



TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW



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INDEX

S. No.	IMPORTANT CASE LAW	PAGE No.
1.	Supreme Court – Civil Cases	II
2.	Supreme Court – Criminal Cases	III
3.	High Court – Civil Cases	V
4.	High Court – Criminal Cases	X

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Aliyathamuda Beethathebiyyapura Poooya and Another Vs Pattakal Cheriyaoya and Others	(2019) 6 MLJ 464 (SC)	01.08.2019	Office of mutawalli was vested with Respondents by custom – customary right to office of mutawalli of mosque, is not unreasonable or opposed to public policy	1
2	Mahanagar Telephone Nigam Ltd. Vs Canara Bank and Others	(2019) 6 MLJ 287 (SC) LNIND 2019 SC 621	08.08.2019	Appellant after giving its consent to refer disputes to arbitration, is estopped from contending that no written agreement to refer parties to arbitration – Statement of Claim and Defence filed before Arbitrator would constitute evidence of existence of an arbitration agreement under Section 7(4) (c) of Act – A non-signatory can be bound by an arbitration agreement on basis of “Group of Companies” doctrine.	1
3	Balwant Singh and Sons Vs National Insurance Company Ltd and Another	(2019) 6 MLJ 301 (SC) LNIND 2019 SC 620	31.07.2019	Though transfer is not informed to the registering authority the policy of Insurance is issued by insurer and payment of premium is made by the Appellant – Transfer of vehicle also is not disputed-Insurer cannot repudiate claim of Appellant	2
4	Krishnamoorthy S.Setlur (D) BY LRS / VS / O.V.Narashima setty (D) BY LRS	2019 (13) SCALE 84	26.09.2019	Plaintiff can claim title to the property based on adverse possession - Adverse possession can be used as an offence and defence	2
5	Doddamuniyappa (Dead) through L.Rs. Vs. Muniswamy and others	2019 (5) CTC 369	01.07.2019	The share which a co parcenor obtained on partition of ancestral property will remain as ancestral property as regards his male issues. They take an interest in it by birth whether then are in existence at the time of partition or are born subsequently. Such share however, is ancestral property only as regards his male issues and as regards other relations it is separate property and if the coparcenor dies without leaving male issues it passes to his heirs by succession	2
6	Mohan Chandra Tamta (Dead) Through LRs. Vs. Ali Ahmad (D) Thr. LRs. & Ors.	2019 (12) SCALE 257	12.09.2019	The tenant remains tenants whoever be the Landlord / owner. Once 3rd defendant under whom the defendants claim protection has not challenged the decree of the trial court with regard to his title, Defendants no1 and 2 can't be allowed to challenge the finding of ownership with which they are not directly concerned	3
7	Chennadi Jalapathi Reddi Vs Baddam Pratapa Reddy (Dead) Thr Lrs. and Anr	2019 (11) SCALE 503	27.08.2019	Expert evidence should not be given precedence over substantive evidence of attesting witnesses – The absence of plaintiff's signature on agreement of sale will not nullify the agreement altogether	4

SUPREME COURT - CRIMINAL CASES

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	G.J.Raja Vs Tejraj Surana	2019 (5) CTC 121 : (2019) 3 MLJ (Cr) 573 (SC)	30.07.2019	when an amendment will take effect discussed-Section 143-A of NI Act will not apply retrospectively - Section 143-A NI Act creates - new liability hence does not apply retrospectively – Amended provision for deposit of Interim Compensation would apply prospectively in respect of offence committed after 1.9.2018	5
2	Sanjeev Kumar Gupta Vs State of Uttar Pradesh and another	(2019) 3 MLJ (Cr) 538 (SC) LNINDORD 2019 MAD 559	25.07.2019	only when there is no rebuttal evidence the age mentioned in the Matriculation or school certificate can be accepted as conclusive proof. If there arise reasonable suspicion then enquiry may be conducted as to the authenticity of the entry made in such certificate.	5
3	M/s.Shree Daneshwari Traders Vs Sanjay Jail and Another	2019 (2) TLNJ 244 (Criminal)	21.08.2019	Presumption under section 139 arises when cheques were issued by respondent/accused for the discharge of any debt in whole or in part – Courts below - erred in not raising the statutory presumption under Section 139.	6
4	Naval Kishore Misra Vs State of UP and others	2019 (5) CTC 382	05.07.2019	Victim has right to file appeal in case of acquittal and it's not necessary for the victim to obtain leave to appeal - The appeal filed by the victim has to be treated as regular appeal.	6
5	Manjit Singh Vs. The State of Punjab	2019 (2) TLNJ 294 (Criminal)	03.09.2019	Common object of the persons composing that assembly could be formed on the spur of the moment and does not require prior deliberations - course of conduct adopted by the members, behaviour before, during, and after the incident and the arms carried by them are a few basic and relevant factors to determine the common object.	7
6	Kathi David Raju Vs. State of Andhra Pradesh and another	2019 (3) MWN (Cr.) 102 (SC)	05.08.2019	No material brought out by Investigating Officer on basis of which it could be opined that DNA Test is necessary - Order passed by lower Court and confirmed by High Court, held, not sustainable	7
7	Girish Singh Vs State of Uttarkhand	2019 (3) MWN (Cr.) 105 (SC)	23.07.2019	Section 113-B provides for presumption as to dowry death, if it is shown that soon before her death, woman was subjected by cruelty or harassment in connection with demand of dowry - Presumption rebuttable - Open to husband and his relatives to show absence of ingredients of Section 304B.	7
8	In Re : Inhuman Conditions in 1382 Prisons	2019 (5) CTC 378	13.12.2018	Death Row Prisoners $A = \pi r^2$ entitled to meet the Lawyers, immediate Family Members and Mental Health Professionals	8

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
9	Jagbir Singh Vs State (N.C.T. of Delhi)	2019 (12) SCALE 57	04.09.2019	When there are more than one dying declaration, and in the earlier dying declaration, the accused-husband is not implicated but in the later dying declaration, husband is implicated by the deceased, the case must be decided on facts of each case – Court will not be relieved of its duty to carefully examine the entirety of materials as also the circumstances surrounding the making of different dying declarations - appeal dismissed	8
10	P.Chidambaram Vs Directorate of Enforcement	2019 (12) SCALE 94	05.09.2019	In a case of money-laundering where it involves many stages of 'placement', 'layering' and 'interrogation i.e. funds used to acquire various assets', it requires systematic and analysed investigation which would be of great advantage – Section 438, Cr.P.C. is to be invoked only in exceptional cases where the case alleged is frivolous or groundless	9
11	Khuman Singh Vs State of Madhya Pradesh	2019 (11) SCALE 485	27.08.2019	To attract Section 3(2)(v) – of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act – the Offences of atrocities must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe.	10
12	Nevada properties private Ltd through its directors VS State of Maharashtra and another	2019 (12) SCALE 826	24.09.2019	Police officer investigating a criminal offence can seize only movable property under section 102 CRPC and cant seize immovable property under section 102 CRPC	10

HIGH COURT - CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Surya Pelle Chemical0020and Mould Vs Hi-Lite Leathers and Others	(2019) 6 MLJ 397	10.07.2019	Trial Court had no Jurisdiction to entertain and pass any orders in interlocutory application after compromise award is passed. It had become functus officio – once attachment made absolute then same enures till decree was fully satisfied - mode of termination of attachment is envisaged under order XXI Rule 55	11
2	Sree Karthick Traders, Rep. by Partner S.Senkuttuvan Vs Adhithya Textiles Process, Rep. by its Partner N.Balasubramanian and others	(2019) 6 MLJ 412	21.07.2019	Under section 25(3) of the contract Act even a time barred debt is a good Consideration. The difference between sec 18 of the limitation act and section 25 (3) of contract Act is that under the former the acknowledgement shall be made before the expiry of debt but under the latter proviso debt could be acknowledged even after it becomes barred by limitation.	11
3	P.Sachithanantham Vs Arivalagan	(2019) 6 MLJ 452	24.04.2019	Certificate issued by Tashildar prove that Plaintiff is a tenant – Document relied by plaintiff raised presumption in his favour under Section 15 of Act – Document relied by plaintiff having value more than that relied by defendant.	12
4	K.Kalianna Gounder and Another Vs Sundararaj and Another	2019 (5) CTC 80	04.02.2019	in absence of reference to Pathway/Cart-track in source document (1958 Partition Deed), such reference created subsequently by descendants of one Co-owner is not binding on Plaintiffs - Claim of right of passage as Co-owner is diagonally opposite to plea of right of passage as easement of necessity	12
5	M.Sathyan Sundararajan Vs K.R.S.Janakiraman (A.K.A.Johnny Shanmugam) and Another	2019 (5) CTC 104	24.04.2019	Unregistered Lease, created in violation of Injunction Order, did not confer any right to Obstructer –Order 21, Rule 102 bar transferee pendent lite from obstructing or resisting execution of Decree for Possession of property –	13
6	Dr.R.Thiagarajan Vs Inspector General of Registration, Santhome, Chennai – 4 and Others	(2019) 6 MLJ 257 (FB) LNINDORD 2019 MAD 10215	05.08.2019	Sale Certificate issued in respect of a property sold in public auction by the civil or revenue officers will not require registration. But sale certificate issued by the Authorized Officer of bank is liable for stamp duty under Article 18-C read with Article 23 of Schedule 1 of Act 1899.	13
7	Ponnammal Vs Malaiyan and Another	(2019) 6 MLJ 312	03.07.2019	If the recall is sought for further elaboration on the left out points it can't be allowed If the document will assist	14

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
		LNINDORD 2019 MAD 9006		the court to arrive at a fair conclusion of disputed question of fact and may bring out truth, court could allow the application even imposing cost for the delay.	
8	N.Rajaram Vs R.Murali and Others	(2019) 6 MLJ 372 LNINDORD 2019 MAD 8962	03.07.2019	Lis pendens transferee though not party to suit is still person claiming under defendant is entitled to be heard - In Rule 13 Order 9 of CPC, the word "he" mentioned therein cannot be construed with such rigidity and restrictions to exclude the person who have stepped into shoes of defendant, from moving application for setting aside ex parte decree especially in presence of the section 146.	14
9	R.Chandrasekar and Another Vs B.Gopalakrishnamurthy and Others	2019 (3) TLNJ 469 (Civil)	02.04.2019	Review cannot be rehear on a fresh cause of action which was not considered before the trial Court or Appellate Court in as much as the court is dealing with the case involving fraud and collusion as held on facts, review petition cannot be allowed – Its settled position of law that mortgagee is not the trustee of mortgagor and hence sale under section 69 of Transfer of Property Act can't be questioned by mortgagor except when there is fraud or collusion between mortgagee and purchaser -burden is on the part of Mortgagor to plead and prove fraud.	14
10	S.Chelladurai Vs Karpagavinayagar firm, Sivagangai District	2019 (4) L.W. 505	09.08.2019	Once a partnership firm is arrayed as party in a civil suit concept of impleading under order 22 is inapplicable.	15
11	Pitchai Iyer and others vs K.Subramanian	2019 (4) L.W. 541	20.06.2019	Objection under order 2 rule 2 (3) of CPC can't be determined in an application under Order 7 rule 11(d).	15
12	Rengasamy VS Balagauru and others	2019 (4) L.W. 367	23.04.2019	Objection as to court fee can be raised either in the written statement or by an application under section 12 of court fees Act. If such objection is raised before evidence is taken in the main suit the court shall determine the issue as to court fees. On such enquiry If court fees paid is found incorrect then opportunity shall be given to the Plaintiff to pay the deficit court fees - trial court before having permitted the plaintiff to carry out such amendment in the plaint should have issued check slip to the plaintiff for additional court fee.	15

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
13	New India Assurance Co. Ltd and Ors Vs Shahin and Ors	2019 (2) TN MAC 381	10.07.2019	Though no cross objection is filed by the claimants the court can take note of the facts and circumstances as it thinks fit to enhance the compensation - it can be more than the amount claimed by the claimants.	16
14	Oriental Insurance Co. Ltd., Vs Chinnathai and Ors	2019 (2) TN MAC 335 (Kar.)	10.01.2019	Duty of High Court in Appeal is to go through materials in detail and dispose of case in accordance with law – Claimants though not preferred any Cross-Appeal, entitled to enhancement of Compensation.	16
15	National Insurance Co. Ltd. Vs Ghanaram Sabu and Ors	2019 (2) TN MAC 327 (Chht.)	03.01.2018	WC rules envisages certain specific provisions of CPC that would be applicable to WC Act – Provision of Order 41, Rule 22 not found mentioned in that rule – Cross-Appeal by Claimant, therefore, is held not maintainable.	17
16	Oriental Insurance Co. Ltd., Vs Malliga	2019 (2) TN MAC 323	10.10.2018	Claimants though Gratuitous passengers, being Third parties, Insurer cannot claim total exoneration – Insurer entitled to recover Award amount from Owner as per mode of recovery incorporated in Nanjappan.	17
17	P.Thanga Piratty Vs T.Maharajan and Anr	2019 (2) TN MAC 319	27.08.2018	Failure on part of transferee to inform Insurer about transfer within 14 days of transfer for necessary changes in Insurance Policy - would not exonerate Insurer from its liability – Transferee entitled to benefit of Insurance Policy.	17
18	United India Insurance Co. Ltd Vs Divya @ Divya Thomas and Ors	2019 (2) TN MAC 316 (DB)	12.04.2019	INTEREST – Rate of Interest – Accident took place on 8.7.2014 – Award of Interest at 9% p.a. – Not proper – Reduced to 7.5% p.a.	18
19	Martin Sagayanadin Vs Antoinette and Anr	III (2019) DMC 121 (DB) (Mad.)	25.01.2019	Spouses living separately for 19 years – No attempt on part of wife to go to her husband's house – Irretrievable breakdown of marriage – Wife has not filed any petition for restitution of conjugal rights – There is no love left between parties – Not to grant decree of divorce would be disastrous for parties.	18
20	Subal Mondal Vs Anjana Dey (Mondal)	III (2019) DMC 104 (DB) (Tri.)	18.01.2019	Mere long separation cannot be automatically taken as a ground unless it is pleaded definitely that despite congenial atmosphere having existed in matrimonial home, respondent started living separately.	18
21	M.Manimegalai and Anr Vs Chellammal and Ors	2019 (3) MWN (Civil) 6	23.07.2019	No reason substantiated for not marking these documents, which were available during trial – Order of Trial Court	19

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				dismissing Application, justified	
22	S.Suresh Vs A.Mahalakshmi	2019 (3) MWN (Civil) 14	19.08.2019	No Medical Certificate produced to prove alleged illness – Husband remarried, after expiry of period fixed for seeking to set aside ex parte Decree or file Appeal – Intention of legislature, while deciding Matrimonial matters, is to settle rights of parties at shortest period of time – Delay ought not to have been condoned.	19
23	Thayammal Vs Government of Tamil Nadu	2019 (3) MWN (Civil) 37	25.06.2018	Patta cannot be granted in respect of Water bodies – When land has been classified as ‘Kanmai Poramboke’ land, no Patta can be granted in respect of such lands	19
24	Bhuvana Vs A.H.Bheeman (deceased) and Ors	2019 (3) MWN (Civil) 49	28.02.2019	Readiness and willingness, sine qua non to grant relief - Part of Contract can be enforced only on relinquishing on claims to performance of remaining part of Contract and on payment of entire consideration – Without satisfying conditions specified under Section 12, part of Contract cannot be enforced.	20
25	Sarasu Vs Vasantha @ Vasanthi and Anr	2019 (3) MWN (Civil) 82	03.04.2019	Averments made in Affidavit explaining admission made in deposition cannot be given any importance – Trial Court, while trying Suit, need not take into account subsequent pleadings made with regard to planting of trees and digging of bore well, since those pleadings are made after admission and during trial.	20
26	Samson Maritime Ltd., Vs Hardy Exploration & Production (India) Inc., and Ors	2019 (3) MWN (Civil) 84	11.03.2019	Judgment-debtor bound to make truthful disclosure in Affidavit – Failure to make truthful disclosure would amount to willful disobedience and liable to be committed to Civil Prison – Direction issued to detain Principal Officer of Company in Civil Prison.	21
27	B.T.Munichikkanna Reddy and Ors Vs Siddappa Reddy	2019 (3) MWN (Civil) 91	26.11.2018	Under Order 1, Rule 10(2) even without Application, Court may at any stage add or strike out parties – Hyper-technical approach which may result in miscarriage of justice cannot be adopted while deciding Application under Order 1, Rule 10.	21
28	V.Ekambaram and Anr Vs O.Kuppusamy and Ors	2019 (3) MWN (Civil) 96	09.01.2019	Court may allow either party to amend pleadings at any stage to determine real question in controversy.	21
29	Padmavathi A. Vs Mahendiran and another	2019 (3) TLNJ 607 (Civil)	18.07.2019	Settlement Deed – once executed it cannot be cancelled.	22

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
30	V.T.Vijayan VS U.Kuttapan Nair and Others	2019 (5) CTC 241 (FB) (Kerala HC)	01.03.2019	Agreement for Sale executed by parties to lis, during pendency of Suit, is hit by Doctrine of lis pendens.	22
31	M.Mallika vs Kasi Pillai	2019 (5) CTC 341	21.06.2019	Material alteration visible to naked eye raises strong suspicion of circumstances surrounding execution of Pro-Note - Renders instrument void - Burden of proving instrument is on Plaintiff side who had possession of Promissory Note.	22
32	Shriram General Ins. Co. Ltd., Vs Raj Kumar Verma and Others	2019 ACJ 2347 (Delhi)	19.07.2018	Goods vehicle - Injured deposed that he was a vegetable seller and he had purchased peas to sell in market and paid money to the owner of truck to carry peas in the truck - Injured was not cross-examined -insurance company is liable.	23
33	United India Insurance Co. Ltd. Vs. Harjit Kaur and another	2019 ACJ 2244 (Punjab & Haryana)	02.11.2018	personal accident cover for owner-driver includes borrower of vehicle – no.	23
34	National Insurance Co. Ltd. Vs. Anil Kumar and others	2019 ACJ 2374 (Delhi)	10.08.2018	permit was issued after 10.15 a.m. on the day of accident and since in cross-examination injured had admitted the fact that accident occurred at 12 noon it cannot be said that bus did not have a valid permit at the time of accident.	23
35	National Insurance Co. Ltd., Vs. Sukriti Sahu and others	2019 ACJ 2362 (Chattisgarh)	07.01.2019	No evidence adduced by insurance company to prove that tanker was carrying any inflammable or hazardous goods at the time of accident - Whether driver was holding a valid license and insurance company is liable - Held: Yes.	24
36	National Insurance Co.Ltd., Vs. Bijaya Bhuyan and others	2019 ACJ 2285 (Gauhati)	31.10.2018	Whether Tribunal has jurisdiction to convert a claim under Section 163-A into a claim under Section 166 or vice versa - Held; no.	24
37	Muthiah Konar & Ors Vs. Masilamani and another	2019 (3) TLNJ 593 (Civil)	18.07.2019	Where the evidence on the record is sufficient to substantiate the absentees party and for disposal of suit the he is deemed to be present and the decision can be set to be on merit.	24

HIGH COURT - CRIMINAL CASES

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Principal District & Sessions Judge, Theni Vs Kattavellai @ Devakar	2019 (5) CTC 45	13.03.2019	Brutality, with which young girl was raped, butchered and inhumanely killed, establishes that Accused is an extremist and a menace to society – Accused, a hardened criminal already convicted in previous cases – Offence committed by Accused, barbaric, heart-breaking and gruesome – Would fall within ‘Rarest of rare category’ propounded by Apex Court in Bachan Singh & Machhi Singh’s case – Imposition of Death Sentence by Trial Court, validated and upheld.	25
2	Prisoners Right Forum, Rep. by its Director, P.Pugalenthai Vs State of Tamil Nadu	(2019) 3 MLJ (CrI) 526 LNINDORD 2019 MAD 9498	22.07.2019	Death in Judicial Custody -third party to proceedings, who is neither a victim nor an aggrieved person, cannot be permitted to prosecute criminal proceedings.	25
3	M.R.Jayakumar Vs S.Senthil	(2019) 3 MLJ (CrI) 536 LNINDORD 2019 MAD 7563	06.06.2019	Relevancy of documents and purpose for which it was sought will be considered at time of appreciation of evidence - Respondent is directed to produce documents or to take a definite stand for refusal for production so that court can evaluate the evidentiary value of the document in accordance with law.	26
4	Radhakrishnan and Others Vs Union of India and Others	(2019) 3 MLJ (CrI) 557 LNINDORD 2019 MAD 9585	24.07.2019	The President has constitutional power to attach conditions while granting pardon / clemency.	26
5	A.Sakthivel Vs State	(2019) 3 MLJ (CrI) 612 LNINDORD 2019 MAD 10386	08.08.2019	No valid marriage between Petitioner and 2nd Respondent and there was no husband and wife relationship between them, hence, there cannot be conviction under Section 498 A.	27
6	Surendran Vs Femy Parimala	2019 (2) TLNJ 221 (Criminal)	08.08.2019	Section 340 Cr.P.C. r/w 195 Cr.P.C. is not a weapon to wreak vengeance – Petitioner obtained anticipatory bail – IA filed by wife contending that the signature found in the affidavit and power of attorney would not be by her husband since he was not in India at that time – allowed by trial Court – Appeal – affidavits were filed in the year 2013 – main case itself was dismissed for default on 30.09.2013 – Wife/ respondent filed a petition under Section 340 Cr.P.C. in the year 2016 – by itself, cannot be a good reason to negative the prayer.	27

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
7	State of Tamilnadu Vs Selvi and Others	2019 (2) TLNJ 230 (Criminal)	05.08.2019	It's well settled that at the time of framing of charge the court need not conduct rowing enquiry. To frame charge it is sufficient that prima facie case made out from the report filed under section 173-Innocence of accused can be proved only after trial.	27
8	Mookaiya Vs. State rep. By Inspector of Police, E-4 Abhirampuram Police Station, Chennai & another	2019 (3) MWN (Cr.) 7	06.03.2019	Deceased found hanging after 40 days - Suicide Note narrated harassments at hands of Petitioner - Prima facie materials on record to show that deceased was under constant threat and humiliation which led him to commit suicide - Prosecution established a prima facie case - It is for Petitioner to defend same before Trial Court in Course of trial by adducing evidence.	28
9	Vaiko Vs. City Public Prosecutor, Chennai City	2019 (3) MWN (Cr.) 24	20.06.2019	Scope and ambit of Section 199 (2) - Defamatory words should be in respect of conduct of Public Servant in discharge of his Public functions.	28
10	Amutha Meenakshi Vs. State Rep. By The Inspector of Police, B-2, R.S.Puram Police Station, (L & O), Coimbatore City & another	2019 (3) MWN (Cr.) 27	24.01.2019	Offence of cheating is made out only when Accused has fraudulent or dishonest intention at time of making promise or representation - Simple breach of Contract does not constitute offence.	28
11	Mohammed Riyaz & Ors Vs. Union of India	2019 (3) MWN (Cr.) 134 (DB)	06.09.2019	Trial Court required to look into materials under Section 173, Cr.P.C. and decide Bail Application on merits considering Case Diary Report under Section 173, etc.	29
12	Venkatesan & another Vs. State rep. By The Deputy Superintendent of Police, NIDCID, Vellore.	2019 (2) TLNJ 257 (Criminal)	28.08.2019	It is for the accused person to make necessary arrangements to cross examine the witnesses on the same day they are examined in chief - He cannot be permitted to put the blame on the counsel appearing for them and for every change in counsel	29
13	Ponnar vs State rep. By the Deputy Superintendent of Police, Jeeyapuram Sub Division, Tiruchirappalli & another	2019 (2) TLNJ 280 (Criminal)	16.08.2019	Merely because, their evidence is produced by defense side their testimonies cannot be put on a lower pedestal - their testimonies are entitled to equal respect as that of the prosecution witness.	29
14	M/s Anamallai's Motors Private Ltd., SIDCO Industrial Estate, Kappalur, Madurai & others Vs R.Subbaiah	2019 (2) L.W. (CrI) 416	30.07.2019	order taking cognizance and issuing process should reflect Judicial Magistrate has applied his mind and a cognizable offence is made out especially when the accused are Managing Director and the employees of the company - If at all any offence is committed, it could be attributed only to the first accused company - Managing director authorized dealer of car and its employees, cannot be made vicariously liable.	30

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15	Elephant G.Rajendran Vs The Superintendent of Police, Trichy District, Trichy & another	2019 (2) LW (CrI) 478	30.08.2019	Petition praying to direct the respondents to register First Information Report - Directions given.	30
16	N.Chandramohan Vs The state of Tamilnadu by the Inspector of police W6 All women police station Keelpauk-Chennai and C.Shakunthala	2019 (2) TLNJ 239 (Criminal)	20.08.2019	False complaint by the wife under POCSO ACT against her husband - Just for taking custody of the child - FIR quashed -direction given to the police to proceed against the wife under section 22 of POCSO Act.	31
17	Rajagopal VS Inspector of Police, All Women Police Station, Sivagangai	2019 (3) MWN (Cr.) 48	03.07.2019	Offence under section 68(a) of Copyright Act is not bailable offence (2001 (2) LW (CrI) 866). Offences of u/s 9 of Central Exercise Act 1944 u/s 135(1)(ii) of Customs Act 1962 or non cognizable and bailable - Offence u/s.12 of POCSO Act is non bailable.	31
18	Palanivel Vs. State rep. By Inspector of Police, Veeranam Police Station, Salem District	2019 (3) MWN (Cr.) 57	11.07.2019	Accused in split up case produced through PT Warrant throughout, when trial for Co-Accused going on - Trial Court directed to proceed further in accordance with Guidelines laid down in H.Aarun Basha and deal with split up case - Code of Court - Cancellation of, by lower Court - Permissibility and legality.	32
19	T.Packiyathan @ Nathan & Another Vs Intelligence Officer, Narcotic Control Bureau, Chennai Zonal Unit.	2019 (3) MWN (Cr.) 123	08.04.2019	Evidentiary value of - Statement given to NCB Officers, not Police Officers in strict sense - Information given by accused leading to discovery of facts - Statement not basis of conviction - Incriminating materials seized alone foundation for conviction - Articles carried in hand or solder or head etc. would not attract section 50.	33
20	S.Kumarasamy & Ors Vs. State rep. By The Inspector of Plice, C-1, Flower Bazaar Police Station, Chennai.	2019 (2) TLNJ 287 (Criminal)	26.08.2019	To attract Section 505 (1)(b) IPC the act of the accused must lead to causing along to the public or any section of the public and induce them to commit an offence against to the state or against public tranquility - to register FIR. for offence u/s 290 permission of Court u/s.155 Cr.P.C. is required.	33
21	Sivaranjith vs State rep. By the Inspector of Police, Rajapalayam South Police Station	2019 (2) LW (CrI) 321 (DB)	30.04.2019	Judicial Magistrate will have to record the confessions of more than one accused in a given case separately after explaining to each one of them, the consequences of giving confession.	33
22	Sri Raja Vs. State Rep. By Inspector of Police, Sivakasi Town Police Station, Virudhunagar District, and another.	2019 (2) LW (CrI) 350	30.08.2019	Three persons said to have formed the assembly, it cannot be considered as an unlawful assembly petitioner cannot be charged under Section 143 - violation of Section 30 (2) will not constitute an offence under Section 143.	34

SUPREME COURT CIVIL CASES

2019 6 MLJ 464 (SC)

**Aliyathammuda Beethathebiyyappura Pooya and Another
Vs
Pattakal Cheriya Koya and Others**

Date of Judgment: 01.08.2019

Muslim Law – Mutawalli – Suit filed by Respondents for declaration that office of mutawalli of mosque in question was vested with certain family – Appellants filed suit claiming mosque to be managed by committee elected by local residents as per compromise decree – Wakf Tribunal declared compromise deed as void and directed parties along with Wakf Board to draft scheme for management of mosque – On revision, High Court decreed suit filed by Respondents and dismissed suit by Appellants and held that office of mutawalli was vested with Respondents by custom against which this appeal is filed.

Held: Respondents had through clear and unambiguous evidence shown practice of continuous and invariable devolution of office of mutawalli through successive appointments from within family, beginning with institution of mosque itself – Evidence sufficient to draw presumption that such hereditary devolution was as per the intention of original wakf, - customary right to office of mutawalli of mosque, is not unreasonable or opposed to public policy – Hence the verdict of the High court is upheld and Appeals dismissed.

(2019) 6 MLJ 287 (SC)

LNIND 2019 SC 621

Mahanagar Telephone Nigam Ltd. Vs Canara Bank and Others

Date of Judgment: 08.08.2019

Arbitration and Conciliation Act, 1996, Section 7(4)(c) –

Whether absence of written agreement for arbitration between parties affect existence of valid arbitration agreement between three parties

Held, :- No- Agreement between parties as recorded in judicial order, is final and conclusive of agreement entered between parties – Appellant after giving its consent to refer disputes to arbitration, is estopped from contending that no written agreement to refer parties to arbitration – Statement of Claim and Defence filed before Arbitrator would constitute evidence of existence of an arbitration agreement under Section 7(4)(c) of Act.

A non-signatory can be bound by an arbitration agreement on basis of “Group of Companies” doctrine, where conduct of parties evidences a clear intention of parties to bind both signatory as well as non-signatory parties.

(2019) 6 MLJ 301 (SC)

LNIND 2019 SC 620

Balwant Singh and Sons Vs National Insurance Company Ltd and Another

Date of Judgment: 31.07.2019

Vehicle purchased by Appellant on auction and insured the vehicle with First Respondent -latter it was stolen by somebody – Claim petition filed by Appellant was rejected on grounds of ownership of vehicle.

In appeal it's Held that: Insurer was specifically informed by Bank of lifting of its lien on insurance policy following the termination of the agreement of hypothecation – The insurance company had knowledge of transfer Policy. Though transfer is not informed to the registering authority the policy of Insurance is issued by insurer and payment of premium is made by the Appellant – Transfer of vehicle also is not disputed-Insurer cannot repudiate claim of Appellant – Claim allowed – Appeal allowed.

2019 (13) SCALE 84

Krishnamoorthy S.Setlur (D) BY LRS Vs O.V.Narashima setty (D) BY LRS

Date of Judgment: 26.09.2019

Whether plaintiff can claim title based on adverse possession?

Held: Yes - Person in possession can't be ousted by another person except by due procedure of law and once 12 yeas period of adverse possession is over, even owners right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner- the Consequence is that the right, title, interest, acquired can be used as sword by the plaintiff (and as shield by the defendant) under Article 65 of the Limitation Act. Plaintiff can claim title to the property based on adverse possession.

2019 (5) CTC 369

Doddamuniyappa (Dead) through L.Rs. Vs. Muniswamy and others

Date of Judgment: 01.07.2019

Hindu Succession Act, 1956 (30 of 1956), Section 6 - Ancestral Property inherited is - Sold under conditional sale – Reconveyed by Purchaser under terms of Sale Deed in favour of 1st defendant -In a suit for reconveyance by the defendants against the 1st defendant Compromise entered between the D2 to D4 and the D1 without knowledge of their sons - Whether binding on the sons of D2toD4.

Held: No

After reconveyance and restoration of possession to original Owners, the title of the property will resume the original character of Joint Family property –

It is well settled in Dipo vs Wassan Singh and others that the property inherited from father by his sons becomes Joint family property in the hands of the Sons .The share which a co

parcenor obtained on partition of ancestral property will remain as ancestral property as regards his male issues .They take an interest in it by birth whether then are in existence at the time of partition or are born subsequently. Such share however, is ancestral property only as regards his male issues and as regards other relations it is separate property and if the coparcenor dies without leaving male issues it passes to his heirs by succession

Therefore the Sons of original owners will be entitled to Coparcenary rights in such reconveyed Joint Family property - Compromise to which sons not party, not binding upon their share of property.

2019 (12) SCALE 257

Mohan Chandra Tamta (Dead) Through LRs. Vs. Ali Ahmad (D) Thr. LRs. & Ors.

Date of Judgment: 12.09.2019

Specific Relief Act, 1963, Section 12 & 14 - Suit for possession - Defendant Nos.1 and 2 claiming to be the tenants in the suit property under the D3 and denied the ownership of the plaintiff- over the suit property - Trial Court decreed the suit - Defendant No.2 filed an appeal but no appeal was filed by the defendant No.3 - First Appellate Court dismissed the plaintiff's suit holding that plaintiff-appellant was owner of the property only to the extent of 3/4th share and since defendant Nos.1 and 2 were the tenants of defendant No.3, they were not liable to be evicted - Second Appeal - High Court held that even in absence of defendant No.3, the appeal was maintainable -

Point for consideration is that Whether defendant Nos.1 and 2, claiming to be tenants, could maintain an appeal challenging the finding of the trial Court that defendant No.3 was not the owner of the property when defendant No.3 himself had not challenged the decree -

Held, The tenant remains tenants whoever be the Landlord /owner. Once 3rd defendant under whom the defendants claim protection has not challenged the decree of the trial court with regard to his title, Defendants No.1 and 2 can't be allowed to challenge the finding of ownership with which they are not directly concerned. Therefore the appeal filed by them before the District Judge on the issue as to whether the plaintiffs had become the full owner of the property or not, was not maintainable .They could have challenged the decree on other grounds but not on the ground questioning the title of the Plaintiff and the suit is decreed defendant Nos.1 and 2 cant challenge the decree.

2019 (11) SCALE 503

Chennadi Jalapathi Reddi Vs Baddam Pratapa Reddy (Dead) Thr Lrs. and Anr

Date of Judgment: 27.08.2019

SPECIFIC RELIEF ACT, 1963 – Suit for specific performance – Expert DW.2 opined that the admitted signatures of first defendant and disputed signature did not tally, thereby meaning that it was forged –But the expert opinion was not corroborated by any reliable evidence – evidence of the attesting witnesses PWs.2 and 3 –is found cogent and reliable. Trial court rejecting the expert evidence decreed the suit. High Court- reversed the decision in appeal.

Held by the Hon’ble Supreme Court that Court must be cautious while evaluating expert evidence, which is a weak type of evidence and not substantive in nature – Expert evidence should not be given precedence over substantive evidence of attesting witnesses – High Court had not assigned any valid reasons for disbelieving the evidence of the attesting witnesses PWs.2 and 3 – Evidence of PWs.1, 2 and 3 fully supported claim of plaintiff – Their evidence was consistent, cogent and reliable – The absence of plaintiff’s signature on agreement of sale will not nullify the agreement altogether – Hence upheld the trial court Judgment.

SUPREME COURT CRIMINAL CASES

2019 (5) CTC 121 : (2019) 3 MLJ (CrI) 573 (SC)

G.J.Raja Vs Tejraj Surana

Date of Judgment: 30.07.2019

Negotiable Instruments Act, 1881 (26 of 1881), Section 143-A [as inserted by Amendment Act 20 of 2018 w.e.f. 1.9.2018] – Whether will have retrospective effect

Held:

1. As for as criminal matters are concerned the amendment will apply retrospectively if investigation is not completed and final report is not filed (See 1994(4) SCC 602)
2. A statute which affects substantive right is presumed to be prospective unless made retrospective either expressly or impliedly. Where a statute merely affects procedure unless such a construction is textually impossible it is presumed to be retrospective.
(Law relating to forum and limitation are considered as procedural in nature ,Whereas law relating to right of action and right of appeal even though remedial is considered as substantive in nature. Every litigant has vested right in substantive law but no such right exist in procedural law)
3. A procedural statute should not be generally applied retrospectively when the result would be to create new disabilities or obligations or impose new duties in respect of transactions already accomplished
4. A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided either expressly or by necessary implication In the case in hand as Section 143-A NI Act creates liability on Accused to deposit 20% of Cheque amount and as it can be recovered by taking recourse to coercive methods of recovery – it creates new liability hence does not apply retrospectively – Amended provision for deposit of Interim Compensation would apply prospectively in respect of offence committed after 1.9.2018.

(2019) 3 MLJ (CrI) 538 (SC)

LNINDORD 2019 MAD 559

Sanjeev Kumar Gupta Vs State of Uttar Pradesh and another

Date of Judgment: 25.07.2019

Petitioner Claimed that he is Juvenile and relied on CBSE School Certificate

Held, – The question of juvenility can be taken at any stage even after the disposal of the case.

Whenever dispute arise as to age of the accused an enquiry is to be conducted as per Section 7A of the Juvenile rule 12 (3) of Juvenile Justice rule 2007

In that enquiry the certificates has to be evaluated as stated here under,

- a) The Date of birth entered Matriculation and equivalent certificate has to be considered first.
- b) Only in the absence of the above said certificate, the date of birth entered in certificate issued by the school at which the delinquent studied first has to be considered.

c) Only in the absence of above two certificates the birth certificate issued by the Corporation, Municipality and panchayat can be considered

d) Only in the absence of above. Three certificates order can be passed for holding ossification test or other latest medical test for determination of age.

It has been further held that only when there is no rebuttal evidence the age mentioned in the Matriculation or school certificate can be accepted as conclusive proof. If there arise reasonable suspicion then enquiry may be conducted as to the authenticity of the entry made in such certificate as held in Abuzar Hossain Vs state of W.B (2012)10 SCC 489, 2013 (1) SCC (Cri) 83.

In the present case the petitioner studied from 5th std to 8th std at Saket vidhy sthali and the Date of birth recorded in CBSE school certificate differ from the date of birth given in the school certificate issued by the primary school . The date of birth given in the primary school certificate matches with the date of birth voluntarily disclosed by 2nd Respondent while obtaining his driving licence and Aadhaar card –Hence – Date of Birth as reflected in the CBSE certificate could not be accepted as authentic or credible – 2nd Respondent not entitled to claim juvenility as on date of alleged incident based on CBSE school certificate.

2019 (2) TLNJ 244 (Criminal)

M/s.Shree Daneshwari Traders Vs Sanjay Jail and Another

Date of Judgment: 21.08.2019

Negotiable Instrument Act, 1881, Section 139 – Cheques issued to purchase of rice and other commodities – bounced – complaint – dismissed by court below and upheld by High Court . In appeal it has been

Held: presumption under section 139 arises when cheques were issued by respondent/accused for the discharge of any debt in whole or in part – Courts below erred in brushing aside the evidence of PW-1 on the ground that there were no averments in the complaint as to the purchases made by cash and Credit – Also erred in not raising the statutory presumption under Section 139 – further erred in saying that by the receipts-Ex.22/C (colly), the respondent-accused has rebutted the presumption – Oral and the documentary evidence adduced by the complainant are sufficient to prove that it was a legally enforceable debt and that the cheques were issued to discharge the legally enforceable debt – evidence adduced by the respondent-accused is not sufficient to rebut the presumption – defence that though even after payment made the blank cheques were not returned by the appellant-complainant is quite unbelievable and unacceptable – Appeal allowed.

2019 (5) CTC 382

Naval Kishore Misra Vs State of UP and others

Date of Judgment: 05.07.2019

Whether the victim of a crime needs to seek leave for appeal against acquittal of the accused under the proviso to section 372 Cr.P.C.

Held -Victim has right to file appeal in case of acquittal and its not necessary for the victim to obtain leave to appeal -The appeal filed by the victim can't be dismissed solely on the ground that the appeal filed by the Government is dismissed.

The appeal filed by the victim has to be treated as regular appeal.

2019 (2) TLNJ 294 (Criminal)

Manjit Singh Vs. The State of Punjab

Date of Judgment: 03.09.2019

Indian Penal Code 1860, Sections 148,149,302,323,324 & 326 - attack with deadly weapons with the view to murder the complainant parties - Accused convicted and sentenced - affirmed by High Court - Appeal - Trial Court held that it is a case of common object and accused persons were held guilty of the offence 148 & 149 IPC - Common object of the persons composing that assembly could be formed on the spur of the moment and does not require prior deliberations - course of conduct adopted by the members, behaviour before, during, and after the incident and the arms carried by them are a few basic and relevant factors to determine the common object - members of the complainant party purportedly came to the very same Court Complex to attend the hearing of the rape and murder case of the village girl in which, their kiths and relatives were the accused persons - blows hurled by the accused persons on the members of the complainant party had been of wide range, sufficient force and chosen aims - accused persons had acted in concert and the object had clearly been to ensure casualties amongst the members of the complainant party - concurrent findings of the Trial Court and the High Court against the accused persons remain proper - Appeals dismissed.

2019 (3) MWN (Cr.) 102 (SC)

Kathi David Raju Vs. State of Andhra Pradesh and another

Date of Judgment: 05.08.2019

Section 53 - DNA Test - FIR lodged on 06.01.2016 - Appellant arrested on 11.01.2016 - Investigating Officer filed Petition on 13.01.2016 seeking permission for conducting DNA Test and same was allowed by lower Court and confirmed by High Court.

Held that: There is No dispute that Police empowered to seek permission of Court for conducting DNA Test in appropriate cases - Police, in the instant case, without collecting material evidence and without conducting substantial investigation, has come to a conclusion that that DNA Test should be conducted - Request for conducting DNA Test, without substantial evidence is premature - No material brought out by Investigating Officer on basis of which it could be opined that DNA Test is necessary - Order was passed by lower Court and confirmed by High Court, held, not sustainable, set aside.

2019 (3) MWN (Cr.) 105 (SC)

Girish Singh Vs State of Uttarkhand

Date of Judgment: 23.07.2019

Section 113-B – Indian Evidence Act, Section 304-B IPC - “Dowry Death” - Ingredients - Section 113-B provides for presumption as to dowry death, if it is shown that soon before her death, woman was subjected by cruelty or harassment in connection with demand of dowry - Presumption rebuttable - Open to husband and his relatives to show absence of ingredients of Section 304B.

2019 (5) CTC 378

In Re: Inhuman Conditions in 1382 Prisons

Date of Judgment: 13.12.2018

Constitution of India, Articles 14, 19 & 21 - Prisons Act, 1894 (9 of 1894) Section 30 - Universal Declaration of Human Rights, 1948 -

Death Row Convict is entitled to move within confines of Prison like any other Convict undergoing Rigorous imprisonment - Restrictions for security reasons permissible, but compliance with Natural Justice provisions and entitlement to Appeal essential - Death Row Prisoners is entitled to meet the Lawyers, immediate Family Members and Mental Health Professionals - Ratio laid down in Frances Coralie Mullin Vs. Administrator, Union Territory of Delhi, 1981 (1) SCC 608, followed.

2019 (12) SCALE 57

Jagbir Singh Vs State (N.C.T. of Delhi)

Date of Judgment: 04.09.2019

CRIMINAL LAW – IPC – SECTION 302 & 506 – EVIDENCE ACT, 1872 – SECTION 32 – Murder of wife – Multiple dying declarations – Admissibility and evidentiary value – When there are more than one dying declaration, and in the earlier dying declaration, the accused-husband is not implicated but in the later dying declaration, husband is implicated by the deceased, the case must be decided on facts of each case – Court will not be relieved of its duty to carefully examine the entirety of materials as also the circumstances surrounding the making of different dying declarations – Deceased was married to appellant in year 1999 and he was unemployed at that time – Later he secured employment in C.R.P.F but he did not take his wife and she continued to reside with mother of deceased at her house – Prosecution case that appellant used to harass his wife and had illicit relationship with wife of his brother – On 23.01.2008, mother of deceased went to matrimonial home of another daughter and on 24.01.2008, at about 6.00 p.m., appellant came to the house under influence of liquor and allegedly poured kerosene oil upon his wife and also some kerosene oil over himself and threw a lighted matchstick on his wife – Both appellant and his wife were taken to a hospital where she gave her statement but did not implicate the appellant-husband – However, on 27.01.2008, a dying declaration was made by deceased implicating appellant and attributing the act of pouring kerosene and setting her ablaze to him – Deceased died on 02.02.2008 i.e. on the ninth day after admission on 24.01.2008 – Trial Court convicted appellant-husband for offence u/s 302 and 506, IPC – In appeal, the High Court confirmed his conviction – Whether the Courts below were justified in discarding first dying declaration noting that it was in presence of appellant – Held, Yes – Whether conviction of appellant as recorded by Courts below was sustainable – Held, Yes – appeal dismissed.

P.Chidambaram Vs Directorate of Enforcement

Date of Judgment: 05.09.2019

CRIMINAL LAW – Cr.P.C. – SECTION 438 – PREVENTION OF MONEY LAUNDERING ACT, 2002 – SECTION 3 & 4 – IPC – SECTION 120B r/ws 420 – PREVENTION OF CORRUPTION ACT, 1988 – SECTION 8 & 13(2) r/ws 13(1)(d) – Cr.P.C. – SECTION 172 – EVIDENCE ACT 1872 – SECTION 145 & 161 – Anticipatory bail – Denial to grant – Power u/s 438, Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences – In a case of money-laundering where it involves many stages of ‘placement’, ‘layering’ and ‘interrogation i.e. funds used to acquire various assets’, it requires systematic and analysed investigation which would be of great advantage – Section 438, Cr.P.C. is to be invoked only in exceptional cases where the case alleged is frivolous or groundless – Alleged irregularities in Foreign Investment Promotion Board (FIPB) clearance given to INX Media for receiving foreign investment to the tune of Rs.305 Crores against approved inflow of Rs.4.62 Crores – Prosecution case that in year 2007, INX Media approached FIPB seeking approval for FDI upto 46.216 percent of the issued equity capital – FIPB recommended proposal of INX Media subject to approval of the Finance Minister, appellant – In violation of conditions of the approval, the recommendation of FIPB, INX Media made a downstream investment in INX News Ltd. without specific approval of FIPB and generated more than Rs.305 crores FDI in INX Media – Allegations that INX Media entered into a criminal conspiracy with appellant – CBI registered FIR u/s 120B r/w Section 420, IPC, Section 8 and 13(2) r/w Section 13(1) (d) of the Prevention of Corruption Act against appellant and other accused persons – Enforcement Directorate registered a case against these accused persons for allegedly committing offence u/s 3 and 4 of the PMLA – Appellant filed application seeking anticipatory bail both in CBI case and also in money laundering case filed by Enforcement Directorate – On 25.07.2018, High Court granted appellant interim protection from arrest in both the cases and it was extended till 20.08.2019 when the High Court dismissed appellant’s petition refusing to grant anticipatory bail – Whether the Court can look into the documents/materials produced before the Court unless the accused was earlier confronted with those documents/materials – Held, Yes – Whether the court is called upon to hold a mini inquiry during intermediary stages of investigation by examining whether the questions put to the accused are satisfactory or ‘evasive’, etc. – Held, No – Whether it is a fit case for grant of anticipatory bail to appellant – Held, No – Dismissing the appeal, held.

2019 (11) SCALE 485

Khuman Singh Vs State of Madhya Pradesh

Date of Judgment: 27.08.2019

CRIMINAL LAW – IPC – SECTION 300; EXCEPTION 4; 302 & 304 PART-II – SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT – SECTION 3(2)(v) – Murderous assault in a sudden fight – Conviction u/s 302, IPC modified to that u/s 304 Part-II, IPC – Prosecution case that on 14.8.2005 at about 11.00 a.m., complainant along with brother (PW.2), deceased and relative PW.7 had gone to cultivate the fields and for grazing their cattle – When deceased was cultivating the field and others were grazing the cattle, appellant came to the field of deceased and left his buffaloes for grazing – Deceased objected to it and drove the buffaloes of appellant-accused out of his field on which appellant became furious and started abusing and scolding the deceased that how the deceased who belonged to Khanger Caste could drive away buffaloes of Thakurs out of his field – When deceased objected to it, appellant attacked him with an axe due to which deceased fell down – Thereafter, appellant-accused allegedly gave two three blows on head of deceased with axe – Deceased died on the spot itself – Trial Court convicted appellant-accused u/s 302, IPC and also u/s 3(2)(v) of the SC and ST Act – In appeal, High Court affirmed conviction of appellant as recorded by the trial Court – There was no pre-meditation for the occurrence and because of grazing of the cattle, in a sudden fight, the occurrence had taken place – Whether conviction of appellant u/s 3(2)(v) of SC and ST Act can be sustained

Held, No – To attract SECTION 3(2)(v) – of the SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT – the Offences of atrocities must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe.

2019 12 SCALE 826

Nevada properties private Ltd through its directors VS State of Maharashtra and another

Date of Judgment: 26.09.2019

Whether the term any property mentioned in section 102 Cr.P.C. includes immovable property.

Held: No Police officer investigating a criminal offence can seize only movable property under section 102 Cr.P.C. and can't seize immovable property under section 102 Cr.P.C.

HIGH COURT CIVIL CASES

(2019) 6 MLJ 397

Surya Pelle Chemical and Mould Vs Hi-Lite Leathers and Others

Date of Judgment: 10.07.2019

Application filed by Plaintiff seeking attachment before Judgment for recovery of amount, ordered – On compromise memo signed by plaintiff and defendants, trial court raised attachment and dismissed application – Compromise schedule not adhered to and Plaintiff moved Court for bringing property attached to sale – Plaintiff filed present revision petition to set aside order of trial court.

It has been held that , mode of termination of attachment is envisaged under order XXI Rule 55 -once attachment made absolute then same ensures till decree was fully satisfied – Compromise agreement specified that in event of any postdated cheques being dishonoured, Plaintiff was free to institute execution proceedings – Only on payment of entire sum, parties would stand totally discharged from liability under decree – Trial Court proceeded to pass orders in application filed after the suit had been decreed .After compromise award is passed the court will become functus officio – Trial Court had no Jurisdiction to entertain any application and to pass any orders in interlocutory application after passing compromise award and had become functus officio– Revision allowed.

(2019) 6 MLJ 412

Sree Karthick Traders, Rep.by Partner S.Senkuttuvan Vs Adhithya Textiles Process, Rep. by its Partner N.Balasubramanian and others

Date of Judgment: 21.07.2019

Contract – Agreement to pay – Time barred – Contract Act, 1872 (Act 1872), Section 25 – Suit laid by Plaintiff against Defendants for recovery of money based on accounts – Decreed by Trial court, but dismissed by Lower Appellate Court as barred by limitation, hence this second appeal – Whether suit barred by limitation – whether judgment of Lower Appellate Court vitiated in holding that suit was barred by limitation even on face of clear and conscious acknowledgement of liability under Ex.A5 and consequential part-payment under Ex.A4 – Held, if there was statement of fact of promise to pay amount contained in the letter, and that was shown as part of cause of action, there could be no objection for considering claim under Section 25(3) of Contract Act 1872, even if suit was prima facie based on original debt itself – Lower Courts concurrently held that Defendants had acknowledged their liability towards debt due to the Plaintiff on certain date – By way of same, Defendants had made promise to pay amount due to Plaintiff in part towards debt owed by them to Plaintiff – In light of provisions of law outlined in Section 25(3) of Act 1872, suit laid by Plaintiff not barred by limitation – Appeal allowed with costs.

Further it has been held that under section 25(3) of the contract Act even a time barred debt is a good Consideration. The difference between sec 18 of the limitation act and section 25 (3) of contract Act is that under the former the acknowledgement shall be made before the expiry of debt but under the latter proviso debt could be acknowledged even after it becomes barred by limitation.

(2019) 6 MLJ 452

P.Sachithanantham Vs Arivalagan

Date of Judgment: 24.04.2019

Tenancy Laws – Agricultural Lease – Presumption – Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, Section 15 – Suit filed by Plaintiff / Appellant for permanent injunction restraining defendant from interfering peaceful enjoyment of property was decreed, however, Appellate court set aside the order of the lower court, hence this second appeal.

Held, Certificate issued by Tashildar prove that Plaintiff is a tenant – – Document relied by plaintiff raised presumption in his favour under Section 15 of Act – Document relied by plaintiff having value more than that relied by defendant. Held that the Plaintiff proved possession – Appeal allowed.

2019 (5) CTC 80

K.Kalianna Gounder and another Vs Sundararaj and Another

Date of Judgment: 04.02.2019

Easements Act, 1882 (5 of 1882), Section 13 – Easement of Necessity – Doctrine of Easement of Necessity is applicable only if Dominant Tenement establishes that (i) no other access to land except through Servient tenement; and (ii) property unusable if right of passage deprived –

Partition Deed in 1958 earmarked 46 cents of land for specific common purpose – No right reserved for passage in common land in 1958 Partition Deed – Reference to Pathway or Cart-track introduced subsequently by descendants of Co-owner and their Sale Deed to Defendants –

Held, in absence of reference to Pathway/Cart-track in source document (1958 Partition Deed), such reference created subsequently by descendents of one Co-owner not binding on Plaintiffs.

Claim of right of passage as Co-owner is diagonally opposite to plea of right of passage as easement of necessity – Right of enjoyment in common property by Co-owner is subject to restriction of not causing inconvenience or detriment to interest of other Co-owners – Right of Easement not based on title – Accepting title with Servient Owner, enjoyment of easement claimed by Dominant Tenement – Relief granted by Courts below, recognizing Plaintiff as Co-owner of property as well as Owner of Dominant Tenement entitled to easement of necessity, erroneous – Judgment and Order of Courts below set aside – Second Appeal allowed.

2019 (5) CTC 104

**M.Sathyan Sundararajan Vs K.R.S.Janakiraman
(A.K.A.Johnny Shanmugam) and Another**

Date of Judgment: 24.04.2019

Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rules 97 & 102 – Decree for Specific Performance – Decree affirmed by Supreme Court – Execution Petition filed for delivery of possession of Suit property – Pending First Appeal, Judgment-debtor executed Lease Agreement in favour of Third party and inducted him into possession of property – High Court granted Injunction restraining Judgment-debtor from alienating or encumbering Suit property pending First Appeal – Violation of Injunction Order – Obstruction caused for execution of Decree based on Unregistered Lease, created in violation of Injunction Order, did not confer any right to Obstructor – Person inducted into possession of Suit property by Judgment-debtor in violation of Injunction Order has no right to obstruct delivery – Order 21, Rule 102 bar transferee pendente lite from obstructing or resisting execution of Decree for Possession of property – Petition filed by Obstructor, held, not maintainable.

(2019) 6 MLJ 257 (FB)
LNINDORD 2019 MAD 10215

Dr.R.Thiagarajan Vs Inspector General of Registration, Santhome, Chennai – 4 and Others

Date of Judgment: 05.08.2019

Registration – Stamp Duty – Public Auction Purchase – Indian Stamp Act, 1899 (Act 1899), Articles 18, 23 and 47-A – Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) –

Petitioner purchased property under public auction conducted by Bank under SARFAESI Act – respondents claim for stamp duty on market value of property – Single Judge found two conflicting judgments wherein first judgment states that stamp duty would not be applicable in respect of property purchased by way of public auction conducted under SARFAESI Act and in second judgment it was held that stamp duty was payable, hence this reference is made as to Whether stamp duty is liable to be paid on property purchased under public auction conducted by Bank under SARFAESI Act –

Held, Sale Certificate issued by court or revenue officials are exempted from payment of stamp duty and penalty but the position of authorized officer of a bank is quite different and hence Sale certificate issued by Authorized Officer of bank is liable for stamp duty under Article 18-C read with Article 23 of Schedule 1 of Act 1899 – In event of under-valuation of property, Registering Officer is entitled to proceed in accordance with Section 47-A of Act 1899 – Reference answered.

(2019) 6 MLJ 312
LNINDORD 2019 MAD 9006

Ponnammal Vs Malaiyan and Another

Date of Judgment: 03.07.2019

Suit filed for declaration of title and recovery of possession of suit schedule property – Applications filed by Petitioner to reopen evidence for marking additional documents after framing of issues, dismissed; hence this revision petition is filed.

Held, Petitioner cannot be found fault for not producing these documents at earlier point of time – Applications neither mischievous nor frivolous or intended to cover up lacuna or negligence – If the recall is sought for further elaboration on the left out points it can't be allowed If the document will assist the court to arrive at a fair conclusion of disputed question of fact and may bring out truth, court could allow the application even imposing cost for the delay – Revision allowed with costs.

(2019) 6 MLJ 372
LNINDORD 2019 MAD 8962

N.Rajaram Vs R.Murali and Others

Date of Judgment: 03.07.2019

Civil Procedure – Ex parte decree – Lis pendens Transferee –

1st Respondent / lis pendens transferee purchased suit property unaware of pending proceedings – Petition filed to set aside exparte decree by 1st Respondent, allowed, hence this revision petition is filed by the decree holder –

The point for consideration is that Whether 1st Respondent / Lis pendens Transferee entitled to be impleaded as party to set aside exparte decree –

Held, lis pendens transferee though not party to suit is still person claiming under defendant is entitled to be heard – In Rule 13 Order 9 of CPC, the word “he” mentioned therein cannot be construed with such rigidity and restrictions to exclude the person who have stepped into shoes of defendant, from moving application for setting aside ex parte decree especially in presence of the section 146 – Petitioner ought to have imp leded 1st Respondent/purchaser of suit property – Petitioner trying to assert rights over suit schedule property based on an exparte decree – Trial Court justified in setting aside exparte decree – Revision dismissed.

2019 (3) TLNJ 469 (Civil)

R.Chandrasekar and Another Vs B.Gopalakrishnamurthy and Others

Date of Judgment: 02.04.2019

Civil Procedure Code 1908, Order 47, Rule 1 r/w Section 114 – Suit filed to set aside the sale deed executed in pursuant of auction sale under Section 69 of the Transfer of Property Act – trial court framed issues regarding fraud and collusion and the suit decreed – Appeal dismissed by Division Bench – High Court held, that – In as much as the court is dealing with the case involving fraud and collusion as held on facts, review petition cannot be allowed.

Its settled position of law that mortgagee is not the trustee of mortgagor and hence sale under section 69 of Transfer of Property Act can't be questioned by mortgagor except when there

is fraud or collusion between mortgagee and purchaser – burden is on the part of Mortgagor to plead and prove fraud or gross inadequacy of price from which inference can be drawn by the court of the fraud In the absence of such proof court cant interfere even if sale price is lesser than market value or there was want of publicity or want of notice.

2019 (4) L.W. 505

S.Chelladurai Vs Karpagavinayagar firm, Sivagangai District

Date of Judgment: 09.08.2019

Whether suit will abate in case of failure to implead the legal representative of one of the partner:

Held : No

Lis is concerned with a firm represented by partners- Death of a partner may not have any implication with reference to the legal right of the firm. Once a partnership firm is arrayed as party in a civil suit concept of impleading under order 22 is inapplicable Application filed by the inducted partner to substitute name in lieu of expired partner is maintainable.

2019 (4) L.W. 541

Pitchai Iyer and others Vs K.Subramanian

Date of Judgment: 20.06.2019

Whether Petition can be filed under Order 7 Rule 11 (d)for rejection of plaint on the ground that the suit is barred under order 2 rule 2 (3).

Held: No -Enquiry under order 7 Rule 11 shall be confined to the facts mentioned in the Plaintiff -contention that cause of action for the previous suit and the present suit are identical and that the suit is barred by order 2 rule 2 (3) can be decided only at the stage of final disposal after recording evidence. Objection under order 2 rule 2 (3) of CPC can't be determined in an application under Order 7 rule 11(d).

2019 (4) L.W. 367

Rengasamy VS Balagauru and others

Date of Judgment: 23.04.2019

Petition filed for amendment when matter posted for Judgment-Amendment petition filed for inclusion of the prayer for declaration is allowed by the court -Plaintiff was permitted to go-head with trial and it's Challenged.

Held that – Objection as to court fee can be raised either in the written statement or by an application under section 12 of court fees Act. If such objection is raised before evidence is taken in the main suit the court shall determine the issue as to court fees. On such enquiry if court fees paid is found incorrect then opportunity shall be given to the Plaintiff to pay the deficit court fees In the case in hand the trial court before having permitted the plaintiff to carry out such amendment in the plaint should have issued check slip to the plaintiff for additional court fee-Cost imposed petition allowed.

2019 (5) CTC 97

**Sarojini Devi A represented by her authorised power agent A.Raja @ Rajaram Vs
R.Arumugam**

Date of Judgment: 25.03.2019

Party in person filed revision petition-Respondent raised objection stating that Advocate enrolled alone can address the court and party in person cant address the court -

Held: Civil procedure code and civil rules of practice permits appearance of non advocates to conduct litigation-courts have recognised appearance by party or by their agents subject to the permission of the court in Judicial precedents-Objection held legally not sustainable.

2019 (2) TN MAC 381

New India Assurance Co. Ltd and Ors Vs Shahin and Ors

Date of Judgment: 10.07.2019

MOTOR VEHICLES ACT, 1988 (59 of 1988), Section 149(2) – Non-possession of Driving Licence to drive Auto rickshaw – Violation of Policy condition proved by Insurer. Tribunal fastening liability of Insurer, not proper – Insurer is directed to pay and recover.

Though no cross objection is filed by the claimants the court can take note of the facts and circumstances as it thinks fit to enhance the compensation. It is well settled that Order 41 Rule 33 of CPC empowers the appellate court to grant relief to the person who has neither appealed nor filed any cross objections .The object of this provisions is to do complete Justice between the parties.

Section 168 MV Act 1988 empowers the court to award such compensations as appears to be just which has been interpreted to mean Just in accordance with law and it can be more than the amount claimed by the claimants (2014 (2) TANMAC 567).

2019 (2) TN MAC 335 (Kar.)

Oriental Insurance Co. Ltd., Vs Chinnathai and Ors

Date of Judgment: 10.01.2019

MOTOR VEHICLES ACT, 1988 (59 of 1988), Sections 166 & 168 – – Deceased, a Coolie/Loadman in Tractor-Trailer – Tribunal fixing Monthly Income at Rs.3,000 p.m. as against claim of Rs.2,500 p.m. –

Income to be assessed on basis of factors of absolute necessity considering date of accident and minimum requirement for hand to mouth – Tribunal, being best assessor, rightly fixed Income in excess of claim in order to award just and fair Compensation –

Claim made in Claim Petition would not come under Doctrine of Estoppels – Considering cost of living and Consumer Price Index, High Court fixed Monthly Income at Rs.4,000 p.m. as against Rs.3,000 fixed by Tribunal – Adding 40% towards Future Prospects, Monthly Income fixed at Rs.5,600 p.m.

In order to award just and fair Compensation claimants are entitled to enhanced Compensation even in absence of Cross-Appeal.

In an Appeal against Award of Compensation by Insurer – Claimants neither represented by Counsel nor appeared before Court even after service of Notice – Duty of High Court in Appeal is to go through materials in detail and dispose of case in accordance with law – Claimants though not preferred any Cross-Appeal, entitled to enhancement of Compensation – District Legal Services Authority entrusted with responsibility of ensuring that enhanced Compensation reached to Claimants.

2019 (2) TN MAC 327 (Chht.)

National Insurance Co. Ltd. Vs Ghanaram Sabu and Ors

Date of Judgment: 03.01.2018

WORKMEN'S COMPENSATION ACT, 1923 (8 of 1923), Section 3 – Whether accident arising out of and in course of employment – Deceased, a Helper engaged in Truck – Truck was in stationary condition at the time of accident – Place of work and duty being on Truck itself, deceased was sitting in Truck at time of accident Held – Accident arising out of and in course of employment.

Whether – Non-possession of Fitness Certificate of Vehicle/Truck can be construed as breach of Policy condition Held No – Mere non-production of Fitness Certificate by Owner would not absolve Insurer of its liability – Non-possession of Fitness Certificate not one of grounds of defence envisaged under Section 149(2).

Whether – Cross-Appeal by Claimant – Maintainable under – Rule 41, of WC WC rules envisages certain specific provisions of CPC that would be applicable to WC Act – Provision of Order 41, Rule 22 not found mentioned in that rule – Cross-Appeal by Claimant, therefore, is held not maintainable.

2019 (2) TN MAC 323

Oriental Insurance Co. Ltd., Vs Malliga

Date of Judgment: 10.10.2018

MOTOR VEHICLES ACT, 1988 (59 of 1988), Sections 147 & 149 –Driver carrying passengers unauthorizedly in Goods vehicle in violation of Policy condition – Order directing Insurer to pay and recover – Whether legal

Held : Claimants though Gratuitous passengers, being Third parties, Insurer cannot claim total exoneration – Tribunal rightly appreciated evidence and ordered Insurer to pay and recover – Insurer entitled to recover Award amount from Owner as per mode of recovery incorporated in Nanjappan.

2019 (2) TN MAC 319

P.Thanga Piratty Vs T.Maharajan and Anr

Date of Judgment: 27.08.2018

MOTOR VEHICLES ACT, 1988 (59 of 1988), Sections 156(1), Explanation to 157(2) – Transfer of Ownership of vehicle – Failure on part of transferee to inform Insurer about transfer within 14 days of transfer for necessary changes in Insurance Policy – If, exonerates Insurer from its liability – Legality of Order exonerating Insurer and holding transferee liable – Explanation to

Section 157(1) inserted w.e.f. 14.11.1994 for removal of doubts declaring that deemed transfer as per Section 157(1) included transfer of right and liability of Certificate of Insurance – Not taken into consideration by WC Commissioner while passing impugned Order on 29.12.2006 – Judgments relied upon by Insurer passed prior to insertion of Explanation – Therefore, in view of Explanation, failure to intimate Insurer within 14 days as per Section 157(2) would not exonerate Insurer from its liability – Transferee entitled to benefit of Insurance Policy – Order exonerating Insurer set aside.

2019 (2) TN MAC 316 (DB)

United India Insurance Co. Ltd Vs Divya @ Divya Thomas and Ors

Date of Judgment: 12.04.2019

INTEREST – Rate of Interest – Accident took place on 8.7.2014 – Award of Interest at 9% p.a. – Not proper – Reduced to 7.5% p.a.

III (2019) DMC 121 (DB) (Mad.)

Martin Sagayanadin Vs Antoinette and Anr

Date of Judgment: 25.01.2019

Dissolution of marriage – on the ground of Desertion – Animus deserendi on part of 1st respondent-wife is clearly established – Spouses living separately for 19 years – No attempt on part of wife to go to her husband's house – Irretrievable breakdown of marriage – Wife has not filed any petition for restitution of conjugal rights – There is no love left between parties – Not to grant decree of divorce would be disastrous for parties – Court below erred in dismissing petition for dissolution of marriage filed by appellant, as both parties were living separately for number of years – Order of Family court is set aside – Marriage stood dissolved between appellant and respondent No.1 – Husband is directed to pay lump sum amount of Rs.5 lac to wife as permanent alimony.

III (2019) DMC 104 (DB) (Tri.)

Subal Mondal Vs Anjana Dey (Mondal)

Date of Judgment: 18.01.2019

Hindu Marriage Act, 1955 – Sections 13(1)(ia),(ib) – Cruelty – Desertion – Appreciation of evidence – Respondent-wife has established that she was ready to reconstitute conjugal life but appellant-husband was not – He instituted suit for divorce – Respondent-wife established overwhelmingly that there was no congenial atmosphere in matrimonial home and she was driven out from matrimonial home by appellant-husband – Fundamental elements of desertion not available to support contention as raised by appellant – Pleadings are sketchy – Mere long separation cannot be automatically taken as a ground unless it is pleaded definitely that despite congenial atmosphere having existed in matrimonial home, respondent started living separately – No material on cruelty in evidence on which divorce can be granted – Respondent clearly stated before this Court that considering welfare of daughter, aged 13 years, she is not agreeable to divorce, as that may affect her future also – No infirmity in impugned judgment and no interference is called for. Appeal is dismissed.

2019 (3) MWN (Civil) 6

M.Manimegalai and Anr Vs Chellammal and Ors

Date of Judgment: 23.07.2019

CODE OF CIVIL PROCEDURE, 1908 (5 of 1908), Order 41, Rule 27 – Suit for recovery of possession – Decreed – First Appeal – Defendant filed Application to receive Additional Documents – Records show that documents sought to be filed are irrelevant and not connected to facts in issue – No reason substantiated for not marking these documents, which were available during trial – Order of Trial Court dismissing Application, justified – Revision dismissed.

2019 (3) MWN (Civil) 14

S.Suresh Vs A.Mahalakshmi

Date of Judgment: 19.08.2019

LIMITATION ACT, 1963 (36 of 1963), Section 5 – HINDU MARRIAGE ACT, 1955 (25 of 1955), Sections 15 & 28 – Revision against Order condoning delay of 879 days in seeking to set aside ex parte Decree for Divorce – Except stating that she was suffering from ‘Chikungunya’ on date on which ex parte Decree was passed, wife has not stated any other reasons for long delay – No Medical Certificate produced to prove alleged illness – Husband remarried, after expiry of period fixed for seeking to set aside ex parte Decree or file Appeal – Intention of legislature, while deciding Matrimonial matters, is to settle rights of parties at shortest period of time – Delay ought not to have been condoned – Impugned Order set aside – Civil Revision Petition allowed.

2019 (3) MWN (Civil) 37

Thayammal Vs Government of Tamil Nadu

Date of Judgment: 25.06.2018

CODE OF CIVIL PROCEDURE, 1908 (5 of 1908), Section 100 – Land classified as ‘Kanmai Poramboke’ land – Water body – Order passed by Assistant Settlement Officer reclassifying land as ‘Ryotwari Land’ – ‘Ryotwari’ Patta granted – However, Revenue records not mutated – Hence, Suit laid for Mandatory Injunction and other reliefs – During pendency of Suit proceedings, Order granting Ryotwari Patta cancelled – contention that land mistakenly classified as ‘Kanmai Poramboke’ land – Rectified by Assistant Settlement Officer – Therefore, Revenue records ought to be mutated – Rival contention that long before Order was passed, land was classified as Water Body – Trial Court’s of opinion that sufficient proof not produced to show that Suit property was Water Body – Further, such Cancellation Order barred by limitation – Appeal by Government – Allowed on basis that Patta cannot be granted in respect of Water bodies – Challenged in Second Appeal – No document to show that land is Ryotwari land, except order of Assistant Settlement Officer – No document to establish title or possession – When land has been classified as ‘Kanmai Poramboke’ land, no Patta can be granted in respect of such lands – Plaintiff has not chosen to approach Civil Court, instead obtained Order from Assistant Settlement Officer fraudulently – Suit filed solely on strength of such Order – Not maintainable – Cancellation of Order granting Patta – Validity of – When corrective action is taken, no time limit applicable – Second Appeal dismissed.

2019 (3) MWN (Civil) 49

Bhuvana Vs A.H.Bheeman (deceased) and Ors

Date of Judgment: 28.02.2019

SPECIFIC RELIEF ACT, 1963 (47 of 1963), Section 16(c) – Suit for Specific Performance – Defence taken that Sale Agreement is result of Loan transaction – Decreed – Reversed in Appeal on ground that Plaintiff did not enter box to prove readiness and willingness – Alternative relief of refund of Advance amount granted – Challenged in Second Appeal – Validity of Sale Agreement, amply proved – Relief of Specific Performance, equitable in nature – Readiness and willingness, sine qua non to grant relief – Whether readiness and willingness established by Purchaser – Payment of consideration in installments spread over a year, although time limit for completion of Contract was fixed at six months – Fact that time was not essence of Contract can be inferred – However, Purchaser ought to have taken steps to enforce Contract within reasonable time – Even during pendency of Suit proceedings, remaining Sale consideration not paid – Readiness and willingness to be deciphered from personal knowledge of Purchaser – Therefore, only Purchaser competent to give evidence – Factors cannot be proved by authorizing father to depose.

SPECIFIC RELIEF ACT, 1963 (47 of 1963), Section 12 – Suit for Specific Performance – One acre of land agreed to be sold – Measurement of Suit property revealed availability of lesser extent of land – Relief sought for only in respect of lesser extent of land – Whether relief of Specific Performance can be sought for in respect of part of Contract – Part of Contract can be enforced only on relinquishing on claims to performance of remaining part of Contract and on payment of entire consideration – Without satisfying conditions specified under Section 12, part of Contract cannot be enforced.

2019 (3) MWN (Civil) 82

Sarasu Vs Vasantha @ Vasanthi and Anr

Date of Judgment: 03.04.2019

CODE OF CIVIL PROCEDURE, 1908 (5 of 1908), Order 6 Rule 17 – Amendment of Plaintiff – After commencement of trial – For inclusion of certain movable properties – Allowed on ground that no prejudice would be caused to adversary – Order challenged in Revision – Contention that amendment is attempt to take away admission made during cross-examination – Admittedly, amendment sought for is post trial amendment – Although such amendment is necessitated and may not affect right of Defendants, fact remains that above amendment was sought on ground that only Plaintiff has grown such trees and made improvements – Such averments in affidavit made, after certain admissions made in depositions – Averments made in Affidavit explaining admission made in deposition cannot be given any importance – Trial Court, while trying Suit, need not take into account subsequent pleadings made with regard to planting of trees and digging of bore well, since those pleadings are made after admission and during trial – Civil Revision Petition disposed of.

2019 (3) MWN (Civil) 84

Samson Maritime Ltd., Vs Hardy Exploration & Production (India) Inc., and Ors

Date of Judgment: 11.03.2019

CODE OF CIVIL PROCEDURE, 1908 (5 of 1908), Order 21, Rule 41 – Examination of Judgment-debtor as to his property – Execution – Obligation of Judgment-debtor to make truthful disclosure of assets – Failure to disclose particulars of assets – Consequences thereof – Suppression of particulars in regard to assets – Disobedience of direction issued by Court for disclosure – Execution Court directed Judgment-debtor to make disclosure of his assets – Judgment-debtor suppressed details of Bank Accounts in Affidavit – Object of provision is to enable Decree-holder to ascertain assets available with Judgment-debtor – Contention of Judgment-debtor that he had no disposing power over amount lying in Bank Accounts and he is not under obligation to disclose details of Accounts is untenable – Judgment-debtor bound to make truthful disclosure in Affidavit – Failure to make truthful disclosure would amount to willful disobedience and liable to be committed to Civil Prison – Direction issued to detain Principal Officer of Company in Civil Prison.

2019 (3) MWN (Civil) 91

B.T.Munichikkanna Reddy and Ors Vs Siddappa Reddy

Date of Judgment: 26.11.2018

CODE OF CIVIL PROCEDURE, 1908 (5 of 1908), Order 1, Rule 10 & Section 151 – Plaintiff's Suit for Partition dismissed for default – Application filed to restore Suit after death of Plaintiff – Another Application filed to implead Legal Heir of deceased Plaintiff as 2nd Petitioner – Whether Application to implead Legal Heir in Restoration Application, filed after death of Plaintiff, is maintainable –

Held, Court empowered to add any person as party at any stage of proceedings if their presence is necessary to effectively and completely adjudicate all questions involved in Suit – Avoidance of multiplicity of proceedings is one of objects of provision –

Under Order 1, Rule 10(2) even without Application, Court may at any stage add or strike out parties – Hyper-technical approach which may result in miscarriage of justice cannot be adopted while deciding Application under Order 1, Rule 10 – Impleading Legal Representative of deceased Plaintiff as Party to Restoration Application not barred – Ratio laid down in Pankajbhai Rameshbhai Zalavadiya v. Jethabhai Kalabhai Zalavadia (deceased), 2017 (6) CTC 54 (SC) followed – Civil Revision Petition dismissed.

2019 (3) MWN (Civil) 96

V.Ekambaram and Anr Vs O.Kuppusamy and Ors

Date of Judgment: 09.01.2019

CODE OF CIVIL PROCEDURE, 1908 (5 of 1908), Order 6, Rule 17 – Suit for Declaration and Injunction – Plaint sought to be amended after filing of Written Statement – Year of purchase of Suit Schedule property and name of Vendor sought to be amended – Trial Court dismissed amendment as delayed and would create new cause of action.

Held, Court may allow either party to amend pleadings at any stage to determine real question in controversy – Amendment sought before commencement of Trial – Said amendment will not alter character of Suit – If allowed, it will not prejudice rights of Defendants to contest Suit on merits – Considering nature of controversy involved Trial Court ought to have allowed amendment – Civil Revision Petition allowed – Order of Trial Court dismissing Amendment Application, set aside.

2019 (3) TLNJ 607 (Civil)

Padmavathi A. Vs Mahendiran & another

Date of Judgment: 18.07.2019

Transfer of Property Act, 1882, Section 123 - Settlement deed - validity of cancellation –

Suit filed by elder sister as against her younger brothers and mother for declaration and recovery of possession of suit property - Plaintiff claims title based on settlement deed executed in her favour by her father - Defendants contended that said settlement deeds were never acted upon and was later cancelled by their father and they are in possession of same - Trial Court decreed the suit holding settlement deeds were acted upon on evidence of bank employee who deposed Plaintiff obtained loan on basis of settlement deed - First Appellate Court set aside the judgment of trial court on the ground suit was bad for non joinder of all the co-owners and subsequent purchasers of the properties and that father had no right to execute settlement deed - Second appeal by plaintiff - held - Settlement Deed takes effect once executed - covenants show the execution and possession - once executed it cannot be cancelled.

2019 (5) CTC 241 (FB) (Kerala HC)

V.T.Vijayan Vs U.Kuttapan Nair and Others

Date of Judgment: 01.03.2019

Transfer of Property act, 1882 (4 of 1882), Sections 52 & 5-A - Interpretation of Statutes – Words and Phrases - Doctrine of lis pendens - Applicability of Section 52 - Expression ‘otherwise dealt with’ by any party has very wide meaning - Any act or any mode of dealing with subject matter of Suit, by any party to lis, which would adversely affect rights of any other party under any Decree, would be subject to result of Suit - Contract for Sale of immovable property does not create interest in or charge on property - Buyer gets enforceable right to get Sale Deed executed in his favour under Specific Relief Act - Such Contract is mode of dealing with property.

Held, Contract for sale of subject matter of suit during pendency of lis, would adversely affect parties to suit - Agreement for Sale executed by parties to lis, during pendency of Suit, is hit by Doctrine of lis pendens - Ratio laid down in Welington, b, in respect of Section 52, rejected - View expressed in Kubra Bibi’s case confirmed.

2019 (5) CTC 341

M.Mallika vs Kasi Pillai

Date of Judgment: 21.06.2019

Negotiable Instruments Act, 1881 (26 of 1881) , Section 87 - Evidence Act, 1872 (1 of 1872), Section 101 - Promissory Note - Validity of Material alteration - Burden of proof - Money Suit based on Promissory Note - Execution denied by Defendant - Promissory Note filled up in two separate inks - Amount written partly in green ink and partly in blue ink - No explanation for same.

Held, material alteration visible to naked eye raises strong suspicion of circumstances surrounding execution of Pro-Note - Renders instrument void - Burden of proving instrument is on Plaintiff, side who had possession of Promissory Note - Plaintiff not disclosed any reasons for material alteration of instrument - Onus not shifted to Defendant - Findings of Lower Appellate Court confirmed - Second Appeal Dismissed.

2019 ACJ 2244 (Punjab & Haryana)

United India Insurance Co. Ltd. Vs. Harjit Kaur and another

Date of Judgment: 02.11.2018

Section 147 (1) read with India Motor Tariff, 2002, GR.36 - Motor Insurance - Borrower of vehicle - Death of - Personal accident cover - Liability of insurance company - Deceased borrowed motor cycle from his father and met with fatal accident while driving the motor cycle due to mechanical defect - Claimants filed claim under Section 163-A - Tribunal held that claimants are not entitled to compensation under section 163-A but awarded Rs.1,00,000 under personal accident cover for owner-driver - Insurance company contended that personal accident cover (PAC) is only with regard to owner-insured and deceased being a borrower was not covered under PAC - As per GR.36 only registered owner is entitled for PAC and representatives of the owner will not fall within the ambit of PAC - Term owner-driver cannot be stretched to mean owner or driver to extend the benefit to claimants - Whether personal accident cover for owner-driver includes borrower of vehicle.

Held : no; however claimants are entitled to Rs.50,000 under no fault liability from insurance company.

2019 ACJ 2374 (Delhi)

National Insurance Co. Ltd. Vs. Anil Kumar and others

Date of Judgment: 10.08.2018

Section 149 (2) (a) (i) (c) - Motor insurance - Permit - Violation of - Liability of insurance company - Passenger traveling in a bus sustained injuries when bus met with accident - Tribunal fastened liability on insurance company - Insurance company disputes its liability on the ground that bus was being plied without valid permit - Evidence that special temporary permit was obtained for one day to carry marriage party, etc. - Testimony of official of Licensing Authority that permit was issued after 10.15 a.m. on the day of accident and since in cross-examination injured had admitted the fact that accident occurred at 12 noon it cannot be said that bus did not have a valid permit at the time of accident - Whether insurance company is liable - Held: yes.

2019 ACJ 2362 (Chattisgarh)
National Insurance Co.Ltd., Vs. Sukriti Sahu and others

Date of Judgment: 07.01.2019

Section 149 (2) (a) (ii) - Motor insurance - Driving licence - Insurance company disputes its liability on the ground that driver of offending tanker was not holding a valid licence at the time of accident as tanker was carrying inflammable and hazardous substance but there was no endorsement in his driving licence to that effect - Driver was holding a valid licence to drive light motor vehicle and heavy goods vehicle - No evidence adduced by insurance company to prove that tanker was carrying any inflammable or hazardous goods at the time of accident - Whether driver was holding a valid licence and insurance company is liable -

Held : Yes.

2019 ACJ 2285 (Gauhati)
National Insurance Co.Ltd., Vs. Bijaya Bhuyan and others

Date of Judgment: 31.10.2018

Claimant filed claim application under Section 163-A for death of her son whose annual income was more than Rs.40,000 - Tribunal deducted 50 per cent of income towards personal expenses of the deceased, adopted multiplier of 18 and awarded compensation Section 163-A, without following structure formula -

Whether Tribunal has jurisdiction to convert a claim under Section 163-A into a claim under Section 166 or vice versa -

Held; (2004 ACJ 934 (SC) followed)

2019 (3) TLNJ 593 (Civil)
Muthiah Konar & Ors Vs. Masilamani and another

Date of Judgment: 18.07.2019

Civil Procedure Code, 1908, Section 2(9) and Order 17 - Suit for declaration of title and permanent injunction in respect of the third schedule property - Plaintiff claims title over third schedule property alleged to be pathway based on oral sale from 2nd Defendant - Which was purchased from 1st Defendant - during trial 2nd Defendant was set exparte - Trial court hearing Plaintiff dismissed the case as no evidence let in to prove the oral sale and possession of suit property - first appeal by Plaintiff - Dismissed - Second Appeal - Contention - When 2nd Defendant set exparte, trial court ought to have disposed suit as provided under Order 17 Rule 2 & 3 of CPC - Judgment not in accordance with Sec.2(9) of CPC -

Held - Relying on B.Janakiramaiah Chetty vs A.K.Parthasarathi and others (2003) 2 MLJ 186 (SC), where Plaintiff files suit for declaration burden is upon him to prove oral sale - Plaintiff cannot take advantage by referring to Order 17 of CPC - Court fully considered the evidence of Plaintiff, after 2nd defendant was set exparte, dismissed suit - discretion has been properly exercised by the trial court in this case - neither oral sale nor adverse possession as pleaded proved by plaintiff - Judgment of Trial Court confirmed - Second Appeal dismissed.

HIGH COURT CRIMINAL CASES

2019 (5) CTC 45

Principal District & Sessions Judge, Theni Vs Kattavellai @ Devakar

Date of Judgment: 13.03.2019

Code of Criminal Procedure, 1973, (2 of 1974), Section 366 – Indian Penal Code, 1860 (45 of 1860), Sections 302, 376, 392 r/w 397 – Rape and Double Murder – No Eyewitness available – It is Proved that on date of occurrence, D1 & D2 left their respective homes and arrived at place of occurrence – Further its established from deposition of PW5 that D1 & D2 were last seen with Accused – Accused seen with weapon in vicinity of scene of crime on date of occurrence by PW25 – Weapon and stolen articles duly recovered from Accused –

Doctrine of confirmation by subsequent events: In a criminal case Material object might have been already recovered .but the investigating agency may not have any clue as to the state of things that surrounded the Physical object. In such an event if disclosure made by accused as to the state of things or facts which are within his knowledge in relation to the physical object which are discovered then it can be said to be discovery of fact within section 27 of the Evidence Act.

Fact that Accused committed rape on D2 established from DNA Report –

Accused identified by PW5 in Test Identification Parade, thrice –

Held, circumstances projected by prosecution, formed a complete chain – Guilt of Accused established beyond doubt – Murders of D1 & D2, robbery and rape of D2 all committed by Accused on same date same place without any provocation – Cut injuries on neck of D1, indicates that Accused attempted to sever the neck – Distance between bodies of D1 & D2 prove that D2 attempted to escape from Accused and was chased by him – Hands and legs of D2 severed by Accused after raping her – Brutality, with which young girl was raped, butchered and inhumanely killed, establishes that Accused is an extremist and a menace to society – Accused, a hardened criminal already convicted in previous cases – Offence committed by Accused, barbaric, heart-breaking and gruesome – Entire occurrence leading to death of D2, held, would fall within ‘Rarest of rare category’ propounded by Apex Court in Bachan Singh & Machhi Singh’s case – Imposition of Death Sentence by Trial Court, validated and upheld.

(2019) 3 MLJ (Crl) 526

LNINDORD 2019 MAD 9498

Prisoners Right Forum, Rep. by its Director, P.Pugalthi Vs State of Tamil Nadu

Date of Judgment: 22.07.2019

FIR registered under Section 176 of Code on death of Prisoner in judicial custody – Pursuant to registration of FIR, enquiry conducted – Enquiry report submitted before District Collector and pursuant to same, Government vide its G.O, decided to initiate criminal and departmental proceedings against Respondents 5 to 7 – On Private complaint filed against said G.O, Chief Metropolitan Magistrate, concluded that no offence has been made out against accused persons, hence this petition – Point for consideration is that Whether Petitioner / third party has locus standi to initiate criminal proceedings.

Held, third party to proceedings who is neither a victim nor an aggrieved person, cannot be permitted to prosecute criminal proceedings – Petitioner forum neither victim nor an aggrieved person – Petitioner must show that its legal rights impaired or any harm/injury caused – Petitioner does not have locus standi to maintain this petition – Petition dismissed.

(2019) 3 MLJ (CrI) 536
LNINDORD 2019 MAD 7563

M.R.Jayakumar Vs S.Senthil

Date of Judgment: 06.06.2019

Petitioner filed petition under Section 91 to direct Respondent to produce books of accounts for particular period and also income-tax assessment for said period – Respondent filed counter stating that those documents are irrelevant and petition filed only to drag proceedings – Petition dismissed, hence this petition is filed.

Point for consideration is that whether court justified in dismissing petition on ground of relevancy for production of documents –

Held, Relevancy of documents and purpose for which it was sought will be considered at time of appreciation of evidence – In view of specific stand taken by Respondent during cross-examination – it becomes relevant - Respondent is directed to produce documents or to take a definite stand for refusal for production so that court can evaluate the evidentiary value of the document in accordance with law – Petition allowed.

(2019) 3 MLJ (CrI) 557
LNINDORD 2019 MAD 9585

Radhakrishnan and Others Vs Union of India and Others

Date of Judgment: 24.07.2019

While granting clemency to Petitioners under Article 72 the Honourable President imposed a condition that Petitioners should remain in prison for whole of remainder of their natural lives and are not entitled to be considered for remission of term of imprisonment – The constitutionality of the condition imposed by President, is questioned.

Held, the President has constitutional power to attach conditions while granting pardon / clemency – President by imposing such condition would have taken into consideration the merits of case and recommendation given by Ministry of Home Affairs, independently – No arbitrariness or unreasonableness in decision making process adopted by President and it is well within his powers to impose conditions while granting pardon – Condition formed part and parcel of clemency granted by President – Petitioners stopped from questioning condition – Petitions dismissed.

(2019) 3 MLJ (Crl) 612
LNINDORD 2019 MAD 10386
A.Sakthivel Vs State
Date of Judgment: 08.08.2019

Quashing of Proceedings – Valid Marriage – Indian Penal Code, 1860, Section 498-A – Petitioner charged for offence under Section 498-A for dowry demand and commission of mental cruelty on 2nd Respondent, hence this petition to quash proceeding alleging that there was no valid marriage between them – Whether proceedings initiated against Petitioner liable to be quashed – Whether prosecution can sustain charge under Section 498 A of IPC, where there is no husband and wife relationship between parties.

Held, no valid marriage between Petitioner and 2nd Respondent and there was no husband and wife relationship between them, hence, there cannot be conviction under Section 498 A – Where marriage is null and void, on account of subsistence of another valid marriage, prosecution cannot sustain charge under Section 498 A – Subsisting marriage between 2nd Respondent and another person – Criminal proceedings quashed – Petition allowed.

(As per decision reported in [2004 (2) KLT 822 (SC)] Even long cohabitation as a men and wife will attract to prosecution u/s 498-A IPC

As per decision reported in [2013 (3) KLT 514] Only legal wedded wife can claim protection u/s 498-A)

2019 (2) TLNJ 221 (Criminal)
Surendran Vs Femy Parimala
Date of Judgment: 08.08.2019

Criminal Procedure Code, 1973, Section 340 – Petitioners filed divorce petition and submitted affidavits and power of attorney to enable his father to represent on his behalf – dismissed for default – Wife lodged complaint for the offences under section 498-A, 417, 406, 506(I) IPC and Section 4 & 6 of D.P. Act – Petitioner obtained anticipatory bail – IA filed by wife contending that the signature found in the affidavit and power of attorney would not be by her husband since he was not in India at that time – allowed by trial Court – Appeal – affidavits were filed in the year 2013 – main case itself was dismissed for default on 30.09.2013 – Wife/ respondent filed a petition under Section 340 Cr.P.C. in the year 2016 – by itself, cannot be a good reason to negative the prayer – there was so much of acrimony between the parties seen from the number of litigations fought between them – Section 340 Cr.P.C. r/w 195 Cr.P.C. is not a weapon to wreak vengeance – appeal allowed.

2019 (2) TLNJ 230 (Criminal)
State of Tamilnadu Vs Selvi and Others
Date of Judgment: 05.08.2019

Criminal Procedure Code, 1973, section 173 & 174 – Case registered as Unnatural death – later filed charge sheet under Section 306 I.P.C. submitted – Discharge petition pending trial – allowed – Revision by State – sufficient ground found to proceed against the respondents – It is a well settled that at the time of framing of charge, the Court need not conduct a roving enquiry on the materials collected by the prosecution to frame the charge – If the materials collected by the

prosecution under Section 173 Cr.P.C. itself is sufficient to frame the charge and prima facie case is made out, the Court can very well frame the charge – innocence of the respondents/accused can be proved only after trial – prima facie case is made out from the report filed by the prosecution under Section 173 of Cr.P.C – Revision allowed.

While framing the charge the Judge has un rebutted power to shift and weigh the evidence for the limited purpose of finding out whether there exist a prima facie case or not.

2019 (3) MWN (Cr.) 7

Mookaiya Vs. State rep. By Inspector of Police, E-4 Abhirampuram Police Station, Chennai & another

Date of Judgement: 06.03.2019

Accused seeking to quash proceedings initiated against him under Sections 306 & 107 IPC for Abetment of committing suicide.

Accused/Petitioner allegedly has scolded and humiliated deceased in front of his shop and friends with regard to non-payment of Loan amount - Deceased found hanging after 40 days - Suicide Note narrated harassments at hands of Petitioner - Prima facie materials on record to show that deceased was under constant threat and humiliation which led him to commit suicide - Prosecution established a prima facie case - It is for Petitioner to defend same before Trial Court in Course of trial by adducing evidence - Quash Petition Dismissed.

2019 (3) MWN (Cr.) 24

Vaiko Vs. City Public Prosecutor, Chennai City.

Date of Judgment: 20.06.2019

Section 199(2) - Indian Penal Code, 1860 (45 of 1860), Sections 499 & 500 – Scope and ambit of Section 199 (2).

Defamatory words should be in respect of conduct of Public Servant in discharge of his Public functions - Petitioner allegedly defamed then Chief Minister - Whether Accused made defamatory insinuations.

Held: Though insinuations prima facie appear to be defamatory, not having nexus with conduct of Chief Minister in discharge of his Public functions - Section 199 (2), held, cannot be resorted to - Petitioner liable to be discharged from prosecution - Impugned order dismissing Discharge Petition under Section 245, Cr.P.C., held, liable to be set aside.

2019 (3) MWN (Cr.) 27

Amutha Meenakshi Vs. State Rep. By The Inspector of Police, B-2, R.S.Puram Police Station, (L & O), Coimbatore City & another

Date of Judgment: 24.01.2019

Quash Petition filed under Section 482 Crpc praying to quash the proceedings initiated under Section 420 – IPC.

Offence of Cheating - Land transaction - Sale Agreements, entered into between Petitioner and complainant, cancelled jointly - Petitioner issued two Cheques of 27,00,000 each towards repayment of advance paid by Complainant - Cheques returned for 138 NI Act or for recovery of money through

Civil Court - Civil Suits filed only for Permanent Injunction restraining Defendants from alienating or encumbering Suit Properties - Averments in Criminal Complaint and Civil Suits entirely different - Offence of cheating is made out only when Accused has fraudulent or dishonest intention at time of making promise or representation - Simple breach of Contract does not constitute offence - Transaction between parties, is only a money transaction - Complainant opted his remedy before Civil Court and on apprehension of not getting a favourable order, same given a Criminal colour - Police filed Final Report without even verifying pending Civil Litigations - Proceedings, held, liable to be quashed.

2019 (3) MWN (Cr.) 134 (DB)

Mohammed Riyaz and Ors Vs Union of India

Date of Judgment: 06.09.2019

Sections 341, 294 (b), 307, 120-B,143,147, 148 & 302 r/w 149 - National Investigation Agency Act, 2008 (34 of 2008), Section 21 - Unlawful Activities (Prevention) Act, 1967 (37 of 1967), Section 15 r/w 16, 18, 18(b), 19 & 20 - Order dismissing Bail Application - Appeal against - Trial Court dismissed Bail Application on being satisfied that prima facie case made out against Accused - Scope of bail to be viewed on Report filed under Section 173 after filing of Charge sheet - Charge sheet filed on 02.08.2019 - Trial Court required to look into materials under Section 173, Cr.P.C. and decide Bail Application on merits considering Case Diary Report under Section 173, etc. - Criminal Appeal dismissed with liberty to file fresh Bail petition before Trial Court - Trial Court is directed to decide such Bail Application considering materials including Charge-sheet.

2019 (2) TLNJ 257 (Criminal)

Venkatesan & another Vs. State rep. by The Deputy Superintendent of Police, NIDCID, Vellore.

Date of Judgment: 28.08.2019

Criminal Procedure Code, 1973, Section 311 Recalling witness to cross examine - application - dismissed - No illegality or infirmity - It is for the accused person to make necessary arrangements to cross examine the witnesses on the same day they are examined in chief - He cannot be permitted to put the blame on the counsel appearing for them and for every change in counsel - Since serious charges under NDPS Act are framed against petitioner one last opportunity to be given to recall PW-1 to PW-4 for Cross examination - Petition allowed.

2019 (2) TLNJ 280 (Criminal)

Ponnar vs State rep. By the Deputy Superintendent of Police, Jeeyapuram Sub Division,

Tiruchirappalli & another

Date of Judgment: 16.08.2019

Indian Penal Code, 1860 Sections 498(A) & 340B r/w 34 :- Suicide by wife - Appellant convicted and sentenced - Appeal only against the sentence under Section 304 B contending that it can be invoked only if it can be shown that soon before the death, deceased was subjected to cruelty and harassment in connection with demand for dowry - appellant did not demand any dowry as such from his in-laws - Mental depression suffered by deceased proved with evidence of D.W.1 to 3 - Post mortem report reflects the head injury suffered by deceased at her forehead due to hit against lamp post by herself -

Proved with evidence of D.W.1 - Merely because, their evidence is produced by defence side their testimonies cannot be put on a lower pedestal - their testimonies are entitled to equal respect as that of the prosecution witness - Sentence against S.304 (B) set aside and against 498 (1) reduced to 6 months - appeal partly allowed.

2019 (2) LW (CrI) 416

M/s Anamallai's Motors Private Ltd., SIDCO Industrial Estate, Kappalur, Madurai & others Vs.

R.Subbaiah

Date of Judgment: 30.07.2019

IPC Sections 417, 418, 420 r/w 34

Criminal Procedure Code, Section 204

Sale of car - Allegations of cheating – vicarious liability of managing director and employees – whether arises - order taking cognizance and issuing process should reflect Judicial Magistrate has applied his mind and a cognizable offence is made out especially when the accused are Managing Director and the employees of the company - If at all any offence is committed, it could be attributed only to the first accused company – Managing director authorized dealer of car and its employees, cannot be made vicariously liable - Private complaint quashed.

2019 (2) LW (CrI) 478

Elephant G.Rajendran Vs The Superintendent of Police, Trichy District, Trichy & another

Date of Judgment: 30.08.2019

Criminal Procedure Code, Sections 154 (3), 482

Petition praying to direct the respondents to register First Information Report

Held : Petition not maintainable - 2018 (2) LW (CrI.) 489 referred to

Directions given:

- I. Section 482 Cr.P.C. cannot be invoked in all circumstances.
- II. It is not an alternative remedy to Section 156(3) Cr.P.C. but a repository of inherent power.
- III. The normal course of remedy on a failure or refusal to record the information is Section 156(3) of the Code of Criminal Procedure after due compliance of Section 154(3) Cr.P.C.
- IV. A petition can be filed invoking the inherent jurisdiction of this Court only after the completion of 15 days from the date of receipt of the information by the Station House Officer. The Registry shall not receive any petition before the expiry of 15 days aforesaid.
- V. No petition shall be entertained without exhausting the remedy under Section 154(3) Cr.P.C.
- VI. An informant can send substance of the information to the Superintendent of Police on knowing the decision of the Station House Officer in not registering the case and proceeding with the preliminary enquiry. After conducting the preliminary enquiry, the Station House Officer's decision in either registering the complaint or closing it will have to be intimated to the informant immediately and in any case not later than 7 days. Once such a decision is made, the informant cannot invoke Section 482 Cr.P.C. as the remedy lies elsewhere.
- VII. The directions issued by the Director General of Police in the circulars referred are to be strictly complied with by all the Station House Officers.

- VIII. The affidavit to be filed shall contain particulars regarding the date of complaint, receipt and the date of sending substances of the information to the superintendent of Police under Section 154(3) Cr.P.C. and its receipt. The Registry shall not number any petition without due compliance.
- IX. This Court is not bound to direct the police to register the complaint in all cases notwithstanding the breach of time table furnished in Lalitha Kumari's case.
- X. The judicial Magistrates, while dealing the petitions under Sections 156(3) Cr.P.C. are directed to keep in mind the narratives in Lalitha Kumari's case with specific reference to the cases, which might require a preliminary enquiry before issuing a direction to investigate and after careful perusal of the complaint. The other directions issued by the learned Single Judge in Sugesan Transport's case are upheld.
- XI. Eschewing Section 156(3) Cr.P.C. is only on exceptional and rarest of rare cases. Monstrosity of the offence, extreme official apathy and indifference, need to answer the judicial conscience, and existence of hostile environment are few of the factors to be borne in mind to bring a case under the rarest of rare one”

2019 (2) TLNJ 239(Criminal)

N.Chandramohan Vs The state of Tamilnadu by the Inspector of police W6 All women police station Keelpauk-Chennai and C.Shakunthala

Date of Judgment: 20.08.2019

False complaint by the wife under POCSO ACT against her husband - Just for taking custody of the child – FIR quashed -direction given to the police to proceed against the wife under section 22 of POCSO Act.

2019 (3) MWN (Cr.) 48

Rajagopal VS Inspector of Police, All Women Police Station, Sivagangai

Date of Judgment: 03.07.2019

Section 2(a) & Schedule I, Part II, Category 2 - Protection of Children from Sexual Offenders Act, 2012 (32 of 2012) (POCSO Act), Sections 11(i) & (ii) & 12 - “Bailable” or “Non-bailable” - Petitioner standing in nude position in front of 5 year old female child, who was also in nude position - Act falls within offence under Section 11 (i) & (ii), punishable under Section 12 - Section 12 provides for punishment for a terms which may extend to 3 years and also Fine - Therefore, it cannot be said that sentence of imprisonment for less than 3 years provided - Would fall within 3rd category of Part II of Schedule I - Offence, therefore, cognizable and “non-bailable” and not “bailable” - Decision in Rajeev Chaudhary cannot be applied to decide issue - View taken in Sivaji Hi-tech Foods followed.

Offence under section 68(a) of Copyright Act is not bailable offence (2001 (2) LW (Cr) 866). Offences of u/s 9 of Central Exercise Act 1944 u/s 135(1)(ii) of Customs Act 1962 or non cognisable and bailable.

Offence u/s.12 of POCSO Act is non bailable.

Palanivel Vs. State rep. By Inspector of Police, Veeranam Police Station, Salem District

Date of Judgment: 11.07.2019

Sections 82 & 299 - Criminal Rules of Practice and Circular Orders, 1958, Rules 16 to 20 - Accused in split up case produced through PT Warrant throughout, when trial for Co-Accused going on - Whether Trial Court ought to have merged split up case of Accused and allowed Accused to participate in trial along with Co-Accused - When Accused was available when trial was going on, no reason why Accused's case should not have been merged with main case - Same could have saved time and energy of Court, However, not following such a procedure by itself would not cause any prejudice to Accused - Trial Court directed to proceed further in accordance with Guidelines laid down in H.Aarun Basha and deal with split up case.

Indian Penal Code, 1860 (45 of 1860), Section 267 - Production of Accused through PT Warrant in execution on Non-Bailable Warrant - Whether PT Warrant can be converted into a regular Warrant - Non-Bailable Warrant issued for failure of Accused on bail to appear before Trial Court - Accused, getting arrested in another case, produced through PT Warrant in execution of Non-Bailable Warrant - Purpose and scope of PT Warrant is limited to extent of directing production of a person confined in Prison - Scope cannot be enlarged by assuming same to be authorization for detaining Prisoner beyond period of detention - Person on bail, detained in another case, when produced through PT warrant, cannot be detained without cancelling earlier bail granted - Judicial discipline requires a Subordinate Court not to cancel bail granted by Superior/Higher Court - Same falls within first principle of law - Accused on bail, when fails to appear and Non-Bailable Warrant issued, on his appearance opportunity must be given to Accused to explain his non-appearance - Accused can be let off recalling Non-Bailable Warrant, if explanation is satisfactory - Explanation if not satisfactory, Court can forfeit Bail Bond after recording reasons - On such finding, Bail Bond, gets automatically cancelled - And, on cancellation of Bail Bond, bail also gets automatically cancelled - Apex Court in Pankaj Jain and Pillappan empowers Subordinate Court to deal with such a situation by virtue of Section 466-A - By adopting such a procedure, Subordinate Court not cancelling bail granted by Superior Court but cancelling Bail Bond for non-compliance of Bail Bond condition - Without following such a procedure, lower Court in instant case straightaway cancelled bail - In P.K.Shaji, Apex Court carved out exception where Bail Order of higher Court provides that Subordinate Court Magistrate/Subordinate Court can take appropriate action - In such a case, Subordinate Court empowered to cancel bail granted by higher Court - In instant case, Bail order not provided such power to be exercised by lower Court - Lower Court also erred in cancelling bail without giving sufficient opportunity to Accused - Impugned Order warranted interference in exercise of jurisdiction under Section 482, Cr.P.C. - Setting to aside impugned Order, Accused/Petitioner directed to execute fresh Bail Bond and Sureties - Fresh Bail conditions imposed.

2019 (3) MWN (Cr.) 123

**T.Packiyathan @ Nathan & Another Vs Intelligence Officer, Narcotic Control Bureau,
Chennai Zonal Unit.**

Date of Judgment: 08.04.2019

Section 67 - Statements given by Accused under - Evidentiary value of - Statement given to NCB Officers, not Police Officers in strict sense - Information given by accused leading to discovery of facts - Statement not basis for conviction - Incriminating materials seized alone foundation for conviction.

Articles carried in hand or shoulder or head etc. would not attract section 50. contra band recovered from plastic bag carried by accused while travelling in a bu. Right u/s 50 explained to the accused before such process and recorded in mahazar.

Appellant found in possession of 976 grams of haroine 96 capsule concealed in finger of silicon and gloves. Section 54 gives a statutory presumption against the accused found in possession narcotic drugs. Accused failed to account for possession. Conseling and packing done at residence of A2 non production of remnant packing material not fatal, Physical evidence produced by prosecution adequately proves guilty.

2019 (2) TLNJ 287 (Criminal)

**S.Kumarasamy & Ors Vs. State rep. by The Inspector of Police, C-1, Flower Bazaar Police
Station, Chennai.**

Date of Judgment: 26.08.2019

Indian Penal Code, 1860, Section 505 (1) (b) and 290 Road rook - distributing booklets against proposed Salem 8 lane project - F.I.R. - Quash Petition - police altered the offence to Sections 505(1) (b), 147 and 290 of IPC - Even then no offence has been made to attract the provisions of Section 505 (1) (b) of IPC – To attract same, the act of the accused must lead to causing alarm to the public or any Section of the public and induce them to commit an offence against the state or public - Merely because the accused persons were opposing the project cannot be said that it amount to an offence of public mischief No public nuisance committed to attract the offence under Section 290 - Also complaint not constitute an offence under Section 143 of IPC since the ingredients under Section 141 not attracted.

Mere protest objecting implementation of project planned by the Government itself cannot amount to an offence of public mischief - Petition allowed.

Further it has been held that to register FIR. For Offence u/s 290 permission of Court u/s.155 Cr.P.C. is required.

2019 (2) LW (Crl) 321 (DB)

Sivaranjith vs State rep. By the Inspector of Police, Rajapalayam South Police Station.

Date of Judgment: 30.04.2019

Evidence Act Section 30, Extra Judicial confession to VAO, reliability

Section 164 Cr.P.C, dose not contemplate for chorous confession-When the proviso relating to confession be so stringent Judicial Magistrate will have to record the confessions of more than one accused in a given case separately after explaining to each one of them, the consequences of giving confession.

Accordingly the Joint confession recorded by VAO is not sustainable

2019 (2) LW (CrI) 350

**Sri Raja Vs. State Rep. By Inspector of Police, Sivakasi Town Police Station, Virudhunagar
District, and another
Date of Judgment 30.08.2019**

Section 195 bars taking cognizance of any offence punishable under sections 172 to 188 except on a complaint in writing given by public servant concerned or some other public servant to whom he is administratively subordinate.

CrI O.P.(MD) No.7922 of 2019 : Three persons said to have formed the assembly, it cannot be considered as an unlawful assembly petitioner cannot be charged under Section 143

CrI.O.P.(MD) No.8827 of 2019 : violation of Section 30 (2) will not constitute an offence under Section 143. Judgment reported in “(2018-2-LW (CrI) 606 Jeevanandham and Ors. Vs. State and Ors.) discussed wherein the following guidelines are issued insofar as an offence under Section 188 of IPC, is concerned:

- a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.
- b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C. will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.
- c) The role of the Police Officer will be confined only to the preventive action as stipulated under Section 41 of Cr.P.C. and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.
- d) In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;
 - i that there must be an order promulgated by the public servant;
 - ii that such public servant is lawfully empowered to promulgate it;
 - iii that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed; and
 - iv that such disobedience causes or tends to cause; (a) obstruction, annoyance or risk of it to any person lawfully employed; or (b) danger to human life, health or safety; or (c) a riot or affray.
- e) The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

- f) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.
- g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1)(a)(i) of Cr.P.C.

The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1)(a)(i) of Cr.P.C.”
