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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

(2014) 4 Supreme Court Cases 163

MANOHARAN
Vs
SIVARAJAN AND Ors

Date of Judgment : 25.11.2013

- A. Civil Procedure Code, 1908 – S. 149 and Or. 7 Rr. 11(b) & (c) – Discretionary power of court to allow party to make up deficiency of court fee within stipulated time and to retrospectively validate insufficiency of stamp duty, etc. – Scope – Ordinarily discretion to be exercised in favour of litigating parties unless there are manifest grounds of mala fides – Concealment of material fact while making application for extension of date for payment of court fee can be ground for dismissal of plaint – On facts held, rejection of appellant’s application by Court fee which he was unable to pay due to financial constraints, held, erroneous and liable to be set aside – Court Fees Act, 1870, S. 12
- B. Limitation Act, 1963 – S. 5 – Condonation of delay – Non-condonation of delay for non-payment of court fees – Propriety – Appellant-plaintiff approaching court claiming substantive right to property, but unable to pay balance court fee due to financial constraints; his application for grant of extension of time for remitting balance court fee rejected, consequent to which his original suit was dismissed – High Court dismissing application for condonation of delay in filing appeal – Held, appellant deserved more compassionate attention in light of directive principle laid down in Art. 39-A of Constitution which is equally applicable to district judiciary – Duty of courts is to see that justice is meted out to people irrespective of their socio-economic and cultural rights or gender identity – Appellant deserved waiver of court fee subject to submission of affidavit of income or legal aid by District Legal Service Authority so that he could contest his claim on merits which involved his substantive right – Court of Sub-Judge erred in rejecting appellant’s suit for non-payment of court fees – Matter remanded to trial court to permit payment of court fees within eight weeks – Liberty granted to appellant to approach appropriate authorities for grant of legal aid for waiver of court fee – Authorities to facilitate appellant’s right of adjudication by securing equal justice – Legal Aid and ADR – Legal Services Authorities Act, 1987 – S. 12(h) – Kerala State Legal Services Authorities Rules, 1998 – R. 12 – Constitution of India – Art. 39-A – Civil Procedure Code, 1908, S. 149 and Or. 7 Rr. 11(b) & (c)
- C. Limitation Act, 1963 – S. 5 – Condonation of delay – Non-condonation of delay – Propriety – Sufficient cause, if established – Dismissal of appeal against order of Court of Sub-Judge rejecting appellant’s suit for non-payment of court fee – Appellant categorically stating that he had gone to his advocate’s office to enquire about status of his suit, when he was informed that his suit was rejected for non-payment of balance court fee – His advocate claiming that he had sent said information to appellant through postal card, but appellant stating that he had not received it and hence, was under impression that his application for extension of time for payment of court fee was allowed – On facts held, since delay in payment of court fees has been condoned, delay in filing appeal also needs to be condoned – Impugned judgment rejecting appellant’s application for condonation of delay in filing appeal set aside
- D. Constitution of India – Art. 39-A – Scope – Held, Art. 39-A provides for holistic approach in imparting justice to litigating parties – It not only includes providing free legal aid via appointment of counsel for litigants, but

also includes ensuring that justice is not denied to litigating parties due to financial difficulties – Court of Sub-Judge erred in rejecting appellant’s case for non-payment of court fee which was principally due to financial constraints faced by appellant – Legal Aid and ADR – Generally

(2014) 3 Supreme Court Cases 183

**PUNE MUNICIPAL CORPORATION AND Anr
Vs
HARAKCHAND MISIRIMAL SOLANKI AND Ors**

Date of Judgment : 24.1.2014

- A. Land Acquisition and Requisition – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Ss. 24(1) & (2) – Lapse of acquisition proceedings initiated under 1894 Act, where “compensation has not been paid to landowners” and award was made 5 yrs or more prior to commencement of 2013 Act – Expression “compensation has been paid” occurring in S. 24(2) – “Paid” – Import of –Deposit of compensation amount in Government treasury, held, not enough – Held, for purposes of S. 24(2) compensation shall be regarded as “paid” if compensation is actually tendered to landowners/interested persons, or, is offered to interested persons and on their refusal to accept the same such compensation is deposited in court**
- Expression “paid” used in S. 24(2) includes deposit of compensation in court, and cannot be limited to mean “offered” or “tendered” to landowners/persons interested, and neither can receipt of compensation by landowners/persons interested be inferred as the only meaning thereof – If literal construction is given to expression “paid”, then it would amount to ignoring the procedure, mode and manner of deposit of compensation in court as provided in S. 31(2) of 1894 Act when landowners/interested persons refuse to accept compensation
 - In instant case, amount of compensation was deposited in Government treasury on 31-1-2008 which is not equivalent to “compensation paid to landowners/persons interested” and award had been made more than 5 yrs previously – Thus, subject land acquisition proceedings had lapsed – Land Acquisition Act, 1894 – Ss. 31 to 33 – Constitution of India – Arts. 300-A and 19(1)(f) – Human and Civil Rights – Right to property – Words and Phrases – “paid”
- B. Interpretation of Statutes – Particular Statutes or Provisions – Expropriatory/Land acquisition or use restriction statutes – Held, Land Acquisition Act, 1894 being an expropriatory legislation should be strictly followed – Collector while making payment of compensation, can only act in manner so provided, since where power is given to do certain thing in certain way, it should be done in that way or not at all – Other methods of performance are necessarily forbidden –Land Acquisition Act, 1894, Ss. 31 to 34, 11 and 12**
- C. Land Acquisition and Requisition – Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Ss. 24(2) and 114 r/w S. 6, General Clauses Act, 1897 – Held, S. 114(2) of 2013 Act makes S.6 of 1897 Act applicable with regard to effect of repeal which is subject to provisions of 2013 Act – Under S 24(2), land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award is made 5 yrs or more prior to commencement of 2013 Act and possession of land has not been taken or compensation not paid – In instant case, since compensation was not paid to persons interested where award had been made more than 5 yrs previously, subject land acquisition proceedings are deemed to have lapsed – General Clauses Act, 1897 – S. 6 –Constitution of India – Arts. 300-A and 19(1)(f) – Human and Civil Rights – Right to property**

(2014) 4 Supreme Court Cases 505

**SAVITA
Vs
BINDAR SINGH AND Ors**

Date of Judgment : 25.3.2014

- A. Motor Vehicles Act, 1988 – Ss. 166 and 168 – Compensation – Just compensation – Duty of Tribunal/court – Principles reiterated**
- B. Motor Vehicles Act, 1988 – Ss. 166 and 168 – Fatal accident – Heads of compensation – Compensation under heads of (i) loss of consortium to spouse and loss of love, care and guidance to children, and (ii) funeral expense amounts, held, should have been Rs.1,00,000 and Rs. 25,000 respectively – Awarded accordingly**
- C. Motor Vehicles Act, 1988 – Ss. 166 and 168 – Compensation – Quantum of – Notional income and future prospects – Notional income of Rs 3000 p.m. taken by Tribunal as claimants could not establish figure claimed by them, not disturbed – Held, without disturbing notional income, in terms of Sarla Verma, (2009) 6 SCC 121, for deceased with fixed income at Rs 3000 and 30% increase for future prospects and after one third deduction for personal expenses the multiplicand would come to Rs.2600; and applying multiplier of 17, correctly applied by Tribunal, total amount of compensation would be Rs 5,30,400 – Adding (i) loss of consortium to spouse and loss of love, care and guidance to children and (ii) funeral expense amounts, order of High Court and Tribunal modified enhancing compensation of Rs.6,55,400 plus interest @ 8% p.a. from date of filing of claim petition till payment of compensation – Enhanced amount to be paid after deducting amount already paid, within four weeks**

(2014) 4 Supreme Court Cases 693

**RAJASTHAN STATE ROAD TRANSPORT CORPORATION AND Anr
Vs
BAJRANG LAL**

Date of Judgment : 14.3.2014

- A. Civil Procedure Code, 1908 – Or. 6 Rr. 2 and 4 and Or. 8 Rr. 3 to 5 – Pleadings – Importance of – Detailed particularized and specific pleadings – Necessity – Held, a party has to plead his case and adduce sufficient evidence to substantiate his submissions – In case of incomplete pleadings, court is under no obligation to entertain same – On facts held, in absence of any specific pleading as to what document had not been supplied to plaintiff-respondent delinquent which was relied upon by enquiry officer, or which witness was not permitted to be cross-examined by him, finding of trial court that departmental enquiry initiated against plaintiff-respondent was in violation of natural justice, held, is erroneous, since same was based merely on allegations in plaint which the defendant-appellant corporation had filed to rebut – Moreover, burden of proving the issue was on plaintiff-respondent and not defendant Corporation – Hence, dismissal order, restored – Service Law – Departmental Enquiry – Pleading and proof – Evidence Act, 1872, Ss. 101 to 103**
- B. Civil Procedure Code, 1908 – Or. 8 Rr.3 to 5 and Or. 6 Rr. 2 to 4 – Admission by failure to deny/traverse – When obtains – Specific pleadings in plaint, held, is a prerequisite – Evidence Act, 1872, S.17**

- C. Civil Procedure Code, 1908, - S. 100 – Second appeal – Finding of fact – Interference with – Perverse findings – No embargo on High Court to entertain second appeal on question of fact in exceptional circumstances where factual findings are found to be perverse – In present case findings of trial court and first appellate court being perverse, High Court erred in not interfering
- D. Service Law – Penalty/Punishment – Proportionality/quantum of punishment – Corruption – Respondent while working as trainee conductor found carrying certain passengers without tickets – Held, only punishment in case of proved corruption is dismissal from service – Hence, dismissal order, restored

(2014) 4 Supreme Court Cases 707

**KESHARBAI ALIAS PUSHPABAI EKNATHRAO NALAWADE (DEAD) BY LRS. AND Anr
Vs
TRABAI PRABHAKARRAO NALAWADE And Ors**

Date of Judgment : 14.3.2014

Family and Personal Laws – Hindu Law – Partition – Presumption – Burden of proof of exclusion of certain property from partition – General presumption is that a Hindu family is joint and properties are joint family properties – But once a partition takes place in a family, presumption would be that all properties stood partitioned – Burden of proof of exclusion of certain property from partition would be on party who asserts same to be joint – In suit for partition and separate possession filed by plaintiff-respondents, trial court found that by virtue of an earlier family arrangement there had already been a complete partition of joint family properties, that property in question was self-acquired property of one of defendants (appellants) and that parties treated properties allotted to them pursuant to such arrangement as their exclusive properties – High Court affirmed trial courts finding that there had already been a prior final partition between parties and parties acted upon same – Having accepted that finding, held, High Court erred in placing burden of proof on defendants to prove that property in question was self-acquired property – Evidence Act, 1872, Ss. 101 to 103.

SUPREME COURT CITATIONS CRIMINAL CASES

(2014) 4 Supreme Court Cases 9

PHULA SINGH

Vs

STATE OF HIMACHAL PRADESH

Date of Judgment : 3.3.2014

- A. Criminal Procedure Code, 1973 – S. 313 – Adverse inference against accused – When may be drawn – Duty of accused to furnish an explanation regarding any incriminating material that has been produced against him – Accused may choose to maintain silence or even remain in complete denial when his statement under S. 313 CrPC is being recorded – However, in such an event, court would be entitled to draw an inference, including such adverse inference against accused as may be permissible in accordance with law – Submission that prosecution has to establish each and every fact and accused has a right only to maintain silence, rejected – Adverse inference drawn against appellant in this case for not at all trying to explain the incriminating circumstances against him – Evidence Act, 1872 – Ss. 103 and 106 – Prevention of Corruption Act, 1988, Ss. 7 13(2) and 20
- B. Prevention of Corruption Act, 1988 – Ss. 7, 13(2) and 20 – Trap case – Reversal of acquittal confirmed – Non-explanation of incriminating circumstances by accused – Adverse inference from – Appellant, Kanungo of a particular area, upon investigating complaint against father of complainant, found that land of V had been encroached upon by complainant's father – Complainant raised objection about this demarcation – Appellant demanded bribe from complainant to cancel the demarcation report, and a deal was struck to the tune of Rs. 1000 – Complainant lodged FIR with Anti-Corruption Department – Trap was laid, and appellant came to residence of complainant and demanded bribe, and appellant was arrested - Sessions Judge acquitted appellant of all charges - High Court awarded sentence of 1 yr's RI and fine – Appellant did not deny his visit to house of complainant or that his shirt was found hanging on the peg on a wall in complainant's house – He failed to furnish any explanation about his visit and staying in the house of complainant when he had no relationship or acquaintance with complainant – Appellant did not furnish any explanation in respect of recovery of Rs. 1000 from the pocket of his pants or how his fingers turned pink on being washed with sodium carbonate solution as the currency notes were found in pocket of his pants – Appellant could not maintain complete silence – Held, there is no perversity in the judgment of High Court – It cannot be said that the judgment is not based on evidence or evidence has not properly been re-appreciated by appellate court – Criminal Procedure Code, 1973, S. 313
- C. Criminal Procedure Code, 1973 – Ss. 378 and 386 – Appeal against acquittal – Interference with order of acquittal – Scope of – Where there are compelling circumstances and the judgment under appeal is found to be perverse, appellate court can interfere – Presumption of innocence of accused and further that trial court's acquittal bolsters presumption of his innocence – Interference in a routine manner where other view is possible should be avoided, unless there are good reasons for interference – Present case was a case where High Court rightly interfered with perverse judgment of acquittal of trial court and reversed the same – Prevention of Corruption Act, 1988, Ss. 7, 13(2) and 20

D.

(2014) 4 Supreme Court Cases 54

**CHHOTAN SAO AND Anr
Vs
STATE OF BIHAR**

Date of Judgment : 17.12.2013

- A. Criminal Trial – Investigation – Defective or illegal investigation – Inadequacy of investigation and prosecution, strongly deprecated – Viscera report from forensic lab not secured by IO – Having regard to nature of the alleged crime of dowry death caused by poisoning, it was a very vital document, more particularly in absence of any direct evidence regarding consumption of poison by deceased – IO who submitted charge-sheet ought not to have done it without securing viscera report from forensic lab and placing it before court – Public Prosecutor failed in his responsibility to guide IO in that regard – Magistrate who committed the matter to Sessions Court failed to apply his mind and mechanically committed the matter for trial – Public Prosecutors and judicial officers owe a greater responsibility to ensure compliance with law in a criminal case – Inefficiency and callousness on their part is bound to shake the faith of society in the system of administration of criminal justice – Penal Code, 1860 – S. 304-B – Criminal Trial – Presiding Judge – Role of - Criminal Procedure Code, 1973, Ss.11, 12, 16, 17, 24, 157 and 173
- B. Penal Code, 1860 – S. 304-B – Dowry Death – Basic ingredients of offence – Death otherwise than under normal circumstances, not proved by legally admissible evidence – Death by poisoning alleged by viscera report from FSL not produced – Conviction reversed – Doctor, who conducted post-mortem, not examined – Content of post-mortem report not discussed anywhere in judgment of courts below – From post-mortem report it would appear that viscera was sent for post-mortem, but the report was not received and no apparent injury, external or internal found upon post-mortem examination of dead body – Finding of courts below that deceased died an unnatural death is based on no evidence – Even if it is assumed that courts below rightly reached a concurrent finding that there were demands of dowry by accused prior to death of deceased and that she was subjected to either cruelty or harassment for such a demand, offence under S. 304-B is not established as foundational element of S. 304-B i.e. death of deceased occurred otherwise than under normal circumstances, is not established by any legally admissible evidence on record – Evidence on record was sufficient only to sustain conviction under S. 498-A - 1872 – S. 113-B – Presumption under – When arises
- C. Penal Code, 1860 – S. 498-A – Cruelty by husband or relative of husband – PW 8 brother of deceased reported to police that in the morning of day concerned deceased was beaten up by a lathi and compelled to consume poison which resulted in her death – It was also stated in the report that whenever deceased came to her parental home, she used to complain that accused were harassing her with a demand to get more money from her parents coupled with a threat of killing her in the event of her not complying with the demand – Parents, brothers and sisters-in-law of deceased were examined to prove facts that the marriage of deceased took place some 5 to 6 yrs prior to her death, and that deceased used to complain that accused were harassing her with a demand of dowry – Said evidence was believed by both the courts below – Conviction of accused under S. 498-A calls for no interference as there is a concurrent finding by both courts below based on evidence that accused husband and his relatives subjected deceased to cruelty as explained under S. 498-A

(2014) 4 Supreme Court Cases 257

**AVEEK SARKAR AND Anr
Vs
STATE OF WEST BENGAL AND Ors**

Date of Judgment : 3.2.2014

Penal Code, 1860 – S. 292 – Obscenity – What constitutes – Test for determination of obscenity – Community standard test applicable – Hicklin, (1868) LR 3 QB 360, test not the correct test – Obscenity, held, should be determined from point of view of average person and in context of contemporary mores and national standards, as concept of obscenity keeps on changing with changing social values – Message which offending object intended to convey is significant – Photography of a nude/semi-nude woman by itself cannot be obscene – Obscenity would depend upon particular posture and background in which nude woman is depicted – Looked at as a whole, it should tend to deprave and corrupt the mind and excite lustful sexual passion so as to constitute offence under S. 292 – Publication in newspaper of picture of a nude white-skinned man (renowned German tennis player) standing close to his dark-skinned nude/semi-nude finance (actress) and man covering breast of finance with his hands, followed by an article conveying message to people against practice of apartheid/racism and that love triumphs over hatred – Held, photograph not obscene – Hence no offence committed under S. 292 – Magistrate erred in initiating proceedings under S. 292 IPC and S. 4 of Indecent Representation of Women (Prohibition) Act without proper application of mind – High Court also erred in refusing to quash the proceedings in exercise of power under S. 482 CrPC – Proceedings quashed – Criminal Procedure Code, 1973 – S. 482 – Crimes Against Women and Children – Indecent Representation of Women (Prohibition) Act, 1986 – S. 4 – Constitution of India, Arts. 19(1)(a) & (2)

(2014) 4 Supreme Court Cases 270

**BHAGWAN TUKARAM DANGE
Vs
STATE OF MAHARASHTRA**

Date of Judgment : 13.3.2014

- A. Penal Code 1860 – S. 302 or S. 304 [S.300 Exception 4] – Murder or culpable homicide – Intoxication, as such, is not a defence to a criminal charge – Intoxication is a mitigating circumstance if accused is not a habitual drinker, otherwise, it has to be considered as an aggravating circumstance – A-1, son and A-2, father returned to their house at about 7.00 p.m. fully drunk – They demanded Rs.200 to Rs.300 from wife of A-1 – On refusal, she was severely beaten up and asked to bring it from her parental house – A-2 then sprinkled kerosene from a plastic can over deceased and A-1 then lit a matchstick and set her on fire – Appellant A-1 contended that he was under influence of liquor, he had no intention to kill his deceased wife and, therefore, at best, offence would fall either under S. 304 Pt. I or S. 304 Pt. II – Assuming that the accused was fully drunk, he was fully conscious of the fact that if kerosene is poured and a matchstick lit and put on the body, a person might die due to burns – It cannot, therefore, be said that since accused was fully drunk and under influence of liquor, he had no intention to cause death of deceased wife – Conviction under S.302, confirmed

- B. Penal Code, 1860 – Ss. 302 and 498-A r/w S. 34 – Murder of bride by husband and father-in-law – Death caused by burn injuries – 3 dying declarations, consistently implicating appellant and his father – Minor discrepancies not found material – A-1, son and A-2, father returned to their house at about 7.00 p.m. fully drunk – They demanded Rs. 200 to Rs. 300 from wife of A-1 – On refusal, she was severely beaten up and asked to bring it from her parental house – A-2 then sprinkled kerosene from a plastic can over deceased and A-1 then lit a matchstick and set her on fire - PW 1, doctor treated her and informed Head Constable PW 5 regarding admission of deceased in hospital, in an injured condition – First dying declaration was recorded by PW 5, Head Constable, in presence of doctor who treated deceased at hospital – PW 1 doctor categorically deposed that deceased was fully conscious and was in a condition to give the statement – Second dying declaration was recorded by Special Judicial Magistrate – Deceased at that time was examined by PW 3, another doctor, who also deposed that deceased was fully conscious, well-oriented and was in a condition to give statement – Deceased made statement to her father also - Investigating officer seized plastic can, matchstick and partly burnt clothes from spot where deceased had extinguished fire by rolling on the ground – Conviction was recorded on basis of dying declarations, corroborated by circumstantial evidence – Held, there is no reason to discard the statements recorded in the dying declarations, which are consistent and minor variations here and there are not sufficient to discard the entire statement considering the fact that victim was suffering from more than 80% burn injuries – Evidence Act, 1872, S. 32(1)
- C. Evidence Act, 1872 – S. 32(1) – Dying declaration – Conviction on basis of – Care and caution to be exercised by court – Nemo moriturus praesumitur mentire – Dying declaration is undoubtedly admissible under S. 32(1) of Evidence Act, but due care has to be taken by persons who record statement - Dying declaration is an exception to hearsay rule when it is made by declarant at the time when it is believed that declarant's death was near or certain – It may be sole evidence and hence it becomes necessary to accept the same to meet the ends of justice – There is no requirement as to corroboration of dying declaration before it is acted upon, but court has to carefully scrutinize the evidence while evaluating a dying declaration since it is not a statement made on oath and is not tested on the touchstone of cross-examination.

(2014) 4 Supreme Court Cases 375

SUNIL DUTT SHARMA

Vs

STATE (GOVERNMENT OF NCT OF DELSHI)

Date of Judgment : 8.10.2013

- A. Criminal Law – Sentence – Discretion of court – Exercise of – Sentencing policy of India – Judge-centric or principle-based – Principles evolved by Supreme Court provide objective basis to Judges for determining quantum of punishment, unlike some other countries where principles are formulated under statute for application on basis of categorization of offences – Principles relating to imposition of death sentence, held, equally to award lesser or higher sentence – Thus Crime Test (aggravating circumstances) and Criminal Test (mitigating circumstances) to be applied: the present legislative policy discernible from S. 235(2) r/w S. 354(3) CrPC, held, following Constitution Bench in Bachan Singh, (1980) 2 SCC 684, is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under S. 302 IPC, the court should not confine its consideration principally or merely to the circumstances connected with the particular crime (Crime Test), but also give due consideration to the circumstances of the criminal (Criminal Test) – Penology – Sentencing norms – Criminal procedure Code, 1973 – Ss. 235 and 354 – Penal Code, 1860, S. 53 and Ch. III (Ss. 53 to 75)

- B. Penal Code, 1860 – S. 304-B – Dowry death – Sentence – Discretion conferred on court by providing minimum term of seven years and maximum sentence of life imprisonment – Relevant factors for determining quantum of sentence, stated – Crime Test and Criminal Test in context of offence under S. 304-B IPC – How to be applied – Explained in detail, and applied on facts**
- **Necessity to combat social evils of dowry and to prevent cruelty and atrocities on women, being common to all offences under S. 304 – B IPC, not determinative – Conviction under S. 304-B IPC, being based on legal presumption arising on occurrence of dowry death within seven years of marriage, aggravating circumstances relating to the crime (Crime Test) may not be readily available – Mitigating circumstances relating to criminal (Criminal Test) should be considered along with all the relevant circumstances – Cumulative effect would be determinative of quantum of sentence to be awarded – Applying above tests to facts of present case, held, instead of life imprisonment, ten yrs' RI would be justified**

HIGH COURT CITATIONS CIVIL CASES

(2014) 2 MLJ 328

R. Vasanthi, W/o. M. Harikrishnan
Vs
M. Harikrishnan

Date of Judgment : 9.1.2014

Family Law – Divorce-Cruelty-Hindu Marriage Act, 1955, Section 13(1)(ia) – Respondent/Husband sought dissolution of marriage under Section 13(1)(ia) on ground of alleged cruelty committed by Appellant/Wife – Trial Court granted divorce – Appeal by Appellant/Wife challenging impugned order of divorce – Appellant alleged that Respondent and his parents caused harassment to her, which made her attempt suicide – Whether decree of divorce dissolving marriage between Appellant and Respondent on ground of cruelty allegedly committed by Appellant correct – Held, failure to state what kind of sexual torture received in hands of Appellant – Respondent in evidence could not remember dates on which alleged incidents of attempt to commit suicide and threat to kill took place - Evidence of respondent clear that alleged sexual torture, threat to kill, attempt to commit suicide were only bald statements without necessary particulars and proof – Allegation of Respondent that Appellant made attempt to commit suicide and was saved by his parents, unsubstantiated by sufficient and reliable evidence – No tangible evidence to prove that complaint lodged by Appellant against Respondent and his parents were false – Mere admission made by Appellant that complaint given against husband and in-laws would not be taken as proof of cruelty or harassment on her part – Impugned order of Trial Court erroneous, infirm and defective, same set aside – Appeal allowed.

2014 (2) CTC 506

Ponniammal
Vs
Ramalingam

Date of Judgment : 10.2.2014

Code of Civil Procedure, 1908 (5 of 1908), Order 22, Rules 4, 5 & 11 – Non-impleadment of Legal Heirs – Consequences thereof – During pendency of First Appeal, 1st Defendant died – Plaintiff filed Application to set aside abatement along with Condone Delay Application – Condone Delay Application was dismissed by Appellate Court – Plaintiff has not challenged Order of Appellate Court by filing Revision before High Court – Appeal heard on merits without bringing Legal Heirs of 1st Defendant on record and decreed Suit against dead person – When Respondent in Appeal dies and right to sue survives, Legal Heirs should be brought on record – Court cannot postpone decision as to how Legal Representative of deceased Respondent to be decided along with Appeal – Code makes it clear that Appeal can be heard only after Legal Representatives are brought on record – Decree passed by Appellate Court against dead person is nullity in law – Second Appeal allowed.

2014 – 2 – L.W. 622

T.K. Arun
Vs
Ezhaliveerappan & Anr

Date of Judgment : 25.3.2014

Transfer of Property Act, Sections 52, 53A.

Sale deed conveying suit property in favour of the appellant – Second respondent/first defendant claimed that the said sale deed was obtained by coercion and misrepresentation and same was unilaterally cancelled by him, followed by the execution of Ex.B3 sale deed in favour first respondent/second defendant.

It was contended by first respondent/second defendant that since sale was preceded by an agreement for sale, which was prior to the date of Ex.A1 sale deed, his derivation of title is unassailable and that the doctrine of lis pendens cannot be applied.

First respondent claims to have entered into an agreement with second respondent – Transfer of title had taken place in favour of the plaintiff under Ex.A2 sale deed – After transfer of title in favour of plaintiff, the second respondent did not have a transferable title to be validly transferred to the first respondent – Remedy available to the first respondent purchaser under the agreement, was to file a suit making the second respondent seeking relief of specific performance.

Plaintiff sought for relief of declaration of his title and recovery of possession and same cannot be resisted.

Even a fraudulent transaction will not be void ab initio and it has to be avoided in accordance with Section 54.

First respondent was not ready and willing to make payment of the balance sale consideration and get the contract specifically enforced against the appellant/plaintiff, who happened to have purchased the property under Ex.A2-sale deed.

(2014) 1 MLJ 679

Divisional Manager, United India Insurance Co.Ltd,

Vs

Apoorvam Ammal and Ors

Date of Judgment : 23.9.2013

- A. Motor Vehicles – Compensation – Deduction of wife’s wages – On collision between trailer and motor cycle, deceased lost life – Tribunal awarded compensation – Challenging quantum of compensation appeal filed by insurance company – Appeal filed by wife and minor daughter seeking enhancement of compensation – Whether wages received by deceased’s wife from job she got on compassionate grounds needs to be deducted from compensation amount – Held, monthly salary received by wife from compassionate appointment has no correlation to compensation computed against tort-feasor for negligence on account of accident – Tort-feasor not contributing anything for compassionate appointment of wife – Tort-feasor not entitled for any benefit in respect of salary that wife receives form compassionate appointment – No need to deduct wages received by wife from job got on compassionate grounds – appeal by insurance company dismissed – Appeal by wife and minor daughter partly allowed.**
- B. Motor Vehicles – Compensation – Deduction of Pension – Whether pension amount received on account of death of husband liable to be deducted – Held, pension amount being pecuniary advantage received on account of one’s death, same has no correlation to compensation computed against tort-feasor for his negligence – Pension receive by wife cannot be deducted from compensation awarded under head of loss of income.**
- C. Motor Vehicles – Enhancement of Compensation – Whether compensation awarded by Tribunal has to be enhanced – Held, monthly income of deceased erroneously fixed by Tribunal – Amount awarded by Tribunal to be re-assessed by increasing monthly income – Amount awarded by Tribunal under head of loss**

of dependency to be enhanced based on increased monthly income – Based on enhanced monthly income and loss of dependency, compensation enhanced.

2014 (2) CTC 690

Donna Rossi Kitchen Line

Vs

D. Harikrishnan and Anr

Date of Judgment : 26.07.2013

Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rule 97 – Execution – Obstruction – Resistance or obstruction to possession of immovable property – Decree for recovery of possession of immovable property – Third party/Obstructor filed Application challenging execution laid by Decree-holder – Contention of Third party that he is in possession of Suit property as lawful Tenant, hence Decree obtained by Decree –holder cannot be enforced against him – Maintainability of Obstruction Petition – Decree-holder alone can maintain Application for removal of obstruction – Third party cannot maintain Application under Order 21, Rule 97, CPC by claiming himself as an Obstructor – Person other than Judgment-debtor, who is removed from Suit property, can approach Court under Order 21, Rule 99 of CPC for adjudication of his rights – Obstruction Petition filed by Third party is not maintainable.

2014- 2 - L.W. 724

Sridhandappa @ Rajappa

Vs

Muniamma

Date of Judgment :7.3.2014

C.P.C., Section 100, Order 41, Rr.22, 23/ Remand, Scope of, Will, proof of,

Evidence Act, Section 68, Will, proof of,

Succession Act, Section 63, Will, proof of,

Practice/Precedents, reliance, Reporting, Citations in journals, how to be read by judicial Officers, Head notes, understanding of, Necessity.

Failure to frame an issue, not ground for remanding case – Omission, an irregularity, can be cured by appellate court, Parties aware of pleas – Effect of.

Will, Proof of – Framing of issue, to prove, Necessity of – Registration of Will, not necessary.

Execution of the Will in the presence of witnesses and attestation by each one of the attestor and the other witness – Plaintiff, who denied the Will, has taken contradictory stand – Examining one of the attestors – Effect of.

Citations in journals – Norms of – how to be read by judicial Officers – Head notes, understanding of – Necessity.

(2014) 2 MLJ 728

Sundaram Co-operative Credit Societies Limited, rep by its Secretary, Chennai – 600 002

Vs

Associated Clearing and Forwarding Agencies, rep. by its proprietor Koshy Thomas and Ors

Date of Judgment : 24.2.2014

Tenancy Laws – Eviction – Res judicata Transfer of Property Act, Section 106 - Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 – Appellant/Plaintiff is registered Co-operative Society and Owner of suit property – Respondent/Defendant is tenant – Plaintiff filed RCOP seeking eviction on ground of own use and occupation, same dismissed for default - Plaintiff also filed RCOP for fixation of fair rent, allowed – Subsequently, Plaintiff filed suit for eviction under TP Act on ground that Plaintiff being Co-operative society, is exempted from purview of Tamil Nadu Buildings (Lease and Rent Control) Act by GO – Defendant/tenant alleged that earlier RCOP by Plaintiff being dismissed for default, subsequent eviction suit under TP Act not maintainable and acted as res judicata – Trial Court directed eviction – Appellate Court reversed judgment on ground that earlier proceedings operate as res judicata – Second Appeal by Plaintiff/landlord – Whether subsequent suit filed by plaintiff/landlord under TP Act is maintainable, in view of fact that they have already exercised right and submitted to proceedings under Rent Control Act – Whether filing of subsequent suit is barred by res judicata – Held, GO exempted Plaintiff landlord/society from purview of applicability of provisions of Tamil Nadu Buildings (Lease and Rent Control) Act – Once held that building exempted as per GO, Rent Controller will not have jurisdiction to pass an order – Even though Plaintiff filed RCOP for eviction, same only dismissed for default and there was no merited order for eviction – When RCOP was dismissed for non-prosecution, same cannot operate as res judicata – Appellant not precluded from filing fresh suit for eviction under TP Act since filing of RCOP does not amount to waiver and right to sue by Plaintiff not lost – Impugned judgment of Appellate Court set aside – Defendant/tenant to vacate premises – Appeal allowed.

2014- 2 - L.W. 743

Dhanalakshmi & Ors
Vs
Janaki Ammal & Ors

Date of Judgment : 17.3.2014

Hindu Succession Act (1956), Section 6, devolution of interest, unmarried daughter's rights,

Hindu Succession Act (1956) (Tamil Nadu amendment Act 1 of 1990), Section 29-A/daughter, as coparcener, Right of unmarried daughter, Section 23, dwelling house, repeal, effect,

Hindu Succession Act (1956 Central amendment act (2005), Section 6/Co-parcenary property, right of devolution, unmarried daughter's rights,

Partition/Division, Oral, Plea of, right of, unmarried daughters.

Unmarried daughter when becomes a coparcener – T. N. and Central amendments – Effect of.

When father died prior to the date on which T.N. amendment was brought into force, succession to his share had opened as per Section 6.

Second plaintiff 'M' remained unmarried on 23.5.1989, the date on which the amendment made by Tamil Nadu Act 1 of 1990 came into effect, she did not become a coparcener because her father was not alive.

For availing the benefit of the amendment either under the TN amendment Act or under the central amendment, father of the female member who claims to have become coparcener should have been alive.

Partition – Effect of T.N. amendment Act 1 of 1990 and Central Act 39 of 2005 – Difference – Act 39 of 2005 makes the daughters a coparcener as coparceners irrespective of their marital status as distinguished from the amendment introduced by TN Act – Rights of unmarried daughters – Date of T.N. Amendment 25.3.89, effect of, on

unmarried daughters – Father of daughter, to be alive, on that date, necessity of, on right of daughter as coparcener.

Partition – Division Of share – ‘A’ died in 1979 – 1/3rd share of ‘A’ enured to his legal heirs, all the four plaintiffs (wife and 3 daughters) and the three defendants (other daughter and 2 sons) in equal proportion – Each 1/21 share – Share of sons shall get increased – Their shares will be 8/27 (1/3+1/3x1/7) each.

All the other 5 legal heirs of ‘A’, namely the plaintiffs and first defendant will be entitled to 1/3x1/7=1/21 each.

Section 23 – Dwelling house – Repeal – Effect of – Effect of suit after central Act – what is.

(2014) 2 MLJ 752

M. Manoharan

Vs

Assistant Executive Engineer, Tamil Nadu Electricity Board, Chidambaram Taluk, Cuddalore District and Ors

Date of Judgment :17.7.2013

Utilities – Electricity – Over-Head electricity lines – Indian Electricity Act, 1910, Section 12(2) – Tamil Nadu Electricity Distribution Code, 2004, Rule 27(6) – Suit filed by appellant against respondent/Electricity Board for drawing over-head electricity lines aerially across appellant’s property – Trial Court decreed suit granting mandatory injunction while claim for damages dismissed – Two appeals preferred by appellant against dismissal of claim for damages and by respondents against grant of mandatory injunction – First appellant court allowed appeal filed by Electricity Board, dismissed appeal filed by appellant – Second appeals for claim of damages and mandatory injunction – Whether appellant entitled to relief of mandatory injunction and damages – Held, Electricity Board has no right to take over head electricity line aerially across private house of individual – Board should not have taken defence that it had power to take domestic supply line aerially across private building of one person to another – Appellant entitled to mandatory injunction – As regards claim for damages, mistake erupted because provisions were not even known to Electricity Board officials – Damages cannot be awarded in the facts and circumstances of the case – Electricity Board at its cost should remove overhead electric line running aerially across property of appellant – Judgment of first appellate court set aside – Judgment of Trial Court in ordering mandatory injunction restored – Second appeals disposed of.

2014 (2) CTC 822

Kamala and Ors

Vs

Kulanthaivel and Anr

Date of Judgment : 11.12.2013

Code of Civil Procedure, 1908 (5 of 1908), Section 10 – Stay of Suit – When can be granted – Former Suit for declaration and injunction filed by husband of 1st Petitioner, dismissed – Appeal filed by Petitioners against dismissal of former Suit, after expiry of period of limitation, pending at unnumbered stage – Later Suit filed by respondents for recovery of possession – Petitioners seeking stay of latter Suit – Application dismissed – Order challenged in Revision – Subject matter of both Suits are one and same – Parties are also same – Since Appeal is at unnumbered stage, it cannot be presumed that Appeal is pending – Formerly instituted Suit is not pending in any Court – Only pendency of formerly instituted Suit constitutes bar on trial of latter Suit – Latter Suit cannot be stayed – Civil Revision Petition dismissed.

HIGH COURT CITATIONS CRIMINAL CASES

(2014) 2 MLJ (Crl) 131

Rahalakshmi

Vs

Superintendent of Police, Thanjavur and Anr

Date of Judgment : 30.1.2014

Criminal Procedure – Proper Enquiry – Addition of Charges – Code of Criminal Procedure, 1973, Sections 482, 174 and 173(8) – Indian Penal Code, 1860, Sections 302 and 304 – Deceased/husband of Petitioner attacked by accused and case registered by 2nd Respondent Police – Deceased took treatment as in-patient and subsequently, discharged – Deceased did not fully recover – Later due to side effect of injury he fell, got injured again and died in hospital – Petitioner alleged that no proper investigation by Police, who could have invoked Section 173(8) of Cr.P.C – Petitioner also alleged that case squarely fell under Section 302 of IPC and instead of adding such charge, Police closed matter – Whether 2nd Respondent/Police can be directed to investigate and add Section 302 IPC in the case on its file – Held, case registered against accused for attack on deceased and charge sheet filed – Deceased fell at his residence, became paralytic, admitted into hospital and died after four days – No reason as to why Police did not reopen case after receipt of post-mortem report and invoke Section 174 of Cr.P.C. – In spite of direction, Investigating Officer did not produce C.D. for injury, same would have helped parties to come to conclusion – Police should have investigated invoking Section 173(8) of Cr.P.C., when it is admitted that deceased sustained injury on both occasions – Should be investigated whether injury sustained during second time has nexus with injury during first time – No reason as to why Police did not even attempt to add Section 304 into charges – 2nd Respondent/Police directed to investigate and add either Section 302 or 304 in charge sheet depending upon circumstances and proceed further with matter in accordance with law.

(2014) 2 MLJ (Crl) 175

D. Thiagarajan

Vs

State, rep. by the Revenue Divisional Officer, Tiruvannamalai and Anr

Date of Judgment : 13.3.2014

- A. Criminal Procedure – Anticipatory Bail – Code of Criminal Procedure, 1973, Section 209(b) – Complaint of custodial death filed against Petitioner/DSP and other Police Officers/accused, by Government Officials – Pending petition for anticipatory bail before Magistrate, Petitioner apprehended that referring to Section 209(b) of Cr.P.C. Magistrate may remand Petitioner to custody, when case comes up for committal – Petitioner sought anticipatory bail – Whether Petitioner entitled to anticipatory bail in a case coming up for committal – Held, if summons issued to accused to appear in sessions case and same comes up for committal, there would be apprehension of arrest in mind of accused – Accused can approach Sessions Court or High Court and Magistrate may be directed to ask accused to execute bond ensuring his appearance before Sessions Court – Accused is being proceeded with for custodial death and he is the sole surviving accused – Petitioner received summons from Sessions court – Petitioner regularly attends Court and he is an elderly man, who has fixed his place of residence and has roots in the society – Magistrate, referring to Section 209(b) of Cr.P.C, need not commit Petitioner to custody to stand for trial before Court of Sessions – Petitioner entitled to anticipatory bail – Magistrate directed not to remand accused to custody, while committing case to Sessions Court – Magistrate shall release Petitioner on bail – Bail bond shall be in force till disposal of sessions case.

- B. **Words and Phrases – ‘Police case’ and ‘private case’ – Police case is instituted on a Police (Final) Report under Section 173 of Cr.P.C. – Private case is instituted upon a complaint under Section 200 of Cr.P.C. – In both cases, after cognizance under Section 190 of Cr.P.C., summons are issued to the accused, if he is not in custody – In either type of case, there may be cases involving offences exclusively triable by a Court of Sessions – Sessions Court has no original jurisdiction, unless the case is committed to it by the Magistrate – There are exceptions to this general principle – Cases under POTa, TADA and defamation cases filed by the public servants are examples of them – Copies of documents proposed to be relied on as against the accused during trial have to be furnished to him, if it is a police case, under Section 207 of Cr.P.C. and if it is a private case, under Section 208 of Cr.P.C. – Only after such compliance, both type of Sessions cases have to be committed to the Court of Sessions under Section 209 of Cr.P.C.**

(2014) 2 MLJ (CrI) 401

Arokiasamy

Vs

State represented by Inspector of Poice, Tuticorin South, Cr. No. 808/2002, Tirunelveli District

Date of Judgment : 25.4.2014

Criminal Laws – Abetment to Suicide – Suicide Note – Indian Penal Code, 1860, Section 306 – Deceased No. 1 got married with Appellant/accused and had two daughters, deceased 2 and 3 – On account of strained relationship, deceased 1, 2 and 3 consumed insecticide and died – Accused tried for abetting suicide – Conviction and sentence based on letter/suicide note written by deceased 2 to her uncle – Appeal against conviction – Whether conviction of Appellant under Section 306 IPC relying on suicide note was justified – Held, police did not send letter to Handwriting Expert along with admitted handwriting of deceased 2 for comparison – At time of death, deceased only 10 years old and studying in 5th standard – Very artificial for 5th standard girl to write letter cataloging reasons for ending life along with mother and sibling – No evidence as to how deceased wife acquired insecticide – Accused was not in house when incident took place – To convict under Section 306 IPC, prosecution should prove that accused instigated or entered into conspiracy or intentionally aided – In absence of three ingredients, accused cannot be convicted under Section 306 IPC merely with aid of dying declaration in nature of suicide note – Conviction set aside – Appeal allowed.

(2014) 2 MLJ (CrI) 408

Dr. A. Jawhar Palaniappan, Majority Shareholder and Director, Kumudam Publications Pvt. Ltd

Vs

State rep. By The Inspector of Police, Central Crime Branch, (Team-1), Egmore, Chennai-600 008 and Anr

Date of Judgment : 21.4.2014

Criminal Procedure – Further Investigation – Misappropriation of Money – Indian Penal Code, 1860, Sections 420, 465, 468 and 471 – 2nd respondent/accused misappropriated specific sum as managerial remuneration without approval of Petitioner/Defacto complainant and Director of Kumudam Publications - In spite of repeated demands by Petitioner, accused refused to provide required financial information – Petitioner required financial information – Petitioner lodged complaint under Sections 420, 465, 468 read with Section 471 against 2nd Respondent – 2nd Respondent arrested and later, released on bail – After examination of witnesses, case was closed as ‘mistake of fact’ – Even though charge sheet was sent to Magistrate, no notice served on Petitioner – Petitioner filed protest petition before Magistrate, same dismissed – Revision – Whether alleged misappropriation against accused proved more than prima facie and same required further investigation to determine its quantum – Held, since there is denial regarding signing of resolutions by Petitioner agreeing for enhancement of remuneration of accused within six months, same has to be investigated by sending the same to handwriting expert – Investigating Agency erred in closing complaint mechanically on basis of reply given by accused for questionnaire issued to him without giving opportunity for Petitioner to ascertain correctness of reply given by accused –

Magistrate also failed to consider all aspects in protest petition and passed impugned order, which was not on basis of facts and law – Impugned Order set aside – Matter remitted to Police to investigate, directed to file final report – Revision allowed.

(2014) 2 MLJ (Crl) 415

Shanmugam

Vs

State by Inspector of Police, Polur Police Station, Tiruvannamalai

Date of Judgment : 15.4.2014

- A. Criminal Laws – Attempt to Murder – Dying Declaration – Indian Penal Code, 1860, Section 307 – Allegation that while deceased was going to take water, Appellant/accused pulled deceased and poured kerosene and set fire – Deceased told Doctor that three persons poured kerosene and set fire – PW.8/Inspector recorded statement from deceased – Magistrate also recorded dying declaration – Conviction and sentence – Appeal – Whether conviction and sentence of Appellant is justified based on three dying declarations – Held, no plausible explanation for delay in lodging report to Police – Delay in making report rises suspicion that entire case concocted and was afterthought – Amongst three dying declarations, in first, deceased stated that three persons set fire – One day after incident, in second to PW.8/Inspector, deceased stated that accused set fire – On same day, in statement to Magistrate, improvements regarding manner of occurrence made – Dying declaration before IO and Magistrate one day after incident cannot be relied as possibility of tutoring by relatives cannot be ruled out – No explanation either from deceased or IO as to reason why deceased stated that three persons set fire – Contradictions in two dying declarations with high degree of improbability of manner of occurrence create doubt regarding contents – Magistrate not given any reason for not obtaining signature when in earlier statement signatures taken – Unsafe to rely on witnesses and inconsistent dying declarations – Highly unsafe to convict Appellant – Impugned judgment set aside - Appeal allowed.
- B. Criminal Laws – Attempt to Murder – Eye Witness – Indian Penal Code, 1860, Section 307 – Whether presence of PW.1 and PW.2 in place of occurrence at time of incident is doubtful and conviction is bad – Held, PW.1 and PW.2 were inside house – Only on hearing cries of deceased, PW.1 and PW.2 came out and saw deceased in flames – Neither PW.1 nor PW.2 tried to extinguish fire and only watched deceased burning – Both PW.1 and PW.2 admit that parents of accused put off fire by pouring water on body – Conduct of PW.1 and PW.2 in not attempting to extinguish fire coupled with fact of coming to spot only after hearing cries of deceased makes testimony highly doubtful – No possibility for PW.1 and PW.2 to have seen incident – Testimony of PW.1 and PW.2 about seeing occurrence unreliable.

(2014) 2 MLJ (Crl) 421

Karthick Theodore

Vs

State rep by Inspector of Poice, All Women Police Station Cantonment, Trichy

Date of Judgment : 30.4.2014

- A. Criminal Laws – Extra-territorial offences – Sanction to prosecute – Indian penal Code, 1860, Section 4 – Code of Criminal Procedure, 1973, Section 188 – Prosecutrix, an Indian national, settled in Sydney fell in love with accused, also an Indian national, employed in Sydney – Both had betrothal in Sydney - Before wedding, both started living together – Subsequently, wedding did not take place and accused came to India for marrying another girl – Complaint lodged in India for offence

of Sections 417 and 376 IPC – Accused convicted and sentenced for offence under Section 376 IPC – Appeal against conviction – Whether prosecution of Appellant/accused in India was justified when offence committed in Sydney, Australia and no sanction was given – Held, both alleged offences, namely offence under Sections 376 and 417 IPC had taken place in Australia – As per Section 4 IPC, when offence committed outside India by citizen of India, no such offence to be inquired or tried in India except with previous sanction of Central Government – Without previous sanction of Central Government, Trial Court wrong to try case – Even during trial no sanction under Section 188 CrPC proviso was obtained – If trial held in place where offence committed, then both sides will have fair opportunity to examine witnesses - By conducting trial in India for alleged offence that took place in Australia, accused was seriously prejudiced – Appellant acquitted – Appeal allowed.

- B. Criminal Laws – Rape – Cheating – Indian Penal Code, 1860, Sections 376 and 417 – Whether prosecution has established by evidence a case to convict Appellant/accused for offences under Sections 417 and 376 IPC – Held, highly educated girl of 26 years goes to Australia; studies there, gets engaged to accused, leaves her father and takes up shared household with accused – Prosecutrix subsequently turns around and says that accused subjected her to sexual assault without her consent which is unbelievable – For maintaining charge under Section 417 IPC, it should be seen whether accused intended to deceive victim from beginning – Both had gone to Registering Office of marriage and given notice of intended marriage – Cannot be said that accused did not have intention to renege from commitment after betrothal – Evidence of father [PW2] to effect that he persuaded prosecutrix not to take separate household – Thereafter, to allege that accused had sex with her forcibly in shared household, appears hard to believe – Prosecutrix left home voluntarily, entered into live in relationship with accused and when relationship became sour, started crying hoarse – Accused disproved prosecution case.

(2014) 2 MLJ (Crl) 431

M.V. Mahesh Kumar

Vs

T. Saravanan, Inspector of Police, Anti-Land Grabbing Special Cell, Office of the District, Superintendent of Police, Krishnagiri District

Date of Judgment : 1.4.2014

Contempt of Court – Disobedience of Court's Order – Contempt of Courts Act, Section 11 – Petitioner filed petition under Section 482 CrPC seeking direction to Respondent to register case based on complaint and investigate – Court directed 1st Respondent to enquire complaint of Petitioner and in case of cognizable offence, case to be registered and to proceed in accordance with law – Petitioner alleged that no enquiry conducted and order of Court not complied with – Contempt petition – Whether there was any wilful disobedience of order of Court or violation of order of Court by Respondent – Held, 'enquiry' intended to find out whether complaint/petition disclosed any cognizable offence – If cognizable offence disclosed, FIR has to be registered and thereafter, investigation comes – Only limited role given to investigation Officer by order of Court namely, enquire whether it disclosed cognizable offence or not – In obedience to order of Court, investigation Officer enquired matter – According to investigation officer, it disclosed only civil matter – It is negative report – If de facto complainant not satisfied with enquiry, complainant can ignore report and file complaint under Section 200 CrPC – Left to Petitioner/complainant to pursue remedy available in law – No contumacious conduct on part of Respondent – Petition closed.

(2014) 2 MLJ (Crl) 519

Alexander Vyukhin @ Alex

Vs

State, by the Intelligence Officer, Narcotic Control Bureau, South Zonal Unit, Chennai - 90

Date of Judgment : 30.4.2014

Criminal Procedure – Bail – Drug Trafficking – Code of Criminal Procedure, 1973, Section 438 – Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 22, 23, 27-A, 28, 29 and 37(b) – Petitioner/Russian National, allegedly participated with other accused in exporting psychotropic substances to foreign countries and financed same – Petitioner arrested – Present petition under Section 438 CrPC seeking bail on ground that Petitioner implicated mainly on confessional statement of A-1 who committed suicide, case legally unsustainable – Petitioner pleaded insanity – Whether Petitioner is liable to be enlarged on bail – Held, Petitioner in connivance with A-1 and A-3 to A-6, procured drugs – Documents showed direct connection and payments between Petitioner and A-1 – While in jail, A-1 committed suicide – Abatement of charges against A-1 will not enure any benefit to Petitioner – Other accused who are whole sale suppliers of drugs, granted bail – On basis of grant of bail to co-accused, Petitioner cannot be considered for grant of bail on principle of parity – On medical examination, Petitioner declared sane – Plea of insanity ruled out – Rider(rigour) incorporated in Section 37(b) of Act applies to Petitioner – No reasonable ground to believe that Petitioner not guilty of offence alleged – If let on bail, Petitioner likely to commit similar offence – No grant of bail – Petition dismissed.

(2014) 2 MLJ (CrI) 524

S. Kumarappan and Ors

Vs

State by Inspector of Police, Fairlands Police Station, Salem

Date of Judgment : 11.4.2014

Criminal Procedure – Filing of report – Wrong provision – Validity of – Tamil Nadu Gaming Act, 1930 Sections 8 and 9 r/w 12 – Chennai City Police (Extension to the Cities of Salem, Tiruchirappali and Tirunelveli) Act, 1997 – Petitioners/Accused found playing cards for money, were arrested – Also sum recovered and table, chairs, money and cards seized – On admission, Trial Court convicted Petitioners under various Sections of 1930 Act and imposed sentence along with fine – Petitioners alleged Sections 8 and 9 r/w 12 repealed, so 1997 Act attracted to offence committed in concerned cities – Revision to set aside conviction and sentence imposed – Whether final report laid by prosecution under Tamil Nadu Gaming Act 1930 sustainable – Held, on date of occurrence of incident, 1930 Act not in force, same substituted by 1997 Act – Magistrate took cognizance of offence, without giving time for reflection, examined Petitioners and convicted them on same day – Filing of final report by Respondent under wrong provisions and taking cognizance of offence by Magistrate not sustainable – Conviction and sentence imposed by Trial Court liable to be set aside – Amount recovered from Petitioners to be returned to them equally – Furniture and other things seized to be returned to owner of property – Revision allowed.

2014 (2) CTC 695

Radhika Sri Hari and Anr

Vs

Commissioner of Police, Coimbatore City, Coimbatore and Ors

Date of Judgment : 12.03.2014

Code of Criminal Procedure, 1973 (1 of 1974), Section 482 – G.O. (3D) No.42m, Home, dated 30.6.2008 – G.O.Ms. No.1580, Home (Police-VII) Department, dated 24.11.2008 – C. No.43/CRB/CSB/2008, dated 8.12.2008 – Inherent Powers of Court – Police Protection for enforcement of Civil Court Orders – Petitioner sought for Police Protection for his immovable property – Right of Petitioner with reference to immovable property – Right of Petitioner with reference to immovable property has been upheld by competent Civil Court and Appellate Court – Guideline issued by Government provides that Police should provide protection for implementation of Civil Court Orders – Police should not insist on specific Court direction to provide Police Protection – Direction issued to provide Police Protection.
