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IMPORTANT CASE LAWS

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INDEX

S. NO.	IMPORTANT CASE LAWS	PAGE NO.
1	Supreme Court - Civil Cases	01
2	Supreme Court - Criminal Cases	05
3	High Court - Civil Cases	10
4	High Court - Criminal Cases	16

TABLE OF CASES WITH CITATION

SUPREME COURT CITATION OF CIVIL CASES

SL. NO.	CAUSE TITLE	CITATION	PAGE NO.
1	Harshad Govardhan Sondagar Vs International Assets Reconstruction Company Ltd And Ors	(2014) 6 SCC 1	01
2	Renikuntla Rajamma (D) by L.Rs. Vs K. Sarwanamma	2014 (4) CTC 572	03
3	Agricultural Produce Marketing Committee Vs Bannama (D) by L.Rs.	2014 (4) CTC 660	03
4	Harbans Pershad Jaiswal (Dead) by Legal Representatives Vs Urmila Devi Jaiswal (Dead) by Legal Representatives	(2014) 5 SCC 723	04
5	S.F. Engineer Vs Metal Box India Limited And Anr	(2014) 6 SCC 780	04

SUPREME COURT CITATION OF CRIMINAL CASES

SL. NO.	CAUSE TITLE	CITATION	PAGE NO.
1	Periyasami, . Vs State represented through The Inspector of Police, 'Q' Branch CiLD, Tiruchirappalli, Tamil Nadu	(2014) 6 SCC 59	05
2	State of Gujarat Vs Kishanbhai And Ors	(2014) 5 SCC 108	06
3	Arnesh Kumar Vs State of Bihar and Anr	(2014) 3 MLJ (Crl) 353 (SC)	07
4	Dashrath Rupsingh Rathod Vs State Of Maharashtra	2014 (4) CTC 666	08
5	Om Prakash Vs State Of Haryana	(2014) 5 SCC 753	09

HIGH COURT CITATION OF CIVIL CASES

SL. NO.	CAUSE TITLE	CITATION	PAGE NO.
1	Farooque Dadabhoy Vs Dr. Usha S. Bhat	2014 (4) CTC 290	10
2	Samiappan. P and Anr Vs Rukmani (died) and Ors	2014 (4) CTC 330	11
3	Managing Director, Tamilnadu State Transport Corporation, Villupuram Ltd., Villupuram District, Rangapuram, Vellore Vs P. Kasthuri	(2014) 4 MLJ 342	12
4	Sathik Ali. S Vs Kannappa Chettiar (died) and Ors	(2014) 5 MLJ 370	12
5	Raveendran. V and Ors Vs Capt. S.K. Joshua and Ors	(2014) 5 MLJ 452	12
6	Kuppuraj. K Vs M. Rajasulochana	(2014) 5 MLJ 539	13
7	ICICI Lombard General Insurance Company Ltd., Mumbai 400 034 and Anr Vs V. Prakash and Anr	(2014) 5 MLJ 593	14
8	Chelladurai Vs Velmurugan	2014 (4) CTC 606	14
9	Lakshminarayanan. R Vs Haji Abdul Khader Nagada Trust, represented by its Trustee, Hameed Sultan, represented by Power Agent, H.N. Junaitha Nachiar	(2014) 4 MLJ 680	15
10	Sankaran. P Vs Somanathan and Company, 308 Palayamkottai Road, Tuticorin, Through its partners R.V. Rama Subramanian, R.V. Sankar	(2014) 5 ML J 680	15

HIGH COURT CITATION OF CRIMINAL CASES

SL. NO.	CAUSE TITLE	CITATION	PAGE NO.
1	Suresh Kumar. K Vs State rep. by Deputy Superintendent of Police, Organised Crime Unit, Crime Branch CID, Salem City	(2014) 3 MLJ (CrI) 310	16
2	Abdul Hussain Vs Indusind Bank, (Formerly Ashok Leyland Finance Ltd) rep. by its Legal Executive, P. Pratheep, T.Nagar, Chennai – 600 017 and Anr	(2014) 3 MLJ (CrI) 323	16
3	Sathiya Prakash. M, S/o. Maylisamy, Godhavadi, Pollachi, Coimbatore District and Anr Vs State rep. by The Inspector of Police, Kinathukadavuu Police Station, Coimbatore District	(2014) 3 MLJ (CrI) 343	17
4	Pachamuthu T.R. Vs M.M. Finance Corporation	2014 (3) CTC 358	17
5	Ragini. S Vs The State by Deputy Superintendent of Police, Q Branch, Dharmapuri.	2014 –1–L.W. (CrI.) 522	18
6	Prakash V. Vs State represented by Sub Inspector of Police, Salawakkam Police Station, Kancheepuram District	2014 -1- LW.(CrI.) 527	18
7	Priya Vs The Inspector of Police, Thookanambakkan Police Station, Cuddalore District	2014 -1- LW.(CrI.) 540	18
8	Senthilrajan Vs State rep by the Assistant Commissioner of Police Anna Nagar Range Chennai	2014 -1- LW.(CrI.) 550	19
9	Sudalaimani Vs State rep by the Inspector of Police, Chrompet, Police Station, Chennai 600 044	2014 (4) CTC 593	19
10	Sathya Vs State rep. By Inspector of Police, Vellore North Police Station, Vellore District	2014 –1– L.W.(CrI) 759	19

SUPREME COURT CITATIONS CIVIL CASES

(2014) 6 Supreme Court Cases 1

HARSHAD GOVARDHAN SONDAGAR

Vs

INTERNATIONAL ASSETS RECONSTRUCTION COMPANY LIMITED AND ORS

Date of Judgment : 3.4.2014

- A. Property Law – Transfer of Property Act, 1882 – Ss. 7, 8 and 48 - Property – Essence of - Nemo dat quod non habet – Transactional exigibility i.e. binding effect of prior property rights over property rights of subsequent transferee(s) irrespective of notice or knowledge of prior property rights on part of subsequent transferee(s) – Constitution of India, Art.300-A
- B. Property Law – Transfer of Property Act, 1882 – Ss. 105, 108(c), 109, 111, 58 and 7, 8 & 48 – Lease – Nature of, as property and its protection under Art.300-A of Constitution – Nemo dat quod non habet – Transactional exigibility of lease i.e. priority of lessee’s rights over those of subsequent mortgagee of lessor irrespective of notice or knowledge of prior lease on part of subsequent mortgagee
- C. Debt, Financial and Monetary Laws – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Ss. 13, 14, 34, 35 and 37 – Right of lessee of borrower in possession of secured asset, to obtain possession of such secured asset – Need for proper registered lease deed to retain possession beyond one year from date of commencement of the lease – Power of secured creditor of Chief Metropolitan Magistrate (CMM)/District Magistrate (DM) to take possession of secured asset from such lessee and hand over the same to secured creditor under S.14 for possession by secured creditor – Extent to which SARFAESI Act overrides Transfer of Property Act, 1882 (TPA) vide S. 35 of SARFAESI Act – Duties of secured creditor and CMM/DM in such cases – Remedy of lessee concerned in case of dispossession
 - Leases granted by borrowers/Lessees, classified into three classes: Class (1) Leases created prior to mortgage which created the secured asset; Class (2) Leases created after creation of the mortgage, vide S. 65-A TPA but prior to receipt of S. 13(2) SARFAESI Act notice by borrower; and Class (3) Leases created after creation of the mortgage, vide S. 65-A TPA but after receipt of S. 13(2) SARFAESI Act notice by borrower – Detailed framework of law laid down on the above issues
- D. Property Law – Transfer of Property Act, 1882 – Ss. 65-A, 105, 109 and 7, 8 & 48 – Creation of lease by mortgagor after mortgage has been entered into – Binding effect on mortgagee – Statutory exception to nemo dat quod non habet principle contained in S.65-A TPA – Scheme of S. 65-A TPA and its limits, explained – Overriding effect of S. 13(13), SARFAESI Act, 2002 over S.65-A TPA once S. 13(2), SARFAESI Act, 2002 notice has been received by mortgagor, vide S.35, SARFAESI Act, 2002 – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13(13), (2) and 35
- E. Property Law – Transfer of Property Act, 1882 – Ss. 105, 108(c), 109 & 111 and Ss. 7, 8 & 48 – Lawful possession of premises during subsistence of valid lease, held, is that of lessee and not lessor – Without determination of a valid lease, possession of lessee is lawful and such lawful possession of a lessee has to be protected by all courts and tribunals – Hence, during subsistence of a valid lease which is prior in time,

subsequent mortgagee i.e. secured creditor cannot take over possession of secured asset in possession of such lessee until lawful possession of the lessee gets determined – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Ss. 13(4) and 14 - Words and Phrases – “Lawful possession”

- F. Property Law – Transfer of Property Act, 1882 – Ss. 111, 109, 65-A and 105 – Leases created prior to a mortgage and during subsistence of mortgage granted by lessor – Termination of – Class (1) : lease created prior to grant of mortgage by lessor, or, Class (2) : lease created by mortgagor during subsistence of mortgage under S. 65-A TPA but prior to receipt of S. 13(2), SARFAESI Act, 2002 notice – Termination of either class of lease above i.e. Class (1) or Class (2) lease, held, can only be done as per modes provided in S. 111 TPA – S. 13, SARFAESI Act, 2002 does not contain any provision under which either class of lease above may be terminated, and nor does any action initiated under S. 13 or S. 14, SARRFAESI Act, 2002 terminate either class of lease above, automatically – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13 and 14
- G. Debt, Financial and Monetary Laws – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Ss. 13, 14, 5, 34, 35 and 37 – Sale or transfer of secured asset by secured creditor under SARFAESI Act so as to transfer the asset free from incumbrance(s) to transferee – Entitlement to benefit of S. 13(6) SARFAESI Act – Necessity of obtaining possession of secured asset prior to any such sale or transfer
- H. Debt, Financial and Monetary Laws – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Ss. 35 and 37 – Overriding effect of SARFAESI Act, 2002 over any other law – Extent of – Held, is only to the extent that any provision of the other law is inconsistent with provisions of SARFAESI Act, 2002, and only to that extent
- I. Debt, Financial and Monetary Laws – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Ss. 17(1), 13 and 14 – Persons who may invoke jurisdiction of DRT under S. 17(1) – Relief that may be granted by DRT – Restoration of possession of secured asset – Persons to whom possession may be restored by DRT – Lessee of borrower in possession of secured asset where (i) lease is created prior to mortgage which created the secured asset, or (ii) lease is created after the mortgage vide S. 65-A TPA but prior to receipt of S. 13(2) SARFAESI Act notice by borrower, held, falls within words “any person” so as to invoke jurisdiction of DRT under S. 17(1) – However, since DRT has power to restore possession of secured asset only to the borrower vide S.17(3), any such lessee of borrower has no remedy under S. 17 to protect his possession under a valid and subsisting lease that falls in the leases of type (i) or (ii), above – Remedy of such lessee would only be under Arts. 226 and 227 of Constitution – Constitution of India – Arts. 226 and 227 of Constitution – Constitution of India – Arts. 226 and 227 – Words and Phrases – “Any person”
- J. Debt, Financial and Monetary Laws – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – S. 14 – Exercise of power by CMM or DM, under – Remedy against, held, lies under Arts. 226 and 227 of Constitution
- K. Rent Control and Eviction – Maharashtra Rent Control Act, 1999(18 of 2000) – S. 33 – Jurisdiction of courts under – Secured asset in possession of tenant of borrower, where (i) tenancy is created prior to mortgage which created the secured asset, or (ii) tenancy is created after the mortgage vide S. 65-A TPA but prior to receipt of S. 13(2) SARFAESI Act notice by borrower – Protection of possession of any such tenancy under S.33 of 1999 Act in an action for eviction under SARFAESI Act, 2002 – Proper mode and forum for.

2014 (4) CTC 572

Renikuntla Rajamma (D) by L.Rs.

Vs

K. Sarwanamma

Date of Judgment : 17.7.2014

Transfer of property Act, 1882 (4 of 1882), Sections 123 & 122 – Gift – Requisites of Gift – When Gift becomes complete – Conditional Gift – Applicability – Donor executed registered Gift Deed retaining possession of Property for enjoyment by Donor during her lifetime and right to receive Rents of property – Validity of Gift – Whether retention of possession of property by Donor would invalidate Gift – Contention of Donor that Gifted property was not delivered to possession of Donee – Held, “Transfer of possession” of Property covered by Registered instrument of Gift duly signed by Donor and Attesting Witness is not sine qua non for making of valid Gift – Delivery of possession of Gifted property is not essential condition for completion of valid Gift – Provision does not make delivery of possession of immovable property gifted as an additional requirement for Gift to be valid – Mere retention of right to use property during lifetime of Donor does not in any way affect transfer of ownership in favour of Donee – Law laid down by Supreme Court in K. Balakrishnan v. K. Kamalam, 2004 (1) CTC 146 (SC), was approved and followed.

Transfer of Property Act, 1882 (4 of 1882), Sections 123, 122 & 129 & Chapter 7 – Gift – Essential conditions of Gift – Delivery of possession of gifted property – Pre-requisite thereof – Rules of Hindu Law and Buddhist Law – Overriding effect – Transfer of Property Act supersedes Rule of Hindu Law contemplating delivery of possession an essential condition for completion of valid gift – Rules of Hindu Law pertaining to Gift will not apply in view of provision contained in Transfer of Property Act – Law protects only rules of Mohammedan Law from rigors of Chapter 7 relating of Gift.

2014 (4) CTC 660

Agricultural Produce Marketing Committee

Vs

Bannama (D) by L.Rs.

Date of Judgment : 25.7.2014

Transfer of Property Act, 1882 (4 of 1882), Section 43 – Doctrine of Feeding Grant by Estoppel – Applicability – Plaintiff filed Suit for declaration of title against his son and subsequent purchasers, who have purchased Suit property from Plaintiff’s son – Trial Court decreed Suit and First Appellate Court reversed decree – Second Appeal filed by Plaintiff was allowed and Decree passed by Trial Court restored – Court below held that Plaintiff is absolute owner of Suit property and his Defendant has no right – Sale made by Plaintiff’s son in favour of third party was also declared as null and void – Subsequent purchaser filed Appeal before Supreme Court – During pendency of First Appeal son of Plaintiff died and L.Rs. were brought on record – During pendency of Appeal before Supreme Court, Plaintiff died leaving behind children of her son as L.Rs. – Contention of Appellant that on death of original Plaintiff, grandchildren would derive interest and title upon Suit property and by applying Principle of Feeding Grand by Estoppel, title of subsequent purchaser is perfected – Held, deceased, son of original Plaintiff, never acquired any interest in Suit property owned by his mother during his life time – Doctrine of Feeding Estoppel would not come into operation as against grandchildren of original Plaintiff – Doctrine applies when transferor, having no interest in property, transfers same but subsequently acquires interest in said property – Transferor not acquired any interest in Suit property during his life time and doctrine will not come into operation as against heirs, who succeeded property of their grandmother.

(2014) 5 Supreme Court Cases 723

HARBANS PERSHAD JAISWAL (DEAD) BY LEGAL REPRESENTATIVES

Vs

URMILA DEVI JAISWAL (DEAD) BY LEGAL REPRESENTATIVES

Date of Judgment : 21.4.2014

Civil Procedure Code, 1908 – Or. 41 Rr. 17, 19 and 21 – Appeal – Non-appearance of appellant or respondent – Consequence – If appellant does not appear, appeal has to be dismissed for default without going into merits under R. 17(1) – But if respondent does not appear, appeal can be heard ex parte on merits under R.17(2) – If appellant applies under R.19 for readmission of appeal or respondent applies under R. 21 for rehearing, court has to be satisfied that appellant or respondent was prevented by sufficient cause from appearing – If appellate courts finds no sufficient cause shown by appellant or respondent, application liable to be rejected.

(2014) 6 Supreme Court Cases 780

S.F. ENGINEER

Vs

METAL BOX INDIA LIMITED AND ANR

Date of Judgment : 28.3.2014

- A. Rent Control and Eviction – Sub-Letting/Sub-Tenant/Sub-Tenancy – Ingredients – Parting with legal possession of premises by tenant in favour of another person without landlord’s consent by availing monetary consideration in lieu thereof – Sub-tenancy often created in clandestine manner – Burden on landlord seeking eviction of tenant to prove illegal sub-letting – Sub-letting can be proved on basis of legitimate inferences**

- B. Civil Procedure Code, 1908 – S. 115 – High Court’s interference in revision with concurrent findings – Permissible, when findings are perverse and arbitrary – Conclusion of courts below based on inferences, not drawn – Landlord’s suit for eviction of tenant on ground of sub-letting of premises without his consent – Issue of sub-letting can be proved on basis of legitimate inferences drawn by court – Drawing inferences from established facts can be considered to be a point of law – But when inferences drawn by trial court and appellate court do not flow from established facts and are not legitimate, High Court can interfere therewith in exercise of its revisional jurisdiction – Rent Control and Eviction – Sub-Letting/Sub-Tenant/Sub-Tenancy – Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (57 of 1947) – S. 13(1)(e) – Practice and Procedure – Questions of Law – Drawing inference(s) from established facts can be considered a question of law – Revision.**

SUPREME COURT CITATIONS CRIMINAL CASES

(2014) 5 Supreme Court Cases 59

PERIYASAMI, S/o Suraisami Novanagar

Vs

STATE REPRESENTED THROUGH THE INSPECTOR OF POLICE, 'Q' BRANCH CID,
TIRUCHIRAPPALLI, TAMIL NADU

Date of Judgment : 11.4.2014

- A. Terrorist and Disruptive Activities (Prevention) Act, 1987 – S. 15 – Retracted confession under – Manner of appreciation of – A retracted confession is not always worthless – Retraction can be the result of an afterthought, legal advice or pressure – Therefore, each case has to be judged by examining these aspects and whether the confession is voluntary and truthful and whether the retraction is an afterthought
- B. Terrorism and Organised Crime –Witnesses – Independent witness – Independent witness – Case under TADA – Absence of adequate independent witness – Available independent witnesses turning hostile – Manner of appreciation of evidence
- C. Terrorist and Disruptive Activities (Prevention) Act, 1987 – Ss. 15, 3(3), 4(1), 3(2)(ii) and 5 – Retracted confession under S. 15, TADA corroborated by other evidence - When can be relied on for conviction – A-1's case – Conviction confirmed based on his retracted confession which was sufficiently corroborated by other reliable and cogent evidence
- D. Terrorist and Disruptive Activities (Prevention) Act, 1987 – S. 15 – Main witness (PW 15) turning hostile though his S. 164 CrPC statement substantially confirming to A-1's confession – Evidence of PW 15, whether reliable or should be discarded as tainted
- E. Terrorist and Disruptive Activities (Prevention) Act, 1987 – Ss. 15, 3(3) & 3(2)(ii) and 4(1) – Retracted confession under S. 15, TADA corroborated by other evidence - When can be relied on for conviction – A-2's case – Conviction of A-2 reversed to acquittal as case against him not being proved beyond reasonable doubt – A-2 only asking PW 15 for giving shelter and food to accused persons and not himself staying in PW 15's house (clear from evidence of PW 15 and confession of A-1) – A-1 (in his confessional statement, from which he retracted) not referring to A-2 – As per evidence of PW 15 and confessional statement of A-1, it being clear that A-2 was not involved in any of the actions of manufacturing bombs, carrying them to target place and planting them or writing slogans – PW 15's evidence that after blast, A-2 told him about persons who caused blast and threatened elimination of his family if PW 15 disclosed it to anyone, not corroborated by any evidence on record – Held, the case against A-2 is not proved beyond reasonable doubt – Therefore, his conviction is set aside and bail bonds were discharged – For conviction of A-1, see Shortnote C – Penal Code, 1860 – S. 120-B – Government Grants, Largesse, Public Property and Premises – Prevention of Damage to Public Property Act, 1984, S. 3 r/w S.4
- F. Terrorist and Disruptive Activities (Prevention) Act, 1987 – S. 15 – Recording of confession under – Proper procedure (whether statement recorded was voluntary and truthful) – Whether was followed – PW 40 (Inspector) producing A-1 before PW 37 (SP, CID) and giving written requisition for recording his confession

under S. 15, TADA – PW 37 after satisfying himself that he was not threatened or induced to give confessional statement, recorded his confession and obtained his signatures on each page of his confession – Held, A-1's confession was recorded after following the correct procedure and A-1 was not forced or compelled to give his statement – His retraction was clearly an afterthought

(2014) 5 Supreme Court Cases 108

STATE OF GUJARAT

Vs

KISHANBHAI AND Ors

Date of Judgment : 7.1.2014

- A. Criminal Trial – Investigation – Defective or illegal investigation – Rape and murder of six year old girl child and amputation of her legs to rob her anklets – A very heinous case ended in acquittal due to lapses in investigation and prosecution – Lapses committed by investigating and prosecuting agencies, stringently deprecated – Directions issued for purposeful and decisive investigation and prosecution – Training programme to be put in place within 6 months to ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same – Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers – Present directions shall be given effect to within 6 months – All the Home Secretaries concerned, shall ensure compliance of directions – Records of consideration, in compliance with above direction, shall be maintained – Penal Code, 1860 – Ss. 376, 363, 369, 394, 302 and 201 – Prosecution – Defective prosecution – Constitution of India – Arts. 136, 32, 226 and 21 – Criminal Procedure Code, 1973, Ss. 155 to 157.
- B. Penal Code, 1860 – Ss. 376, 394, 302 and 201 – Rape and murder of six year old girl child and amputation of her legs to rob her anklets – Circumstantial evidence – Last seen evidence – Reliability of – Testimonies of witnesses (PW 2, PW 5, and PW 6) testifying to having last seen accused with victim demonstrated to be full of inconsistencies and infirmities, test identification parade not conducted, key witness not examined, thus rendering them suspicious and unreliable – Improbability of prosecution story – Reversal of conviction, confirmed.
- C. Criminal Procedure Code, 1973 – S. 154 – FIR – Delay in FIR – Credibility of FIR – Unexplained long delay of seven hours in registration of complaint, coupled with other suspicious circumstances, held, rendered prosecution case doubtful – Reversal of conviction, confirmed – Criminal Trial – Defective or illegal investigation.
- D. Penal Code, 1860 – Ss. 376, 394 and 302 – Rape and murder of six year old girl child and amputation of her legs to rob anklets – Injuries on genitals of deceased found to be post-mortem in nature – Rape if committed after amputation of legs near ankles and infliction of other severe injuries upon victim – Plausibility of, considering human behavior.
- E. Penal Code, 1860 – Ss. 376 and 302 – Rape and murder of six year old girl child – Material inconsistencies – Green bloodstained dupatta found on body of deceased victim by medical officer while conducting post-mortem examination on deceased – None of prosecution witnesses had referred to factum of victim having worn a green dupatta – If neither victim nor accused were said to have worn green dupatta, this casts a serious doubt on prosecution case, even leading to inference of presence of a third party at the time of occurrence – Held, this is a glaring omission.

- F. Penal Code, 1860 – Ss. 363, 369, 394, 302 and 201 – Rape and murder of six year old girl child – Appreciation of evidence – Injuries suffered by victim on her genitals – Non-production of medical report of accused – When relevant
- G. Criminal Trial – Investigation – Forensic Techniques/Test which ought to/may be conducted – Need for investigating agency to resort to latest scientific and forensic techniques to establish the facts, emphasised.
- H. Criminal Trial – Clues and Tell-Tale signs/Forensics – Bloodmarks/Trail and Bloodstains – Blood of Group B+ve found on clothes of accused – Whether it was his own blood or blood of victim – Determination of – DNA profiling - Advisability of.
- I. Criminal Trial – Identification – Identification of articles – Probability of credible identification.
- J. Penal Code, 1860 – Ss. 378, 390, 394 and 397 – Robbery of anklets by amputation of legs of six year old girl – proof of – Circumstantial evidence – Jeweller with whom anklets pledged not examined as prosecution witness – Further, receipt for pledged anklets allegedly thumb-marked by accused not produced to identify thumb-mark of accused – Lastly sum of money recovered from accused different from sum allegedly received by pledge from jeweler – Held, these were important missing links without which accused could not be connected with the said anklets – Evidence Act, 1872, S 114 III. (a).

(2014) 3 MLJ (Crl) 353 (SC)

Arnesh Kumar

Vs

State of Bihar and Anr

Date of Judgment : 2.7.2014

- A. Criminal Procedure – Apprehension of Arrest-Grant of Bail – Entitlement to – Code of Criminal Procedure, 1973 (Code 1973), Section 41 – Indian Penal Code, 1860 (Code 1860), Section 498-A – Dowry prohibition Act, 1961 (Act 1961), Section 4 – Allegation of demand of dowry levelled by 2nd Respondent/ Appellant's wife against Appellant – Denying allegations of his wife, Appellant preferred application for anticipatory bail, same rejected by Sessions Judge and High Court – Appellant apprehending his arrest under Section 498-A of Code 1860 and Section 4 of Act 1961 filed appeal before Supreme Court - Whether bail could be granted to Appellant apprehending arrest under Section 498-A of Code 1860 and Section 4 of Act 1961 – Held, Section 41 of Code 1973 authorizes Police Officer to arrest accused without Magistrate order and warrant – If provisions of Section 41 of Code 1973 scrupulously enforced, wrong committed by Police Officer would be reversed and number of cases for grant of anticipatory bail will substantially reduce – Practice of mechanically reproducing in case diary all or most of reasons contained in Section 41 of Code 1973 for effecting arrest be discouraged and discontinued – Objective to ensure police officers do not arrest accused unnecessarily and Magistrates do not authorize detention casually and mechanically – Provisional bail granted to Appellant on certain conditions – Directions issued shall not only apply to cases under Section 498-A of Code 1860 or Section 4 of Act 1961, but also to cases where offence punishable with imprisonment less than seven years or extending to seven years – Appeal allowed.
- B. Interpretation of Statutes – ‘Arrest’ – ‘Arrest’ in Section 41 of Code of Criminal Procedure, 1973 curtails freedom, brings humiliation and casts scars forever – No ‘arrest’ should be made only because offence is non-bailable and cognizable and lawful for Police Officers to do so – Apart from power to ‘arrest’, Police Officers must be able to justify reasons thereof – No ‘arrest’ can be made in routine manner on mere allegation of commission of offence made against person – It would be prudent and wise for Police Officer that no ‘arrest’ is made without reasonable satisfaction reached after some investigation as to gen-

uineness of allegation – When accused is produced before Magistrate, Police Officer effecting ‘arrest’ is required to furnish to Magistrate, facts, reasons and its conclusions for ‘arrest’ – Magistrate in turn is to be satisfied that condition precedent for ‘arrest’ under Section 41 of Code 1973 has been satisfied and it is only thereafter that he will authorize detention of accused – Magistrate before authorizing detention will record its own satisfaction, may be in brief but said satisfaction must reflect from its order – Section 41A of Code 1973 makes it clear that in all cases where arrest of a person is not required under Section 41(1) of Code 1973, Police Officer is required to issue notice directing accused to appear before him at specified place and time – Law obliges accused to appear before Police Officer and it further mandates that if such accused complies with terms of notice he shall not be arrested, unless for reasons to be recorded, Police Officer is of opinion that ‘arrest’ is necessary – Condition precedent for ‘arrest’ as envisaged under Section 41 of Code 1973 has to be complied and shall be subject to same scrutiny by Magistrate.

2014 (4) CTC 666

Dashrath Rupsingh Rathod

Vs

State of Maharashtra

Date of Judgment : 1.8.2014

Negotiable Instruments Act, 1881 (26 of 1881), Sections 138 & 142 – Code of Criminal Procedure, 1973 (2 of 1974), Sections 177 & 179 – Offence of Dishonour of Cheque – Cognizance of Offences – Ordinary place of inquiry and trial – Territorial Jurisdiction of Court to entertain Complaint – Factors – Offence triable where act is done or consequence ensues – Supreme Court in Bhaskaran case held that concatenation of five acts namely (1) drawing of Cheque, (2) Presentation of Cheque to Bank, (3) Returning of Cheque unpaid by drawee Bank, (4) Giving of Notice in writing to drawer of Cheque demanding payment of Cheque amount, (5) Failure of drawer to make payment within 15 days of receipt of Notice are factors for determination of Territorial jurisdiction of Courts – Bhaskaran case held that if five different acts were done in five different localities, any one of Courts exercising jurisdiction in one of five local areas can become place of trial for offence under Section 138 – Subsequent Bench of Supreme Court disagreed with law laid down in Bhaskaran with reference to issue of Territorial jurisdiction – Reference to Larger Bench – Return of Cheque by drawee Bank alone constitutes commission of offence and indicates place where offence is committed – Place, situs or venue of judicial inquiry and trial of offence must be logically be restricted to where drawee Bank is located – Place of issuance or delivery of statutory Notice or where Complainant chooses to present Cheque for encashment by his Bank are not relevant for purposes of Territorial Jurisdiction of Complaints – Complainant is statutorily bound to comply with Section 177 of NI Act – Territorial jurisdiction is restricted to Court within whose local jurisdiction offence was committed which is where Cheque is dishonoured by Bank on which it is drawn – Law laid down by Bhaskaran case on aspect of Territorial jurisdiction is overruled.

Negotiable Instruments Act, 1881 (26 of 1881), Sections 138 & 142 – Code of Criminal Procedure, 1973 (2 of 1974), Sections 177 & 179 – Offence of Dishonour of Cheque – Cognizance of Offences – Territorial Jurisdiction – Law laid down by Supreme Court in Bhaskaran case on issue of Territorial jurisdiction overruled – Supreme Court declared ratio in Bhaskaran case in year 1999 – Following ratio laid down in Baskaran case for all years Complaints have been entertained before various Magistrates Courts – Effect of new law declared by Supreme Court on Territorial jurisdictions – Maintainability of Complaints pending before various Magistrate Courts on basis of Bhaskaran case – Consequences thereof – Supreme Court has not overruled Bhaskaran case prospectively by invoking Doctrine of Prospective Overruling – Supreme Court restricted operation of ration with certain limitations – How pending Complaints should be dealt as per new ratio - Guideline : (a) Pending cases where post summoning and appearance of alleged Accused, recording of evidence has commenced as envisaged in Section 145(2) of Act can be continued – (b) Cases in which evidence has been led before Magistrate at pre-summoning stage, either by Affidavit or by oral statement, Complaints will be maintainable only at place where Cheque stands dishonoured - (c) All other Complaints (obviously including those where Accused has not been properly served) shall be returned to Complainants for filing in proper Court as per new ratio decedendi and if such Complaints are filed/refilled within thirty

days of their return, they shall be deemed to have been filed within time prescribed by law unless initial or prior filing itself was time barred.

Negotiable Instruments Act, 1881 (26 of 1881), Sections 138 & 142 – Code of Criminal Procedure, 1973 (2 of 1974), Sections 177 & 179 – Offence of Dishonour of Cheque – Cognizance of Offences – Ordinary place of inquiry and trial – Territorial jurisdiction of Court to entertain Complaint – Factors – Cause of action to file Complaint – (a) Presentation of Cheque to drawee Bank within period of six months from date of its issue (b) if Complainant demanded payment of Cheque amount within thirty days of receipt of information by him from Bank regarding dishonour of Cheque (c) if drawer has failed to pay Cheque amount within fifteen days of receipt of such Notice – Facts constituting cause of action do not constitute ingredients of offence under Section 138 of Act – Proviso to Section 138 simply postpone/defers institution of Criminal proceedings and taking of cognizance by Court till such time cause of action in terms of clause (c) of Proviso accrues to Complainant – Once cause of action accrues to Complainant, jurisdiction of Court to try case will be determined by reference to place, where Cheque is dishonoured.

(2014) 5 Supreme Court Cases 753

OM PRAKASH

Vs

STATE OF HARYANA

Date of Judgment : 16.4.2014

- A. Penal Code, 1860 – Ss. 302/149 and 148 – Vicarious liability – Common object to murder – If established – Murder based on previous enmity – Injured/related witnesses – Ocular evidence of, corroborated by medical evidence – Plea that medical evidence did not match oral account of deceased having been run over by tractor, rejected – Furthermore, evidence clearly showed that all accused persons had come together armed with lathis – H was armed with a gun – Eyewitnesses who are natural witnesses, being brothers, have deposed in an unequivocal manner about assault by all accused persons – Common object is clearly evident – In such a situation, attribution of special individual overt act has no role to play – All the requisite tests to attract S. 149 IPC have been established by prosecution – Conviction of all accused under Ss. 302/149, confirmed
- B. Criminal Procedure Code, 1973 – S. 154 – First information report – Delay in lodging of FIR – Effect on credibility of prosecution case – Principles reiterated – Mere delay in lodging FIR cannot by itself be regarded as fatal to prosecution case – Court has a duty to take notice of delay and examine the same in the backdrop of factual score – Whether there has been any acceptable explanation offered by prosecution – When delay is satisfactorily explained, no adverse inference is to be drawn – It is to be seen whether there has been possibility of embellishment in prosecution version on account of such delay – Impact of crime on relations who are eyewitnesses, shock and panic which would rule supreme at the relevant time and other ancillary aspects are also to be kept in mind

HIGH COURT CITATIONS CIVIL CASES

2014 (4) CTC 290

Farooque Dadabhoy

Vs

Dr. Usha S. Bhat

Date of Judgment : 23.6.2014

Specific Relief Act, 1963 (47 of 1963), Sections 16(c) & 20 – Suit for Specific Performance of Agreement of Sale – Readiness and Willingness of Plaintiff – Whether established – Sale Agreement relating to immovable property – Time essence of contract as stipulated in Agreement - Documents produced by Plaintiff to prove readiness and willingness, self-contradictory – Cheque issued by Plaintiff to Defendant for payment of advance money, not encashed by Defendant – Fact of non-encashment deliberately suppressed by Plaintiff before Court – Letters allegedly issued by Plaintiff to Defendant to complete transaction not delivered to Defendant – Sale consideration not kept ready by Plaintiff while sending alleged communications to Defendant – Required Stamp paper not purchased by Plaintiff for preparation of Sale Deed – False contentions made by Plaintiff with regard to deposit of balance sale consideration in Bank – Plaintiff not contacting Defendant (immediate neighbor) personally and sending letters only to create records – Plaintiff, held, not investing single penny in transaction and restraining Defendant from dealing with property for several years – Plaintiff, held, not ready and willing to perform his part of contract – Moreover, Plaintiff not coming to Court with clean hands and not entitled to discretionary relief of Specific Performance.

Deeds & Documents – Contacts and Agreements – Sale Agreement – Whether executed on basis of consensus ad idem between parties – Suit for Specific Performance based on Sale Agreement – Suit property situated in prime location – Contention of Defendant that Sale Agreement was executed by her on account of undue influence exerted by Plaintiff and another – Established that defendant was suffering from physical and mental ill-health at time of execution of Agreement - Plaintiff taking advantage of strained relationship between Defendant and her husband – Held, drafting of Agreement in most urgent manner by plaintiff, finalization of sale consideration over phone and preparation of MoU before receipt of advance by defendant and all other attending circumstances, proving that there was no consensus ad idem among parties while signing Agreement – Agreement, held, to give an unfair advantage to Defendant over Plaintiff.

Specific Relief Act, 1963 (47 of 1963), Section 20 – Equitable relief of Specific Performance – Grant of – Whether warranted – Suit for Specific Performance based on Sale Agreement – Agreement not entered into by Defendant (seller) willingly – Sale Agreement granting unfair advantage to Plaintiff over Defendant – Four years' undue delay by Plaintiff in prosecution Suit – Value of property shown by Plaintiff far below existing market value – Defendant, held, not to be penalized for inaction of Plaintiff – Moreover, Plaintiff not parting with a single penny for execution of transaction – Plaintiff also guilty of suppressing material facts before Court – In such circumstances, inequitable to grant relief of Specific Performance

Specific Relief Act, 1963 (47 of 1963), Section 16 – Readiness and Willingness of Plaintiff – Burden of proof - On whom – Held, in Suit for Specific Performance burden on Plaintiff to prove that he was ready and willing to perform his part to contract – Defendant not bound to enter witness box and prove negative – Evidence Act, 1872 (1 of 1872), Sections 101 to 104

Specific Relief Act, 1963 (47 of 1963), Section 20 – Relief of Specific Performance – Conduct of Plaintiff vis-à-vis Discretion of Court – Relevant parameters, discussed.

2014 (4) CTC 330

P. Samiappan and Anr

Vs

Rukmani (died) and Ors

Date of Judgment : 19.6.2014

Contract Act, 1872 (9 1872), Section 10 – Specific Relief Act, 1963 (47 of 1963), Section 12 – ‘Concluded Contract’ – What is – Sale Agreement in respect of undivided property – Out of five vendors/sharers named in Sale Agreement, only four signed – Whether there is Concluded Contract – Initially, relief of Specific Performance was sought in respect of entire Suit property -Later Plaint was amended claiming only 4/5 share in Suit property – Trial Court held that Sale Agreement is not Concluded Contract – Appeal to High Court – Agreement was reduced to writing – Vendors/sharers, who are signatories to Sale Agreement, have admitted that they have settled terms, viz., extent of property sale consideration and time for performance – Only reason stated for not performing their part of contract was that one sharer had not signed in Sale Agreement – But it will not invalidate Sale Agreement – In so far as other sharers, who signed Sale Agreement, there is Concluded Contract – Hence, it can safely be concluded that Sale Agreement is Concluded Contract.

Specific Relief Act, 1963 (47 of 1963), Sections 16(b) & (c) & 20 – Suit for Specific Performance – Alternative relief of refund of advance amount granted by Trial Court – Whether Plaintiffs are entitled to decree for Specific Performance – As per recitals in Sale Agreement, Plaintiffs agreed to deposit balance sale consideration and seek Specific Performance – Despite agreeing to deposit entire sale consideration before Court and proceed to file Suit, Plaintiffs have conveniently given go-by to same – Having agreed to deposit money as per pre-condition and having failed to do so, Plaintiffs in all fairness, ought to have mentioned same in Plaint – But Plaintiffs have deliberately failed to do so and in view of such omissions, it is concluded that Plaintiffs have not come to Court with true set of facts – There is also discrepancy regarding balance amount payable in Suit Notice – Plaintiffs are not entitled to relief of Specific Performance.

Specific Relief Act, 1963 (47 of 1963), Sections 16(c) & 20 – Plaintiffs have not sent Suit Notice to correct addresses of some of Defendants – Act of Plaintiffs in giving different statements at different points of time creates cloud over their conduct – Plaintiffs have raised all kinds of false pleas before Court, which would disentitle them from asking discretionary relief of Specific Performance – Plaintiffs have set up false case and approached Court with unclean hands – Therefore, they are not entitled to relief of Specific Performance

Specific Relief Act 1963, (47 of 1963), Section 16(c) – Code of Civil Procedure, 1908 (5 of 1908), Order 8, Rules 3, 4 & 5 – Evidence Act, 1872 (1 of 1872), Sections 101 to 103 – Readiness & Willingness – Plaintiffs have pleaded that they are ready and willing to perform their part of contract – Said plea is not disputed by Defendants – Even in additional Written Statement, readiness and willingness of Plaintiffs was not challenged by defendants – However, it can be seen from Statement of Accounts filed by Plaintiffs, that they were not possessed of sale consideration of Rs.6,75,000/- on that date – When Plaintiffs have specifically pleaded that they were ready and willing to perform their part of contract, it is for them to prove same and such readiness & willingness should be there throughout proceedings – It is trite position of law that Plaintiff has to fail or succeed on strength of his own case and not take advantage of lacuna in case of Defendants – Plaintiffs, having failed to demonstrate their readiness and willingness, cannot take advantage of fact that same is not challenged by Defendants - Therefore, Plaintiffs were not ready and willing to perform their part of contract – Appeal dismissed.

(2014) 4 MLJ 342

Managing Director, Tamilnadu State Transport Corporation, Villupuram Ltd., Villupuram District,
Rangapuram, Vellore

Vs

P. Kasthuri

Date of Judgment : 11.3.2013

Motor Vehicles – Accident claims – Second claim petition – Maintainability of – Respondent met with road accident and sustained injuries – Claim petition filed seeking compensation, same pending – Second claim petition filed with same prayer – Appellant/Transport Corporation objected to maintainability of second claim petition on ground that Respondent already filed petition claiming compensation for injuries sustained in same accident – Tribunal decided aspect of negligence and determined quantum of compensation – Appeal challenging correctness of award – Whether Tribunal can entertain second claim petition, when earlier claim petition pending on file of very same Tribunal – Held, Respondent failed to disclose earlier claim petition already taken on record by Tribunal – Tribunal omitted to advert to specific plea of how second claim petition maintainable – Tribunal grossly erred in proceeding to decide aspect of negligence and quantum of compensation – Successive claim petitions for same cause of action, not maintainable – Impugned award set aside – Appeal allowed.

(2014) 5 MLJ 370

S. Sathik Ali

Vs

Kannappa Chettiar (died) and Ors

Date of Judgment : 7.2.2014

Tenancy Laws – Eviction – Execution of – Obstruction – Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 – Original landlord sought eviction on ground of willful default in payment of rent, unauthorized subletting and for bona fide requirement – Original landlord died and his legal heirs came on record – When eviction order sought to be executed, Petitioner made obstruction that he was the original tenant and order obtained against third party tenant cannot be executed against him – Rent Controller held that Petitioner set up by judgment debtor to resist execution petition – Appeal by Petitioner dismissed – Revision – Whether obstruction of Petitioner to execution of eviction order could be sustained – Held, execution application itself describes third party tenant as partner with Petitioner – Petitioner took deviation during enquiry in application to project his case, as if he was actual tenant and third party tenant was only entrusted with management of his business – No documents to prove that Petitioner's father or Petitioner paid rent in respect of petition premises except receipt for advance paid by Petitioner's father – No rental receipt issued for payment made by third party tenant contains reference to Petitioner's father or Petitioner as tenant on whose behalf, rent paid – Petitioner was aware of institution of proceedings, also passing of order – Petitioner failed to take steps to establish his claim and that eviction ordered against person, who was his representative for managing business – Obstruction by Petitioner could not be sustained – Petition dismissed.

(2014) 5 MLJ 452

V. Raveendran and Ors

Vs

Capt. S.K. Joshua and Ors

Date of Judgment : 25.4.2014

- A. Contract – Specific Performance – Bona fide Purchaser – Plaintiffs expressed their willingness to purchase suit property – Advance paid and sale agreement entered – Plaintiffs applied for sub-division of suit property and for building permission, but they were informed that clearance from Urban Land Ceiling Authori-

ties (ULCA) not obtained – Plaintiffs approached 1st Defendant to get clearance from ULCA – No steps taken – Plaintiffs sent notice requesting 1st Defendant to get clearance certificate – 1st Defendant sent reply stating that he never agreed to get clearance certificate, but agreed to get only clearance from Urban Land Tax Authorities – When Plaintiffs sent another notice to get clearance certificate, 1st defendant sent letter cancelling sale agreement – Plaintiffs filed suit for specific performance – Later, Plaintiffs came to know that 1st Defendant sold suit property to 3rd Defendant and alleged that 3rd Defendant was not bona fide purchaser – Also, to direct 3rd Defendant to deliver possession of suit property – Trial Court held that 3rd Defendant was bona fide purchaser and Plaintiffs not entitled to relief of specific performance, but entitled to get refund of advance with interest – Appeal by Plaintiffs – Whether 3rd Defendant was bona fide purchaser for value – Held, though burden was on 3rd Defendant to prove that she was bona fide purchaser, she proved through her pleading and evidence that she was bona fide purchaser and made improvements on suit property, same accepted by Plaintiffs – Merely because, suit property sold for lesser price, it cannot be stated that purchase was not bona fide purchase, when purchaser did not have knowledge about price and when same sold for guideline value – Explanation given by 1st Defendant’s vendor for selling suit property for lesser price – Trial Court rightly held that 3rd Defendant was bona fide purchaser, same not interfered – Though 3rd Defendant was bona fide purchaser, she was also liable to pay advance paid by Plaintiffs under sale agreement along with 1st Defendant, as Plaintiffs entitled to unpaid vendor’s lien on property agreed to be sold to them – Appeal dismissed.

- B. Contract – Specific Performance - Willingness to perform – Whether Plaintiffs are ready and willing to perform their part of contract – Held, Plaintiffs, both in pleadings and prayer, made it clear that they were not willing to perform their part of contract without production of clearance from ULCA and their offer was conditional, not absolute – But, Trial Court erred in holding that Plaintiffs willing to perform their part of contract, same perverse – Without proving readiness and willingness, even though agreement found to be true, no decree in favour of Plaintiffs to be granted – 1st and 3rd Defendants jointly and severally liable to pay advance with interest to Plaintiffs.
- C. Civil Procedure – Cross-Appeal – Cross-Objection - Code of Civil Procedure, 1908, Order 41 Rule 22 – Whether 3rd Defendant entitled to canvass findings by Trial Court that Plaintiffs ready and willing to perform their part of contract and cancellation by 1st Defendant not valid, in absence of filing cross appeal or cross objection against said finding under Order 41 Rule 22 of Code 1908 – Held, necessity to file cross appeal or objection arises only, when impugned decree is partly in favour of Appellant and partly in favour of Respondents – When decree is entirely in favour of Respondent, there is no need to file cross appeal or objection – Even in absence of appeal or cross objection, adverse finding against Respondents can be challenged by Respondents in appeal filed by Appellant – 3rd Defendant entitled to challenge findings given by Trial Court that Plaintiffs were ready and willing to perform their part of the contract.

(2014) 5 MLJ 539

K. Kuppuraj

Vs

M. Rajasulochana

Date of Judgment : 3.4.2014

Family Law – Hindu Law – Divorce – Cruelty and Desertion – Hindu Marriage Act, 1955, Section 13(i-a)(i-b) – Appellant/Husband moved petition before Trial Court, for grant of divorce under Section 13(i-a)(i-b) of Act – Respondent/Wife resisted suit and stated that Appellant had illicit intimacy with another prior to and after marriage – Trial Court dismissed petition filed by Appellant – Appellant filed appeal before High Court – Whether Trial Court was right in rejecting relief sought by Appellant for grant of divorce against Respondent on ground of cruelty and

desertion – Held, to establish cruelty, there should be concrete evidence – One or two stray instances and quarrels between spouses cannot be considered – Appellant has not proved that acts of Respondent amount to cruelty and there was reasonable apprehension that it would be harmful and injurious for him to live with Respondent - Reason given by Trial Court for separate living by Respondent due to Appellant's illicit intimacy with another, cannot be accepted – Respondent had not attempted or taken any steps to join her husband by filing petition before Family Court for restitution of conjugal rights – Respondent clearly deposed that she was willing to live with her husband despite knowing that he had illicit relationship with desertion, and entitled for relief of divorce on ground of desertion – Civil Miscellaneous Appeal allowed.

(2014) 5 MLJ 593

ICICI Lombard General Insurance Company Ltd., Mumbai 400 034 and Anr

Vs

V. Prakash and Anr

Date of Judgment : 18.2.2014

Motor Vehicles – Enhancement of Compensation – Reduction of Compensation – Claimant travelling in vehicle of 1st Respondent, met with accident – Claimant suffered grievous injuries paralyzing his movement perpetually – Tribunal awarded compensation with interest – Being aggrieved, appeal filed by 2nd Respondent Insurance Company – Claimant filed cross objection seeking enhancement of compensation – Whether claimant entitled to enhanced compensation or to reduced one – Held, compensation awarded to claimant must be 'just' on consideration of facts and circumstances on record – Claimant, during his employment, periodically received increments and it was proved in evidence that claimant was a permanent employee – Award of compensation towards loss in earnings by considering future prospects is to balance situation by attempting to put claimant in position if accident had not occurred – Claimant suffered 100% permanent disability reducing him to vegetative state and he has to depend on others for everything – Claimant clearly established that he was under continuous intensive treatment and needed attender - No valid reasons to interfere with award regarding medical expenses - Further medical expenses to be enhanced as it would not only include expenses indicated in Ex.P9, would include many other expenses – Claimant entitled for compensation towards loss in earning during treatment – Attender charges increased – Claimant would have to visit hospital or doctor periodically throughout his life – Transportation charges and extra-nourishment charges increased – Claimant entitled separately to compensation for mental agony, towards loss of amenities in life and loss of happiness – Compensation enhanced without interest – Interest awarded by Tribunal shall be paid on other heads – Appeal dismissed – Cross-objection partly allowed

2014 (4) CTC 606

Chelladurai

Vs

Velmurugan

Date of Judgment : 1.4.2014

Indian Evidence Act, 1872 (1 of 1872), Section 73 – Comparison of disputed signature with admitted signature – Power of Court – Suit for recovery of money based on Promissory Note – Dispute as to signature found in Promissory Note – Procedure to be followed by Trial Courts – Cautious approach – Comparison of disputed signature with contemporaneous documents – Court does have power to make comparison of disputed signature with admitted or proved signatures – Power of Court to make comparison should be exercised cautiously to avoid making comparison of disputed signatures with admitted signatures as there is possibility of same being consciously disguised – Under what circumstances Court can make comparison – (a) Court should not normally compare disputed signature with signature found in documents that came into existence much later in point of time or after dispute has arisen and same is opposed by party relying on document containing disputed signature (b) Court can make comparison, when person, who relies on disputed signature, does not have objection for comparison or seeks comparison with admitted signature contained in document even though such document came into exis-

tence after dispute has arisen and signatures are not disguised and they are good for comparison; (c) Court cannot exercise power of comparison when party, who relies on disputed document, expresses apprehension that document of recent origin or farthest document shall not be suitable for making comparison; (d) Normally admitted or proved contemporary signatures alone should be used for comparison with disputed signatures.

(2014) 4 MLJ 680

R. Lakshminarayanan

Vs

Haji Abdul Khader Nagada Trust, represented by its Trustee, Hameed Sultan, represented by Power Agent, H.N. Junaitha Nachiar

Date of Judgment : 3.6.2014

Property Law – Eviction – Notice – Validity of – Transfer of Property Act (Act), Section 106 – Respondent/plaintiff filed suit for ejection against appellant/tenant – Suit property was of wakf property – Husband of respondent was Trustee of wakf property – Respondent/Plaintiff was appointed as Power agent by her husband – Respondent issued eviction notice under Section 106 of Act and filed suit for ejection and to deliver vacant possession – Suit decreed by Trial Court and said decree confirmed on first appeal – Second appeal challenged by appellant on ground that notice issued by respondent was as individual capacity and not as Trust – Whether suit instituted by Power agent on basis of notice under Section 106 of Act, can be amended to bring some other Plaintiff on record, who had never issued any notice – Held, Respondent issued notice of eviction under Section 106 of Act as Power of Attorney, of her husband and not as of Trust – Eviction notice issued as individual capacity – Alleged notice issued as if suit property was separate property of husband of respondent – Ex.A1 eviction notice not issued by concerned landlord namely the Trust – Suit originally filed only as individual capacity and not as trustee or representative of the Trust – Only during pendency of suit, plaint was amended – Alleged eviction notice-Ex.A1 issued under Section 106 of Transfer of Property Act, is not a valid eviction notice, same not issued by landlord – Both courts below failed to consider same – Findings of both courts below not valid – Alleged Ex.A1 eviction notice issued under Section 106 of Act, invalid – Decree and judgment passed by both courts below set aside - Second appeal allowed.

(2014) 5 MLJ 680

P. Sankaran

Vs

Somanathan and Company, 308 Palayamkottai Road, Tuticorin, Through its partners
R.V. Rama Subramanian, R.V. Sankar

Date of Judgment : 22.5.2014

Tenancy Laws – Tenancy rights – Sale – Execution – Amendment of measurements – City Tenants Protection Act (Act), Section 9 – Father of Petitioner was tenant in land – Respondent purchased land and filed OS for ejection of Petitioner's father – In OS, Petitioner's father filed IA under Section 9 of Act for direction to Respondent/landlord to sell property – Trial Court held that Petitioner's father entitled to benefit under City Tenants Protection Act and entitled to purchase land - Petitioner filed EP to execute sale deed – In EP, Respondent filed EA to amend measurements of schedule of property – Petition allowed – Revision – Whether Trial Court was justified in directing Petitioner to amend schedule of property in EP – Held, neither measurements nor boundaries were given in plaint in OS by Respondent – Measurement was correctly given by Petitioner's father in IA under Section 9 of City Tenants Protection Act - Advocate Commissioner's report gives very same boundaries given by Petitioner's father in IA – Respondent miserably failed to mention boundaries in plaint itself – EP filed to get property as per Section 9, where courts already determined extent and measurement correctly – Respondent cannot seek to amend schedule of property in EP when Respondent initiated proceedings without giving measurements and boundaries – Trial Court's order set aside – Petition allowed.

HIGH COURT CITATIONS CRIMINAL CASES

(2014) 3 MLJ (Crl) 310

K. Suresh Kumar

Vs

State rep. by Deputy Superintendent of Police, Organised Crime Unit, Crime Branch CID, Salem City

Date of Judgment : 24.1.2014

Criminal Procedure - Discharge – Code of Criminal Procedure, 1973, Section 227 – Petitioner/5th accused charged for act of conspiracy with other accused and act of instigation to murder family of retired Inspector of Police/father of 1st accused due to property dispute – Petitioner filed discharge petition on ground that no material available to prove act of conspiracy except confession statement of co-accused, same opposed by respondent/complainant – Trial court dismissed discharge petition along with similar petitions by other accused on ground that materials produced prima facie makes out sufficient ground for framing charge against Petitioner – Revision – Whether Petitioner could be discharged from charges levelled against him – Held, statements of witnesses established civil nature of dispute between parties and involvement of Petitioner in civil dispute of parties – Statements of witnesses were only about involvement of Petitioner on basis of hearsay evidence, same not sufficient to make out intention of Petitioner in aiding and abetting 1st accused to commit crime charged – No ground made out to presume probable involvement of Petitioner in commission of offence to proceed to frame charges against Petitioner – Trial Court reproduced evidence and arrived at finding that prima facie case made out, without duly analyzing evidence available – Order of Trial Court warrants interference – Petitioner discharged from charges levelled against him – Petition allowed.

(2014) 3 MLJ (Crl) 323

Abdul Hussain

Vs

Indusind Bank, (Formerly Ashok Leyland Finance Ltd) rep. by its Legal Executive,
P. Pratheep, T.Nagar, Chennai – 600 017 and Anr

Date of Judgment : 18.1.2014

- A. Criminal Procedure – Complaint – Subsequent Order – Validity of – Criminal procedure Code, 1973 (Code 1973), Sections 397 and 401 – Petitioner lodged complaint that vehicle was missing – Police traced vehicle which was in custody of Respondent no.1/Financier – Petitioner filed application before Trial court and sought for release of vehicle – Trial court directed release of vehicle to Petitioner subject to certain conditions – Respondent no. 1 filed application before Trial Court that vehicle was purchased under hire purchase agreement and Petitioner was defaulter – Trial court via impugned order directed release of vehicle to Respondent no. 1 as they were ostensible owner of vehicle – Criminal Revision Petition under Sections 397, 401 Code 1973 to set aside order of Trial court – Whether subsequent order could be passed by Trial Court already existed – Held, Trial court while issuing impugned order took note of the objections of Petitioner and first order – Trial court having been satisfied that Respondent no. 1 was ostensible owner, as they are holder of registration certificate (R.C.), directed release of vehicle in favour of Respondent no. 1 – Petitioner has not challenged impugned order – Not a case, where Trial Court reviewed its earlier order, but order was passed on fresh application filed by Respondent no. 1 – Revision dismissed.
- B. Criminal Procedure – Custody of vehicle – Complaint – Hypothetication agreement – Whether Petitioner could contend that Respondent no. 1 has no right to claim vehicle by stating that financier cannot become

ostensible owner by himself and it is only R.C., owner who was entitled to file application for claiming interim custody of vehicle – Held, Petitioner has not filed any appeal or revision against impugned order and same has attained finality – Vehicle was in custody of Respondent no. 1 and after Petitioner gave complaint, Police directed Respondent no. 1 to surrender vehicle to them – Vehicle in question was under hypothecation agreement with Respondent no. 1 – Respondent no. 1 continues to remain as owner of vehicle till entire dues are settled and no objection certificate issued by them for cancelling hypothecation.

(2014) 3 MLJ (CrI) 343

M. Sathiya Prakash, S/o. Maylisamy, Godhavadi, Pollachi, Coimbatore District and Anr

Vs

State rep. by The Inspector of Police, Kinathukadavuu Police Station, Coimbatore District

Date of Judgment : 29.4.2014

Criminal Procedure – Prosecution evidence – Discrepancy – Delay in documents – Justification of proceedings – Indian penal Code, 1860 (Code 1860), Sections 148 and 302 r/w 34 and 149 – Prosecution alleged that deceased was in love with sister of 1st accused/Appellants – Later, she started to stay away from deceased as he was drunkard – Also alleged, since deceased was harassing her, all accused, in unlawful assembly, attacked and killed deceased on spot – Session judge convicted all accused under Sections 148 and 302 r/w 34 and 149, Code 1860 – Trial Court acquitted 3rd to 5th accused but found 1st and 2nd accused guilty under Section 302 r/w Section 34, Code 1860 – Appellants alleged that there is enormous delay in sending material documents to Court – Appeal – Whether delay in sending documents to Court is significant and ought to be considered when there are discrepancies in prosecution case – Held, PW/Eye witness, alleged that accused threatened him and on fear he went home and next day went to his uncle’s house – Evidence of PW cannot be believed that he kept without even informing his family members as he knew deceased – Evidence of investigating officer and evidence of PW contradictory making it unsafe to rely on evidence of witness – Complaint stated that tyre marks found on dead body of deceased, no explanation given by investigating officer – No mention about tyre marks in post mortem report – Prosecution case cannot be accepted that deceased was only done to death and not accident – Motive projected by prosecution that deceased had love affair with sister of accused and due to which accused had axe to grind against deceased cannot be believed – When accused family had gone to look for bridegroom, deceased had not picked up quarrel upon the issue – Evidence on record shows that accused and deceased were last seen together in bus – With discrepancies in prosecution case, delay of six months in sending material documents to Court assumes importance – Circumstances projected by prosecution before Court far from convincing, do not unerringly point out guilt of accused and benefit of doubt given to accused – Impugned judgment of conviction and sentence set aside – Accused acquitted – Appeal allowed.

2014 (3) CTC 358

T.R. Pachamuthu

Vs

M.M. Finance Corporation

Date of Judgment : 30.8.13

Negotiable Instruments Act, 1881 (26 of 1881), Section 138 (b) – No prescribed form of statutory Notice demanding amount covered by dishonoured Cheque – Requirement is that it should contain a demand for payment of amount of Cheque within stipulated time – “Kindly do the needful” is not a “demand” contemplated under Provision (b) to Section 138 – Statutory requirement not met – Held, Notice invalid and proceedings liable to be quashed – Case law discussed.

2014 -1-L.W. (CrI.) 522

S. Ragini

Vs

The State by Deputy Superintendent of Police, Q Branch, Dharmapuri.

Date of Judgment : 7.1.14

Prevention of Terrorism Act (POTA) (2002), Section 34/Bail, denial of.

Bail – Grant of – Power to take accused after filing of charge sheet recognised – Member of a terrorist organization – Absconding of, by accused – Effect of – Cannot claim parity with Others – Petition dismissed.

2014 -1- LW.(CrI.) 527

V. Prakash.

Vs

State represented by Sub Inspector of Police, Salawakkam Police Station, Kancheepuram District

Date of Judgment : 12.11.2013

Criminal Procedure Code, Section 468, 473/Cognizance, by Magistrate, beyond limitation,

I.P.C., Sections 279, 337, 338, 304 (A)/Cognizance, by Magistrate, beyond limitation.

Cognizance, taking of, by Magistrate, beyond limitation – Delay, condonation, Scope of – Offences charged against the accused are punishable with imprisonment for a term not exceeding three years – Trial Court ought to have taken cognizance of the same within three months from the date of the offence – But same was taken cognizance with the delay of above 155 days – Discharge of accused, when cognizance taken beyond limitation – When permissible – Bar of limitation on prosecution – Scope of – Absence of order by magistrate for extending period of limitation – Effect of, accused discharged – Impugned order set aside.

2014 -1- LW.(CrI.) 540

Priya

Vs

The Inspector of Police, Thookanambakkan Police Station, Cuddalore District

Date of Judgment : 13.12.2013

I.P.C., Sections 302, 392, 397/child witness, reliability,

Criminal Trial/murder, child witness, reliability,

Evidence Act, Section 6/Res gestae, child witness, reliability.

One eyewitness to the occurrence is daughter of the deceased, child 7 years old well-oriented and capable of giving evidence – She stated that, she was lying with her mother on the bed when the appellant came into the room and started attacking her mother.

After beating the deceased on her head, appellant took away the ornaments worn by her mother and left the place – Statements of S (child) to P (her brother) is ‘res gestae’ and is admissible u/s. 6 – Offence of alleged robbery, not proved.

2014 -1- LW.(CrI.) 550

Senthilrajan

Vs

State rep by the Assistant Commissioner of Police Anna Nagar Range Chennai

Date of Judgment : 11.2.2014

I.P.C., Sections 304 – B, 498 – A/Cruelty, Dowry death,

Dowry Prohibition Act (1961), Section 2'Dowry'.

To hold person guilty under Section 304-B, ingredients – What are – No evidence to show that appellant had subjected the deceased to cruelty in connection with the demand of dowry – No evidence to show that money was demanded in connection with the marriage.

2014 (4) CTC 593

Sudalaimani

Vs

State rep by the Inspector of Police, Chrompet Police Station, Chennai 600 044

Date of Judgment : 31.7.2014

Indian Evidence Act, 1872 (1 of 1872), Sections 25 & 27 – Code of Criminal Procedure, 1973 (2 of 1974), Section 162 – Confessions made to Police Officer – Proof of relevancy – Whether Confession Statement made by Accused to Police can be used in favour of Accused - Permissibility – When Accused after commission of crime surrendered to Police and gave Statement, which was confession in nature, can be used in favour of Accused – Confession Statement made by Accused to Police Officer during course of investigation will undoubtedly fall within sweep of Section 162, Cr.P.C. – Police confession made after commencement of investigation cannot be used to give any benefit or advantage to Accused – Confession given to Police Officer before commencement of investigation alone can be used in favour of Accused – Any confession made to Police Officer after commencement of investigation cannot be used in favour of Accused, as same barred under Section 162, Cr.P.C. – Law laid down by Division Bench in Shajin case held as per incuriam.

2014 –1– L.W.(CrI) 759

Sathya

Vs

State rep. By Inspector of Police, Vellore North Police Station, Vellore District

Criminal Procedure Code, Section 436, bailable offence, grant of bail,

I.P.C., Sections 201, 212, 302/bailable offence, grant of, bail,

Harbouring offender – Petitioner must know he was carrying a killer in his bike to help him to escape from legal punishment – Bailable offence, Offence tried by first class magistrate – Entitled to bail – Bailable, non-bailable offence, Difference.
