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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

(2013) 8 MLJ 84 (SC)

Jagdish Singh
Vs
Heeralal and Ors

Banking and Finance – Securitisation - Jurisdiction of Civil Court – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (Securitisation Act) Sections 13(4), 17 and 34- Loan granted to Respondent, default in re-payment – Property put to auction under Securitisation Act, Appellant was auction purchaser – Subsequently, Respondent filed Civil Suit for declaration of title, partition and permanent injunction against Appellant/auction purchaser and bank – Lower Court held suit not maintainable as specific bar to file civil suit contained in Section 34 of Securitisation Act – On appeal, High Court held civil suit maintainable – Impugned order of High Court challenged – Whether high Court was right to hold that civil suit filed was maintainable irrespective of bar on Civil Court imposed by Section 34 of Securitisation Act – Held, suit properties were individual properties and not properties of HUF – Due to non-repayment of loan amount, bank can take measures provided in Section 13(4) for recovery of loan amount – Person aggrieved by “measures” taken in Section 13(4) got statutory right to appeal to Debt Recovery Tribunal (DRT) under Section 17 – Section 34 outs civil Court jurisdiction – No civil Court shall have jurisdiction to entertain any suit or proceeding “in respect of any matter” which DRT or Appellate Tribunal is empowered – High Court erred in maintaining civil suit against “measures” taken by secured creditor under Section 13(4) – Judgment of High Court set aside – Appeal allowed.

2014 (1) CTC 98

Haryana Financial Corporation
Vs
Gurcharan Singh & Anr

Transfer of property Act, 1882 (4 of 1882), Sections 100 & 59 – Charge – Nature and Scope – Respondent availed loan from State Financial Corporation by executing undertaking affidavit that he will not alienate properties covered in Undertaking during currency of loan – Subsequently - Respondent–Wife filed Suit for declaration against Respondent to declare that she is absolute owner of Suit property and Suit decree – Corporation filed Suit to declare decree obtained by Wife as collusive and null & void – undertaking given by borrower to Corporation that he will not encumber Suit property during currency of loan, would not confer any charge on immovable properties – Mere undertaking to create mortgage is not sufficient to create an interest in any immovable property – No charge is created by borrower by depositing title Deeds – Corporation cannot claim any charge over property.

(2013) 9 Supreme Court Cases 181

SUDISH PRASAD AND ORS
Vs
BABUI JONHIA ALIAS MANORAMADEVI AND ORS

A. Family and Personal Laws – Guardians and Wards Act, 1890 – Ss. 20, 37, 27, 29 and 30 – Guardian appointed by court in relation to person and property of minor – nature of his relationship and position vis-à-vis minor – his duties while dealing with property of minor – Dealing with property by way of sale, mortgage, etc. without permission of court and against the interest of minor – Validity of

- Held, guardian stands in fiduciary relationship to his ward and acts as a trustee – He cannot gain any personal profit by availing himself of his said position – He is bound to do all acts for protection and benefit of property of ward and must act as carefully as a man of ordinary prudence would act in his own matter – he cannot

deal with said property by way of sale, mortgage, charge or lease without permission of the court and against the interest of minor – Any such action of guardian dealing with property against the interest of ward would be voidable under the law [Ed.: except against bona fide purchasers without notice who have paid valuable consideration : see S. 88 r/w Ss. 95,96,63 & 64 of the Trusts Act, 1882; see also at pp. 183h-184a-e, below] – Trusts and Trustees – Trusts Act, 1882 – S. 88 r/w Ss. 95,96,63 & 64 – Guardian appointed by court in relation to person and property of minor – Stands in fiduciary relation to his ward and acts as a trustee – Equity – Fiduciary – Who is – Instances

B. Family and Personal Laws – Guardians and Wards Act, 1890 – Ss. 41(2) (b), (3) & (4) – Guardianship of properties of minor – Discharge of guardian in respect of, on attainment of majority by minor- when takes place – if a discharge order by court is essential in respect thereof – Whether custody of properties remains with guardian and he is accountable in respect of said properties till the discharge order is passed by court

- In present case, minor S attained and died subsequently – there was no order by court discharging the guardian, B from guardianship of properties of S– Suit filed against guardian B by sole surviving legal heir of S i.e. his daughter, claiming title to and possession of the entire properties of S – Allowability of – persons coming into possession of property of S after attainment of majority by S by virtue of various transfers/alienations made by the guardian – Claim made by, as to title and interest in that property by adverse possession – Tenability of

- Division Bench of High Court correctly holding that in absence of any order as to discharge from guardianship, the property of minor remained in custody of the guardian, and through him it remained custodial egis all throughout – Consequently, it rightly held that there was no question of anyone acquiring the said property by adverse possession – As per Division Bench, guardian B was holding the property for benefit of S during his lifetime, and upon death of S for and on behalf of the person who was entitled to inherit the property of S in accordance with the laws of inheritance – Thus, it further rightly held that B continued to be in the helm of affairs pertaining to properties of S for the sole benefit of daughter of S after the civil death of widow of S – Accordingly, High Court decreed the suit in respect of entire properties of S in favour of his daughter directing discharge of B from guardianship – Held, judgment passed by Division Bench is proper – Hence, affirmed

C. Limitation Act, 1963 – S. 27 and Art. 65 – Adverse possession – Extinguishment of right to property under – Property of minor S – Guardian appointed under Guardians and Wards Act, 1890 in respect of – No order by court discharging the guardian from said guardianship, despite attainment of majority by S and his subsequent death – Persons coming in possession of property of S after attainment of majority by S – Claim made by, as to title and interest in that property by adverse possession – Untenability of – Property Law – Adverse possession – Property of minor in guardianship – Is property held on trust

(2013) 10 Supreme Court Cases 258

SUNITA JUGALKISHORE GILDA

Vs

RAMANLAL UDHOJI TANNA (DEAD) AND ORS

A. Property Law – Transfer of Property Act, 1882 – Ss. 52, 65 and 65-A – Induction of tenant by mortgagor in mortgaged property during pendency of suit – Permissibility – Right of mortgagor to lease and the rights of the lessee of any such lease, held, are subject to S. 52 – Hence held, mortgagor cannot induct any person as tenant in mortgaged property which is subject-matter of litigation between mortgagor and mortgagee detrimental to rights of mortgagee – Thus, such lessee is bound by result of litigation when mortgagor grants lease during pendency of suit for sale by mortgagee, and lessee cannot resist claim for possession by auction-purchaser in the mortgage sale

- In instant case, as R-1 was inducted as lessee during subsistence of mortgage and pendency of court proceedings for mortgage sale without knowledge and consent of mortgagee, held, courts below erred in rejecting decree for declaration of title and recovery of possession against R-1 – Furthermore, tenant inducted during subsistence of mortgage cannot take the benefit of Rent Control Act – Hence, held, such lessee (R-1) is not entitled to protection under Maharashtra Rent Act, 1999 – Thus, suit of appellant mortgagee who had purchased

the mortgaged property in the mortgage sale with the permission of the court, decreed for declaration of title and recovery of possession against R-1, but without mesne profits

B. Rent Control and Eviction – Protection of Rent Act – Mortgagor's tenant- Rights of – Protection under Rent Act – Held, tenant who is inducted during subsistence of mortgage is not entitled to get protection of Rent Act – Maharashtra Rent Control Act, 1999 (18 of 2000) – Generally – Entitlement to protection – Property Law – Transfer of Property Act, 1882, Ss. 65-A and 65

C. Property Law – Transfer of Property Act, 1882 – Ss. 52, 67 and 65-A – Lis pendens – Applicability – Held, rule of lis pendens applies to suit by mortgagee also – Mortgagee is entitled to avoid a transfer on the ground that it was created by mortgagor during pendency of a mortgage suit

D. Property Law – Transfer of Property Act, 1882 - S. 52 – Doctrine of lis pendens – Rationale for – Held, said doctrine is intended to prevent a party to suit to make an assignment inconsistent with the rights which may be decided in the suit and which might require a further party to be impleaded in order to make effectual the court's decree – Doctrines and Maxims – Doctrine of Lis pendens

(2013) 9 Supreme Court Cases 425

NARINDER SINGH RAO

Vs

AIR VICE-MARSHAL MAHINDER SINGH RAO AND ORS

A. Family and Personal Laws – Hindu Law – Hindu Succession Act, 1956 – Ss. 8 and 10 – Devolution of property of male dying intestate – Distribution of share of property amongst Class I heirs – Owner of property died intestate, leaving his widow and 8 children – Widow executed a will bequeathing the entire property to one of the sons, appellant – Held, after death of widow, entire property in question did not stand transferred to appellant by virtue of the will – This was because upon death intestate of her husband, widow and 8 children would inherit property in equal shares i.e. each heir would inherit 1/9th share – Thus widow was entitled to bequeath only her own 1/9th share to appellant – Hence as a result of will, appellant would inherit 1/9th share of his mother in addition to 1/9th share which he inherited from his father – Thus appellant would become owner of 2/9th share of property – Will – Competence – Nemo dat quod non habet – Testator bequeathing property by will in excess of her own share – Will, held, has to be treated as bequeathing property Law – Transfer of property Act, 1882, Ss. 7 and 8

B. Family and Personal Laws – Hindu Law – Will – Validity – Writing executed by owner of property stating that on death of himself or his wife, Property would be inherited by survivor – Writing neither attested by two witnesses nor registered under Registration Act – By virtue of the writing neither complete ownership nor share of owner transferred to wife – Held, writing neither in nature of a will nor in nature of transfer of property and has no legal effect – Succession Act, 1925 – S. 63 – Evidence Act, 1872, S. 68

C. Family and Personal Laws – Hindu Law – Will – Validity – Questions of fact – Whether testator was in sound and disposing state of mind at time of execution of will and whether will was attested by two competent witnesses and validity executed – Questions of fact – Held, High Court in second appeal rightly accepted findings arrived at by lower appellate court – Supreme Court would also not reappreciate those findings and would accept findings arrived at by court below – Constitution of India – Arts. 136 and 133 – Question of fact – Succession Act, 1925, Ss. 59 and 63

D. Constitution of India – Art. 136 – New plea – Question of fact – Cannot be permitted to be raised for first time before Supreme Court – Questions whether suit property belonged to one individual i.e. whether he was beneficial owner or a benami, are questions of fact – No averment made and no issue raised in that regard before trial court – Issue in that regard raised for first time before appellate court which was not permissible – Held, all submissions made in relation to provisions of Benami Transactions (Prohibition) Act, 1988 and with regard to real ownership of suit property cannot be looked into at the stage of appeal before Supreme Court – Practice and Procedure – New plea

SUPREME COURT CITATIONS CRIMINAL CASES

(2013) 4 MLJ (CrI) 171 (SC)

Deepak Rai
Vs
State of Bihar

- (A) Criminal Law – Murder – Death sentence – Indian Pena Code, 1860, Sections 120B, 148, 302 read with 149, 307 read with 149, 326, 429, 436 and 452 – Three accused persons convicted for murder of wife and five children of Informant – Motive of occurrence was alleged to be Informant’s refusal to withdraw FIR lodged by him against 1st accused – Death sentence imposed by Trial Court, confirmed by High Court – Whether offence committed by Appellants fall into category of rarest of rare cases so as to warrant death sentence – Held, accused persons causing death of six persons by burning them alive and injury to informant was well established by cogent, reliable and unimpeachable eye-witnesses – Evidence of prosecution witnesses recorded in two trials corroborates prosecution case – Murder of wife and five children of informant for not withdrawing case of theft shocked entire community – Crime was so brutal, diabolical and revolting so as to shock collective conscience of community, sentence awarded by Trial Court was just and proper – 1st and 2nd accused committed cold blooded murder in pre-ordained fashion without any provocation, their offence falls under category of rarest of rare – No overt act in commission of crime could be attributed to 3rd accused -Sentence to life imprisonment would appropriately serve as punishment proportional to decree of offence committed by 3rd accused – Sentence of death imposed on 1st and 2nd accused confirmed – Sentence awarded to 3rd accused commuted to life imprisonment – Appeal disposed of.
- (B) Criminal Procedure – Contents of judgment – Death sentence – Special reasons – Code of Criminal Procedure, 1973, Section 354(3) – Lack of special reasons assigned by Lower Courts for awarding death sentence – Whether reasons assigned by Lower Courts while sentencing Appellants are special reasons under Section 354(3) of Code – Held, no impropriety by Lower Courts below in compliance with procedure prescribed under law of sentencing Appellants – Adequacy and correctness of special reasons assigned by Lower Courts for awarding sentence of death determined – Crime in question was a dastardly crime involving death of 5 innocent human beings for purpose of achieving sadistic goals of 1st accused – Time, place, manner of and motive behind commission of crime speak volumes of pre-meditated and callous nature of offence – The ruthlessness of Appellants was reflected through brutal murders of young, innocent children and wife of informant by burning them alive to avenge their cause in the dark of the night – On considering brutality of attack, number of persons murdered, age and infirmity of victims, their vulnerability and diabolic motive, sentence awarded by the trial court was just and proper.

(2013) 4 MLJ (CrI) 213 (SC)

A.C. Narayanan
Vs
State of Maharashtra and Anr

- (A) Negotiable Instruments – Dishonour of Cheque – Power of attorney – Negotiable Instruments Act, 1881, Sections 138 and 142 – Code of Criminal Procedure, 1973, Section 200 – Whether Power of Attorney holder can sign and file complaint petition on behalf of complainant under Section 138 – Held, Section 200 of Code does not create any embargo that attorney holder cannot be a

complainant – Power of attorney holder is agent of grantor – When upon authorization of grantor, attorney holder initiates legal proceedings, he does so as agent of grantor – Initiation is by grantor represented by his attorney holder and not by attorney holder in personal capacity – Power of attorney holder cannot file a complaint in his own name as if he was complainant, can only initiate criminal proceedings on behalf of principal – Power of attorney holder can file, appear and depose for purpose of issue of process for offence punishable under Section 138 – Filing of complaint petition under Section 138 through power of attorney is legal and competent – Reference answered.

- (B) Negotiable Instruments – Power of Attorney – Verification on oath – Code of Criminal Procedure, 1973, Section 200 – Whether Power of Attorney holder can be verified on oath under Section 200 – Whether specific averments as to knowledge of Power of Attorney holder in impugned transaction must be explicitly asserted in complaint – Held, when attorney holder of complainant in charge of business of complainant is alone personally aware of transactions, attorney holder can depose as a witness – Power of Attorney holder can depose and verify on oath before Court in order to prove contents of complaint – Power of attorney holder must have witnessed transaction as an agent of payee/holder – Complainant should make specific assertion as to knowledge of power of attorney holder in transaction explicitly in complaint – Explicit assertion as to knowledge of Power of Attorney holder about transaction in question must be specified in complaint.
- (C) Negotiable Instruments – Issue of Process – Calling upon complainant – Obligation of Magistrate – Whether Magistrate obliged to call upon complainant to remain present before Court, or to examine complainant of his witness upon oath for taking decision to issue process on complaint under Section 138 – Held, open to Magistrate to issue process based on contents of complaint and documents in support of affidavit submitted by complainant – Calling upon complainant to remain present and to examine him a matter of discretion – If Magistrate after considering relevant documents is of view that examination of complainant required, complainant may be called upon to be present before Court – Magistrate not mandatorily obliged to call upon complainant to remain present before Court, or to examine complainant of his witness upon oath for taking decision to issue process on complaint under Section 138.

2014 (1) CTC 329

Kamlesh Kumar

Vs

State of Bihar and Anr

Negotiable Instruments Act, 1881 (26 of 1881), Sections 138 & 142 – Dishonour of Cheque – Prerequisite to maintain Complaint – Act of dishonouring of Cheque will culminate into commission of offence subject to fulfillment of pre-conditions envisaged under Act – (i) Service of Notice upon drawer of Cheque to make payment of amount mentioned in Cheque within 30 days of receipt of information by drawee from Bank (ii) Failure of drawer to make payment within 15 days of receipt of Notice – Right to institute proceedings for prosecution would accrue after proper completion of formalities under Act – Complainant second time presented Cheque for payment on 10.11.2008 and Notice was issued only on 17.12.2008 after expiry of 30 days – Complaint preferred by Complainant itself not maintainable – Complaint liable to be quashed.

Code of Criminal Procedure, 1973 (2 of 1974), Section 482 – Inherent Powers of High Court – Abuse of process of Court – Legality of Criminal prosecution – Complaint preferred under NI Act itself not maintainable for non-complaint of mandatory procedure stipulated under Act – Accused filed Petition to quash Complaint – High Court dismissed Petition for reason that trial has already commenced and two witnesses have already been examined – Issue raised by Accused would go to root of matter touching upon maintainability of proceedings – High Court has ample power to quash proceedings at any stage.

(2013) 10 Supreme Court Cases 465

SUBRAMANIAN SWAMY AND ORS
Vs
RAJU THROUGH MEMBERS, JUVENILE JUSTICE BOARD AND ANR

- (A) Constitution of India – Arts .136, 32 and 226 – Maintainability – Locus standi/Standing – Public interest litigation – SLP filed in public interest seeking authoritative pronouncement on provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 and to take out of its purview a juvenile who commits heinous crimes to enable prosecution in regular criminal court (making specific reference to juvenile accused in Delhi Gang Rape Case) – Petitioner, a third party, approaching Supreme Court after being refused impleadment in proceedings against said (R-1) juvenile (Accused in Delhi Gang Rape case) by High Court in PIL – Petitioners not seeking impleadment in the inquiry against R-1 pending before Juvenile Justice Board nor in any likely trail against R-1 – Petitioners only seeking an authoritative pronouncement on the true purport and effect of the different provisions of the JJ Act – Questions raised by petitioners requiring answers not specifically qua R-1 but having an effect on all juveniles who may come into conflict with law in the future – Hence, SLP held maintainable – Criminal Trial – Juvenile/Child accused – Heinous crimes – Blanket immunity from criminal prosecution to persons below age of 18 yrs – If can be withdrawn – Words and Phrases – “Juvenile” – Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 2(p),(k), (l), 6, 7 7-A and 16 to 19
- (B) Criminal Trial – Prosecution – Generally – Locus standi/Standing – Role of third party/stranger – Administration of criminal justice – State’s function – Two broad stages at which criminal justice machinery operates – Investigation of an alleged offence leading to prosecution and, the actual prosecution of the offender in a court of law – In certain exceptional situations there is a recognition of a limited right in a victim or his family members to take part in the process, particularly, at the stage of the trial – The law, however, prohibits any abdication by the State of its role – A third party/stranger does not have any right to participate in a criminal prosecution which is primarily the function of the State
- (C) Constitution of India – Arts. 32, 226 and 136 – Maintainability – Locus standi – Intervention of third parties in criminal proceedings in public interest – Supreme Court’s approach towards, indicated.

(2013) 9 Supreme Court Cases 769

BHAIKON ALIAS BAKUL BORAH
Vs
STATE OF ASSAM

A. Penal Code, 1860 – Ss. 376 and 302 – Rape and murder – Sole eyewitness – Credibility – Conduct of sole eyewitness, not unnatural in the circumstances – His testimony was corroborated by medical evidence and other witness – Conviction confirmed – Sentence of death awarded by trial court, which was commuted to life imprisonment by High Court on the grounds that accused was a young man of 33 yrs of age and also on finding that the case does not come under the purview of “rarest of rare” category, held, does mean that such convict is entitled to automatic remission of the sentence after 14 yrs of incarceration – Contention of appellant-accused to this effect, categorically rejected

- Appellant along with another person committed rape and, thereafter, murdered the deceased – Entire prosecution case rested on solitary evidence of eyewitness, PW 1 – According to PW 1, appellant engaged him as a labourer in his farmhouse and all along he was working under compulsion – PW 1 deposed that on the date of occurrence, he saw appellant and his friend following the deceased – PW 1 also followed them and saw that appellant and his companion were behaving indecently with the girl, committed rape on her and thereafter appellant assaulted girl by throttling her neck – Girl died on the spot and appellant along with accomplice dragged her to nearby place surrounded by shrubs and bushes and left the body there – Since both were having “khukri” (sharp knife) in their hands, PW 1 did not raise an alarm out of fear – High Court confirmed the conviction – Appellant contended that evidence of PW 1 was not reliable – Though PW 1 remained silent, after 2 hrs, when PW

2, father of victim raised a commotion at the place of occurrence, appellant-accused also came there and saw the dead body of girl – Conduct of PW 1, in view of the above, held, cannot be doubted because of reluctance on his part to open his mouth in presence of his master, the appellant – Even the trial court found PW 1 trustworthy, and that he had no reason to falsely implicate his master and rightly held him to be a reliable witness – Evidence of PW 1 clearly shows that he was forced to work in the house of appellant – Fact that PW 1, was working in the house of appellant was admitted by appellant in his statement under S. 313 CrPC – There is no reason to disbelieve PW1, who is an independent eyewitness to the incident – Underwear of deceased and appellant found stained with semen; medical evidence and other witnesses also corroborated statement of PW 1 – Criminal Procedure Code, 1973, S. 313

B. Criminal Procedure Code, 1973 – Ss. 433 and 433-A – Remission/Commutation powers of executive – Reiterated, for adequate reasons, it is for the said authorities to exercise their power in an appropriate case – Moreover, when death sentence is commuted to imprisonment for life by the appellate court, the Government concerned is permitted to exercise its executive power of remission only cautiously, taking note of the gravity of the offence – Thus, life imprisonment means imprisonment for whole of life subject to the remission power, and no life convict can claim the right to be released automatically upon lapse of 14 yrs of incarceration – Constitution of India, Arts. 72 and 161

C. Penal Code, 1860 – Ss. 376 and 302 – Rape and murder – Medical evidence vis-à-vis oral evidence – Appreciation of – Vaginal smear – Injuries noted by PW 9 support prosecution story though he had noted that there was no sign of injury on genital organs of deceased – Overwhelming materials placed on record by prosecution – Courts below rightly observed that there was no reason to disbelieve PW 1 (labourer working on appellant-accused' farm) and corroborative evidence was led in by prosecution, particularly, evidence of PWs 1,2 and 9 as well as statement of co-villagers – Conclusion arrived at by trial court and affirmed by High Court regarding death of deceased due to rape and murder by appellant, affirmed.

HIGH COURT CITATIONS CIVIL CASES

(2013) 8 MLJ 59

Balagopal (died) and Ors

Vs

Vijayakumar and Ors

Succession Laws – Partition – Persons entitled to share in partition – Legitimate Children – Hindu Marriage Act, Section 16 – Suit filed by Plaintiff/Appellant for share in suit property owned by plaintiff's father – Respondents/Defendants 1 and 2 claimed to be legitimate children of plaintiff's father – Witnesses and Mortgage deed executed by mother of 1st and 2nd Respondents produced as evidence – Trial Court held Respondents 1 and 2 not born through lawful marriage, Plaintiff entitled to 1/6th share - Appeal – Whether Respondents 1 and 2 be considered as legitimate children of plaintiff's father – Whether Trial Court right in granting preliminary decree in respect of 1/6th share instead of ¼ share – Held, difference exists in year of marriage as stated in written statement and evidence of prosecution witness – In mortgage deed, mother of Respondents 1 and 2 did not state that she married Plaintiff's father after death of her first husband – Non-examination of mother of Respondents 1 and 2 lead to conclusion that examining her would go against interest of Respondents 1 and 2 – Marriage between Plaintiff's father and 1st and 2nd Respondents' mother not proved – When there was no legal marriage Respondents 1 and 2 cannot be considered legitimate children of Plaintiff's father – As Respondents 1 and 2 cannot be considered legitimate children of plaintiff's father – As Respondents 1 and 2 not legitimate children, they are not entitled to claim any share in suit property – Trial Court should have granted 1/4th share in favour of Plaintiff and erred in granting 1/6th share – Appeal partly allowed.

2014 (1) CTC 79

T.M. Durairaj

Vs

S. Arulprakash

Code of Civil Procedure, 1908 (5 of 1908), order 8, Rule 6-A – Counter-Claim – Filing of Counter-claim after commencement of Trial – Effect thereof – Counter-claim cannot be filed once recording of evidence has commenced – Provision for Counter-claim is to avoid plurality of proceedings – Counter-claim was filed after commencement of Claim by way of additional Written Statement – Counter-claim cannot be filed belatedly and Law of Limitation squarely applies to Counter-claim – Order of Trial Court refusing to entertain Counter-claim in form of additional Written Statement does not suffer from any illegality.

2013 – 4 – L.W. 107

Harikrishnan Daga (Deceased) Rep. by his LRs 1. Mrs. Nirmala Daga 2. Vaibhav Daga

Vs

Loknath Rao, Proprietor, Udipi Hotel Sri Ganesh Bhavan, No. 11 Hanuman Koil Street,

Tamil Nadu Buildings (Lease and Rent Control) Act (1960), Section 14(1), (2)/ Demolition and reconstruction, affidavit of undertaking, by landlord, when to be filed, Section 14(1) (b), directory, subsequent events, taking note of, to order eviction, scope of.

RCOP filed on grounds of willful default, act of waste, act of nuisance, sub-letting and demolition and reconstruction was allowed only on the ground of demolition and reconstruction – Appellate Authority dismissed the eviction petition.

Condition of the building at every stage either before or after filing of the RCOP, is important – Subsequent developments in some cases, more important than the original pleadings, especially while considering the application under Section 14(1) (b).

Crumbling and falling down of portion of the second floor over the roof of the first floor – Effect of – Whether can be taken note of.

Statutory authority had issued a notice of demolition of the building and also threatened the landlord to face penal consequences if he does not demolish – Law presumes building is in bad shape and requires demolition, when the eviction is sought for under demolition and reconstruction.

Filing of an undertaking by landlord, before passing an order of eviction – No condition precedent for filing an application.

Requirement to furnish undertaking would arise only when the Rent Controller is satisfied with the bonafide requirement of the landlord under Section 14(1) (b).

Undertaking if not given in the original petition, can be given at a later stage by the landlord.

An omission to give such undertaking in the original application, does not vitiate the proceedings.

Intention of legislature seeking undertaking under Section 14(2) (b) is to order repossession under Section 16, in case of failure of the landlord to adhere to the time frame action – Repossession should be the net result in case of default under Section 14(2) (b).

Requirement under Section 14(2) (b) is only directory.

When demolition is sought and repossession not possible, Effect of, Undertaking given, what is.

(2013) 8 MLJ 129

New India Assurance Company Limited and Anr

Vs

G.K. Srinivasan, (rep. by his wife Amutha as natural guardian) and Ors

Insurance Law – Accident claim – Compensation – Accident due to rash and negligent driving of driver of insured vehicle after which injured victim living in vegetative state of life – Claim made by 1st Respondent/injured victim represented by wife – Tribunal awarded compensation – Questioning quantum of compensation, Insurance Company filed appeal – Seeking enhancement of compensation, injured victim filed appeal – Whether compensation awarded by Tribunal holding Insurance Company liable to pay compensation was justified – Held, victim produced before Tribunal in wheel chair, not in position to answer questions posed – Victim living vegetative state of life – Tribunal rightly fixed disability suffered by victim as 100% - No tangible evidence to prove income of injured victim – Sum fixed by Tribunal as monthly income on higher side – Correct multiplier to be adopted is 16 – Injured victim needs assistance of attendant throughout life – Sum awarded by Tribunal under head of attendant

charges and extra nourishment enhanced – Total compensation awarded reduced – Appeal by Insurance Company partly allowed – Appeal by 1st Respondent/claimant dismissed.

(2013) 8 MLJ 142

Balasubramania Nainar (Deceased) and Ors
Vs
Ashok Kumar and Ors

- (A) Property Law – Partition – Trust Property – As per Partition between Plaintiff and his uncle/father of 1st Defendant, one portion of property kept common – Out of income from common property, suit properties purchased for constructing a school – Trust deed for purpose of running school executed by Plaintiff and his uncle – As buildings became dilapidated, school taken over by Government – Area kept by school remained vacant which is suit property – 1st Defendant plotted suit property, sold it to other Defendants – Suit for partition of half share in schedule properties filed by Plaintiff – Suit decreed in favour of defendants – Appeal – Whether suit for partition maintainable having regard to fact that Trust was created in respect of schedule property – Held, Plaintiff and 1st Defendant's father executed Trust Deed for the purpose of running a school for which schedule property was dedicated – As per schedule, property mentioned in suit becomes trust property – If suit property is Trust property, suit for partition by Plaintiff treating same as his separate property not maintainable – Appeal dismissed.
- (B) Property Law – Title – Ouster and denial – Whether Trial Court right in holding that 1st Defendant proved ouster and proved that Plaintiff by not participating in enjoyment of schedule property waived his right – Held, when property owned by two persons, claim of one person to be absolute owner by ouster, to be proved by something more than mere non-participation in enjoyment of property by other co-owner – Denial by person who claims to be absolute owner must also be proved – Ouster and denial must be to knowledge of other co owner – No evidence on fact that 1st Defendant denied title of Plaintiff in respect of suit property – Trial Court not right in holding that 1st Defendant proved ouster and proved that Plaintiff by not participating in enjoyment of schedule property waived his right.

2014 (1) CTC 188

Karthik V.R. Thondaiman and Anr
Vs
Rajagopala Thodaiman and Ors

Hindu Law – Suit for Partition – Coparcenary Property – Plaintiff filed Suit for Partition claiming Partition of Joint Family properties against other Coparceners – Right of Coparcener by birth – Case of Plaintiff that Suit property was originally owned by his grandfather and he died intestate – Suit property inherited by Plaintiff's father along with other Coparceners – Claim of Plaintiff that after demise of his father as Coparcener of Joint Family he is entitled for partition – Defendant has contended that Joint Family property was partitioned by virtue of Family Arrangement and Partition List was also recorded - Joint Family property was partitioned among Coparceners of property and same was acted upon – Plaintiff cannot ignore Family Arrangement and Partition taken place among members of Joint Family – Suit property loses status of Joint Family property – Plaintiff himself has executed some Sale Deeds evidencing and recognizing Family Arrangement and Partition – Plaintiff stopped from claiming Partition of Joint Family property.

2014 -1 – L.W. 239

P. Perumal (died) Rep. by its LRs. And Ors

Vs

V. Arun Prasad

Pondicherry Buildings Lease and Rent Control Act (1969), Section 10(3A) (a) (i) and 14(1)(b)/Eviction sought on ground of personal occupation – Landlord in possession of 1st floor premises – If the need is for doing business, then, Section 10(3A)(a)(i) will not apply – Landlord working as a Village Administrative Officer, whether could carry on any business when he is under the services of the State Government.

Building is more than 50 years old – Distinction between a simple photo copy and photo copy which has been marked after verifying with the original, by a Court officer.

(2013) 8 MLJ 385

**Mythili Priya Ors
Vs
Saminathan and Ors**

- (A) **Motor Vehicles – Accident claims – Liability – Deceased hit by 2nd Respondent/Transport Corporation vehicle – Vehicle in which deceased travelled, insured with 5th Respondent – 5th Respondent/Insurance company alleged that accident occurred due to negligence of 2nd Respondent alone, and that insurance company not liable to pay compensation – Tribunal held that accident was due to collision of both vehicles and fastened liability at equal ratio on both vehicles – Whether Tribunal erred in fixing negligence and liability equally on driver of bus and other vehicle on assumption that accident was head on collision – Held, eye witness stated that accident occurred due to collision of both vehicles in the middle of the road – Respondent not produced any documentary proof to rebut evidence of eye witness – Tribunal rightly held that accident was due to head on collision of both vehicles – Findings of Tribunal in respect of negligence and liability fastened upon both vehicles confirmed – Appeal filed by 2nd Respondent/Transport Corporation and 5th Respondent partly allowed and Appeal by claimants dismissed.**
- (B) **Insurance Law – Enhancement of compensation – Whether compensation awarded by Tribunal was proper – Held, monthly salary of deceased calculated based on VI pay commission by Tribunal is incorrect, same has to be considered with regard to last drawn salary – Deductions made towards personal expenses maintained – Considering age of deceased, multiplier adopted by Tribunal accepted – Compensation towards “loss of consortium” and “love and affection” enhanced – Compensation awarded by Tribunal reduced, same to be apportioned between 2nd Respondent/Transport Corporation and 5th Respondent/Insurance Company equally.**

(2013) 8 MLJ 420

**Radhakrishna Reddy (Died) and Ors
Vs
G. Ayyavoo and Ors**

- (A) **Civil Procedure – Rejection of Plaintiff – Adverse possession – Code of Civil Procedure, Order VII Rules 10, 10A and 11 – Plaintiff / Appellant filed suit for declaration that is prescribed title to suit property by adverse possession and for consequential injunction – Interim application by 7th Defendant to reject plaintiff – Trial Judge in impugned judgment allowed application and rejected plaintiff – Being aggrieved, appeal filed by Plaintiff/Appellant – Whether Lower Court was right in rejecting suit on ground of limitation – Held, when person claims adverse possession, period from which he held property adverse to knowledge of Defendants must be stated specifically – Plaintiff/Appellant has not completed 12 years prescribed for adverse possession – Plaintiff/Appellant was disposed for which relief of recovery of possession was added – Plaintiff/Appellant not entitled to claim adverse possession – Lower Court rightly rejected plaintiff – Appeal dismissed.**
- (B) **Civil Procedure – Rejection of Plaintiff – Code of Civil Procedure, Order VII Rules 10, 10A and 11 – Whether Lower court was right in rejecting plaintiff on ground that Plaintiff/Appellant abused process of Court by adding paras after suit was returned for proper presentation to proper court – Held, plaintiff represented with amended averments must be treated to be fresh plaintiff subject to limitation, pecuniary jurisdiction – Plaintiff cannot be dismissed on ground of amendments which did not find place in original plaintiff – By amending pleadings while representing plaintiff, Court can only treat plaintiff as fresh and cannot reject the same holding that Plaintiff/Appellant tampered with Court records – Lower Court wrong to reject plaintiff on ground of abuse of process of law.**

(2013) 8 MLJ 631

Khaja Mohideen and Anr
Vs
M. Mohammed Saliha (died) and Ors

Partnership and Joint Ventures – Property of Partnership firm – Partition – Indian Partnership Act, Section 14 – After dissolution of partnership firm, legal heirs of partners and existing partners entered into registered partition deed - One partner allotted A Schedule properties – B Schedule properties allotted to 1st Defendant and 7 others including Plaintiffs – Plaintiffs alleged that 1st Defendant who sold machineries under ‘B’ Schedule of partition deed to 7th Defendant, had no right to sell the same and that 1st Defendant was bound to account for sale proceeds – 1st Defendant denied allegation, claimed that items sold were purchased with his own funds – Trial Court dismissed suit for partition and separate possession, refused to grant partition as Plaintiffs were not shown as shares in properties – Appeal – Whether 1st Defendant allowed his properties to be treated as properties of partnership firm and his conduct attracts ingredients of provisions of Partnership Act – Whether Plaintiffs are entitled to partition – Held, through partition deed, Plaintiffs and 1st Defendant and Others got equal shares in properties – In partition deed, present suit properties come under ‘B’ Schedule to which 8 persons (including 1st Defendant and Plaintiffs) are absolutely entitled – 1st Defendant consciously participated in partition and accepted suit properties to be partitioned, he is stopped from contending contra to document – Plaintiffs entitled to 3/8th share in suit properties – Impugned judgment of Trial Court set aside – Appeal suit allowed.

HIGH COURT CITATIONS CRIMINAL CASES

2014 (1) CTC 289

K. Ramaraj

Vs

State, by Inspector of Police, CBCID, Guindy Estate, Chennai.

Evidence Act, 1872 (1 of 1872), Section 22 & 45 – Ante-timing of Complaint – Effect of impact of – Medical evidence establishing gunshot injury to head and death following scene – Injuries not seriously challenged – Held, death was caused by gunshot injuries rejecting defence theory of fall from tree.

Evidence Act, 1872 (1 of 1872), Sections 3,8,14 & 54 – Bad Character of Accused – Not relevant fact in Criminal proceeding against Accused – Motive behind crime is relevant fact under Section 8 - Mental makeup of Accused is relevant fact as general state of mind of person is relevant in reference to particular matter in question – Accused said to be intolerant towards activities of urchins near his place of residence – Evidence of Witness deposing on such general state of mind, relevant.

Evidence Act, 1872 (1 of 1872), Sections 3 & 6 – Several Witnesses deposed that they heard loud noise as if tyre had burst – Hearing or seeing something is fact as set out in Illustration (b) to Section 3 – Fact in issue in such case is not hearing noise or fall of deceased but fact in issue is whether deceased fell down because somebody opened fire at him – Hearing of noise, fall of deceased and 3 persons, who accompanied deceased, running away are transactions that are so connected with deceased falling down and are relevant as per Section 6 of Evidence Act.

Evidence Act, 1872 (1 of 1872), Section 7 – Observation Mahazar noted existence of 4 feet Compound Wall and fence over it, dent in inner side of Compound Wall and blood-stained earth 5 feet from Compound Wall – Observation Mahazar submitted to Court next day after occurrence Observations under Observation Mahazar are relevant – Ballistic Experts notice dent in Compound Wall – Fact that shot was fired from inside building, proved.

Evidence Act, 1872 (1 of 1872), Section 3 – Appreciation of Evidence – Chaff and Grain Theory – Applicability of falsus in uno, falsus in omnibus – Witness, who was present with deceased while deceased was fired at, deposed that Accused had, after occurrence of event, covered earth with dry leaves to conceal evidence – Maxim falsus in uno, falsus in omnibus is not applicable to Indian conditions – Chaff and Grain Theory applied and one portion of evidence of witness accepted and other portion rejected.

Evidence Act, 1872 (1 of 1872), Section 42 – Recovery of Weapon – Accused disclosed that he had thrown Rifle used by him for firing in participated in retrieval of weapon – Accepted – Discrepancy in sequence in photographs noted – Conduct of Investigating Officer in attempting to make truth look true, disapproved – Recovery, held, in accordance with Section 27 of Evidence Act.

Identification of Prisoners Act, 1920 (33 of 1920), Section 5 – Police Standing Orders, Order 646 – Source of power to take Photograph of Accused during investigation derived under Identification of Prisoners Act and not from Cr.P.C. – Photographing of under-trial prisoners is generally forbidden.

Evidence Act, 1872 (1 of 1872), Section 7 - Observation Mahazar reenacting crime scene is inadmissible in evidence – Observation Mahazar relevant only if it states what Police Officer sees and notes in place of Occurrence.

2014 (1) CTC 174

**Sterling Holiday Resorts (India) Limited., Chennai – 600 018 and Ors
Vs**

**Murli Khemchand, Managing Partner, P.M. Associates, 70/A, IVY Banks, Upper Wood, House Road,
Udhagamandalam**

Code of Criminal Procedure, 1973 (2 of 1974), Section 482 – Indian Penal Code, 1860 (45 of 1860), Sections 447 & 380 – Offence of Theft and Trespass – Complainant purchased movable and immovable properties in auction conducted under SARFAESI Act – Such property originally belonged to Accused and auction was conducted pursuant to default committed by Accused – After Sale Certificate, Accused alleged to have removed movables sold as aforesaid – Complainant admittedly was not handed over possession of property – Unless Accused trespassed into land in possession of Complainant and property taken away from possession of Complainant, Offences under Sections 447 & 380 of IPC will not be attracted – Complainant should establish that he is in actual physical possession of property in question and not right to have property – Concept of symbolic possession cannot be imported into definition of ‘theft’ – Private Complaint is misconceived and is abuse of process of Court – Proceedings initiated by Complainants is quashed.

2013 4 MLJ (CrI) 136

**P. Gandhimathi
Vs**

State, Inspector of Police , Chennai.

Criminal Procedure – Custody of property pending trial – Stolen property –Disputed ownership – Code of Criminal procedure, 1973, Section 451 – Alleged that in confession statement, accused admitted that chains snatched were made as ingot by purchaser of stolen chains – Application filed under Section 451 for return of case property / gold ingot – Magistrate dismissed petition as case property produced before Court did not tally with property alleged to have been stolen and no document was produced to establish that complainant was owner of property – Revision petition filed challenging impugned order – Whether Magistrate erred in dismissing petition on ground that there is no proof of ownership of property – Held, movables were purchased long time back, cannot expect full proof documents – Prima facie proof available before Court that, immediately after chain was snatched, defacto complainant made complaint before police that gold chains were stolen – Accused made confessional statement and admitted that chain stolen was made as ingot – Court erred in dismissing petition – Impugned order set aside – Directions issued – Revision allowed.

(2013) 4 MLJ (CrI) 156

**Nagaraj
Vs**

State rep. by its Inspector of Police, Udumalpet Town Police Sation, Udumalpet, Thiruppur District

Criminal Law – Right of defence – Constitution of India, 1950, Articles 21 and 22(1) – Code of Criminal Procedure, 1973, Sections 303 and 311 – Petitioner/Accused prosecuted for offences under Sections 294(b) and 376(2) (f) of IPC and Section 5(c)(m) r/w Section 6 of Protection of Child from Sexual Offences Act – Petitioner/Accused not represented by lawyer – Witnesses were not cross-examined by Petitioner/Accused’s Lawyer – Trial Court dismissed Petitioner/Accused’s petitioner filed under Section 311 of Cr.P.C – Impugned order of Trial Court challenged – Whether Petitioner entitled to be defended by legal practitioner – Held, hearing accused persons without assistance of lawyer is not giving him real opportunity – Petitioner being prosecuted for having alleged to have committed serious offences exclusively triable by Court by of sessions – Trial Court has not given any reasonable opportunity to Petitioner to defend his case – Impugned order passed by Principal Sessions Judge shows that attempt made by Petitioner’s counsel to recall witnesses to cross examine them – Petitioner not been offered real/reasonable opportunity to defend himself by having assistance of legal practitioner – Infraction of Petitioner’s right of defence guaranteed to him under Section 303 Cr.P.C r/w Articles 21 and 22(1) – Order of Trial Court not in accordance with law – Trial Judge directed to give opportunity to Petitioner’s counsel to cross examine witnesses – Criminal original petition disposed of

2013 4 MLJ (CrI) 237

**Somalaiappan
Vs
Palanisamy and Ors**

(A) Criminal Procedure – Prosecution – Appointment of Advocate – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST (PA) Act), Sections 15 and 3(i) (x) – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, Rule 4(1) and 4(5) – Indian Penal Code, 1860, Sections 147 and 323 – Respondents 1 to 11 prosecuted by Special Judge for offences under IPC and SC/ST (PA) Act, prosecution for the same conducted by Special Public Prosecutor – Petitioner filed petition to engage Senior Advocate to conduct prosecution, no action taken by Magistrate – Whether Petitioner entitled to engage Senior Advocate to conduct prosecution – Held, under Rule 4(5), if District Magistrate or Sub Divisional Magistrate deem it necessary or victim of atrocity desires that Senior Advocate is required to be engaged to conduct prosecution case in Special Court, then District Magistrate shall engage such Advocate – Rule 4(5) is independent of appointments envisaged in Section 15 and Rule 4(1) – District Collector cannot avoid request of victim of atrocity to engage Senior Advocate – District Magistrate directed to engage Senior Advocate to conduct prosecution in special case – Petition disposed of.

(B) Interpretation of Statutes – Rule of literal interpretation – Rule 4(5) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules is plain, simple and admits of difficulty or ambiguity in understanding it - There cannot be any addition or subtraction to language of law employed in plain rule.

(C) Interpretation of Statutes – Section 4(2) incorporates principle that special will prevail over general unless stated – Investigation, inquiry, prosecution and trial of offences under SC/ST (PA) Act shall be prescribed under the Act and Rules framed only in absence of provisions to meet contingency not provided either in SC/ST (PA) Act and Rules framed thereunder, provisions of Criminal Procedure Code will apply.

2013 4 MLJ (CrI) 246

**A.K. Balasubramaniam
Vs
District Revenue Officer, Erode District, Erode and Anr**

Criminal Procedure – Jurisdiction of Magistrate – Prohibitive Order – Breach of peace – Code of Criminal Procedure, 1973, Section 147 – District Revenue Officer exercising powers under Section 147 passed prohibitive order, directing Revision Petitioner not to prevent 2nd Respondent and public from using disputed panchayat road -Criminal Revision – Whether prohibitive order passed by Executive Magistrate is without availability of jurisdictional facts Held, issue regarding title and possession which are of civil nature to be decided only by civil court – Only under exceptional circumstances of apprehension of breach of peace, Executive Magistrates conferred with powers in limited way to pass orders to prevent breach of peace – Perusal of impugned order reveals neither existence of emergent situation likely to cause breach of peace nor satisfaction of grounds providing for such apprehension – There is jurisdictional obstruction to Magistrate to exercise powers under Section 147 – Jurisdiction of civil court cannot be usurped by Executive Magistrate in garb of exercising powers under Section 147 – Order passed without availability of jurisdictional facts, set aside - Criminal revision case allowed.

(2013) 4 MLJ (CrI) 513

**Madesh
Vs
State by The Inspector of Police, Nagavalli Police Station, Salem District**

Criminal Laws – Murder – Unsoundness of mind – Indian Penal Code (45 of 1860), Sections 84, 302 and 309 – Indian Evidence Act, 1872, Section 105 – Allegation that after stabbing own child, Appellant attempted to slit his throat and commit suicide – Conviction and sentence – Appeal on plea of insanity – Whether act of Appellant/accused falls within scope of Section 84 of IPC so as to hold that he had no mens rea and that he

committed act by reason of unsoundness of mind without knowing nature of act – Held, burden of proving existence of circumstances bringing accused within general exceptions is on accused as adumbrated in Section 105 of Evidence Act – Mental condition of Appellant examined at various stage by competent Specialists – P.W.8/doctor gave evidence that Appellant is in sound state of mental health – P.W.15/Psychiatrist and medical records from Institute of Mental Health opined that Appellant suffering from depression and not from unsoundness of mind – Fact that after stabbing child, Appellant attempted to slit his throat and commit suicide belies contention of not being in mentally fit condition while committing murder – Conviction and sentence confirmed – Appeal dismissed.

(2013) 4 MLJ (Crl) 546

N. Jagannathan and Ors
Vs

State rep. by the Inspector of Police, D6, Anna Square Police Station, Chennai and Ors

- (A) Criminal Procedure – Abatement of Proceedings – Protest petition – Code of Criminal Procedure, 1973 (2 of 1974) – Allegation that Petitioner/accused misappropriated money – Based on complaint, enquiry conducted and case closed as mistake of fact – Protest Petition by defacto complainant – Death of defacto complainant – Co-brother of complainant filed substitute application along with second Protest Petition – Magistrate issued notice in substitution application to appear and file counter – Action of Magistrate issuing notice to Petitioner/accused, challenged in Criminal Revision – Subsequently, Joint Commissioner of Police advised to re-open case – After investigation, Respondent closed case as mistake of fact – DGP issued impugned memorandum for re-opening case of further investigation – Criminal Original Petition to quash order of DGP for re-opening case – Whether on death of complainant, the proceedings/ prosecution initiated by him, automatically abates or proceedings can be allowed to be continued by representative of complainant – Held, under exceptional circumstances, second Protest Petition maintainable – Trying to allow complaint to continue by proper and fit complainant – Dismissal of first protest petition would not operate as a bar for second protest petition being considered – Maintainability in terms of limitation and merits to be considered by Magistrate – When opportunity adduced by issuance of notice, open to petitioners/accused to contest – Revision petition challenging issuance of notice ordered by Magistrate dismissed.
- (B) Criminal Procedure – Re-investigation – Code of Criminal Procedure, 1973 (2 of 1974), Section 173(2) – Under what circumstances, Investigating Agency is competent to order/conduct fresh/de novo/re-investigation, where already a final report is filed under Section 173(2) Cr.P.C. – Whether it is imperative for official ordering re-investigation to give a specific finding when regard to fact of investigation already conducted – Whether further investigation can be ordered in absence of any new facts or when investigation has to be carried out from a different angle or when certain aspect of matter having been omitted to be considered – Held, no investigation agency empowered to conduct fresh or de novo or re-investigation for offence, for which, report already filed in terms of Section 173(2) Cr.P.C – Order passed by D.G.P. did not state that fresh facts were brought to knowledge of investigating agency – No explanation as to aspect on which further investigation required – No explanation as to whether new facts came to notice and that whether investigation be carried out from different angle or whether certain matter omitted to be considered – Order passed by D.G.P. ordering re-investigation in name of ‘further investigation’ cannot be upheld – Original Petition allowed.

(2013) 4 MLJ (Crl) 555

Nagammal
Vs

State of Puducherry, rep. by its Secretary, Department of Home, Puducherry State and Ors

Criminal Procedure – Transfer of prisoner – Transfer of Prisoners Act, 1950, Section 3 – Petitioner’s son convicted and sentenced to undergo life imprisonment – Writ petition to direct State not to transfer petitioner’s son, life convict to any place outside State – Whether State Government is empowered to transfer a prisoner to another State – Held, one State entitled to transfer prisoners from its prison to another prison in another State with consent

of transferee State – Government of transferee State must give its consent for such transfer – Section 3 permits transfer notwithstanding distance involved between two prisons – Power to transfer prisoners to other States to be exercised in larger public interest – State to consider case of prisoners individually and transfer not to be as matter of course – State justified in transferring troublemaking prisoners to prisons outside State – Proposed transfer not mala fide – Petition dismissed.

(2013) 4 MLJ (Crl) 632

P.G. Sundararaj and Ors

Vs

V. Arul

Criminal Procedure – Discharge – Code of Criminal Procedure, 1973 (2 of 1974), Section 227 – Complaint filed alleging that Petitioners/accused came with deadly weapons and demolished compound wall of complainant – Complainant claimed title and ownership and for possession of property – Application for discharging accused from charges – Trial Court dismissed discharge petition stating that averments in complaint and sworn statement of witnesses make out prima facie case – Criminal Revision Petition – Whether accused entitled to be discharged from charges leveled – Held, presumption is in favour of innocence of accused until contrary proved – Trial Court erroneously proceeded as if until ownership proved, accused shall be presumed to have committed act of mischief – Finding of trial Court merely on basis of pleadings, averments and sworn statement of witnesses legally not sustainable – Until finality reached in Civil Suit, respondent cannot maintain any complaint against accused for acts alleged against them – Cannot be two parallel proceedings for same cause of action – Dispute of mere civil nature, no criminal flavor to be attached to it – No sufficient ground made out for proceeding against accused – Accused discharged from charges leveled against them – Criminal revision allowed.
