

**Vol -IX  
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# **IMPORTANT CASE LAWS**

*Compiled by*

**Tamil Nadu State Judicial Academy  
Chennai**



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## **HIGH COURT - CRIMINAL CASES**

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## SUPREME COURT CITATIONS CIVIL CASES

(2014) 8 MLJ 492 (SC)

Dr. Thakar Singh

v.

Sh. Mula Singh

Date of Judgment : 14.10.2014

Property Laws – Mortgaged Property – Possession of - Clog on Redemption – Transfer of Property Act, 1882, Sections 60, 62 & 111 – Plaintiffs/Mortgagors filed suit for recovery of possession for reason that physical possession of suit property not handed over to them even after its redemption – Defendants/Mortgagees alleged to have rented out portions of suit property to 3<sup>rd</sup> to 14<sup>th</sup> Defendants – Trial Court decided case on many issues and held that on reading of mortgage deed, mortgagors recognized mortgagees' tenants, whose tenancy did not end with redemption – On appeal, High Court did not go into other issues and held that since mortgagors entitled to future rent after redemption, mortgagors recognized mortgagees' tenants during subsistence of mortgage – Also, held that suit for vacant possession of suit property from Defendants not maintainable – Appeal – Whether Mortgagors entitled to recover possession of redeemed mortgaged properties – Held, mortgagor's right to get back possession expressly recognized by mortgage deed without clear and unambiguous language entitling mortgagees' tenants to become mortgagors' tenants – Entitlement to receive rent in future can by no stretch be held to create tenancy between mortgagor and mortgagees' tenants, same to be reconciled with expression preceding 'on taking possession' - Taking of possession from mortgagees and his tenants completely antithetical to recognizing mortgagees' tenants as mortgagors' tenants – Mortgagee continuing in possession after redemption as tenant of mortgagor regarded as clog on redemption – If mortgagee's tenants continue in possession after redemption, same to be disregarded as clog on redemption, as right to redeem would be rendered illusory – High Court's order set aside – Other issues left open and can be agitated before High Court – High Court requested to take up other issues and decide as early as possible.

2014 (6) CTC 568

Embassy Hotels Pvt. Ltd.

v.

Gajaraj & Co

Date of Judgment : 12.11.2014

Transfer of Property Act, 1882 (4 of 1882), Section 60 – Specific Relief Act, 1963 (47 of 1963), Section 20 – Equity of Redemption – Right of Mortgagor to redeem mortgage is available only if such right had not been extinguished by act of parties or decree of Court – Act of parties would mean situation where both mortgagor and mortgagee agree that property may be sold in favour of third party – Where mortgaged property is brought to sale by Court auction and sale is confirmed, right of redemption gets extinguished and person, claiming to have entered into Agreement to Sell with mortgagor, cannot seek Specific Performance – Auction purchaser can successfully resist claim for Specific Performance.

Specific Relief Act, 1963 (47 of 1963), Section 31 – Practice and Procedure – Challenge of Court proceedings in Collateral proceedings – Permissibility of – Any proceeding including Court proceedings could be set aside, if Plaintiff enters plea of fraud and proves same – Challenge to such proceedings must be direct and it cannot be subjected to challenge in Collateral proceedings – Judgments of Court cannot be ignored by another Court in Collateral proceedings.

**2014 (2) TN MAC 680 (SC)**

**Kala Devi**

**v.**

**Bhagwan Das Chauhan**

**Date of Judgment : 31.10.2014**

**INCOME – Fixation of - Deceased aged 25 years, a matriculate working as a driver holding driving licence for driving Heavy Motor Vehicles – Income claimed at Rs.9,000 p.m. – Tribunal fixed income at Rs.3,000 p.m. – High Court in Appeal, added 40% as Future Prospects and fixed income at Rs.4,200 p.m. – If, proper – Deceased, a resident of State of Himachal Pradesh, where a driver on average earns Rs.9,000 p.m. even as per Minimum Wages Act - Courts below failed to take judicial notice of same – Further, job of driver being a skilled job, gross income can be taken at Rs.9,000 p.m. and Rs.1,08,000 p.a. – After deduction 20% towards Income-tax, Apex Court fixed net income at Rs.86,400 p.a.**

**MULTIPLIER – Deceased aged 25 yrs – Application of Multiplier of 18 by High Court as against 17 as applied by Tribunal – Held to be proper.**

**MOTOR ACCIDENT CLAIM – Compensation – Determination – Deceased aged 25 years, a driver earning Rs.9,000 p.m. –Claimants : Wife, 2 minor children & mother of deceased – Rs.4,40,000 awarded by Tribunal against claim of Rs.12,96,000, enhanced by High Court to Rs.6,99,800 – Scope for further enhancement – Income : Rs.3,000 p.m. fixed by Tribunal though enhanced in Appeal to Rs.4,200 p.m., not proper : Driver's job being a skilled job Rs.9,000 p.m. fixed by Apex Court – Multiplier : of 18 confirmed – Loss of Dependency : After deducting Income-tax and Personal Expenses at 1/3<sup>rd</sup> Apex Court awarded Rs.10,36,000 as against Rs.6,04,800 awarded by High Court – Loss of Consortium : Rs.30,000 awarded by High Court enhanced to Rs.1,00,000 : SC in Rajesh followed - Loss of Love & Affection : Rs.2,00,000 [Rs1,00,000 to each child] awarded as against Rs.40,000 : SC in Rajesh & Jiju Kuruvila followed – Funeral Expenses : Rs.25,000 awarded : Principles in Rajesh followed – Loss of Estate : Rs.1,00,000 awarded by Apex Court following Kalpanaraj – Total Compensation : Enhanced from Rs.6,99,800 to Rs.14,61,800 – Interest : 9% p.a. confirmed.**

**2014 (6) CTC 791**

**Dipanwia Roy**

**v.**

**Ronobroto Roy**

**Date of Judgment : 15.10.2014**

**Evidence Act, 1872 (1 of 1872), Section 112 – Legitimacy of Child – Conclusive proof of Legitimacy – DNA Test – When can be ordered – Husband filed Petition for divorce on ground of adultery – Husband has specifically alleged that wife is leading an adulterous life with named person and out of said relationship male child was also born – Wife filed Reply Statement denying allegation of adultery and other facts – Husband filed Application to order DNA Test of himself and child to prove allegation of adultery – Trial Court declined to order DNA Test and on Appeal, High Court has ordered DNA Test – Whether DNA Test ordered in Divorce proceedings to prove allegation of adultery – DNA Test can be ordered to establish plea of adultery alleged to have been committed by wife – Instant case, liberty given to wife to comply with or disregard Order passed by High Court to hold test DNA Test subject to conditions (a) if wife accepts Order of High Court, in such case DNA Test will determine conclusively veracity of accusation or (b) if she disregards Order of High Court, in that case allegation of adultery would be determined by drawing presumption of nature contemplated in Section 114 as also Illustration (h) of Indian Evidence Act.**

**2014 (6) CTC 803**

**Baluram**

**v.**

**P. Chellathangam**

**Date of Judgment : 10.12.2014**

**Code of Civil Procedure, 1908 (5 of 1908), Order 1, Rule 10(2) – Impleadment of Parties – Proper and necessary party – Suit for Specific Performance of Contract of Sale – Trustees of Trust entered into Sale Agreement with Plaintiff – Plaintiff filed Suit for Specific Performance alleging that Trustee failed to execute Sale Deed as per Sale Agreement – Beneficiary of Trust filed Application to implead him as party to Suit – Trial Court impleaded beneficiary as party – High Court set aside order of Trial Court by holding that beneficiary of Trust is stranger to contracted – Held, beneficiary of Trust cannot be treated as stranger – Trustee has to act reasonably in exercise of his right of alienation under terms of Trust Deed – To avoid multiplicity of proceedings, beneficiary of Trust should be impleaded as party to Suit.**

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## SUPREME COURT CITATIONS CRIMINAL CASES

### (2014) 10 Supreme Court Cases 248

Narendra

v.

State of Rajasthan

Date of Judgment : 02.09.2014

- A. Penal Code, 1860 – S. 300 Exception 5 – Scope and applicability – Consent of deceased – Onus to establish, and scrutiny of evidence therefor
- B. Penal Code, 1860 – S. 300 Exception 5 – Suicide pact – Free and voluntary consent of deceased person

### (2014) 10 Supreme Court Cases 275

Anuplal Yadav

v.

State of Bihar

Date of Judgment : 26.09.2014

Penal Code, 1860 – S. 149 [Ss. 302/149, 436/149, 380/149, 323/149, 145 and 147] – Unlawful assembly – Constructive liability for being part of the unlawful assembly – Showing of overt act by all – Not required – Common object of unlawful assembly – Necessity of recording a finding on – Group rivalry – Possibility of roping in innocent persons, due to enmity/PWs interested witnesses – Fixing constructive liability in such circumstances

- Held, it is well settled that once it is established that unlawful assembly had a common object, it is not necessary that all persons forming unlawful assembly must be shown to have committed some overt act, rather they can be convicted under S. 149 IPC

### (2014) 10 Supreme Court Cases 380

Bairam Muralidhar

v.

State of Andhra Pradesh

Date of Judgment : 31.07.2014

- A. Criminal Procedure Code, 1973 – S. 321 – Withdrawal of prosecution – Corruption case – Public Prosecutor seeking withdrawal of prosecution only on the ground that State Government has issued order to withdraw the prosecution – Non-application of independent mind by Public Prosecutor – Impermissibility – Held, Special Judge and High Court rightly declined to grant consent – Application must indicate perusal of the materials by stating what are the materials Prosecutor has perused, may be in brief, and whether such withdrawal of prosecution would serve public interest and how he has formed his independent opinion – Here Public Prosecutor has been totally guided by order of the Government and really not applied his mind to facts of the case – Noteworthy that State Government had granted sanction and Anti-Corruption Bureau also found no justification for the withdrawal – Regard being had to gravity of the offence and the impact on public life apart from the nature of application filed by the Public Prosecutor, view expressed by trial Judge and High Court, upheld - Prevention of Corruption Act, 1988 – Ss. 7 and 13(1)(d) r/w S. 13(2)

- B. Criminal Procedure Code, 1973 – S. 321 – Withdrawal from prosecution – Role of Prosecutor and duty of court granting consent – How to be exercised – Held, it is the obligation of the Public Prosecutor to state what material he has considered – It has to be set out in brief – Public Prosecutor cannot act like the post office on behalf of the State Government, he is required to act in good faith, peruse materials on record and form an independent opinion that withdrawal of the case would really subserve public interest – An order of the Government on the Public Prosecutor in this regard is not binding – A court while giving consent under S. 321 is required to exercise its judicial discretion, which is not to be exercised in a mechanical manner – Court must consider the material on record to see that the application had been filed in good faith and it is in interests of the public and justice

(2014) 9 Supreme Court Cases 632

State of Punjab

v.

Gurmit Singh

Date of Judgment : 02.07.2014

- A. Penal Code, 1860 – S. 304-B Dowry death – “Any relative of her husband” – Meaning and scope – Held, mean such persons who are related by blood, marriage or adoption – Hence respondent-accused who was brother of husband’s aunt by marriage (chachi i.e. wife of brother of husband’s father) cannot be said to be a relative of deceased’s husband – However, clarified that though a person who is not relative of husband may not be prosecuted under S. 304-B, but that does not mean that such person cannot be prosecuted for any other offence viz. S. 306 IPC in case allegations constitute offence other than S. 304-B
- B. Interpretation of Statutes – Particular Statutes or Provisions – Penal statutes or provisions – Should be strictly construed – Hence held, expression “any relative of her husband” occurring in S. 304-B, IPC should be limited to persons related by blood, marriage or adoption – Penal Code, 1860 – S. 304-B – Interpretation of
- C. Interpretation of Statutes – Construction of Words and Phrases – Generally – Dictionary meaning – Held, can be relied on to find out general sense in which the word or phrase is understood in common parlance, when words of a statute are not defined -On facts held, word “relative” occurring in S. 304-B IPC should be understood to mean any person related by blood, marriage or adoption – Further held, where words of a statute are not defined they must be understood in their natural, ordinary or popular sense – Penal Code, 1860, S. 304-B
- D. Penal Code, 1860 – S. 498-A – “Relative of the husband” – Meaning and scope of – Held, would mean the same as “any relative of her husband” in S. 304-B IPC, namely, persons related by blood, marriage or adoption – Interpretation of Statutes – Basic Rules – Determination of legislative intent/Object of legislation – Usage of same words in different parts of statute – Held, presumption that those words have been used in same sense, unless displaced by context

(2014) 4 MLJ (Crl) 741 (SC)

Motilal Yadav

v.

State of Bihar

Date of Judgment : 25.11.2014

Kidnapping for ransom – Indian Penal Code, 1860, Section 364A read with Section 34 and Section 120B read with Section 364-A – Indian Evidence Act, 1872, Section 9 – Allegation that Appellant and co-accused kidnapped boy and demanded ransom for release – After paying money, PW3/victim’s father recovered kidnapped son – Conviction and sentence, affirmed by High Court – Appeal – Whether conviction and sentence cryptic or brief – Whether not holding of test identification fatal to prosecution – Held, PW 3 had opportunity to see most of accused Appellant as he went for release of his minor son from custody – PW3 given all details as to how money taken to

place where victim released and handed over – High Court discussed at length prosecution evidence – High Court further discussed how from corroboration of statements of witnesses, entire prosecution story and charge stood proved – No force in argument that High Court’s order is cryptic or brief – Testimony of PW-3 natural as he explained in what manner he reached place of occurrence and identified accused who took money whereafter victim released – Not holding test identification not fatal to prosecution – Appeal dismissed.

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## HIGH COURT CITATIONS CIVIL CASES

(2014) 8 MLJ 359

M. Elumalai

v.

S. Rajaram

Date of Judgment : 18.08.2014

- A. Civil Procedure – Compromise Decree by Lok Adalat – Specific Performance – Maintainability of – Execution of Sale Deed – Code of Civil Procedure, 1908 (Code 1908), Sections 152 and 47 – Legal Services Authorities Act, 1987 (Act 1987), Section 21 – Respondent/Plaintiff filed suit for specific performance – By Joint Memo of compromise by parties to suit, Lok Adalat passed decree and based on same, execution petition filed by Plaintiff/deGREE holder – Since Defendants/judgment debtors did not file counter, they were set ex parte – Judgment Debtors filed petition under Section 47 of Code 1908, same returned – Revision petition – Petitioners alleged that compromise decree by Lok Adalat did not provide for execution of sale deed by Judgment Debtors – Also, alleged that decree holder cannot invoke Section 152 of Code 1908, as Section 152 of 1908 can be invoked only to correct clerical mistakes, not to correct or to supply omission touching merits of case – Whether decree by Lok Adalat can be executed only, when it contains express Clause providing for execution of decree and not otherwise – Held, Section 21 of Act 1987 and dictum laid down in P.T. Thomas v. Thomas Job would show that decree by Lok Adalat deemed to be decree passed by Civil Court and same executable – Decree holder has rightly filed execution petition – Though inadvertent omission in describing property in execution petition, same does not appear to be intentional with view to grab more property – Mistake can be corrected by permitting decree holder to amend schedule of property, which would tally with description of property as made in plaint – Executing Court directed to permit decree holder to amend description of property/schedule of property in such a way that it would tally with description of property as described in plaint – Petition dismissed.
- B. Civil Procedure – Compromise Decree by Lok Adalat – Specific Performance – Maintainability of – Execution of Sale Deed – Code of Civil Procedure, 1908 (Code 1908), Sections 152 and 47 – Transfer of Property Act (Act), Sections 54 and 55 – Whether compromise decree should provide for separate Clause in providing for execution of sale deed by seller and if not whether decree would become inexecutable – Held, there must be transfer of ownership from one person to another in order to constitute sale – Transfer of ownership by person means transfer by such person of his rights and interests in property in full and permanently – Consideration for transfer stated to be price which is paid or promised or partly paid and partly promised – Facts on record show that entire sale consideration paid – Once seller receives entire sale consideration, seller bound to execute sale deed – Clause providing for payment of sale consideration by seller imposes corresponding duty on part of purchaser to execute sale deed – No necessity for separate Clause in compromise decree providing for execution of sale deed by seller – Also, Section 55 of Act expressly directs seller to execute sale deed – When Court grants decree for specific performance, it promises to do all things, as parties would have been bound

to do, had this been done without intervention of Court – Plea that there shall be express Clause providing for execution of sale deed is unreasonable.

**(2014) 8 MLJ 408**

**S. Sengottaiyan**

**v.**

**Minor Dhanasankar**

**Date of Judgment : 16.10.2014**

**Evidence – Conclusive Proof – Legitimacy – Indian Evidence Act, 1872 (Act 1872), Section 112 – Code of Criminal Procedure 1973 (Code 1973) – 1<sup>st</sup> and 2<sup>nd</sup> Respondents/Petitioner's son and wife filed suit for partition and maintenance alleging that 1<sup>st</sup> Respondent was Petitioner's son born through 2<sup>nd</sup> Respondent – But, Petitioner denied paternity of 1<sup>st</sup> Respondent and in order to prove his case, he filed petition for direction to conduct DNA test – District Munsif held that Petitioner's attempt was to nullify protection afforded under Section 112 of Act 1872, same alone not enough to dislodge such protection, unless proved by evidence that Petitioner did not have access to 2<sup>nd</sup> Respondent during relevant period – Whether mistake found in District Munsif order – Held, marital relationship between Petitioner and 2<sup>nd</sup> Respondent not snapped and it still continues – No exchange of notices or legal proceedings either for judicial separation or for divorce or for restitution of conjugal rights – 2<sup>nd</sup> Respondent did not file suit or original petition or proceedings under Code 1973 for maintenance on ground that she lived separately before filing of suit – Petitioner chose short cut by filing petition for conducting DNA test to ascertain paternity instead of leading reliable evidence and prove his case that he did not have access to 2<sup>nd</sup> Respondent during relevant period – No mistake or defect found in order of District Munsif – Revision petition dismissed.**

**(2014) 8 MLJ 413**

**A.R. Mohammed Jalaudeen**

**v.**

**V.S. Dhakshinamoorthy**

**Date of Judgment : 29.10.2014**

**Negotiable Instrument – Promissory Note – Presumption – Negotiable Instruments Act, Sections 20 and 118 – Respondent/Plaintiff instituted suit for recovery of specific sum advanced under promissory note to Appellants/Defendants – Appellants alleged that they did not borrow amount as pleaded in plaint and did not execute promissory note, but only signed in blank promissory note – Trial Court dismissed suit for reason that Respondent did not prove suit claims – On appeal, First Appellate Court set aside judgment and decree of Trial Court holding that Appellants negative their plea of blank promissory note, as they admitted their signatures in it – Whether First Appellate Court justified in applying presumption laid down in Section 118, when Defendants completely denied execution of promissory note – Held, Section 20 authorizes holder of instrument to fill up blanks with amount up to value of stamp, same validly taken advantage of by Respondent to thrash down plea of Appellants that they signed in blank promissory note – Appellants admitted their signatures in promissory note and evidence let in by Plaintiff proved the same – No independent evidence except evidence of DW-1, same not enough to rebut presumption arising under Section 118 – No reference in Ex.B.1 that same written in connection with promissory note debt – Ex.B.1 would not absolve Defendants from their very duty to rebut presumption arose under Section 118 – Judgment and decree of First Appellate Court upheld – Appeal dismissed.**

**(2014) 8 MLJ 469**

**Branch Manager, Tamil Nadu Industrial Investment Corporation Ltd**

**v.  
Chinnasamy**

**Date of Judgment : 28.10.2014**

- A. **Succession Laws – Joint family properties – Discharge of debt – Partition – 2<sup>nd</sup> Respondent/elder son obtained loan from Appellant/Corporation while Respondent's father as Kartha created equitable mortgage in favour of Appellant – Failure in repayment of loan – Meanwhile, 1<sup>st</sup> Respondent filed suit against 2<sup>nd</sup> Respondent and father seeking partition, same dismissed – 1<sup>st</sup> Appellate Court granted preliminary decree for partition – Second Appeal alleging that joint family properties liable for discharging debt due to Appellant – Whether member of joint family entitled to seek partition by raising plea that hypothecation or equal mortgage created on joint family properties by Kartha not binding on share of 1<sup>st</sup> Respondent – Held, father of Respondent as Kartha made joint family properties answerable to loan obtained by 2<sup>nd</sup> Respondent – 1<sup>st</sup> Respondent not entitled to raise plea that his share in joint family property not answerable to debts obtained from Appellant – Father of Respondents being Kartha given joint family property as security for loan which is binding on joint family properties including share of 1<sup>st</sup> Respondent – No cause of action for filing suit without discharging loan obtained from Appellant – Decree of partition set aside – Appeal allowed.**
- B. **Civil Procedure – Reversal of Judgment – Reasons for –Validity of – Code of Civil Procedure, 1860 (Code 1860), Order XXXI Rule 31 – Whether Appellate Court right in reversing judgment of Trial Court pertaining suit as stated by Appellant in view of Order XXXI Rule 31 of Code 1860 – Held, 1<sup>st</sup> Appellate Court not given any cogent reasons for decision to reverse judgment and decree passed by Trial Court – No valid reason available in Judgment of 1<sup>st</sup> Appellate Court for reversing judgment and decree passed by Trial Court – Findings of Appellate Court against evidence available on record.**

**(2014) 8 MLJ 519**

**N. Kandasamy**

**v.**

**Tamil Nadu Industrial Investment Corporation Ltd**

**Date of Judgment : 10.10.2014**

**Government Contracts – Auction – Earnest Money Deposit – Recovery of – As per auction notice, Appellants/Plaintiffs submitted tender for purchase of property, paid Earnest Money Deposit of 10% of sale amount– Dispute arose on extent of land in auction – Plaintiffs demanded refund with interest, declined – Suit for recovery – Trial Court held that Respondent/Corporation not entitled to forfeit Earnest Money Deposit, decreed suit for refund – Lower Appellate Court reversed decree – Second Appeal – Whether Appellants entitled to recover 10% of auction amount from Respondent – Held, failure on part of Respondent to abide by terms and conditions – Appellants not at fault but breach on part of Respondent – When Appellants not responsible for breach of contract, Respondent has no right to forfeit Earnest Money Deposit or advance amount – Action of Respondent in forfeiting amount deposited by Appellant wholly arbitrary and unfair – Lower Appellate Court failed to consider that forfeiture would arise only when breach on part of Appellants – Preponderance of probabilities in favour of Appellants – Dismissal of suit by Lower Appellate Court perverse – Order of Trial Court restored – Appeal allowed.**

**(2014) 8 MLJ 525**

**G.G. Bharathidasan**

**v.**

**Malini Mai**

**Date of Judgment : 13.08.2014**



- A. Civil Procedure – Execution of Decrees – Removal of Obstructor – Code of Civil Procedure, 1908, Order 21 Rule 35 and Order 21 Rule 97 – Suit property purchased by decree-holders/Respondents from judgment-debtors – Since judgment-debtors evaded to vacate, mandatory injunction filed, same decreed - Execution Petition filed whereby order of delivery passed – But Appellant/obstructor claiming as occupant of suit property, obstructed execution – Appellant claimed that by oral agreement judgment-debtor agreed to sell suit property to Appellant and given possession – Appellant filed objection in Execution Appeal alleging that without making Appellant as party, judgment-debtors conspiring with decree-holders sold away property – Executing Court ordered removal of Appellant – Second Appeal – Whether decree obtained by suppression of fact could be executable against person who was not made as party to suit, when he is in possession of suit property on basis of oral agreement – Held, Appellant not examined any witnesses to support alleged oral agreement – Appellant cannot plead to be in lawful possession in capacity of sale agreement holder since Appellant did not take steps to enforce alleged oral sale agreement – Executing Court rightly concluded that no document to show that Appellant paid sale consideration to judgment-debtors – No suppression of fact or collusion between judgment debtors and Respondents – Impugned order of removal directing appellant/obstructor to hand-over vacant possession valid – Substantial question of law answered against Appellant – Appeal dismissed.
- B. Civil Procedure – Execution of Decree – Removal of obstructor – Code of Civil Procedure, 1908, Order 21 Rule 35, Order 21 Rule 97 and Order 21 Rule 98 – Transfer of Property Act, 1882, Section 53-A – Whether Plaintiffs having obtained decree for mandatory injunction can execute decree under Order 21 Rule 35 of CPC and apply for removal of obstructor under Order 21 Rule 97 of CPC – Whether orders of removal of obstructor are valid in absence of specific finding under Order 21 Rule 98 of CPC that Appellant was acting at instigation or on behalf of judgment debtors – Held, Appellant is obstructor claiming right over property on basis of oral agreement, did not mention on what date oral agreement for purchase entered – Appellant being obstructor failed to prove title, interest and lawful possession – Judgment cannot be made applicable to inter-meddler, hence, Appellant not permitted to raise question of executability of decree – Appellant cannot argue for lawful possession, since neither of ingredients mentioned under Section 53-A of Transfer of Property Act fulfilled – Transferee should do some act in furtherance of contract or should have performed or willing to perform part of contract – But Appellant totally remained silent and only after bailiff approached suit property for executing decree, filed objection – Doctrine of part performance under Section 53-A of Transfer of Property Act cannot be invoked by Appellant – Substantial question of law answered against Appellant.

(2014) 8 MLJ 597

M. Kaliamoorthy

v.

Dhanuskodi

Date of Judgment : 10.10.2014

Evidence – Comparison of signatures – Assistance of Handwriting Expert – Indian Evidence Act, Section 45 – Appellant/Defendant borrowed various amounts from Respondent/Plaintiff and executed promissory notes – Since Appellant not paid but alleged that signatures found in suit promissory notes forged, Respondent filed suit for recovery – Trial Court decreed suits finding promissory notes as genuine, confirmed by Lower Appellate Court – Second Appeals – Whether Courts below were right in comparing handwriting without assistance of expert – Whether Lower Appellate Court justified in dismissing appeal without ordering for comparison of signature of Appellant to signatures made during relevant period – Held, neither Trial Court nor Appellate Court directed Appellant to give his specimen signature ante litem motam for comparison by expert – Lower Appellate Court directed to obtain specimen signatures of Appellant – Handwriting expert directed to compare disputed signatures with that of admitted signatures of Appellant – Open to Appellant to take out application to appoint Commissioner to take documents for comparison by expert of Forensic Department – Lower Appellate Court to provide sufficient safeguards for taking disputed documents or summon expert to Court to do exercise of comparison – Judgment and decree passed by Courts below set aside – Matter remitted back – Appeals allowed.

2014 (6) CTC 670  
S.V. Matha Prasad

v.

Renuka Devi

Date of Judgment : 11.11.2014

Code of Civil Procedure, 1908 (5 of 1908), Order 18, Rule 17 & Section 151 – Appeals against dismissal of Applications, seeking to reopen Suit and recall of Witness – Provision enables Court at any stage of Suit to recall Witness, who has been examined and put such questions to him as it thinks fit – Such power can be exercised by Court, either on its own motion or on an Application filed by any of parties to Suit – Such power is not intended to fill up omissions in evidence of Witness, who was already examined – Provision is not intended to enable party to recall any Witness for further cross-examination in chief or cross-examination or to place additional material, which could not be produced when evidence was recorded – It primarily enables Court to clarify any issue or doubt – Once Witness is recalled for purpose of such clarification, Court may permit parties to assist it by putting some questions – For case to be reopened and/or recall of Witness for cross-examination, proper recourse would be Section 151 – It is not case where Court felt handicapped and needed any clarification – Appellant has already been given adequate opportunity – Appeals are meritless – Only intention of Appellant is to delay conclusion of Suit – Appeals dismissed with costs of Rs.10,000/-

2014 (6) CTC 677

Mohan

v.

Kanagavalli

Date of Judgment : 01.07.2014

Hindu Marriage Act - Application of 'Plain Meaning Rule' – Principle of 'Social Context Judging' by Judges

Hindu Marriage Act, 1955 (25 of 1955), Section 7-A – Marriage between parties – Whether valid – Application of 'Plain Meaning Rule' – Fulfilment of any of conditions enumerated in Section 7-A would constitute a valid marriage – Lucid deposition of Plaintiff that Suyamariyathai marriage took place between Plaintiff and Defendant – Fact of marriage having taken place and claims of mutual love between parties and refusal of Defendant to live with Plaintiff after marriage as stated by Plaintiff in her evidence, all corroborated by evidence of PW2, who is friend of Defendant, proves marriage – Considering all relevant circumstances, held, valid marriage took place between parties.

Evidence Act, 1872 (1 of 1872), Section 3 – Appreciation of evidence – Suit for declaration that Plaintiff is wife of Defendant – Defendant/husband in evidence, answering "I do not know" to questions to which answers would be either 'yes or 'no' – Said answer by Defendant, held, portray that Defendant attempting to suppress truth – Defendant, held, trying to balance his conscience on one side and his parents on other side – Questions to which Defendant answered 'I do not know' held, establish falsity of his defence and truthfulness of Plaintiff's case – Plaintiff declared as legally wedded wife of Defendant.

Evidence Act, 1872 (1 of 1872) – Evidence of woman conceding sexual relationship with man – Appreciation and effect of – Considering Indian Society, Indian women mostly reluctant to complain or raise issue of sexual relationship – Any such allegations/contentions tend to have adverse social effects on said woman – In such circumstances, women if disclose any such relationship, statements of such women to be presumed to be true.

Code of Civil Procedure, 1908(5 of 1908), Section 35 – False depositions – Costs – Defendant/husband guilty of falsely deposing in Court – False depositions of Defendant causing excessive deterioration of Plaintiff/wife's life which cannot be compensated in terms of money – Parties directed to be referred to Mediation for resolving all mutual issues.

Code of Criminal Procedure, 1973 (2 of 1974), Section 125 – Code of Civil Procedure, 1908 (5 of 1908), Sections 96 & 100 – Application for Maintenance – Whether can be stayed during pendency of Appeal – Suit for declaration filed by wife, decreed by Trial Court and Decree confirmed by First Appellate Court – Second Appeal preferred by husband – Maintenance proceedings filed by wife, stayed by Magistrate on account of pendency of Second Appeal – Held, in absence of any categorical Stay Order from High Court, staying of Maintenance proceedings by Magistrate, erroneous – Magistrate, held, ought to have disposed off Maintenance Application without waiting for result of Second Appeal – Magistrate directed to dispose off Application within one month from date of receipt of instant judgment.

Code of Criminal Procedure, 1973 (2 of 1974), Section 125 – Application for Maintenance – Speedy disposal of – Significance of, emphasised – Constitution of India, Articles 15(3) & 39.

Justice Delivery System - Fights between unequals – Application of Principle of ‘Social Context Judging’ by Judges, discussed.

Justice Delivery System – Right to ‘access to justice’ vis-à-vis Right to ‘speedy justice’ – Discussed.

Interpretation of Statutes – Rules of Statutory Construction – Plain Meaning Rule – Meaning and application of, elucidated.

Jurisprudence – Change in Law vis-à-vis Change in Society – Linked phenomenon, explicated.

**2014 (2) TN MAC 669 (DB)**

**Arul Raj @ Arul**

**v.**

**State Express Transport Corporation Ltd**

**Date of Judgment : 11.09.2014**

**PERMANENT DISABILITY – Compensation – Assessment – Injured/Claimant aged 46 yrs., a Pastor, earning Rs.15,000 p.m. – Suffered crush injuries on both legs as also fracture injuries – Right leg below knee amputated as also left lower limb below ankle – Injured unable to walk without support – Doctor/PW 2 assessed disability at 85% - Injured also suffered severe non-proliferative diabetic retinopathy and maculopathy in both eyes and for which pan retinal photo coagulation with grid laser done in both eyes – Vision Disability assessed at 60% by PW3 – Disability Certificate also issued by Government Institute of Rehabilitation Medicine at 80%- Tribunal accordingly fixed disability at 80% - Confirmed in Appeal – Income : Injured a Pastor, closely associated with Church activities and also Trustee of Kaber Nadhi Ministries : Tribunal considering copy of Trust Deed/Ex.P14 and other documents fixed income at Rs.5,500 p.m. : Held, on lower side : Following dictum in Syed Sadiq, same enhanced to Rs.6,500 p.m. – Applying Multiplier of 13, High Court awarded Rs.8,11,200 [Rs.6,500 x 12 x 13 x80%] towards Permanent Disability as against Rs.6,86,400 awarded by Tribunal.**

**PAIN & SUFFERING – Compensation – Crush injury of both legs – Amputation of left leg below ankle and right leg below knee – 80% disability – Rs.50,000 awarded by Tribunal, held, on lower side, enhanced to Rs.1,00,000 – Full Bench in Cholan Roadways and R.D. Hattangadi followed.**

**MENTAL AGONY – Award under – Amputation of right leg below knee and left leg below ankle – 80% disability – Claimant not able to walk without walker/stick or artificial limb – Rs.75,000 awarded by Tribunal enhanced to Rs.1,00,000 – Full Bench decision in Cholan Roadways followed – However, non-awarding of Compensation under Loss of Amenities upheld.**

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## HIGH COURT CITATIONS CRIMINAL CASES

2014 (6) CTC 653

Yuvaraj

v.

State

Date of Judgment : 24.09.2014

Criminal Jurisprudence – Examination of Witnesses during boycott of Courts – Whether appropriate – Common practice adopted by Government Pleaders/Advocates and Public Prosecutors to attend Court proceeding and not join boycott call – Hearing of Witnesses and passing Order/granting reliefs by Courts in absence of Defence Counsel even during boycott, held, appropriate – Putting a stall to Court proceedings during boycott, held, would be contrary to decision of Apex Court in Ex-Capt. Harish Uppal v. Union of India, 2003 (2) SCC 45 – Recording of examination-in-chief of Witness by Trial Court even when Defence Counsel is absent due to boycott, held, in consonance with law laid by Apex Court in Harish Uppal’s case – Possibility of admitting of inadmissible evidence during boycotts by Trial Court remote, as Courts manned by Judicial Officers – However, examination of Witness in chief not permissible during boycotts in cases where no Counsel engaged by Accused – Trial Courts to conduct proceedings judiciously considering rights of both Accused and Victim – Nonetheless, examination of Witnesses during absence of Defence Counsel due to boycott, held, permissible.

Code of Criminal Procedure, 1973(2 of 1974), Section 389 – Murder – Suspension of Sentence and Grant of Bail – Whether warranted – Accused charged with murder of relative - During fag end of Criminal proceedings, Petitions filed by Accused for recalling of Prosecution Witness and for condoning his absence before Court – Said Petitions dismissed by Trial Court and Accused convicted and sentenced – Held, dismissal of said Petitions would not warrant suspension of sentence of Accused considering fact that Accused is charged with grave offence and prima facie materials are against Accused – Decision of Apex Court in Atul Tripathi case followed - Petition for suspension of sentence and grant of bail, dismissed.

(2014) 4 MLJ (Crl) 648

Kannan

v.

State

**Date of Judgment : 15.09.2014**

**Attempt to Murder – Interested Witness – Indian Penal Code, 1860, Section 307 – Appellant/accused convicted and sentenced for offence under Section 307, same challenged – Appellant alleged that Trial Court erred in relying on interested, inconsistent, uncorroborated and discrepant evidence of Prosecution Witnesses – Whether Trial Court justified in convicting Appellant for offence under Section 307 on basis of interested witnesses – Held, where injuries inflicted, crucial testimony is of injured – Testimony of injured witness is of great way and presence of such witness at time of place of occurrence cannot be doubted and convincing grounds required to discard evidence of such witness – Evidence of PW-1/Author of Complaint and evidence of PW-11/injured/victim were natural, consistent, cogent and convincing because of their trustworthiness and credibility – Also, PW-7/Doctor, in his evidence, spoke about extraordinary injuries found on PW-11 and fourth injury being grievous one, same corroborated with injured witnesses – Since Prosecution witnesses proved necessary facts to bring home guilt of Appellant under Section 307, same accepted – Nature of external injuries found on PW-11 as per ExP-4 speaks out guilty mind of Appellant in regard to indiscriminate attack made by him – Charge against Appellant under Section 307 proved by prosecution beyond all reasonable doubt – Judgment of conviction passed by Trial Court upheld, but, imposed sentence reduced – Fine amount imposed by Trial Court left undisturbed – Appeal partly allowed.**

**(2014) 4 MLJ (Crl) 703**

**Mahendran**

**v.**

**State**

**Date of Judgment : 12.09.2014**

**Murder – Circumstantial Evidence – Indian Penal Code, 1860, Section 302 – Allegation that Appellant/accused murdered deceased – Based on circumstantial evidence, Trial Court convicted accused for offence under Section 302 IPC and sentenced him – Appeal – Whether Trial Court was justified in convicting and sentencing Appellant under Section 302 IPC – Held, from evidence of PW4/husband of deceased, local villagers/PW7 and PW8, clear that Appellant and deceased had illicit intimacy – Fact that Appellant and deceased took Room No. 7 of Lodge was established beyond doubt through evidence of broker/PW 16, owner of Lodge/PW 2 and Room Boy of Lodge/PW 3 – Fact that Appellant latched room from outside and thereafter not seen was established through evidence of PW 2 and PW 3 – Thereafter body of deceased found inside Room No. 7 with injuries – Death of deceased not suicidal, but homicidal – Also, Appellant arrested and found in possession of key of lock to Room No. 7 – From conspectus of evidence on record, prosecution proved all circumstances beyond doubt which lead and irresistible inference that Appellant committed offence – Appeal dismissed.**

**(2014) 4 MLJ (Crl) 713**

**K. Jayakumar**

**v.**

**State**

**Date of Judgment : 27.10.2014**

**First Information Report – Quashing of FIR – Cheating – Code of Criminal Procedure, 1973, Section 482 – Indian Penal Code, 1860 (Code 1860), Sections 415, 420 and 506 – Petitioner purchased bags of paddy from de facto complainant - Alleged that when de facto complainant demanded payment of dues, Petitioner declined to pay – FIR registered under Sections 420 and 506 of Code 1860 – Petition to quash FIR – Whether FIR can be quashed – Held, events make out case of simple failure on part of accused to pay cost of paddy purchased out of true and genuine business transaction – To make out offence of ‘cheating’, deception, inducement either dishonestly or fraudulently essential – No element of prima facie case to hold that Petitioner acted dishonestly or fraudulently – No essential**

elements for 'cheating' found, registration of FIR abuse of process of law – Allegation under Section 506 of Code 1860 vague besides so trivial – Entire case quashed – Petition allowed.

2014 – 2 – LW.(CrI) 731

State

v.

Gunas

Date of Judgment : 18.11.2014

Evidence Act, Section 32/dying declaration, reliability

Two dying declarations – Reliability of – Evidentiary value, which to be given, scope of – Court's role.

2014 (6) CTC 736

State

v.

K. Prabhu

Date of Judgment : 12.12.2014

Criminal Jurisprudence – Power of Police to conduct Press Meet after arrest of accused in sensational cases – Conducting Press Meet by Superior officers of Police Department along with Accused persons – Legality – Press Meet was conducted before conducting Identification Parade – Practice of Superior Police Officers giving interview to Media/Press with regard to occurrence of crime – In order to ensure that there is no occasion for Witness to see Accused before going for Test Identification Parade, Accused should not be shown to witness either in person or through any mode like photograph, videograph, or through press or electronic media – Law empowers arresting Officer along to keep arrestee in his custody and he shall not carry him to every place wherever he wants unnecessarily and hand him over to custody of some other Officer including Superior Police Officer – Unnecessary publicity in sensational cases through Print and Electronic media about details of investigation ultimately affects administration of justice – Practice of Superior Officers conducting Press Meet with Accused persons in sensational cases, deprecated – Direction issued to Secretary to Home Department and DGP to issue general directions to all Police Officers throughout State apprising that they should not unnecessarily expose identity of Accused and other details of investigation and Materials Objects collected during course of investigation – Suggestion made to Government and DGP to conduct service trainings for Police Officers to apprise legal position.

2014 – 2 – LW.(CrI) 748

K. Suresh

v.

The State

Date of Judgment : 05.09.2014

Prevention of Corruption Act (1988), Sections 13(2), 13(1)(d), 19, sanction for prosecution, need for when arises,

I.P.C., Sections 120-B r/w.420, Sanction for prosecution need for,

Criminal Procedure Code, Section 239/Discharge,

Delhi Special Police Establishment Act (1946), Section 6A.

whether prior approval of State Government of Madhya Pradesh is essential for registration of disproportionate assets cases against 1<sup>st</sup> Petitioner/A1 (Senior IAS officer/former Chairman, Chennai Port Trust) as he joined his parent cadre on 24.8.2009 while FIR was registered on 12.10.2009 – Relevant period during which the offences take place is a pivotal factor – Investigation carried out in respect of the period while the 1<sup>st</sup> Petitioner/A1 was in service of Food Corporation of India and Chennai Port Trust.

**Held** : offences investigated by the CBI were not committed within the State of Madhya Pradesh – There is no need for the CBI to obtain prior permission from the State of Madhya Pradesh for prosecuting the 1<sup>st</sup> Petitioner/A1 – Section 6A/struck down as invalid by Supreme Court – Effect of.

**2014 – 2 – LW.(CrI) 772**

**Karthick**

**v.**

**State**

**Date of Judgment : 01.09.2014**

**I.P.C., Sections 302, 401, 300, clause 3, whether applies,**

**Evidence Act, Sections 7, 9, 45, ‘fact’, ‘fact in issue’, Expert opinion, post mortem doctor’s evidence, relevancy, 106, burden of proof, scientific enquiry, judicial enquiry, difference,**

**Criminal Trial/Murder trial, post mortem doctor, evidence, reliability, scientific enquiry, judicial enquiry difference.**

**Murder – Motive – R deceased was a Siddha doctor, from whose daughter, the appellant (goldsmith) borrowed money and did not repay – Circumstantial evidence – Intention of appellant is clear, he caused 14 injuries on a 70 year old man and has left him inside the house and locked it from outside and decamped with his ornaments.**

**Dead body was recovered from the portion in occupation of the appellant, a burden is cast on the appellant under Section 106 to explain how the dead body came there.**

**Distinction between a Scientific enquiry and a judicial enquiry – a scientific enquiry in a laboratory begins with a cause and goes to find its effect – In a judicial enquiry, cause is studied from the effect and one cannot re-create either the effect or the cause.**

**Post-mortem Doctor is an Expert under Section 45, his opinion is relevant under Section 7 – By a process of reverse engineering, the Post-Mortem Doctor decides the cause of death, ‘in his opinion’ not conclusive proof of that fact - Evidence of the post-mortem doctor is not a substantive piece of evidence to prove the fact-in-issue, but they are substantive evidence to prove the facts relevant under Sections 7 and 9.**

**Post-mortem done on a decomposed body, not possible for doctor to say which of the injury is sufficient to cause death in the ordinary course of nature.**

**2014 – 2 – LW.(CrI) 782**

**Lakshmi**

**v.**

**State**

**Date of Judgment : 28.11.2014**

**I.P.C., Section 302,**

**Evidence Act, Section 24, Extra judicial confession, Section 106/burden of proof.**

Murder of deceased (husband) by wife – Extra judicial confession to VAO, whether admissible – Evidence of neighbours, reliability, scope of – Both accused and deceased resided together in place of occurrence – Burden of proof on accused not discharged – PW 3 to 5 not cross examined on this vital fact – Failure to send material objects for chemical examination would not affect case of the prosecution.

2014 – 2 – LW.(CrI) 789

Kumar @ Kutty & Others

v.

State of Tamil Nadu

Date of Judgment : 22.09.2014

Criminal Procedure Code, Section 428/’set off’, granting of, scope.

Criminal Trial/Practice, arrest, Remand warrant, Procedure.

Appeal by life convicts to give them set off under section 428.

In all cases Judicial Officers had not given detention period in the commitment warrant, therefore, prison authorities were not able to give the set off under Section 428 Cr.P.C.

No rule casts a duty on the Presiding officer to enter pre-conviction detention particulars in the warrant of commitment.

Procedure of arrest and Remand, stated Form 45, 59, effect of – Warrant of commitment preparation, effect of – Normal practice in Tamilnadu – what is.

Applying principle *optimus interpres rerum usus* [The best interpretation comes from usage], legal imprimatur to this practice via Section 476 given.

Prisoner cannot be made to suffer for the fault of the Presiding Officer of the Court in not giving the pre-conviction detention particulars of a prisoner to the jail authorities – Convict prisoners in these cases will be entitled to set off under Section 428 Cr.P.C. – Denying them the benefit of set off will not only violate Section 428, but also Article 21.

A bond under Section 88 Cr.P.C., should be taken in both summons and warrant cases – If the accused absconds during Trial, he can be arrested in execution of non-bailable warrant and remanded to judicial custody and later released on bail – In such cases also he will be entitled to set off under Section 428 Cr.P.C. – Copy of judgment to jail authorities, sending of, need for.

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