



TAMIL NADU STATE JUDICIAL ACADEMY

Vol: XIII

Part: 8

August, 2018

IMPORTANT CASE LAW



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SUPREME COURT – CIVIL CASES

2018 (9) SCALE 456

Shamanna Vs. The Divisional Manager, The Oriental Insurance Co. Ltd.

Date of Judgment: 08.08.2018

MOTOR VEHICLES – MOTOR VEHICLES ACT, 1988 – SECTION 147 & 166- Accident claim – Breach of insurance policy condition due to disqualifications of the driver or invalid driving licence of the driver – In case of third party risks, the insurer has to indemnify the compensation amount to the third party and insurance company may recover the same from the insured – Deceased was travelling in a jeep when the jeep was driven negligently due to which door of the jeep suddenly opened and deceased was thrown out of the vehicle, sustained grievous injuries and died in the hospital – In the claim petition filed by parents of the deceased, the Tribunal awarded compensation of Rs. 3,55,500/- – Since the driver of the jeep had no valid driving licence at the time of the accident and since there was violation of the terms of the insurance policy, the Tribunal directed the insurance company to pay the compensation to the claimants and granted liberty to the insurance company to recover the same from the owner of the offending vehicle – In appeal, High Court enhanced the compensation awarded by the Tribunal from Rs.3,55,500/- to Rs.4,94,700/- while setting aside the direction to the insurance company to ‘pay and recover’ – High Court reversed the award passed by the Tribunal for ‘pay and recover’ holding that the owner of the vehicle was liable to pay the compensation to appellants-claimants – Whether the impugned judgment of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle was sustainable – Held, No – Allowing the appeal, Held,

2018 (9) SCALE 526

Ved Pal (D) Thr. LRs. Vs. Prem Devi (D) Thr. LRs.

Date of Judgment: 10.08.2018

CIVIL PROCEDURE – CPC – ORDER 23 RULE 3A; SECTION 96(3) – Compromise between parties – Civil suit decreed in terms of the compromise – A civil suit was filed for a declaration and permanent injunction – Single Judge of the High Court disposed of the second appeal in terms of compromise, which is said to have been arrived at between the parties – Second appeal was not decided on merits but disposed of in the right of compromise arrived at between the parties – Review petition filed by appellants was dismissed – Whether the order passed in the review petition can be set aside – Held, Yes – This Court permits appellants to file an application before the High Court for amending their review petition, raising all their grievances – Disposing the appeal, Held,

(2018) 6 SCC 574

Y.P. Sudhanva Reddy Vs. Karnataka Milk Federation

Date of Judgment: 25.04.2018

A. Specific Relief Act, 1963 – Ss. 34, 35, 37 and 38 – Claim of ownership of property subsequent to its acquisition, where acquisition proceedings attained finality – Declaratory remedy of ownership cannot be granted – Suit of such nature cannot be filed

B. Civil Procedure Code, 1908 – Or.41 R.27 – Additional evidence – Exercise of discretionary power to grant of permission to lead additional evidence – Justifiability of

(2018) 6 SCC 422

Chhotanben Vs. Kiritbhai Jalkrushnabhai Thakkar

Date of Judgment: 10.04.2018

Civil Procedure Code, 1908 – Or. 7 R. 11(d) – Application for rejection of plaint – Adjudication as to – Relevant considerations therein – Plea as to rejection of plaint on ground of suit being barred by limitation – Tenability – Existence of triable issue with respect to that plea – Effect

(2018) 6 SCC 209

M. Durga Singh Vs. Yadagiri

Date of Judgment: 18.04.2018

A. Tenancy and Land Laws – Land Grabbing – Frivolous litigation – Prolongation of fruitless litigation in different forums – No interference warranted

B. Practice and Procedure – Costs – Frivolous litigation – Appellant took several courts to a ride through continuous and fruitless litigation spanning several decades – Held, appellants liable to pay costs of Rs.50,000/-

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SUPREME COURT – CRIMINAL CASES

(2018) 6 SCC 591

Bhaskarrao Vs. State of Maharashtra

Date of Judgment: 26.04.2018

A. Penal Code, 1860 – S. 302 r/w Ss. 149 & 506 and Ss. 147, 148, 458 r/w S. 149 – Circumstantial evidence – Chain of events unequivocally pointing towards guilt of accused, not established – Duty of court to separate chaff from husk and to dredge truth from pandemonium of statements – No compelling reasons and substantial grounds for High Court to interfere with order of acquittal passed by trial court – Acquittal, restored

B. Criminal Procedure Code, 1973 – Ss. 378 and 386 – Appeal against acquittal – Powers of appellate court – Scope – Reiterated – On facts held, there were no compelling reasons and substantial grounds for High Court to interfere with order of acquittal passed by trial court – Penal Code, 1860, S. 302 r/w Ss. 149 & 506 and Ss. 147, 148, 458 r/w S. 149

C. Criminal Trial – Witnesses – Related witness – Testimony – Evidentiary value – Need for circumspection since possibility of bias not ruled out

D. Criminal Trial – Circumstantial Evidence – Motive – Relevance – Extent of

E. Penal Code, 1860 – S. 302 r/w Ss. 149 & 506 and Ss. 147, 148, 458 r/w S. 149 – Applicability of S. 149 – Common object – Proof

F. Criminal Trial – Identification – Test Identification Parade – Non-conduct of – On facts held, was fatal to prosecution case – Evidence Act, 1872, S. 9

(2018) 3 MLJ (CrI) 498 (SC)

Kishan Rao Vs. Shankargouda

Date of judgment: 02.07.2018

Negotiable Instruments – Dishonour of Cheque – Rebuttal of Presumption – Negotiable Instruments Act, 1881, Sections 138 and 139 – Trial Court convicted accused for offence under Section 138 on complaint filed by Appellant/Complainant and same confirmed by Appellate Court – On revision, High Court set aside conviction order, hence this appeal – Whether High Court justified in allowing Revision, setting aside order convicting accused – Whether there was any doubt with regard to existence of debt or liability of accused – Held, no valid basis for High Court to hold that accused was successful in creating doubt with regard to existence of debt or liability – Appellant proved issuance of cheque which contained signatures of accused and same was returned with endorsement “insufficient funds” – Bank official produced as witness proved that cheque not returned on ground that same did not contain signatures of accused rather returned due to insufficient funds – Trial Court as well as Appellate Court found cheque contained signatures of accused – Presumption under Section 139 rightly raised and not rebutted by accused – Judgment of

High Court set aside and judgment of Trial Court affirmed by Appellate Court restored – Appeal allowed.

(2018) 6 SCC 358

Harita Sunil Parab Vs. State (NCT of Delhi)

Date of Judgment: 28.03.2018

Criminal Procedure Code, 1973 – S. 406 – Transfer petitions – Apprehension of not getting a fair and impartial inquiry or trial besides inconvenience of petitioner in pursuing cases – Grounds of – Held, such apprehension is required to be reasonable and not based upon conjectures and surmises – Convenience for purposes of transfer means convenience of prosecution, other accused, witnesses and larger interest of society – Court has to visualise comparative inconvenience and hardships likely to be caused to witnesses besides burden to be borne by State Exchequer in making payment of travelling and other expenses of official and non-official witnesses, for attending court proceedings, if cases are ordered to be transferred to transferee court – Herein, transfer petitions rejected.

(2018) 6 SCC 433

Kameshwar Singh Vs. State of Bihar

Date of Judgment: 09.04.2018

A. Penal Code, 1860 – Ss. 302/201/149 – Murder trial – Brutal murder of a person with a view to prohibit such person from deposing before court in a case against his assailant – Dead body of deceased was cut into two pieces, and thrown at two different places, in order to destroy evidence – Involvement of 7 accused (including 5 appellant-accused herein, 2 accused since dead) – Evidence of 3 eyewitnesses (PWs 6, 11 and 14) found consistent, cogent and reliable regarding prime appellant-accused K – However, evidence against remaining accused not as reliable – Hence, conviction of K alone, confirmed – Remaining accused given benefit of doubt and acquitted

B. Criminal Trial – Proof – Suspicion – Held, any amount of suspicion may not take place of proof

C. Criminal Trial – Conduct of accused, complainant, witnesses, etc. – Conduct/Reaction/Behaviour of witness – They ran away to their homes without trying to save life of deceased nor raising hue and cry in village – If such conduct suspicious – Case of brutal murder of a person with a view to prohibit such person from deposing before court in a case against his assailant – Dead body of deceased was cut into two pieces, and thrown at two different places, in order to destroy evidence

D. Criminal Trial – Appreciation of evidence – Contradictions, inconsistencies, exaggerations or embellishments – Duty of court while appreciating such evidence – What should be – Held, maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) is not applied in India – Hence, said maxim is treated as neither a sound rule of law nor a rule of practice in India.

(2018) 7 SCC 623

State of Andhra Pradesh Vs. Pullagummi Kasi Reddy Krishna Reddy

Date of Judgment: 03.07.2018

A. Penal Code, 1860 – Ss. 302/149 – Murder trial – Rivalry between two factions in village leading to attack using country-made bombs, hunting sickles and iron pipes – Death of four persons because of – All respondent-accused acquitted by High Court – If proper

B. Criminal Trial – Appreciation of Evidence – Contradictions, inconsistencies, exaggerations or embellishments – Minor contradictions and omissions in evidence of witness are to be ignored if there is ring of truth in testimony of witness – Held, principle of “falsus in uno falsus in omnibus” has not been accepted in India – Even if some accused are acquitted on ground that evidence of witness is unreliable, other accused can still be convicted by relying on evidence of the same witness

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MADRAS HIGH COURT – CIVIL CASES

(2018) 6 MLJ 230

Govindasamy Vs. Kandasamy

Date of Judgment: 04.07.2018

Property Laws – Title of Vendor – Unstamped Partition List – Appellant/Plaintiff traced his vendor's title from partition and filed suit for declaration and injunction – Trial Court decreed suit – On appeal, 1st Appellate court set aside decree of Trial Court against Plaintiff, hence this second appeal – Whether Plaintiff's vendor had valid title to suit property as projected in plaint – Held, Plaintiff relies upon partition list/Ex.A4 – Partition list is not stamped and registered as per requirements of law – 1st Appellate Court rightly concluded that Plaintiff's vendor could not derive valid title to suit property – Plaintiff cannot lay valid claim of title to suit property based on sale deed/Ex.A5 – Plaintiff failed to establish both his and his vendor's title, possession and enjoyment of suit property – First Appellate Court justified to decline reliefs sought for by Plaintiff by setting aside judgment and decree of Trial Court – Appeal dismissed.

(2018) 6 MLJ 233

K.S. Sathyanarayanan Vs. D.Yasodha

Date of Judgment: 11.07.2018

Succession Laws – Probate of Will – Attesting Witness – Indian Succession Act (IS Act), Section 63 – Indian Evidence Act (IE Act), Section 68 – Suit property was absolute property of testatrix by virtue of Sale deed – Testatrix executed Will during her life time, in favour of her four sons/ beneficiaries and eldest son/Appellant was appointed as Executor of Will – On death of Testatrix, Appellant applied for mutation in revenue records in names of sons of Testatrix – Respondents/daughters of Testatrix sent legal notice claiming 1/8th share in property alleging Will was fabricated – Suit filed for grant of Probate of Will – Single Judge dismissed suit – Challenging same, present intra-Court Appeal filed – Whether alleged Will is genuine document – Whether Appellant has proved will in accordance with Section 63 of IS Act and Section 68 of IE Act – Whether Single Judge has properly appreciated materials on record before rejecting claim of Appellant for Probate of Will – Held, no dispute with regard to signature of testatrix in Will – Attesting witness talks about signature found in Will to be that of testatrix – Attesting witness also speaks about sound disposing mind, memory, understanding of testatrix and her free will while executing document – Testatrix did sign Will, was attested by other witnesses and scribe of Will wrote as dictated by one witness, who was renowned author and academician – Attesting witness examined in accordance with Section 68 of IE Act – One of sisters completely supported claim made by beneficiaries which proves fact that sisters knew about existence of Will – Sisters decided to claim share by feigning ignorance about Will – Will duly executed by Testatrix, attested by witnesses and proved by propounder – Suspicious circumstances raised that Will was executed four decades back, fabricated in blank papers and execution of Mortgage Deeds defies existence of Will, has all been rebutted – Appellant discharged onus of proving Will –

Appellant proved Will in accordance with Section 63 of IS Act and Section 68 of IE Act – Judgment and decree passed by Single Judge is set aside – Appeal allowed.

2018 (2) TN MAC 168 (DB)

National Insurance Co. Ltd Vs. Thangadurai

Date of Judgment: 13.04.2018

NEGLIGENCE – Finding of – If, proper – Injured/Claimant riding Two-wheeler, dashed by Car – FIR filed against Car Driver – Charge-sheet filed against Car Driver – Tribunal, considering oral and documentary evidence, concluded that accident occurred due to rash and negligent driving of Car Driver – No rebuttal evidence on side of Insurer, Owner and Driver – No interference called for with factual finding of Tribunal.

NEGLIGENCE – CONTRIBUTORY NEGLIGENCE – Injured/Claimant riding Two-wheeler without possessing effective Driving Licence to drive Two-wheeler – Claimant having Licence to drive LMV and HVM – No endorsement with regard to Two-wheeler – Insurer justified in making plea of non-possession of valid Driving Licence – Amount to Contributory Negligence on part of Claimant – High Court fixed 20% Contributory Negligence, on part of Claimant.

PERMANENT DISABILITY – LOSS OF EARNING CAPACITY – Compensation – Assessment – Injured/Claimant, aged 42 yrs., a Driver & suffered fracture of both bones of left leg, left radius, lower end of ulna & nasal bone – Treated as inpatient from 20.11.2013 to 23.12.2013, operated upon and internal fixtures fixed – Skin grafting done – Mal union of fractured bones – Length of left leg reduced – Urination problem due to urinary tract injury – Disability assessed by Doctor at 65% – Considering fact that injured being a Driver not in position to undertake his avocation, Tribunal rightly fixed Loss of Earning Power at 100% – Fixing Income at Rs.11,700 [Rs.9,000 + 30%] as against Rs.6,500, Multiplier of 14 applied – Deducting 20% towards Contributory Negligence, Loss of Earning Capacity awarded at Rs.15,72,480 [Rs.11,700 x 12 x 14 x 80/100].

MOTOR ACCIDENT CLAIM – Compensation – Quantum – Enhancement – Injured/Claimant aged 42 years, a Driver suffered multiple fractures in left leg – 65% disability – Injured not in position to drive vehicle and undertake his avocation – Tribunal rightly fixed Loss of Earning Power at 100% – Fixing Income at Rs.11,700 as against Rs.6,500 p.m., Rs.15,72,480 awarded towards Loss of Earning Power as against Rs.11,70,040 – Compensation under Pain & Suffering enhanced from Rs.25,000 to 1,00,000 – Rs. 5,000 each under Transport Expenses and Extra-Nourishment enhanced to Rs.25,000 – Total Compensation enhanced from Rs.14,77,000 to Rs.20,00,000 – Rs.10,00,000 directed to be deposited in Interest earning Fixed Deposit for 5 yrs.

INCOME – NOTIONAL INCOME – Injured, Claimant aged 42yrs., a Driver, earning Rs.15,000 p.m. as per claim – No documentary proof to substantiate claim of income – Tribunal fixing Notional Income at Rs.6,500 p.m., – If, Proper – Following Supreme Court decision in Syed Sadiq and considering date of accident i.e. 20.11.2013, High Court in Appeal taken income at Rs.9,000 p.m. – Following dictum in Pranay Sethi, 30% added towards Future Prospects – Monthly Income accordingly fixed at Rs.11,700 as against Rs.6,500 p.m.

(2018) 6 MLJ 452

Deepa Rajendran Vs. N. Unnikrishnan

Date of Judgment: 18.06.2018

Hindu Law – Interim maintenance – Quantum – Hindu Marriage Act, 1955, Section 24 – Husband filed petition to dissolve marriage on ground of “cruelty” by wife – On application filed by wife for interim maintenance and litigation expenses, Family Court directed husband to pay interim maintenance of Rupees Forty Thousand per month and Ten Thousand as litigation expenses, hence these appeals by husband and wife – Whether order of Lower Court had to be set aside as prayed for by husband – Whether interim maintenance to be enhanced as prayed for by wife – Held, purpose of Section 24 was to provide adequate financial support to husband or wife, if independent income was not sufficient to maintain himself or herself pending final conclusion of main matrimonial proceedings which was interim relief – Wife’s prayer for enhancement of maintenance based on income earned by husband could not be entertained for purpose of determination of quantum under Section 24 – Husband also could not walk away from burden cast upon him under Section 24 at this stage without proper evidence to contrary that wife had sufficient means to support herself – Uncontroverted fact that wife was unemployed and had to take care of child singlehandedly and had no independent means of income could not be ignored – Finding given by Lower Court that husband is earning Two lakh per month could not be ignored – To meet ends of justice, interim maintenance awarded to wife increased – Husband directed to pay Forty five Thousand per month to wife as interim maintenance – Appeal filed by wife partly allowed – Appeal filed by husband dismissed.

(2018) 6 MLJ 469

R. Vasu Vs. M. Ramakrishnan (Deceased)

Date of Judgment: 29.06.2018

Property Laws – Tenancy – Purchase of property – Madras City Tenants Protection Act, Section 9 – Defendant/tenant failed to pay rent – Plaintiff/landlord determined tenancy by issuance of notice – Defendant failed to comply with directions in notice – Suit filed by Plaintiff seeking possession of suit property and for past and future damages decreed by Lower Courts, hence this second appeal – Whether landlord who knowingly permitted tenant to carry out improvements in superstructure be left out while offering ground property for sale to others – Whether Appellant’s right to claim preference in purchase of schedule mentioned property is governed by provisions of Act – Held, Defendant had not made plea of his entitlement to benefits of Act in written statement and had not adduced any reliable evidence on above lines – Defendant had not established that he was entitled to seek benefits under Act as stipulated therein – First Appellate Court determined that Defendant was not entitled to seek benefits of Act as no endeavor had been initiated by Defendant with reference to same as provided under Section 9 of Act – No interference called for in judgment and decree of lower Courts – Second Appeal dismissed.

(2018) 6 MLJ 476

A.G. Venkatachalam Vs. P. Ganesan

Date of Judgment: 28.06.2018

Contract – Specific performance – Readiness and willingness – Specific Relief Act, 1963, Section 20 – Suit filed by Appellants/Plaintiffs against Respondents/1st to 6th, 8th to 11th Defendants for specific performance of agreement of sale or in alternative for return of advance amount paid by them was dismissed by Lower Courts, hence this appeal – Whether Appellants pleaded and proved their readiness and willingness to perform their part of contract – Whether Appellants entitled to discretionary relief of specific performance of agreement when Respondents failed to prove that Appellants not entitled to discretionary relief of specific performance as per Section 20 – Held, reasoning of lower Courts that Appellants had not issued any notice to Respondents before expiry of time calling upon them to receive balance sale consideration and execute sale deed was erroneous – Lower courts failed to consider that Appellants had deposited balance sale consideration in to Court at time of filing of suit itself – Respondents had not pleaded and proved any of conditions mentioned in Section 20 (2) to reject discretionary relief of specific performance in favour of Appellants – Hardship caused to Appellants in rejecting decree of specific performance however, Respondents would not be put to any hardship, if decree of specific performance granted to Appellants – Appellants were always ready and willing to perform their part of contract – Appellants entitled to specific performance – Appeal allowed.

(2018) 6 MLJ 581

Tamilnadu Table Tennis Association Vs. N. Arulselvi

Date of Judgment: 03.08.2018

Civil Procedure – Rejection of Complaint – Cause of Action – Code of Civil Procedure, 1908, Order VII Rule 11(a) – 1st Defendant/Association has District Associations affiliated to it – Dissatisfaction arose among members at functioning of Executive Committee and general demand arose for elections to be held as per Articles of Association for posts of Office bearers of 1st Defendant – Nomination of some candidates including Plaintiff rejected by Observer appointed by Court, as not in accordance with of Articles of Association – Plaintiff challenged rejection of nomination by filing suit – Applicant/1st Defendant filed application to reject Complaint under Order VII Rule 11(a) on ground of non-disclosure of cause of action – Whether application for rejection of Complaint under Order VII Rule 11(a), sustainable – Held, complaint shall be rejected only if it does not disclose cause of action – If Plaintiff states various facts and circumstances, which are material for filing suit and claims that same are cause of action then its enough to hold that complaint discloses cause of action – Court has to go by averments made in complaint to find out whether it discloses cause of action and not to judge issue based on defence raised by Defendant in his pleadings – Plaintiff not challenged election on ground that her nomination has been rejected but on grounds of violation of Articles of Association and rejection of various nominations – Nominations scrutinized by two member committee/Sub Committee which is not permissible under Articles of Association – No new Committee appointed to conduct elections as per bye laws – Circumstances pleaded in complaint indicate cause of action – Application dismissed.

(2018) 5 MLJ 661

R. Chinnasamy Vs. T. Ponnusamy

Date of Judgment: 12.04.2018

Civil Procedure – Suit for Recovery – Proof of loan – Appellant/Plaintiff filed three suits against Respondent/Defendant and two others who were partners of Respondent of textiles business of money lent to each of them – Each Defendant claimed that amount paid by Plaintiff was only by way of settlement of accounts after retirement of Defendant in first suit from transport partnership business of Plaintiff – Trial Court dismissed all suits, hence these appeals – Whether Plaintiff issued cheque by way of loan as pleaded by Plaintiff or by way of settlement of accounts in respect of partnership firm pursuant to retirement of Defendant – Held, plea of Plaintiff that he advanced amount by issuing two cheques each to Defendant in three suits is unacceptable – Plaintiff who was supposed to have custody of partnership accounts at relevant point of time had not produced any document – Plaintiff at least could have produced his income tax returns to show that he paid such huge amount to Defendant only as loan – Defendant in first suit established that he was entitled to receive substantial amount from partnership firm by way of his share towards his capital contribution, profit and assets of firm – Money which he was entitled to receive from firm and other partners of firm should be shared by Defendant in three suits – Money which was paid by Plaintiff to each of Defendant in three suits was only by way of and towards settlement of accounts pursuant to retirement of Defendant in first suit from partnership firm – Plaintiff did not lend any amount as loan to Respondents – Appeals dismissed.

(2018) 5 MLJ 704

Global Plastics Vs. T.K.K.N.N. Vysya Charities

Date of Judgment: 25.04.2018

Civil Procedure – Attachment Before Judgment – Subjective satisfaction – Code of Civil Procedure, 1908, Order 38 Rule 5 – In suit filed for recovery of damages / rent, Respondent/Plaintiff filed application for directing Appellants / Defendants to furnish security to certain value, failing which Order of Attachment before Judgment be passed attaching immovable property – Single Judge allowed application, hence this appeal – Whether impugned order passed by court without subjectively satisfying itself in regard to various factors – Held, source of information, belief and material particulars obtained in regard to there being every chance to encumber or transfer only property owned by Appellants to defraud Respondent requiring entitlement of recovery of damages were not established to subjective satisfaction of this court – Pleadings and defence set out by parties as on date were to be tested and proved in threadbare, complete and comprehensive manner – Single Judge view set aside – Appeal allowed.

(2018) 5 MLJ 725

Ramasamy Vs. Lakshmi @ Rajammal

Date of Judgment: 04.06.2018

Property Laws – Easement of necessity – Adverse possession – Suit filed for declaration in respect of suit cart track by way of easement of necessity – Trial Court dismissed suit, however, lower appellate court decreed suit, hence this second appeal – Whether claim based on adverse possession and easementary right based on necessity could go together in eye of law – Whether lower appellate Court committed error of law in granting right to use passage based on adverse possession, in absence of pleading and proof – Held, Plaintiff laid claim in respect of suit cart track both by way of adverse possession and easementary right by way of necessity – Both claims were contrary to each other – No material placed to show that Plaintiff perfected her right to use suit cart track by way of adverse possession – Plaintiff was having alternative cart track to reach her property and not made clear as to on what basis she was seeking right over suit cart track – During evidence, Plaintiff rested her right upon Will which did not mention anything about suit cart track – Will not established by Plaintiff as per law – No valid reason and material to uphold claim of easementary right by way of necessity in respect of suit cart track – First appellate Court, on improper appreciation of materials and against principles of law governing law apropos of easement of necessity, accepted Plaintiff's case – Judgment and Decree of lower appellate court set aside and that of trial Court confirmed – Appeal allowed with costs.

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MADRAS HIGH COURT – CRIMINAL CASES

(2018) 3 MLJ (Crl) 236

Subramani @ Subramanian Vs. Rahim @ A.K.Rahim Basha

Date of Judgment: 22.06.2018

Negotiable Instruments – Dishonor of Cheque – Appeal against acquittal – Negotiable Instruments Act, Section 138 – Appellant filed private complaint against Respondent / accused under Section 138, however, Magistrate found that accused had not issued Ex.P1 and Ex.P2 cheques to discharge debt and acquitted accused, hence this appeal – Whether Magistrate was right in acquitting accused – Whether appeal had to be allowed – Held, Ex.D1 would show that on certain date, brother-in-law of accused and his wife had borrowed certain sum from Complainant – Loan given by Complainant only by getting necessary document – In Ex.D3, accused requested Complainant not to present cheques and keep them as security until borrowers repay said amount – Ex.D4 postal acknowledgment shows that Complainant had received Ex.D3 letter – After issuing Ex.D3 letter, accused would not have issued Ex.P1 and Ex.P2 cheques – Complainant not at all whispered about receipt of Ex.D3 letter in notice which was sent by Complainant – Complainant had not come with clean hands – Trial Court rightly acquitted accused – Appeal dismissed

(2018) 3 MLJ (Crl) 251

K.A. Shajahan Vs. State by Deputy Superintendent of Police

Date of Judgment: 02.07.2018

Prevention of Corruption – Illegal Gratification – Prevention of Corruption Act, 1988, Sections 7, 13 and 20 – Trial Court convicted accused / Appellants under Sections 7, 13(1) (d) and 13 (2), hence these appeals – Whether recovery of tainted money from bag and evidence is sufficient enough to draw presumption under Section 20 against Appellants – Held, PW-3, *defacto* Complainant, PW-4 and PW-5 witnesses to registration of subject document have turned hostile – Defence were able to place that they are empowered to collect cash up to alleged amount towards deficit of stamp duty – Document registered by PW-3 suffers deficit stamp duty and has to be necessarily referred to Valuation Committee – Hostility shown by prosecution witnesses who are supposed to prove demand and acceptance of illegal gratification adds enough doubt about prosecution case – Doubtful nature of prosecution case regarding presence of 2nd accused at time of trap and demand and acceptance by 1st accused – No witness to speak against 2nd accused that bag belongs to 2nd accused and tainted money recovered was kept inside bag within knowledge of 2nd accused – Appellants have rebutted presumption and probalised that payment was not for bribe but towards deficit stamp duty – Judgment of conviction set aside – Appeals allowed.

(2018) 3 MLJ (CrI) 385

Dashwanth Vs. State

Date of Judgment: 10.07.2018

A. Death Sentence – Sexual Assault on Child – Code of Criminal Procedure, 1973 (Code 1973), Section 366 – Indian Penal Code, 1860 (Code 1860), Sections 201, 302, 354-B, 363, 366 – Protection of Children from Sexual Offences Act, 2012 (Act 2012), Sections 5, 6, 7 and 8 – Accused/Appellant kidnapped deceased/child, committed sexual assault on her, killed her and burnt her body using petrol – Trial Court convicted accused under Sections 302, 201, 363, 366 and 354 (B) of Code 1860 and under Sections 5, 6, 7 and 8 of Act 2012, hence this appeal against conviction and reference made under Section 366 of Code 1973 for confirmation of death sentence – Whether the case falls under rarest of rare category – Whether sentence of death given to accused by Trial Court is just and proper – Held, no justification to convert death sentence imposed by Lower Court to life imprisonment for rest of life – Gruesome offence committed with highest viciousness – Accused may not be hardened criminal but faith imposed by young child on accused, shattered to pieces when child lured as puppet to satisfy sexual lust of criminal mind – Deceased’s existence in world had been put to rest by iron hands of accused and parents deprived of having last look at their daughter due to barbaric act of accused in incinerating her body – Viciousness and ruthlessness with which accused committed brutal act brings case within category of “rarest of rare cases” – No reason to deviate from sentence awarded by Trial Court and sentence of death imposed on accused confirmed – Appeal dismissed – Reference answered accordingly.

B. Child Rape – Confession – Evidence Act, Section 27 – Whether conviction of accused justified – Held, habit of accused in seeing obscene movies in his mobile and his urge for carnal pleasure projected as motive for occurrence – If evidence on record suggests existence of necessary motive required to commit crime, may be conceived that accused committed same – Discovery of fact about body of deceased in burnt stage being at place, identified by accused had come out from lips of accused, through his confession statement admissible under Section 27 – Opinion of doctor that burn injuries are not ante-mortem in nature leads to irrefutable conclusion that burn injuries should necessarily be post mortem in nature – Deceased died of homicidal violence and burnt in order to screen material evidence – Prosecution proved case against accused beyond all reasonable doubts.

C. Death Sentence – Rarest of Rare Case – Whether case falls under rarest of rare Category – Held, no hesitation to conclude that this case comes within category of rarest of rare case, warranting imposition of death penalty – No reasons to interfere with findings of Trial Court and this Court concurs with findings of death penalty.

(2018) 3 MLJ (CrI) 463

R. Sakthivel Vs. State Represented by The Inspector of Police

Date of Judgment: 25.06.2018

Discharge Petition – Protraction of proceedings – Code of Criminal Procedure, 1973, Section 239 – Final report filed against Petitioner / surveyor that he demanded and received bribe from *defacto* Complainant – Discharge petition filed by Petitioner dismissed by trial Court, hence, this revision – Whether discharge petition liable to be allowed – Held, case of prosecution were necessarily to be tested through appropriate evidence and in full fudged trial – Truthfulness or otherwise of disputed facts could not be summarily decided – Petitioner earlier approached this Court for quashing F.I.R and raised most of points which he was canvassing before this Court in revision petition which was perused and detailed order passed – Suppressing the facts, Petitioner tried to recanvass same point in discharge petition – Petitioner successfully delayed framing of charges for nearly three years by filing quash petition, discharge petition and now revision petition – Trial Court directed to frame charge on next hearing and proceed with trial and complete trial at earliest, probably within period of six months – Revision dismissed.

(2018) 3 MLJ (CrI) 469

Selvaraj Vs. State

Date of Judgment: 26.06.2018

Prevention of Corruption – Incriminating Evidence – Indian Penal Code, 1860 (Code), Sections 109, 120(b), 167, 406, 420 and 477A – Prevention of Corruption Act, 1947 (Act), Section 5 – Accused/members of Panchayat Union entered into criminal conspiracy to commit commission of offences of cheating, criminal breach of trust and falsification of accounts for purchase of electrical items – FIR registered and Trial Court convicted accused under Section 109, 120(b), 167, 477A, 420, 406 of Code and Sections 5(1)(c), 5(1)(d) and 5(2) of Act, hence this appeal – Whether evidence relied on by prosecution is sufficient to hold Appellant guilty of conspiracy and fabrication of accounts, cheating as held by Trial Court – Held, main incriminating evidences against Appellant are of approver and deposition of PW-3 – PW-3 identified hand writing and signature of accused in bill for contingent charges/Ex.P19 – Criminal intention could not be presumed against Appellant by mere preparation of bill – Evidence of PW-2/approver that during alleged month, accused came and spoke details of conspiracy to procure materials at inflated price is highly doubtful – In absence of corroboration, approver evidence cannot be taken as gospel truth against Appellant – No other evidence found to substantiate case of prosecution that Appellant joined hand with higher officials and participated in conspiracy – Role of Appellant in crime not been established – Judgment of conviction and sentence imposed on Appellant set aside – Appeal allowed.

(2018) 3 MLJ (CrI) 492

Paramasivam Vs. State by the Inspector of Police

Date of Judgment: 05.07.2018

Compounding of Offences – Settlement After Conviction – Code of Criminal Procedure, 1973 (Code 1973), Sections 320, 397, 401 and 482 – Indian Penal Code, 1860 (Code 1860), Sections 426, 498(A), 494, 506(ii), 352 and 323 – Dowry Prohibition Act (Act), Section 4 – 2nd Petitioner / mother in law demanded dowry and did not allow de facto Complainant to live with 1st Petitioner / husband – Later, 1st Petitioner married another woman with whom he had illicit intimacy – Trial Court convicted Petitioners / accused under sections 426, 498(A), 457 of Code 1860 and Section 4 of Act and same confirmed by Appellate Court, hence this revision preferred seeking to set aside conviction order based on compromise between parties – Whether after conviction and sentence of accused person, this Court exercising its jurisdiction under Sections 397, 401 and 482 of Code 1973 can compound offence and set aside same, where offence involved is non-compoundable in nature – Whether Court can exercise inherent jurisdiction where settlement between parties happens after conviction recorded and same confirmed by Appellate Court – Held, inherent power of High Court under Section 482 of Code 1973 prevents abuse of process of Court and reiterates that power to quash is attracted even if offence is non-compoundable – Inherent jurisdiction is different from power given to Criminal Court for compounding offences under Section 320 of Code 1973 – Court will be cautious and circumspect in exercising its inherent jurisdiction under Section 482 of Code 1973 to quash Criminal Proceedings after conviction and sentence has been imposed – Revision proceeded on merits and to scrutinize correctness, legality of finding, conviction and sentence passed by lower Courts – Both lower Courts have assessed oral evidence of witnesses and concluded that cruelty committed against de-facto Complainant both by conduct and by demand of dowry – Revisional jurisdiction cannot reassess evidence unless shown that findings are perverse – No ground to interfere with order of conviction as confirmed in appeal – Sentence of imprisonment modified – Revision partly allowed.

(2018) 3 MLJ (CrI) 505

V. Gowthaman Vs. State

Date of Judgment: 11.07.2018

Quash of Charge sheet – Sufficient materials – Indian Penal Code, 1860 (Code 1860), Section 188 – Code of Criminal Procedure, 1973 (Code 1973), Sections 173 and 195 – FIR and consequent charge sheet filed against Petitioners for intervening Complainant/lady Inspector of Police from discharging her duties, hence this petition to quash charge sheet – Whether there were sufficient materials for prosecution to proceed against Petitioners – Held, Petitioners on account of pre-concerted design, gathered at peak hours and physically prevented flow of traffic over Highway – They had come well prepared to violate law – If crime takes place in presence of Police Officer, he could very well be first informant – Woman Inspector of Police was first informant and investigation was not conducted by her, but conducted by another Inspector of Police – Scope and objects of enactments relating to Highways were entirely different – It could no way abridge power of police to intercede and prevent situation becoming explosive – Court could not take cognizance of offence under

Section 188 of Code 1860 on police report filed under Section 173(2) of Code 1973., but only on complaint by concerned public servant in light of Section 195 of Code 1973 – Prosecution of accused under Section 188 of Code 1860 Quashed – Except above, there were sufficient materials for prosecution to proceed against Petitioners – Petition dismissed.

(2018) 3 MLJ (Crl) 509

S. Suriya Devi Vs. Thilip Kumar

Date of Judgment: 26.06.2018

Maintenance – Cause of action – Code of Criminal Procedure, 1973 (Code), Section 125 – Protection of Women from Domestic Violence Act, 2000 (Act), Section 20 – Respondent/wife filed petition under Section 125 of Code seeking maintenance from Petitioner/husband – Petitioner filed petition to quash maintenance case on ground that complaint filed by Respondent under Act seeking various reliefs including relief of monthly maintenance was pending – Respondent filed petition seeking for expeditious disposal of maintenance case – Whether aggrieved person be entitled to claim maintenance simultaneously under provisions of Code as well as Act for same cause of action – *Held*, Respondent having chosen to invoke provisions of Act seeking for monetary relief under Section 20(3), could not subsequently invoke Section 125 of Code for maintenance on same set of facts and cause of action – No provision under Code empowering Magistrate to order for maintenance under Section 125 of Code when it was brought to his notice that order for maintenance had already been granted under Act or any other enactments – In case, order was passed granting maintenance in both cases, there would be gross miscarriage of justice – Petitioner would be put to serious prejudice – Impediment that subsequent proceedings initiated by Respondent under provisions of Section 125 of Code, be quashed – No prejudice would be caused to Respondent by quashing proceedings since her interest had been protected in her earlier proceedings under Act – Maintenance case on file of Family Court quashed – In view of quashing of maintenance case, Petition filed by Respondent seeking expeditious disposal of maintenance case dismissed – Petition filed by Petitioner allowed.

(2018) 3 MLJ (Crl) 426

C.R. Muthukumar Vs. R. Ranganayagi

Date of Judgment: 23.06.2018

Negotiable Instruments – Dishonor of Cheque – Discharge of debt – Negotiable Instruments Act, Section 138 – Respondent / accused convicted under Section 138 by trial Court was acquitted by Appellate Court, hence this appeal – Whether acquittal of Respondent by Appellate court for offence under section 138 justified – *Held*, out of 50 cheque leafs issued to accused, 48 cheque leafs were used but 2 cheques were not deposited in Bank between certain period – It was during this period of time, chit transaction was going on between Complainant and husband of accused – Out of these two cheques, one cheque was subject matter of present case – Defense version that subject matter cheque was given to Complainant as security for chit transaction established by preponderance of probabilities – Complainant in course of his lending business was maintaining books of accounts but in cross examination, he said that this particular loan transaction had not been recorded in books of accounts maintained by him – Above two factors shows that version of defense stood

established – Burden of proof shifted on Complainant to prove that cheque issued for legally recoverable debt or liability – Appellate Court rightly concluded that Complainant failed to prove that subject matter cheque was issued towards discharge of debt said to have been taken by accused and her husband – Appeal dismissed.

(2018) 3 MLJ (CrI) 450

A. Selvaraj Vs. State

Date of Judgment: 19.06.2018

Illegal Gratification – Demand and acceptance – Prevention of Corruption Act 1988, Sections 7 and 13 – Appellant / accused / Village Administrative Officer held guilty of charges under Sections 7 and 13(2) read with 13(1)(d) for demand and acceptance of illegal gratification for issue of Chitta to PW-2/defacto Complainant, hence this appeal – Whether evidence for prosecution was clouded with doubt to render trial Court judgment naught – Held, prosecution proved charges against accused through valid and reliable evidence – Trial Court considered all issues raised by defence and arrived at correct conclusion – Prosecution through its witnesses proved recovery of tainted money and also that money so recovered, was received by accused on demand to provide chitta to defacto Complainant – No infirmity in judgment of trial Court to interfere – Appeal dismissed.

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