of property which was ancestral in nature – Plaintiff not entitled for any share in suit property – Finding rendered by both Lower Courts vacated as they had applied pre-codified Hindu Succession Act – Appeal allowed.

(2018) 1 MLJ 480

Ponniah (Died) Vs. Mayandi Thevar

Date of Judgment: 03.11.2017

Property Laws – Title to property – Oral exchange – Suit property in certain survey number purchased by Plaintiffs from different vendors – Remaining land in that survey number belonged to D.W.2 – Plaintiff filed suit for relief of declaration of title and permanent injunction – Defendants set up independent title through different vendor and claimed through mortgage deeds/Exs.X.1 and X.2 and that Northern portion belonged to them – Trial Court dismissed suit – Appeal filed by Plaintiffs allowed, hence this appeal by Defendants – Whether land on Northern portion belonged to Plaintiffs or to defendants – *Held*, D.W.2 denied alleged oral exchange between him and Plaintiffs – D.W.2 had exercised his right of ownership in respect of that land by mortgaging property in favour 2nd Plaintiff and discharging it – Lower Appellate Court erred in accepting oral exchange of Plaintiffs – There shall be decree only in respect of lands covered under Sale Deed in favour of Plaintiffs – In plaint schedule, no separate schedule with specified boundaries were mentioned – It was described as entire property as enblock in single piece, out of which, northern portion, Plaintiffs had not proved their title – Plaintiffs had failed to prove their plea of oral exchange of land on Northern side – Appeal allowed.

(2018) 1 MLJ 489

B.V. Subramanian Vs. Vasantha

Date of Judgment: 06.12.2017

Contract – Specific Performance – Readiness and willingness – Plaintiff and Defendant entered into sale agreement with reference to suit property belonging to Defendant – Defendant failed to act as per terms of agreement – Suit filed by Plaintiff for specific performance was decreed – Defendant defended that time was essence of contract – First Appellate Court dismissed suit, hence this appeal – Whether time was essence of contract, when contract specifically did not say so – Whether lower appellate Court was right in rejecting Ex.A2 to A6/receipts as not genuine – *Held*, though time may not be essence of agreement/Ex.A1, Plaintiff miserably failed to establish his readiness and willingness to perform his part of contract right from inception – Plaintiff projected false case, as if he made part payment to Defendant through her husband towards part of sale consideration – Plaintiff, being suitor, failed to establish truth and validity of Exs.A2 to A6 – Failure of Defendant in not examining her husband to substantiate case of Plaintiff or establish his defense version not helpful to uphold Plaintiff's case – Plaintiff not established even cheque payment said to have been made by him on certain date by adducing acceptable and reliable evidence – Appeal dismissed.

(2018) 7 MLJ 668

Janab S.A. Fakrudeen Ibrahim Vs. State of Tamil Nadu

Date of Judgment: 25.09.2018

Muslim Law – Wakf Property – Management by Board – Wakf Act, 1995, Sections 65 and 68 – Respondent/Wakf Board after hearing trustees, ordered taking over of management of Wakf under its direct control and directed publication of same in official gazette – 3rd Respondent appointed as Executive Officer – Petitions and appeals filed challenging said notification and resolution dismissed and parties relegated to Appellate remedy – Appeal filed by Appellant dismissed by 1st Respondent – Board passed resolution extending period of direct management by one more year – Petitions filed challenging above orders dismissed, hence these appeals – Whether order of Board for taking over of management of Wakf under its direct control justified – *Held*, when there was allegation of mismanagement and siphoning off funds from trust, it was for Board to interfere and frame scheme for proper administration of trust – Every attempt of Board to frame scheme and regularize management of wakf thwarted by Appellant – There had been disputes between erstwhile Haqudars and allegations of mismanagement of Wakf properties – Entire exercise to assume direct management of Wakf commenced on complaint by one of members of Wakf – Proceedings going on for past thirteen years – Parties harboring their time only before Court, rather than taking interest in performance of Wakf – Wakf Tribunal had held that there was no hereditary trustee, which was affirmed by this Court – Continuance of Appellant in management of Pallivasal had no basis and he was no longer Trustee – Question of issuing notice to him did not arise – No violation of principles of natural justice – Appellant directed to hand over charge and deliver possession of records, accounts and all properties of Wakf, including cash, to Executive Officer of Board – Board shall frame scheme, in terms of directions contained in order passed by this Court – Appeal disposed of.

(2018) 7 MLJ 716

K.R. Sethupathy Vs. Parvathy

Date of Judgment: 14.09.2018

Succession Laws – Partition – Will – Indian Succession Act, 1925 (Act 1925), Section 63 – Indian Evidence Act, 1872 (Act 1872), Section 68 – 1st Respondent/Plaintiff, first wife of deceased filed suit for partition against Appellants/1st and 2nd Defendants/son and second wife of deceased – Defendants put forth Will executed by deceased – Trial Court passed preliminary decree for partition, hence this appeal – Whether Appellants proved Will as required under Section 63 of Act 1925 and Section 68 of Act 1872 – Whether 1st Respondent entitled for partition – Whether 1st Respondent was entitled to alternative relief of monthly maintenance – *Held*, Appellants by examining two attesting witnesses/DWs 2 and 3, duly proved execution of Will – Will was registered and it had partaken character of genuine Will – Testator did not leave 1st Respondent in lurch – He had bequeathed land in her favour to be enjoyed by her till her life time – Deposition of DWs 2 and 3 was natural and cogent – Their evidence could not be discarded merely because they were related to deceased – Execution of Will was in consonance with Section 63 of Act 1925 and Section 68 of Act 1872 – 1st Respondent not entitled for partition – 1st Appellant/son directed to pay Rupees Twenty thousand per month till her life time, from date of plaint – Appeal allowed.

(2018) 7 MLJ 742

Sparks Gym Vs. Faery Estates Private Limited

Date of Judgment: 01.08.2018

Civil Procedure – Interim Injunction – Deposit of money – Applicants/Plaintiffs filed suit for declaration that they were tenants operating Gym in Respondents/Defendants' premises to specific extent under agreement in question and that terminated addendum agreement was null and void – Applicants filed application for grant of interim injunction restraining Respondents from interfering with their right in running of Gym in Respondents' premises – Respondents prayed for dismissal of application and took out application for direction to Applicants to deposit certain sum – Whether Applicants entitled to interim injunction as prayed for – Whether interim injunction was subject to deposit of amount by Applicants – *Held*, Applicants were put in possession under leave and license agreement – Period was for three years and rent commencement date was also given in schedule – Subsequently, amount had also been received as rent – Intention of parties had to be seen to find out whether it was lease or license and it was matter of evidence which could not be decided in interim injunction application stage itself – Applicants were in possession of property, which was not disputed by Respondents – Merely because documents appears to have been revoked that itself was not ground to evict Applicants at this stage – Applicant had entered in agreement agreeing to pay certain amounts, therefore, it was duty of Applicant to pay amount – Without paying amount they could not enjoy premises – Till disposal of suit, there shall be interim injunctions as prayed for – Said order was subject to deposit of amount by Applicant before this Court to credit of suit – Applications Ordered.

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MADRAS HIGH COURT – CRIMINAL CASES

(2018) 4 MLJ (Crl) 1

Palanivel @ Velusamy Vs. State

Date of Judgment: 10.08.2018

Murder – Fair trial – Indian Penal Code, 1860, Sections 302 and 307 – Appellant/sole accused convicted under sections 302 and 307 for causing cut injuries to his wife/P.W.1 and murdering P.W.1's mother, hence this appeal against conviction – Whether entire trial was vitiated due to non-cross-examination of witnesses by accused – Whether prosecution had proved guilt of accused beyond all reasonable doubt – *Held*, when P.W.1 was examined, despite presence of counsel in some hearings, no attempt whatsoever made even to file application to recall witnesses – It could not be stated by accused in appeal stage that entire trial was vitiated on ground of fair trial concept – Conduct of accused indicated that he deliberately failed to cross-examine eye witnesses, namely, his wife and her relatives – Complicity of accused in crime clearly established by prosecution – Prosecution proved guilt of accused beyond reasonable doubt – Judgment of Trial Court convicting accused for offences under Sections 302 and 307, did not warrant interference – Appeal dismissed.

(2018) 4 MLJ (Crl) 20

Nalini Chidambaram Vs. Directorate of Enforcement

Date of Judgment: 10.07.2018

Summons – Money Laundering – Code of Criminal Procedure, 1973 (Code), Section 160 – Prevention of Money Laundering Act, 2002 (Act), Sections 3 and 50 – In proceedings initiated under Act, summons issued to Appellant/Senior Lawyer under sections 50(2) and 3 of Act – Challenge made to summons seeking umbrage under Section 160 of Code, rejected, hence these appeals – Whether Appellant entitled to invoke Section 160 of Code – *Held*, initially Appellant was permitted to appear through authorized agent – Impugned notice issued on finding certain new facts and contradiction in statements given, which could not be satisfactorily explained by authorized agent – Appellant had been rendering professional service by travelling extensively throughout country – For appearing before authority mandated by law, she sought protective discrimination as woman – In discharge of professional duty, there was no difference between man and woman – Summons were issued to Appellant in her discharge and capacity as professional and not otherwise – Fair construction principle would apply to Section 160 – Neither likelihood of bias nor malice could be seen through summons issued – Appellant did not choose to challenge summons earlier but rightly appeared through authorized agent – Issues raised only when 2nd Respondent had asked her to appear in person – Appellant not entitled to invoke Section 160 of Code – Appeals dismissed.

(2018) 4 MLJ (CrI) 44

V. Gnanamurthy Vs. State

Date of Judgment: 01.08.2018

Rash and negligent driving – Reasonable Doubt – Indian Penal Code, 1860, Sections 279 and 304 (A) – Lower Courts convicted Petitioner for offence under Section 279 and 304 (A) (2 counts) and for offences under Motor Vehicles Act for causing death of two persons by his negligent driving of lorry, hence this revision – Whether death happened as result of rash and negligent act of accused – *Held*, theory of PW-2 and PW-3/eye witnesses that Lorry hit Motor Vehicle driven by deceased persons on back side falsified by Rough sketch, Inspection Report and evidence of Motor Vehicle Inspector/PW-10 – PW-3 and PW-4 were there at time of accident but however they had not witnessed accident at time when it happened – Both of them were only able to see back side of Lorry, even as per their own admission in evidence – Evidence of PW-7 and PW-8 create doubt in manner in which law was set in motion – Name of Petitioner was added at later point of time in different hand writing in both complaint and FIR – Lower Courts had assumed that driving at high speed by itself was negligent act – Speed by itself was not criteria to punish person under Section 304(A) – Prosecution had not established beyond reasonable doubt that accident happened only due to rash and negligent driving of Petitioner – Judgments of lower Courts set aside – Revision allowed.

(2018) 4 MLJ (CrI) 56

Sivan Vs. State through the Inspector of Police

Date of Judgment: 09.08.2018

Dacoity – Improbable Evidence – Indian Penal Code, 1860, Sections 399 and 402 – Trial – Trial Court found Appellants/1st to 5th accused guilty under Sections 399 and 402 on allegations that they conspired to dacoit by waylaying vehicles, hence these appeals – Whether prosecution proved case beyond all reasonable doubt – *Held*, evidence of P.W.1 to P.W.4 and P.W.7, that while travelling in vehicle on bridge they heard conversation of accused, who were sitting under bridge was highly improbable – Such evidence of P.W.1 to P.W.4 and 7 was completely artificial and could not be believed – Case of P.W.7 that he stopped vehicle and went to place of occurrence and arrested accused indicates that prosecution case was highly unbelievable – P.W.7 admitted in cross examination that it was published in newspaper that twenty people were arrested in order to maintain law and order problem, which included accused also – Inordinate delay in sending rough sketch and First Information Report had not been explained – P.W.7 being informant should not proceed with investigation – Appellants in both cases acquitted – Appeals allowed.

(2018) 4 MLJ (CrI) 75

Cell @ Karunanithi vs. State by Inspector of Police

Date of Judgment: 14.08.2018

Culpable homicide not amounting to murder – Recovery of weapon – Indian Penal Code, 1860 (Code 1860), Section 304(ii) – Trial Judge convicted Appellant/Accused under Section 304(ii) of Code 1860 for assaulting son of *defacto* complainant/PW1 in presence of PWs-2, 3, 5 and 6 and causing his death, hence this appeal – Whether usage and recovery of weapon were proved – Whether evidence available against Appellant for conviction – *Held*, evidence of PWs-2, 3, 4, 5 and 6 had not substantiated use of MO-3/Aruval – Though prosecution attempted to prove case through recovery of Aruval through PW-8 and PW-9, they did not support case of prosecution – Use of Aruval had not been proved by prosecution – Injuries found on dead body could not be taken into account that those injuries were inflicted upon deceased by using Aruval – Prosecution failed to prove admitted portion of confessional statement and also recovery of weapon – Eye witness/PWs-2, 3 were not sure as to whether Appellant used any Aruval in occurrence and thereafter forcibly took accused along with him – Evidence of PW-2 and PW-3 appears to be artificial and no conviction could be sustained based upon such evidence – PW-1 was not aware of alleged occurrence – He was not sure while lodging complaint about involvement of appellant in occurrence – None of witnesses pointed out that Appellant was responsible for death of son of PW-1 – Usage and recovery of Aruval were not proved – No clinching evidence available as against Appellant that he alone was responsible for homicide of son of PW-1 – Conviction set-aside – Accused entitled to benefit of doubt and acquitted from all charges – Appeal allowed.

(2018) 4 MLJ (CrI) 87

Rani Vs. State

Date of Judgment: 09.08.2018

Murder – Provocation – Indian Penal Code, 1860, Sections 302 and 304(i) – P.W.1 and accused had developed illegal contact, which resulted in quarrel between deceased/wife of P.W.1 and P.W.1 – Accused poured kerosene on deceased, lighted match-stick and ran away from place of occurrence – Accused charged with murder – Trial Court convicted Accused under Section 302, hence this appeal – Whether prosecution proved guilt of accused beyond all reasonable doubts – *Held*, circumstances narrated indicate that Accused would have committed such offence in sudden provocation and in heat of passion – Fact indicates that only to cause some injury on body of Deceased, Accused did such act – Act of Accused would fall within ambit of Section 304(i), since she had intention to cause bodily injury on Deceased – Offence under Section 302 would not attract – Appeal partly allowed.

(2018) 4 MLJ (CrI) 140

M. Siluvai Murugan @ Murugan Vs. State

Date of Judgment: 30.07.2018

Grievous Hurt – Acid Attack – Indian Penal Code, 1860, Sections 326 (A), (B) and 506(ii) – As Accused threw acid from bottle, victim got permanent scar and suffered simple injury – Trial Court convicted accused under Sections 326(A) and 506(ii), hence this appeal – Whether prosecution proved charges under Section 326(A) against accused beyond reasonable doubt – Whether prosecution proved charge under Section 506(ii) – Whether judgment of Trial Court is sustainable in law – *Held*, words and phrases adopted in Sections 326(A) and 326(B), show that whichever caused either permanent or partial damage or deformity or portion of disfigurement in any part or parts of body of person, are causing grievous by throwing acid with a knowledge that it is likely to cause such injury or yet, phrase adopted will clearly indicate that injury need not be grievous in nature – To attract penal provisions of alleged Sections, use of weapon for crime should be “acid” – Victim should have suffered either permanent or partial damage or any deformity or burns or maims or disfigurement – Act of accused in throwing substance of liquid with alleged percentage and consequent injury on body of victim will squarely fall under Section 326(B) and not under Section 326(A) – Conviction passed under Section 326(A) is set aside and modified, as contemplated under Section 326(B) – Conviction and sentence for offence under Section 506(ii) remains unaltered – Appeal partly allowed.

(2018) 4 MLJ (CrI) 157

D. Ramesh vs. Vijayakumar

Date of Judgment: 31.07.2018

Investigation Process – Power of Magistrate – Code of Criminal Procedure, 1973, Sections 2(o), 2(s), 154 and 156(3) – Petitioner in both petitions filed complaints before City Crime Branch (CCB), to take action against some individuals – On non-action by Investigating Officer of CCB, Petitioners filed petitions under Section 156(3) seeking for direction to CCB to register case and to investigate complaint against Respondents – Petitions dismissed, hence these revisions – Whether CCB was police station under Section 2(s) – Whether police officer in-charge of CCB could be termed as Officer in-charge of police station under Section 2(o) – Whether legal requirement to approach first investigating agency/police, had been complied with by Petitioner – Whether petition filed under Section 156(3) must be supported by affidavit – *Held*, CCB was police station within meaning of Section 2(s) and all Assistant Commissioners of Police in CCB are officers in-charge of police station within meaning of Section 2(o) – If Officer in-charge refused to entertain/receive complaint, Complainant could approach Deputy Commissioner of Police, CCB, under Section 154(3) – Before invoking Section 156(3), Petitioner must comply with procedure under Section 154(1) and (3) – Petition filed for invocation of Section 156(3) must be accompanied with affidavit sworn in by Petitioner, without which, such petition shall not be entertained – Court of Metropolitan Magistrate for exclusive trial of CCB Cases and CBCID Metro Cases constituted under specific G.O. was exclusive Court only for cases entrusted or investigated by CCB and CBCID, Metro cases – Such Magistrate shall exercising power under Section 156(3) to give directions to officers in-charge at CCB –

Rejection order made in first petition by Magistrate set aside and remitted back to Magistrate for reconsideration under Section 156(3) – Petitioner in second case had not filed any supporting affidavit to petition – Order of Magistrate upheld – First revision petition allowed – Second petition ordered accordingly.

(2018) 4 MLJ (Crl) 229

R. Gopalakrishnan Vs. State by the Inspector of Police

Date of Judgment: 14.09.2018

Illegal Gratification – Presumption – Prevention of Corruption Act, 1988 (Act), Sections 7, 13 and 20 – Appellant/accused/Line man in telephone department convicted under Sections 7, 13(1) and 13(2) for demand and receipt of illegal gratification for shifting of telephone line, hence this appeal – Whether amount received by Appellant was towards illegal gratification or towards expenses incurred in providing telephone connection to PW2 – Whether explanation offered by Appellant to rebut presumption under Section 20 of Act was plausible and acceptable – *Held*, receipt of money for expenses towards transport of unused poles to house of PW2 and wages towards labourers for digging pits and erection of poles could not be treated as illegal gratification – Appellant had not obtained any pecuniary advantage for himself – Explanation offered by Appellant that money was received towards expenses, plausible and acceptable – Trial Court ought to have accepted explanation – Prosecution failed to prove offences under Section 7 and 13(2) read with 13(1)(d) – Judgment of trial court set aside – Appeal allowed.

(2018) 4 MLJ (Crl) 290

KHEC Technologies (India) Pvt. Ltd. Vs. R.S. Gowrishankar

Date of Judgment: 23.08.2018

Negotiable Instruments – Dishonour of Cheque – Service of Statutory Notice – Negotiable Instruments Act, Sections 138 and 142 – Respondent/accused served in Complainant/Company and misappropriated money – Accused gave four cheques for alleged amount and except one cheque other three were dishonoured on round of ‘payment stopped by drawer’ – Complainant gave statutory notice and it returned unserved with postal endorsement that intimation delivered – On complaint filed by Complainant under Sections 138 and 142, Trial Court held that service of statutory notice was incomplete and acquitted accused, hence this appeal – Whether accused evaded service and case of Complainant/Appellant, legally unsustainable – *Held*, when accused took stand stating that there was no legally enforceable debt, he ought to have offered explanation as to why cheques were issued by him in favour of Complainant and it is his duty to prove same in manner known to law – Stand taken by accused as if statutory notice was not properly served upon him, cannot be appreciated – Accused received summons from Court by same address where statutory demand notice was sent – Statutory notice was served upon him by postal authorities – Judgment of Trial Court set-aside – Accused convicted for offence under Section 138 – Appeal allowed.

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