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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

2014 (3) CTC 35

V. Kala Bharathi & Ors

Vs

Oriental Insurance Co. Ltd., Br. Chitoor

Date of Judgment : 1.4.2014

Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rule 1 – Modes of paying Money under Decree – Rule of Appropriation towards Interest and Principal, discussed – If Decree contains a Clause, specifying manner in which money deposited to be appropriated, then appropriation shall be made in that direction – In absence of such specific direction, amount deposited shall be appropriated first towards Interest, then towards Cost and subsequently towards principal due under Decree.

Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rule 1 – Modes of paying Money under Decree in a Motor Accident Claim – Award was directed against Insurance Company to pay Rs.98,04,500/- together with Interest at 12% p.a. – On Appeal, Award amount was reduced to Rs.56,40,000/- - Insurance Company deposited Rs.23,27,635/- claiming to be full satisfaction of Award – Executing Court appropriated amount first towards interest and excess towards Principal – Held, if amount deposited falls short of Decree amount, Decree-holder is entitled to appropriate first towards Interest, then towards Costs and thereafter towards Principal – Rule of Appropriation discussed.

2014 (3) CTC 174

Fahim Ahmad & Ors

Vs

United India Insurance Co. Ltd. & Ors

Date of Judgment : 25.3.2014

Motor Vehicles Act, 1988 (59 of 1988), Sections 2(14) & 149(2)(a) – Pay and Recover, when applicable – Fatal accident – At time of accident Trolley was attached with a Tractor to carry sand – Insurance Company pleaded violation of Policy conditions – Merely because vehicle was carrying sand would not mean that Tractor was being used for commercial purpose resulting in breach of condition – There was nothing on record to show that Tractor was used for commercial purpose or purpose other than Agricultural purpose, i.e., for hire or reward – It is mandatory for Insurance Company to prove by positive evidence and mere pleading is not sufficient – Principles of Pay and Recover, not applicable – Insurance Company, held, liable.

(2014) 3 MLJ 471 (SC)

Purnya Kala Devi

Vs

State of Assam and Anr

Date of Judgment : 7.4.2014

Motor Vehicles – Compensation – Liability – Assam Requisition and Control of Vehicles Act, 1968, Section 5(1) - Motor Vehicles Act, 1988, Sections 2(30) and 146 – Appellant/Claimant's husband died in road accident by speeding bus belonging to registered owner – Vehicle was not insured and was under requisition of 1st Respondent/State at relevant time – Appellant claimed compensation against registered owner and State – Tribunal directed registered owner to pay compensation with interest and absolved Respondents from liability – On appeal,

High Court enhanced compensation and held that State cannot be held liable to pay compensation under 1988 Act, because liability to pay compensation under 1988 Act is upon registered owner – Appeal – Whether State liable to pay compensation under provisions of 1968 Act, as offending vehicle was under requisition of State at relevant time – Held, Section 5(1) of 1968 Act provides that vehicle may be released from requisition after service of notice in writing on owner to take delivery of vehicle and no liability for compensation shall lie with officer or authority – State failed to place material to prove that delivery of vehicle effected at relevant time in terms of Section 5(1) of 1968 Act – High Court, without adverting to Section 5 of 1968 Act, merely on basis of definition of ‘owner’ in Section 2(30) of 1988 Act, mulcted award payable by owner of vehicle – Tribunal and High Court failed to appreciate that offending vehicle was under requisition of State at relevant time – State also violated statutory provisions of 1988 Act that no person shall use or cause or allow other person to use motor vehicle in public place without insurance policy, same was not appreciated by High Court – Appellant entitled to receive specific sum as fixed by High Court with interest from date of claim petition till date of deposit and same payable by State – Appeal allowed.

(2014) 4 MLJ 479 (SC)

Coffee Board

Vs

Ramesh Exports Pvt.Ltd

Date of Judgment : 9.5.2014

Civil Procedure – Suit – Omission of part claim – Subsequent suit – validity – Code of Civil Procedure, 1908, Order 2, Rule 2 – Appellant/Board issued Circular regarding Coffee Export stamp system for export of coffee to members of International Coffee Organization (ICO) – Respondent/registered exporter shipped coffee to members of ICO without valid ICO certificate – Later, Respondent requested Board for ICO stamps and for issue of necessary permit to re-import coffee already sent – Board issued show cause notice alleging that Respondent committed breach of terms of ICO agreement – Respondent replied to notice, also filed two suits against Board for two separate claims – Trial Court decreed earlier suit, but dismissed subsequent one – Appeals filed by both Board and Respondent partly allowed – Appeal – Whether subsequent suit filed by Respondent barred by Order 2 Rule 2, since relief claimed in subsequent suit could have been claimed in earlier suit – Held, if different claims arise out of same cause of action, Plaintiff must place all his claims in one suit – Order 2, Rule 2 bars Plaintiff from omitting one part of claim and raising same in subsequent suit – Two separate reliefs claimed by Respondent dependent on same fact being omission of duty by Appellant – No specific pleadings differentiating same – Claims should have been clubbed together in same suit – Reliefs claimed separately in two suits negated principle of Order 2, Rule 2 – Subsequent suit is barred – Trial Court order upheld – Appeal allowed.

(2014) 3 MLJ 595 (SC)

National Legal Services Authority

Vs

Union of India and Ors

Date of Judgment : 15.4.2014

A. Constitution – Gender Equality – Third Gender – Recognition of - Constitution of India, 1950, Articles 14, 15, 16, 19 and 21 – Petition for recognition of gender identity of Hijras/Eunuchs, a transgender community as third gender, over and above male and female – Allegation that non-recognition of identity of transgender as third gender denies right of equality before law and equal protection of law – Transdender faces discrimination to contest election, in right to vote, employment, get licences, etc. and treated as outcast and untouchable – Whether transgender (TG), who are neither males nor females, have a right to be identified and categorized as “third gender” – Held, Hijras are identified as persons of third gender and not identified either as male or female – Gender identity refers to person’s internal sense of being male, female or transgender – Hijras separate from both male and female genders and are neither man nor woman, but “third gender” – Hijras belong to distinct socio-religious and cultural group and to be considered as “third gender” apart from male and female – Determination of gender to be decided by person concerned – Gender identity integral to dignity of individual and is at core of “personal autonomy” and

“self-determination” – Indian law on whole recognize paradigm of binary genders of male and female, based on one’s biological sex – Non-recognition of identity of Hijras in various legislations denies equal protection of law – Articles 14, 15, 16, 19 and 21 are “gender neutral”, take within sweep Hijras and are not limited to males or females – Discrimination on basis of sexual orientation or gender identity has effect of nullifying or transposing equality by law or equal protection of laws – Hijras/Eunuchs, apart from binary gender, to be treated as “third gender” – Petitions allowed.

B. Constitution – Gender Equality – Gender Identity – Discrimination – Constitution of India, 1950, Articles 14, 15, 16, 19 and 21 – Whether Articles 14, 15, 16 19 and 21 of the Constitution recognize gender equality and gender identity of third gender – Held, treatment of equals as unequals or unequals as equals, violative of basic structure of Constitution – Article 14 does not restrict word ‘person’ and its application only to male or female – Hijras who are neither male/female – fall within expression ‘person’ – Non-recognition of identity of Hijras denies equal protection of law – Hijras face discrimination in access to public spaces – Discrimination in access to public spaces – Discrimination on ground of sexual orientation or gender identity impairs Article 14 – Expression ‘sex’ used in Articles 15 and 16 not just limited to biological sex of male or female, but intended to include Hijras – TGs not afforded special provisions under Article 15(4) for advancement of socially and educationally backward classes (SEBC), are entitled and eligible to get benefits of SEBC – TGs denied rights under Article 16(2) and discriminated in employment or office under State on ground of sex – TGs entitled to reservation in appointment under Article 16(4) – State bound to take affirmative action to give due representation in public services – Article 19(1)(a) includes one’s right to expression of self-identified gender – Gender identity lies at core of one’s personal identity, gender expression and presentation and to be protected under Article 19(1)(a) – Legal recognition of gender identity is part of right to dignity and freedom guaranteed under Constitution.

As Per A.K. SIKRI, J.:

A. Constitution – Gender Identity – Third Gender – Transgender – Right to equality - Constitution of India, 1950, Articles 14 and 21 – Whether transgender (TG), who are neither males nor females, have a right to be identified and categorized as a “third gender – Held, gender identification becomes very essential component required for enjoying civil rights – Only with recognition as ‘third gender’ many rights like right to vote, right to own property, right to marry, etc. would be available more meaningfully – Society and law, completely ignored basic human right of TGs to give appropriate sex categorization – Treating TG as male or female violates human rights and is denial of constitutional rights – To recognize TGs as ‘third gender’ in law is recognition of right to equality in Article 14 and right to life with dignity under Article 21 – Rule of law demands protection of individual human rights – TG even though insignificant in numbers, are still human beings and have every right to enjoy human rights – By recognizing TGs as third gender, rule of law is upheld – TG to be ‘third gender’ for purposes of safeguarding and enforcing appropriately, rights guaranteed under Constitution.

B. Constitution – Gender Identity – Whether a person who is born as a male with predominantly female orientation (or vice-versa), has a right to get himself to be recognized as a female as per his choice more so, when such a person after having undergone operational procedure, changes his/her sex as well – Held, person born with particular sex and forced to grow up identifying with that sex, and not sex that his/her psychological behavior identifies with, faces innumerable obstacles in growing up – Even in absence of statutory regime in India, person has constitutional right to get recognition as male or female after Sex Re-Assignment Surgery, which was not only his/her gender characteristic but has become his/her physical form as well.

SUPREME COURT CITATIONS CRIMINAL CASES

(2014) 3 MLJ (CrI) 30 (SC)

Chandra Prakash

Vs

State of Rajasthan

Date of Judgment : 9.5.2014

A. Criminal Laws - Conspiracy – Explosives – Prevention of Damage to Public Property Act, 1984, Sections 3 and 4 – Explosive Act, 1884, Section 9B – Explosive Substances Act, 1908, Sections 3, 4, 5 r/w Section 6 – Indian Penal Code, 1860, Sections 120B, 307, 118, 435 and 456 – Blast of explosives in stadium – Allegation that 4th Appellant planted time bomb, same duly recovered and proved from testimonies of witnesses – 2nd and 3rd Appellants helped 4th Appellant in commission of offence, met and hatched conspiracy – Allegation that PW-1/Approver and 4th Appellant brought explosives from 1st Appellant – Alleged that 1st Appellant opened godown from where ammonium nitrate recovered and utilized for preparation of explosive substance – Appellants/Accused arrested – Appeals – Whether sentence and conviction of Appellants justified – Held, test identification parade held within period of three weeks from date of arrest, no unusual delay – PW-1/Approver clearly deposed about conspiracy – Approver implicated himself in crime – No effort by Approver to give exculpatory statement – From evidence of Approver and information under Section 27 of Evidence Act, concluded that two time bombs implanted by 4th Appellant – Huge quantity of ammonium nitrate seized along with other items, same sufficient to prepare bomb – Possession of articles in large quantity gives credence that possession was conscious and intended to be used for blast – Participation of accused persons, purchase of ammonium nitrate and other items, carrying of boxes cumulatively show conspiracy to commit blast – Grounds assailing judgment of conviction and sentence have no substantiality, same rejected – Appeals dismissed.

B. Criminal Procedure – Sanction to prosecute – Foreigners Act, 1946, Section 14 – Explosive Substances Act, 1908, Section 7 – 4th Appellant who was arrested, admitted of being Pakistani and no passport or visa found in his possession – Whether conviction under Section 14 of 1946 Act justified – Whether sanction given under Section 7 of 1908 Act to prosecute 4th Appellant/resident of Pakistan was correct, though Magistrate not examined as witness to prove order of sanction – Held, 4th Appellant is resident of Pakistan and had no valid document to be in India – Offence under 1946 Act proved – District Magistrate had authority to give consent for prosecution and consent was given – Trial Judge, upon scrutiny, expressed opinion that approval granted after perusal of materials – High Court observed that consent/sanction order is self-speaking and detailed – Approval/consent granted by District Magistrate in obtaining factual matrix not vitiated – Examination of District Magistrate to prove his consent not necessary.

(2014) 3 MLJ (CrI) 66 (SC)

Satish Chandra and Anr

Vs

State of M.P.

Date of Judgment : 6.5.2014

Criminal Law – Dowry Death – Cruelty – Conviction and Sentence – Validity of – Indian Penal Code, 1860, Sections 304-B and 498-A – Evidence Act, Section 32 – Deceased/Wife committed suicide by pouring kerosene and setting herself on fire – Appellant Nos.1 and 2/Husband and Mother-in-law, charged under Sections 304-B and 498-

A IPC – Statement recorded before death treated as dying declaration and case registered against accused – Trial Court convicted and sentenced both Appellants and sister of 1st Appellant under IPC – On appeal, High Court confirmed conviction of Appellants but acquitted sister – Appellants alleged that there was no demand for dowry and no cruel treatment – Appeal – Whether conviction of Appellants under Sections 498A and 304B IPC rightly recorded by Lower Courts – Whether quarrel between deceased and mother-in-law treated as satisfying condition that “soon before death she was subjected to cruelty in connection with demand for dowry” – Held, no reason to discard dying declaration since it was not in form of question and answers, as same found to be trustworthy and admissible under Section 32 – Deceased stated in letter that her mother-in-law fought regularly demanding gold – Immediate cause of committing suicide was regular fights with mother-in-law due to dowry demand – Ingredients of Section 498-A satisfied qua Appellant No. 2 as deceased subject to cruelty for unlawful demand and was driven to commit suicide – Deceased in her statement accused only mother-in-law and sister-in-law – No evidence or finding by Lower Courts that 1st Appellant ever demanded dowry – Deceased stated Appellant No. 1 innocent and at time beat her when mother-in-law asked him to, but not in connection with demand of dowry – Even before death, deceased subject to cruelty on demand of dowry, conviction of Appellant No.2 under Section 304-B also proved – Benefit of doubt given to Appellant No.1 as no act of cruelty attributed to him – Conviction of Appellant No. 2 under Sections 498-A and 304-B upheld, Appellant No.1 acquitted on both charges – Though immediate cause of suicide was fight, deceased also not happy with matrimonial life for other reasons also, same proved by letters written to her aunt – Sentence under Section 498-A maintained but under Section 304-B reduced as against Appellant No.2 – Appeal Partly allowed.

(2014) 3 MLJ (Crl) 176 (SC)

Md. Jamiluddin Nasir and Anr

Vs

State of West Bengal

Date of Judgment : 21.5.2014

A. Criminal Procedure – Death Sentence – Confirmation of – Indian Penal Code, 1860, Sections 120B, 121, 121A and 122 – Evidence Act, 1872, Sections 10 and 30 – 1st to 9th Appellants/accused arrested for attack on American Centre – 1st to 3rd Appellants and 6th to 9th Appellants convicted, but 4th and 5th Appellants acquitted – Trial Court imposed death sentence on convicts under Section 27(3) of Arms Act, also under Section 121 Code 1860 – On appeal, High Court confirmed conviction and sentence of 1st and 8th Appellants and acquitted 2nd and 3rd Appellants, while modifying conviction and sentence of 6th, 7th and 9th Appellants – Appeals by State against 6th, 7th and 9th Appellants de-tagged for want of time – Appeals by 1st and 8th Appellants – Whether death sentence on 1st and 8th Appellants for offences under Sections 121, 121A, 122 read with 120B of Code 1860 held to be appropriate punishment – Held, Magistrate recorded confessional statement in accordance with law – Confession of 1st Appellant not contradicted by eye witnesses, but corroborated – Non-recovery of weapon used for shooting at American Centre cannot be a ground to disbelieve statement contained in confession of 1st Appellant – Though conspiracy hatched in secrecy, same established by oral and documentary evidence supported by Appellant – Confession of 1st Appellant also used, while finding 8th Appellant guilty of charges leveled against him – Attack by Appellants killing and injuring police personnel proved, same constitute offences under Sections 302, 307, 333 read with 120B of Code 1860 – Offence under Sections 427, 467, 471 read with 468 read with Section 120B of Code 1860 also proved – While charges proved against Appellant are of grave in nature, imposition of death penalty not warranted in facts on record, same modified – appeals partly allowed.

B. Evidence – Confession – Code of Criminal Procedure, 1973, Section 164 and 164(4) – Whether Confessional statement of Appellant made under Section 164 free from any technical flaw in its recording, as well as procedures contemplated under provision – Held, Confession of appellant/accused was recorded by PW-97/Magistrate after compliance of ingredients set out in Section 164 Cr.P.C – Prior to recording of confession it was properly informed to Appellant that there was no necessity in law for him to make confession – It was informed to appellant that facts and details mentioned in confession may be detrimental to his interest and may land him in conviction – Before recording confession it was explained to appellant that he is not bound to make a confession – Confession of

appellant voluntarily – Appellant before confession specifically stated to magistrate that nobody including police, enticed him to make statement – Prior to day of confession Appellant was not under police custody but was in jail – Procedure to be followed while recording a confession statement has been adhered to by magistrate – No police personnel was allowed in his chambers when confession was recorded – Magistrate certified in manner required under Section 164(4) – It was established that prior to recording of confessional statement it was ensured that mindset of Appellant, his readiness to make confessional statement without any hindrance and uninfluenced by any other force including police authorities – Magistrate had exhaustively dealt with statutory prescription – No flaw in recording of said statement – Confession statement of Appellant made under Section 164 free from any technical flaw in its recording, as well as procedures contemplated under provision.

C. Arms Act – Possession of Firearms – Arms Act, 1959, Section 27(3) – Constitution of India, 1950, Articles 13, 14 and 21 – Whether charge under Section 27 (3) of Arms Act can be maintained in light of decision in State of Punjab v. Dalbir Singh – Held, Section 27(3) of Arms Act is post constitutional law and has to obey injunction of Article 13 – In view of Article 13/Part III rights, Section 27(3) of Arms Act is repugnant to Articles 14 and 21 and void, since it was enacted in clear contravention of Part III rights – Section 27(3) of Arms Act also deprives judiciary from discharging its constitutional duties of judicial review whereby it has power of using discretion in sentencing procedure – By imposing mandatory death penalty, Section 27(3) of Arms Act runs contrary to statutory safeguards which give discretion to judiciary in matter imposing death penalty – Section 27(3) of Arms Act ultra vires concept of judicial review, which is one of the basic features of Constitution – Decision in State of Punjab v. Dalbir Singh followed – Orders of Trial Court and High Court imposing punishment of death sentence against Appellants for offences under Section 27(3) of Arms Act set aside.

(2014) 4 Supreme Court Cases 704

HARYANA STATE COOPERATIVE SUPPLY AND MARKETING FEDERATION LIMITED

Vs

JAYAM TEXTILES AND ANR

Date of Judgment : 7.4.2014

Debt, Financial and Monetary Laws – Negotiable Instruments Act, 1881 – Ss.138, 140 and 142 – Dishonour of cheque – Complaint by Company – Authorisation to file complaint not produced – Defect of – Effect – Complaint dismissed solely on ground that authorization of person who signed complaint on behalf of complainant appellant Company was not filed and proved - Held, procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice – Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use – Further held, an opportunity ought to have been granted to appellant Company to place document containing authorization on record and prove in accordance with law – Judgments of courts below set aside and matter remitted to trial court with direction to conduct trial afresh taking into consideration authorization placed on record before Supreme Court – Criminal Procedure Code, 1973 – S. 460 – Civil Procedure Code, 1908 - Or. 6 R. 14 – Corporate Laws – Legal representation of company

(2014) 4 Supreme Court Cases 780

STATE OF HIMACHAL PRADESH

Vs

SUNIL KUMAR

Date of Judgment : 5.3.2014

Narcotic Drugs and Psychotropic Substances Act, 1985 – Ss. 50, 41 to 43 and 20 – Chance recovery of narcotic substance during personal/body search by police, while checking for ticketless passengers on a bus – Compliance with S.50 in such case – Not required, in view of Baldev Singh,(1999) 6 SCC 172 – Reversal of

conviction by High Court, on ground of non-compliance with S. 50, equating positive suspicion by police that accused was carrying narcotic substance aroused spontaneously due to suspicious conduct of accused, with “reason to believe” or with prior information that person concerned was carrying narcotic substance, held, was erroneous – Conviction under S. 20, restored

- Words and Phrases – “Chance recovery”, “prior information”, “reason to believe”, “suspicion” and “positive suspicion” – Meanings of – Evidence Act, 1872, Ss. 8, 14 and 15

HIGH COURT CITATIONS CIVIL CASES

2014 (3) CTC 10

Nagasamy

Vs

E.P.K. Mani @ E. Palaniappan and Anr

Date of Judgment : 17.12.2013

Code of Civil Procedure, 1908, (5 of 1908), Section 47 – Suit for Specific Performance filed by Agreement holder against Vendor and Subsequent Purchaser – Vendor had sold property to Subsequent Purchaser after executing registered Sale Agreement but before filing of Suit for Specific Performance by ignoring such Sale Agreement – Ex parte Decree passed on 29.6.2009 – Thereafter Execution Petition filed – subsequent Purchaser, instead of filing Application to set aside ex parte Decree passed on 29.6.2009 – Thereafter Execution Petition filed – Subsequent Purchaser, instead of filing Application to set aside ex parte Decree, filed Application under Section 47 contending the Decree was inexecutable as it was obtained in suppression of pre-suit arrangements between parties – Application allowed – Order challenged in Revision – First and Second Part of Section 47 are joined with the conjunction “and” cannot be read disjunctively – Any other interpretation would permit party to proceedings omitting to take plea in Written Statement, to raise any question between parties to Suit – Questions to be raised before Executing Court should be qualified by rider that same should be relating to execution, discharge or satisfaction of Decree – Such an interpretation alone shall be meaningful – Otherwise same will lead to chaotic position whereby litigant, who omits to put forth plea in Suit can go on filing Application under Section 47 raising pleas, which he ought to have raised in Suit – In addition to absence of jurisdiction, if Decree is passed in ignorance of then existing law, such Decree can be attacked as nullity and in case Decree is made inexecutable by post decree legislation, then also such decree can be challenged as inexecutable – In present case, executing Court has gone beyond scope of said provision – Subsequent purchaser did not contest Suit and allowed it to be ex parte Decree – According to him, even prior to Suit there was an understanding – Contention raised by Subsequent Purchaser is not one contemplated under Section 47 – Order of executing Court holding that Decree was inexecutable, set aside – Civil Revision Petition allowed.

(2014) 3 MLJ 62

Anjugam and Anr

Vs

K. Ramasamy Iyer and Ors

Date of Judgment : 28.1.2014

A. Partnership and Joint Ventures – Partner – Share in Partnership Firm – Appellants/ Plaintiffs and 2nd Defendant were running theatre on partnership basis – Theatre sold to third party in Court auction – 1st Defendant purchased theatre from Court auction purchaser – Allegation that as agreement was made between Plaintiffs and 1st Defendant that sale deed shall be retained by 1st Defendant and the 2nd Plaintiff shall run theatre on behalf of 1st Defendant – Later, 1st Defendant claimed absolute ownership to theatre – Suit filed for partition by 1st Plaintiff dismissed – Appeal – Whether 1st Plaintiff continues to be partner of firm even after sale of theatre in Court auction – Held, agreement between 1st Plaintiff and 2nd Defendant prior to purchase by 1st Defendant will not have any effect - No document to substantiate that there was agreement between Plaintiffs and 1st Defendant by which 1st Defendant agreed to run theatre in partnership with 1st Plaintiff – Licence for theatre was in name of 1st Defendant – Plaintiffs cannot claim right over theatre in absence of document to prove agreement

between Plaintiff s and 1st Defendant regarding joint management of theatre – Plaintiffs not entitled to relief of partition – Trial Court order confirmed – Appeal dismissed.

B. Property Laws – Ownership of Property – Whether 1st Defendant is absolute owner of theatre – Held, in court auction, third party purchaser became absolute owner of theatre and 1st plaintiff did not have right over theatre – 1st Defendant purchased theatre from Court auction purchaser through sale deed – No evidence produced by Plaintiffs to substantiate that sale in favour of 1st Defendant was sham and nominal – Only oral allegations made in plaint and evidence – 1st Defendant is absolute owner of theatre.

2014 (3) CTC 146

R. Riyaz Ahmed and Ors
Vs
J.G. Glass Industries Pvt. Ltd

Date of Judgment : 4.4.2014

Law of Adverse Possession – Plea of Adverse Possession can be raised only as a defence – It can be used as a shield and not as a sword – No declaration can be sought on basis of adverse possession – Ratio in Gurdwara Sahib v. Gram Panchayat Village Sirthala and another, 2014 (1) SCC 669, relied on and applied.

(2014) 5 MLJ 150

Vadivel
Vs
Umamaheswari

Date of Judgment : 20.12.2013

A. Family Law – Hindu Law – Custody of Minor Child – Guardianship – Guardians and Wards Act, 1890, Section 10(g) – Appellant/husband and Respondent/wife who were married and blessed with male child, were separated – Child remained in custody of Appellant – Respondent alleged that she was not allowed to see her child – Appellant filed divorce petition, also filed application for order restraining Respondent not to forcibly remove child from his custody – Respondent filed petition under Act 1890, also filed application under Section 26 of Act 1955 – Consent order passed in both applications allowing Respondent to take her child based on conditions imposed – Subsequently, guardian original petition also allowed in favour of Respondent, same challenged – Whether Respondent truthfully complied conditions under Section 10(g) of Act 1890, when application under Act 1890 filed, Respondent did not file interlocutory application in divorce petition and same filed only on later date – Respondent correctly gave particulars under Section 10(g) of Act 1890 – Appeal allowed.

B. Family Law – Hindu Law – Custody of Minor Child – Proceedings – Guardians and Wards Act, 1890, Sections 7, 10(g) and 25 – Hindu Marriage Act, 1955, Section 26 – Hindu Minority and Guardianship Act, 1956, Sections 2, 6, 13(2) and 14 – Whether proceeding for custody of minor under Act 1890 simultaneous with proceedings filed under Section 26 of Act 1955 – Whether application by Respondent under Section 25 of Act 1980 inapplicable, as such provision applicable only to Guardian who lost custody of ward – Whether Act 1955 and Act 1956 had overriding effect on Act 1890 – Held, Act 1956 is supplemental to Act 1890 by virtue of Section 2 of Act 1956 – Person claiming to be guardian of minor can file application under Section 7 of Act 1980 for guardianship of minor and on such appointment, he is charged of custody of ward – If custody removed, guardian may move Court under Section 25 of Act 1890 for return of custody – Natural guardian not expected to file application either to declare or appoint him for guardianship of minor – Under Act 1956, custody of minor who has not completed age 5 years shall be with mother – In case of Hindu Minor above five years of age, whose

custody shall be with father as Natural guardian, mother cannot file application under Section 25 of Act 1890 for custody alone – But, mother can file application for Guardianship and then custody under Section 7 of Act 1890 – In pending proceedings under Act 1955, either of party can seek custody under Section 26 of Act 1955 – Simultaneous proceeding referred to under Section 14 of Act 1956 relates to proceedings under Section 7 of Act 1890 – Neither Act 1956 nor Act 1955 have overriding effect to Act 1890 – Respondent cannot seek remedy of custody of minor child above five years under Section 25 of Act 1890 – Reasoning of Lower Court not based on paramount consideration of welfare of child – Lower Court order unsustainable, same set aside.

(2014) 3 MLJ 558

Medical Officer, Government Primary Health Centre, Guaruvareddiyur, Bhavani Taluk, Erode District

Vs

Rasuppaiyan @ Rasu and Anr

Date of Judgment : 29.1.2014

A. Motor Vehicles – Negligence – Compensation – Pillion Rider – Motor Vehicles Act, 1988, Sections 128, 140, 145 and 147 1(b) (ii) – Claimant pillion rider sustained grievous injuries in accident – Accident caused by rash and negligent driving of 1st Respondent’s ambulance van – Claimant agriculture labourer claimed that he sustained permanent disability – Tribunal awarded compensation with interest – Appeal by 2nd Respondent/Medical Officer – Whether accident caused by rash and negligent driving of 2nd Respondent’s driver – Whether pillion rider entitled to claim compensation – Held, perusal of award and documents shows that accident occurred due to rash and negligent driving of 2nd Respondent’s driver – Driver abandoned spot and ran away after accident – No oral or documentary evidence let in by Appellant to prove the contrary regarding negligence – Section 128 shows that law permits drivers of vehicle to carry pillion rider – When no conditions required to be followed to carry pillion rider, person liable to pay compensation for accident is liable towards pillion rider also – Word ‘any person’ in Sections 140, 145, and 147 1(b)(ii) includes pillion rider also – Owner of vehicle liable to pay compensation in absence of insurance policy – Since Government vehicles exempted from subscribing to insurance policies, Government or respective Department, which is registered owner of vehicle liable to pay compensation – Pillion rider also entitled for compensation – No irregularity found in compensation awarded – No interference called for – Appeal dismissed.

B. Motor Vehicles – Impleadment of Necessary Parties – Appellant alleged that owners of two wheelers and their Insurance Companies were not impleaded as parties, claim petition to be rejected for non-joinder of parties – Whether owner of two wheelers and their Insurance Companies were necessary parties to claim petition – Held, if claim is against either of the drivers of two wheelers, owners and Insurance Company must have been made parties – Claim filed against Appellant/owner and driver of ambulance who caused accident – Owners of two wheelers and their Insurance Companies not necessary parties – Tribunal rightly rejected plea of Appellant.

C. Words and Phrases – ‘Any Person’ – Motor Vehicles Act, 1988 – The word “any person” under the context of the Motor Vehicles Act, 1988 would mean any person travelling the vehicle involved in the accident and any person who suffered any injury as the result of the accident – The word “any person” in Sections 140, 145, and 147 1(b)(ii) would certainly include a pillion rider as well.

2014 – 3 – L.W. 673

Solai Subramanian alias S. Subramanian and Anr

Vs

The Chief Secretary, Tamil Nadu State Government, Fort St. George, Chennai – 600 009. and Anr

Date of Judgment : 1.7.2014

Constitution of India, Articles 343, 345, 346, 347, official language of subordinate Courts, in Tamil Nadu, Mandamus quashing of Memorandum, to write judgments in English, scope of.

Tamil Nadu Official language (amendment) Act (41 of 1976), Section 4-A, 4-B, Mandamus to quash memorandum permitting writing judgments in English.

Tamil Nadu Official languages Act (1956), Mandamus to quash memorandum permitting writing judgments in English.

Madras State Legislature (Continuance of use of English Language) Act (1964), Mandamus to quash memorandum permitting writing judgments in English.

PIL was filed challenging an office memorandum issued by the Registrar General, permitting the Judicial Officers of the Subordinate Courts to write Judgments, Decrees, Awards and Orders in English and direct the Subordinate Judicial officers to write Judgments only in Tamil.

Primary objective was to enable a few presiding officers who expressed difficulties in writing Tamil judgments – power of, second proviso to Section 4-B(1), scope of.

By impugned circular, all officers throughout the State have been granted a general permission – It is violative of second proviso S.4-B(1) – Power under the second proviso can be exercised by the High Court, only in specified circumstances and for specified periods of time – No restriction with regard to time.

Circumstances on the basis of which the Full Court passed a resolution, noted – It exists no more, circular exempting all Judicial Officers for all times to come, is far in excess of the power conferred upon the High Court under the second proviso to Section 4-B(1) – Impugned office memorandum is set aside.

(2014) 3 MLJ 678

Collector of Chengalpattu, MGR District at Kancheepuram

Vs

S.P. Balakrishnan and Anr

Date of Judgment : 20.3.2014

Property Laws – Possession of title – Suit ‘B’ Schedule is part of ‘A’ schedule property – Claim that original owner, after getting suit properties by partition deed, sold same to 1st Respondent/Plaintiff and 2nd Respondent/2nd Defendant – Plaintiff claims to be owner of suit schedule properties along with 2nd Defendant – While so, Appellant/1st Defendant/Government tried to trespass into property and put up construction – Suit for injunction – 1st Defendant claimed that suit property is Chathiram poramboke which vests with Government and no individual had any independent right, title or interest - Trial Court declared that Plaintiff and 2nd Defendant are absolute owners and granted injunction against 1st Defendant – On appeal by 1st Defendant, Appellate Court set aside judgment of Trial Court holding that suit property is Chathiram poramboke, not owned by any individual – Feeling aggrieved, Plaintiff preferred Review Application, same allowed setting aside judgment rendered by Appellate Court and posted appeal for fresh hearing and disposal – Whether Plaintiff and 2nd Defendant have established title to suit property – Whether Plaintiff is in possession of suit property in ‘B’ schedule – Held, no serious objection regarding validity of Partition deed/Ex.A2 and as such, it can be inferred that original owner had valid title to suit property –

PW2/accountant of original owner, deposed that original owner sold suit lands to Plaintiff and 2nd Defendant – Evidence of PW2 and witness in sale deed/Ex.A3 would go to show that land does not belong to 1st Defendant – While so, claim of Government that lands belong to Government and putting up Mid-day Meal Centre in suit property will not take away right of Plaintiff – Mere deposition of DW1/Tahsildar that land in dispute belongs to Government not sufficient to establish claim of 1st Defendant – Considering evidence of PWs.1 to 3, lands only belonged to original owner who subsequently sold to Plaintiff and 2nd Defendant – Plaintiff proved valid title over suit property – 1st Defendant/Government restrained from interfering with peaceful and lawful possession of Plaintiff – Judgment of Trial Court confirmed – Appeal dismissed.

2014 – 3 – L.W. 715

Puthiya Poivudan Puthiya Idathil Vivekananda Coaching Centre

Vs

Vivekananda Coaching Centre

Date of Judgment : 18.6.2014

Trade Marks Act (1999), Sections 134 and 135.

Suit for passing off – To restrain coaching centre in the name of ‘Puthiya Polivudan Puthiya Idathil Vivekananda Coaching Centre’ Tiruppur.

Public accustomed to plaintiff’s Vivekananda coaching centre and they would be misled in going to the defendant’s coaching centre in the belief that it is the branch of plaintiff.

Three ingredients to be proved in a passing off action, what are – Goodwill, misrepresentation, likely damage – ‘goodwill.’, - What is.

Usage of same name by defendant is likely to deceive and divert prospective students likely to cause confusion in people’s minds – Misrepresentation, factors, confession or deception, how arises, fraudulent intention, determination of – nature of services to be considered – coaching centre.

‘Qui Timet’ action – What is – In a passing off action, proof of damage is not necessary

2014 – 3 – L.W. 726

Saroja & Ors

Vs.

R.P. Mathewswaran

Date of Judgment : 3.7.2014

Transfer of Property Act (1872), Sections 122, 126/Settlement deed, cancellation, fraud, plea of, revoking, scope of.

Challenge to settlement executed by ‘P’, aged 92 years – Cancellation deed executed later, right of revocation, whether available – Plea of fraud, misrepresentation, whether proved.

Case of the appellants was that respondent by misrepresenting took P-an illiterate person to the Sub-Registrar’s office and got the settlement deeds executed in his favour.

Held: execution of 3 documents was to give an impression to P that partition deeds are being executed in favour of his daughters – Within six weeks from date of execution of settlement deeds, cancellation deeds were executed.

Nothing to establish contents were read over and explained to ‘P’, deeds are liable to be declared as null and void.

HIGH COURT CITATIONS CRIMINAL CASES

(2014) 3 MLJ (CrI) 3

S. Vijayalakshmi

Vs

State by Inspector of Police, Vigilance and Anti Corruption, Kancheepuram

Date of Judgment : 15.4.2014

Prevention of Corruption – Illegal Gratification – Presumption – Prevention of Corruption Act, Sections 7, 13(1)(d), 13(2) and 20 – PW-2/defacto complainant approached 1st Appellant/accused for birth certificate – Accused demanded money for Flag Day Fund and for traveling expenses – Complainant made complaint to PW-11/Inspector – Trap proceedings arranged and raiding party seized money from accused – Case registered against accused – Magistrate convicted and sentenced accused for offence under Sections 7, 13(1) (d) read with Section 13(2) – Appeal – Accused alleged that presumption under Section 20 would not be raised in absence of proof of demand of illegal gratification – Whether presumption under Section 20 would be raised in absence of proof of demand of illegal gratification – Held, no evidence indicated that accused asked for bribe money – Prosecution failed in establishing guilty of accused beyond reasonable doubt that there was demand and acceptance of illegal gratification – Explanation given by accused plausible and discharged burden thereby rebutting presumption under Section 20 – Mere recovery of tainted money not sufficient to record conviction against accused – In absence of proof of demand, question of raising presumption would not arise – Impugned judgment of conviction and sentence set aside – Accused acquitted – Appeal allowed.

(2014) 3 MLJ (CrI) 10

Murugadoss

Vs

State by Inspector of Police, All Women Police Station, Tindivanam

Date of Judgment : 10.4.2014

Criminal Law – Attempt to Rape – Alteration of conviction – Indian Penal Code, 1860, Sections 376 r/w 511 and 376(2) (f) r/w 511 – Appellant/Accused charged under Section 376(2)(f) r/w 511 for attempt to rape against Prosecutrix/Victim – Lower Court found Appellant guilty and sentenced to ten years R.I. and pay a fine in default to undergo two years R.I. – Appeal – Whether delay in filling FIR fatal to prosecution case – Whether conviction of Appellant under Section 376(2)(f) r/w 511 incorrect as there were no injuries on victim's private parts – Held, conduct of mother in not reporting incident till arrival of her husband cannot be doubted – Delay in reporting matter to Police fully explained – Since victim is minor, possibility of hesitation on part of mother to lodge complaint cannot be overruled – Appellant alleged that date of incident stated by victim's mother and victim correct, and that of doctor wrong, however, same does not in any way corrode credibility of Prosecution case – Prosecutrix's evidence clearly established fact that Appellant attempted to commit sexual act – Commission of actual rape not established as there was no penetration but evidence sufficient to prove that attempt to commit rape was made, as nail mark was seen on victim's cheek – Conviction altered from 376(2)(f) r/w 511 IPC to Section 376/511 IPC – Sentence reduced – Appeal partly allowed.

(2014) 3 MLJ (CrI) 18

Mani

Vs

State rep. by The Inspector of Police, J-3 Guindy Police Station, Chennai - 32

Date of Judgment : 30.4.2014

A. Criminal Procedure – Bail – Code of Criminal Procedure, 1973, Sections 439, 174 – Indian Penal Code, 1860 (IPC), Sections 306 and 107 – Deceased committed suicide leaving a note accusing Petitioner to be responsible for extreme decision taken by her – Initially, police registered case under Section 174 of Cr.P.C., then altered it to Section 306 of IPC – Petitioner arrested and sent to jail – Pending investigation, Petitioner prayed for bail alleging that he did not abet deceased to commit suicide – Whether in facts and circumstances of the case, Petitioner entitled to bail – Held, person merely named in suicide note cannot be held to be offender under Section 306 of IPC – Positive act must have emanated from accused towards victim – If nothing comes from accused, accused cannot be blamed for extreme decision taken by victim – Substance of information in suicide note examined – In light of principles governing ‘abetment’ under Section 306 of IPC read with Section 107 of IPC, nothing emanated from Petitioner with requisite mens rea to force deceased to commit suicide – In absence of mens rea and positive act, mere blaming of accused by deceased for her decision, offence under Section 306 of IPC not attracted against Petitioner – Petitioner has no bad antecedents and criminal history – Petitioner will neither interfere with investigation nor flee away from justice – Bail granted.

B. Interpretation of Statutes – ‘Abetment’ – ‘Abetment’ in Section 306 read with Section 107 of Indian Penal Code, 1860 – Offence of abetment requires ‘mens rea’ (guilty mind) – There must be intentional doing/aiding or goading the commission of suicide by another – Otherwise, even a mere casual remark, something said in routine and usual conversation will be wrongly construed or misunderstood as ‘abetment’.

C. Words and Phrases – ‘Suicide’ – ‘Suicide’ is self-killing, self-murder and self-destruction – ‘Suicide’ is deliberate termination of one’s own physical existence – ‘Suicide’ is a deliberate destructive act committed by a sane person – ‘Suicide is where a man of age of discretion voluntarily kills himself.

(2014) 3 MLJ (CrI) 100

Balasubramanian

Vs

State, Rep. by Deputy Superintendent of Police, Tiruchendur, (Cr.No.45/2002 of Nazareth Police Station), Tuticorin District

Date of Judgment : 10.6.2014

A. Criminal Law – Dowry death – Validity of – Indian Penal Code, 1860 (Code 1860), Sections 498A and 304-B – 1st accused married deceased and had a son – Deceased committed suicide by hanging – PW/Father filed complaint alleging that 1st accused responsible for death of deceased – Since death caused within seven years of marriage, police informed Revenue Divisional Office (RDO) – Prosecution alleged that after wedding, accused was demanding money from father of deceased – Trial Court acquitted 2nd and 3rd accused/Father and Brother of 1st accused of all charges but convicted 1st accused for offence under Sections 498A and 304-B Code 1860 – Appeal – Whether there is sufficient evidence to convict Appellant under Section 304-B Code 1860 – Held, in cross-examination of P.W.1/father of deceased and P.W.2/brother of deceased, defence established that two instances stated by them in chief-examination regarding demand of dowry not disclosed either in complaint (Ex.P1) or in police statement – Said two instances referred regarding demand of dowry, clear improvements made by witnesses – To fasten criminal liability under Section 304-B it is essential for prosecution to prove that demand of dowry was in connection with marriage, no evidence to prove the same – Witnesses P.W.1 to P.W.4 did not say year or month in which demand of money was made – Minimum evidence with regard to year or month essential to determine

whether demand was soon before death – In absence of evidence to prove two vital aspects viz, (a) soon before death and (b) demand of dowry in connection with marriage, appellant cannot be convicted for offences under Sections 304-B – Prosecution failed to prove offence under Section 304 –B – Appeal partly allowed.

B. Criminal Law – Cruelty – Indian Penal Code, Section 498A – Evidence Act, Sections 8 and 32 – Whether there is evidence to convict Appellant under Section 498A – Held, evidence of witnesses disclosed that very frequently deceased had complained to her father and brother that accused was ill-treating and beating her – Statements which are complaining in nature made by married woman to her parents or relatives cannot be stated as hearsay but they are relevant under Section 8 of the Evidence Act - Complaint made by deceased about cruelty meted out to her by appellant are relevant – No reasons to disbelieve the testimony of P.W.1/father, P.W.2/brother, P.W.3/sister and P.W.4/father in law of PW 2 in this regard – Conviction and sentence imposed upon Appellant for offence under Section 498A Code 1860 confirmed.

2014 – 3 – L.W. 102

E. Vedavanam

Vs

Dr. Saravanan Balaguruswamy and Ors

Date of Judgment : 25.10.2013

Criminal Procedure Code, Section 203/bigamy, foreign judgment, effect of,

I.P.C., Sections 494, 109/bigamy, foreign judgment, effect,

C.P.C., Sections 13, 14, foreign judgment, conclusive, when, bigamy, offence of, exparte decree, effect.

Revision filed against order of lower court dismissing private complaint against R1 to R3 for want of prima facie case for bigamy and its abetting.

Dispute regards validity and enforceability of UK decree of separation, remarriage, when the order of divorce is in force and sufficiency of allegations against husband and parents-in-law.

Held: Divorce, exparte and not on merits- made without hearing wife and voluntarily subjecting herself to the jurisdiction of UK Court.

Regarding parents-in-law, allegations are they arranged and conducted the second marriage of the proposed first accused – Parents-in-law had never gone to UK at relevant point of time.

Respondents 2nd 3 have not stated that they intentionally aided A1 in commission of the offence – No allegation to constitute act of abetment – Dismissal of the complaint against respondents 2 and 3 confirmed – Matter remanded.

(2014) 3 MLJ (CrI) 108

G. Priyadarshini

Vs

State by The Assistant Commissioner of Police, Anti Dowry Cell, Central Crime branch, Chennai 600 006 and Anr

Date of Judgment : 20.6.2014

Criminal Procedure – Police Custody – Refusal of – Code of Criminal Procedure, 1973, Section 167(2) – Constitution of India, 1950, Article 21 – Defacto complainant lodged complaint against 2nd Respondent and his parents/accused alleging that they demanded dowry and harassed her, case also registered against them – Accused sought for anticipatory bail – Bail granted, but challenged by defacto complainant before Supreme Court –

Supreme Court set aside bail granted to 2nd Respondent and gave him liberty to approach appropriate Court for regular bail – 2nd Respondent surrendered before Magistrate – Investigation Officer filed petition under Section 167(2) of Code 1973 seeking police custody – Magistrate turned down request of Investigation Officer, same not challenged by State, but by defacto complainant in revision – Whether order of Magistrate refusing police custody of 2nd Respondent justified – Held, police custody must be strictly in accordance with law – Limitation is inbuilt in Section 167(2) of Code 1973 – Magistrate can exercise his power to grant police remand only before expiry of first 15 days of remand – Party did not approach Court for disposal of revision before expiry of first 15 days period of remand – 15 days initial period prescribed in Section 167(2) of Code 1973 already over – Court cannot overstep mandate prescribed in Section 167(2) of Code 1973 – Petition dismissed.

2014 – 2 – L.W. (CrI) 115

Shanmugam

Vs

State by Inspector of Police, Polur Police Station, Tiruvannamalai

Date of Judgment : 15.04.2014

Indian Penal Code, Section 307.

Death due to burn injuries – Statement to Doctor, the three persons set fire to her – FIR stated that accused set fire to her, Inconsistent Dying Declarations, Doubt as to truthfulness – Possibility of influenced by her brother and father – Conviction set aside.

(2014) 3 MLJ (CrI) 136

Polyfine Industries, rep. by its Partner and Ors

Vs

P. Gopal

Date of Judgment : 24.6.2014

Criminal Procedure – Quashing of proceedings – Legality of – Code of Criminal Procedure (Code 1972), 1973, Section 482 – Negotiable Instruments Act, 1881 (Act 1881), Section 138 -Respondent/Complainant lodged complaint against Petitioners/Accused for alleged commission of offence under Section 138 Act 1881 – Petitioners filed petition under Section 482 of Code 1973 to quash proceedings filed by Respondent – Petition filed on ground that alleged instrument in question cannot be negotiable instrument as amount mentioned in cheque is more than debt due and cheque number in legal notice issued by Respondent wrongly mentioned – One of the partner who is not signatory of cheque impleaded as party, no specific averments made against her – Whether proceedings initiated against Petitioners liable to be quashed based on allegations made by Petitioners – Held, issue raised regarding cheque amount is disputed question of fact, same to be decided by Lower Court and cannot be agitated in summary manner under Section 482 of Code 1973 – Though there is mistake in cheque number and amount, original cheque has been produced before Lower Court, which on being satisfied with correct proof furnished, complaint taken on file – No specific averments regarding involvement in case against one of the partner who is not signatory to cheque – Complaint made against said partner unsustainable and quashed – Complaint on first two grounds sustained, complaint on ground of partner quashed – Petition partly allowed.

Mariya Anton Vijay

Vs

State represented by, The Inspector of Police, Q Branch C.I.D., Thoothukudi

Date of Judgment : 10.7.2014

A. Criminal Procedure - Quashing of proceedings – Criminal jurisdiction on board foreign ship – Innocent passage – Code of Criminal Procedure, 1973, Section 482 – Arms Act, 1959 (Act 1959), Sections 33, 35 and 3 r/w 25(1B)(a), 7 r/w 25(1A), 10 r/w 25(1B)(f) – Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zone Act, 1976, Section 4(1) – UNCLOS, 1982, Articles 18 and 19 – Essential Commodities Act, 1955 (Act 1955), Section 3(b) r/w. 7(1)(a)(ii) and Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 1990, Section 2(m)(5) – A1 and A2 are owner of foreign Vessel and Company – A3 to A37 are Captain, Crew and Security Guards in Ship – A38 to A45 entered into criminal conspiracy, whereby A1 to A37 were in possession of prohibited firearms without license within territory of Indian sea – A1 to A37 are charged under Act 1959 – As A38 to A45 had illegally supplied fuel to ship, charged under Section 7 of Act 1955 – A38 filed Revision challenging final report - A3 to A37 filed petition for quashing prosecution – Whether crew and guards in ship be prosecuted for possession of prohibited arms under Act 1959 – Whether Indian Arms Act apply to presence of prohibited arms on board Flag Ship Vessel – Held, Vessel is registered ship and into Anti-piracy business – Registration as Utility Vessel does not affect its use as Anti-piracy vessel – Deck Log Book shows operations of ship is to provide security guards to merchant ships that pass through pirate infested areas - Crew are neither pirates nor working for enimical nation – Deck Log Book and GPS Log Book shows that ship ran out of provisions and fuel, came into Indian territorial waters and anchored – India obligated to follow UNCLOS – Under Article 27 of UNCLOS, Arms Act cannot be extended on board Flag Ship as Vessel was simply found anchored and not committed violations – Article 18(2) of UNCLOS States that ‘passage’ includes stopping and anchoring – “Innocent passage” shows that passage is innocent so long as not prejudicial to peace or security of India – Anchoring of Vessel within Indian territorial saved by principle of ‘innocent passage’ – Prosecution of Crew and Security Guards for offences under Arms Act quashed – Petition and revision partly allowed.

B. Admiralty – Foreign Vessel – Supplying fuel – Essential Commodities Act, 1955, Section 7 – Motor Spirit and High Speed Diesel (Regulation of Supply), Distribution and Prevention of Malpractices) Order, 2005 – Indian Penal Code, 1860 (Code 1860), Section 120(B) – Whether prosecution under Essential Commodities Act are justified – Held, ship already had arms, entered territorial sea and anchored there, subsequently A38 supplied fuel to it – A38 cannot be prosecuted for presence of prohibited fire arms in ship with aid of Section 120B of Code 1860 – But A38 can be prosecuted under Control Order of 2005 – A3/Captain liable for obtaining fuel in illegal manner from A38 – Other crew members and guards in ship cannot be prosecuted, as they have to abide by directions of Captain – A38 liable for prosecution for Violating Control Order, 2005 punishable Essential Commodities Act, 1955 – A3/Captain liable for abetment of offence committed by A38 under Essential Commodities Act within Indian territorial waters.

(2014) 2 MLJ (Cri) 663

M. Thangavel and Ors

Vs

Assistant Superintendent of Police Vigilance and Anti Corruption, Nagercoil, Kanyakumari District and Ors

Date of Judgment : 11.10.2013

Prevention of Corruption – Misappropriation of Funds – Criminal Conspiracy – Indian Penal Code, 1860, Sections 120B, 167, 409 and 471 – Prevention of Corruption Act, 1988, Sections 2(c)(x), 13(1)(c)(d) and 13(2) – Co-operative Housing Society engaged in formation and development work – Allegation of misappropriation of funds and criminal conspiracy made against accused No.1/Secretary of Society, accused No. 2/part time Engineer and accused No.3/contractor – Inspector of Police registered case and after investigation, filed final report with delay – Magistrate held accused guilty under Sections 120B, 167, 409 and 471 of IPC r/w Sections 13(1)(c)(d) and 13(2) of 1988 Act – Appeals – Whether Prosecution proved charges leveled against accused beyond reasonable doubt – Held, as per Section 2(c)(x) of 1988 Act, in absence of evidence to show that alleged Society is receiving or received aid, prosecution of accused under Act not valid – Evidence of Investigating Officer shows that there was no fair and impartial investigation – No clear and acceptable evidence regarding misappropriation – No evidence to show accused acted in conspiracy and fraudulently and dishonestly prepared vouchers – Dishonest or fraudulent intention which is essential ingredient for offence not proved - Prosecution failed to prove charges levelled against accused – Benefit of doubt given to accused – Conviction and sentence set aside – Accused acquitted of charges – Appeals allowed.
