

**Vol -IX  
Part-V**

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## **IMPORTANT CASE LAWS**

*Compiled by*

**Tamil Nadu State Judicial Academy  
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## SUPREME COURT CITATIONS CIVIL CASES

(2014) 1 Supreme Court Cases 536

TATA IRON AND STEEL COMPANY LIMITED

Vs

STATE OF JHARKHAND AND ORS

Date of Judgment : 16.9.2013

- A. Labour Law - Industrial Disputes Act, 1947 – S. 10 – Order making reference under – Manner in which reference is to be worded – Fair statement of dispute(s), without prejudging issues from either perspective – Real dispute between parties not referred – Reference only depicting version of one side – Reference quashed
- Appellant Company's case being that on sale of its cement division to L Company, services of 75 employees working in cement division were also taken over by L Company, whereas respondent workmen claiming that they continued to be employees of the appellant and their services were simply transferred to L Company – Reference presupposing respondent workmen are employees of appellant and that their services have been “transferred” to M/s L, held, is clearly defective as it does not take care of the correct and precise nature of dispute between the parties – On these suppositions, the limited scope of adjudication is confined to decide as to whether the appellant is under an obligation to take back these workmen in service – Obviously, it is not reflective of the real dispute between the parties – It only depicts version of respondent workmen – This precludes appellant from putting forth and proving its case as it would deter Labour Court from going into those issues – Also, by presuming so, Government has itself decided those contentious issues and assumed the role of an adjudicator which is reserved for the Labour Court/Industrial Tribunal – References made in the present form, quashed – Directions issued to Government to make fresh reference, incorporating the real essence of the dispute, without prejudging issues from either perspective
- B. Labour Law – Industrial Disputes Act, 1947 – S. 10 – Jurisdiction of Industrial Tribunal/Labour Court determined by the reference – Bounden duty of Government to make the reference appropriately reflective of real/exact nature of “dispute” between the parties
- C. Labour Law – Industrial Disputes Act, 1947 – S. 10 – Reference – Scope – Though the jurisdiction of the Labour Court /Industrial Tribunal is confined to the terms of reference, but at the same time it is empowered to go into incidental issues
- D. Labour Law – Industrial Disputes Act, 1947 – Ss. 2(k) and 10 – “Industrial dispute” – Whether or not relationship of employer and employee ceased to exist – Appellant Company denying respondents to be its workmen and respondent workmen asserting that they continued to be employees of the appellant Company – Held, is “dispute” within meaning of S. 2(k) which has to be determined by means of adjudication

**(2014) 3 Supreme Court Cases 584**

**N. MANJEGOWDA  
Vs  
UNITED INDIA INSURANCE CO. LTD**

**Date of Judgment : 12.11.2013**

**Motor Vehicles Act, 1988 – Ss. 166, 168, 171 and 173 – Motor accident – Quantum of compensation – Determination – Functional disability/Loss of earning capacity – Estimation of – Reiterated, functional disability of an accident victim requires determination on the basis of nature of disability in the light of the career or profession which he or she was pursuing in life – It should not be computed mechanically based only on percentage of physical disability**

**- Victim, a young advocate aged about 36 yrs, sustaining whole body disability of 50% - Compensation of Rs.8,87,300 awarded by Claims Tribunal – Reduction of, by High Court to Rs.4,67,500 (by reducing loss of future income due to disability from Rs.6,17,500 to Rs.1,50,000) – Propriety - Appellant victim due to accident suffering partial sensory loss all over his limbs and lacking proper coordination in all four limbs – He requiring an assistant for daily routine work – Considering medical assessment of appellant's condition after accident and in view of his whole body disability of 50%, held it would be very difficult for appellant to practice as an advocate and compete with others in the field of legal profession – Appellant being a young advocate was bound to suffer huge professional loss on account of his said condition due to injuries sustained by him in accident – Hence, reduction of appellant's loss of income due to disability from Rs.6,17,500 to Rs.1,50,000 by High Court, held, was not proper – Further held, in order to do complete justice in the matter, victim's loss of earning i.e. functional disability should be treated as 70% and appropriate multiplier should be 16 in place of 13 – Thus, enhancing appellant's loss of income due to disability from Rs.6,17,500 to Rs.10,17,500, total compensation payable to appellant enhanced to Rs.12,87,300/- Directed to be paid with interest @ 6% p.a. from the date of filing of claim petition till the date of payment together with costs quantified at Rs.15,000.**

**(2014) 3 Supreme Court Cases 595**

**STATE BANK OF INDIA  
Vs  
GRACURE PHARMACEUTICALS LIMITED**

**Date of Judgment : 22.11.2013**

- A. Civil Procedure Code, 1908 – Or. 2 R. 2 –Bar of subsequent suit under – Applicability of bar – Principles reiterated – When cause of action is the same, suit must include whole claim and plaintiff cannot split up claim so as to omit one part and sue for the other – In present case, two consecutive suits filed based on same cause of action – Facts on which subsequent suit filed existed on date of filing of first suit – No fresh cause of action arose in between two suits – Relief sought in second suit could have been sought in first suit – Held, cause of action in both suits being the same and plaintiff having omitted to seek certain relief in the first suit, he cannot file second suit seeking that same relief**
- B. Debt, Financial and Monetary Laws – Banks – Banking business - Banking service/Customer service/Negligence – Letter of credit (LoC) – Bill of exchange against, honoured by Bank and payments made to account holder – But LoC amount not received by Bank, so it debiting account of said account holder (plaintiff herein) and finally due to non-regularisation of account/non-settlement of dues, Bank closing account – Issues relating to settlement of LC amount and consequent closure of account thereafter, held, in present case constituted one cause of action – Hence only one suit in respect thereof was maintainable**

**(2014) 1 Supreme Court Cases 635**

**HILL PROPERTIES LIMITED  
Vs  
UNION BANK OF INDIA AND ORS**

**Date of Judgment : 11.9.2013**

- A. **Property Law – Transfer of Property Act, 1882 – Ss. 40 Paras 2 & 3 & 53 –A and Ss. 9 to 12, 54 58(a) & (f), 59, 107, 118 & 123 – Right of ownership over flat purchased by becoming shareholder (to the extent of value of flat) of a housing company, or, by becoming member (to the extent of value of flat) of a co-operative housing society – Nature of, and transferability/alienability of such right of ownership – Restriction on transferability/alienability right of mortgage, sale or transfer of flat of such shareholder by articles of association of company or of such member by the bye-laws of housing society – Permissibility**
- **R-5 obtained a flat by becoming shareholder of appellant Housing Company – Thereafter R-5 created a mortgage by depositing the share certificate by virtue of which it was allotted said flat, with respondent Bank – Thereafter, respondent Bank secured an order of attachment of said flat from DRT as there was a default in repayment of loan obtained by creating the said mortgage on the said flat – Resisting said attachment order, appellant Housing Company contending that all rights, title and interest in respect of said flat remained exclusively vested in Company and R-5 only had right to use and occupy said flat and could not mortgage it without permission of Company – Bank argued that value in share of Housing Company is nothing but value of flat and it could be transferred for consideration and hence said property which was mortgaged, is liable to be attached**
  - **Held, multi-storeyed flats are being purchased by people either by becoming members of cooperative housing society or shareholders of housing company – Right of flat-owner over said flat is exclusively that of his which is transferable and heritable, though he is bound by bye-laws of society or articles of association of company being a member of either – Right or interest to occupy any such flat since becomes a species of property, held, flat-owner can sell, donate, leave by will or let out or hypothecate his right – Further held, such right can be taken away only by a statue – As articles of association of a company have no force of statue, right of R-5 to mortgage said flat cannot be restricted by articles of association of the company – Hence, held, no interference is warranted with order of attachment of said flat issued by DRT – Appellant is granted liberty to invoke its right of pre-emption conferred by the articles of association, but at not less than value of market value of said flat - Registration Act, 1908 – Ss. 91, 95, 96 and 58 – Specific Relief Act, 1963 – S.19(b) – Property Law – Equitable Estates and Interests**
- B. **Corporate Laws – Companies Act, 1956 – Articles of association – Nature of – Held, have no force of a statue**

**(2014) 1 Supreme Court Cases 648**

**OLD AND NATURAL GAS CORPORATION LIMITED  
Vs  
MODERN CONSTRUCTION AND COMPANY**

**Date of Judgment : 07.10.2013**

- A. Civil Procedure Code, 1908 – Or. 7 R. 10 – Return of plaint – Reckoning of date of institution of suit in case of – Such date, held, is date on which suit based on returned plaint being presented before competent court commences and not date of suit wherein plaint was returned – After return of plaint, presentation thereof before court of competent jurisdiction amounts to institution of a fresh suit, requiring commencement of trial afresh even if same had concluded before court which lacked jurisdiction – Latter suit cannot be considered a continuation of the earlier suit
- Initial suit, filed before court having no territorial jurisdiction, decreed – But High Court in appeal directed return of plaint to – Plaint accordingly presented before competent court which passed decree in favour of respondent-plaintiff for payment of a certain amount with interest thereon by appellant-defendant from “date of filing of the suit till realisation” - Held, plaintiff entitled to interest from date of institution of second suit based on presentation of plaint before competent court and not from back date of filing suit before court which lacked jurisdiction, as institution of subsequent suit after return of plaint cannot be treated as continuation of previous suit – Plaintiff committed mistake in initially filing suit before a court which had no jurisdiction and that court also erred in receiving, registering and decreeing suit – But plaintiff cannot be permitted to take advantage of his own mistake and mistake of court – However, plaintiff entitled to benefit of S. 14 of Limitation Act and adjustment of court fee paid in previous suit – Limitation Act, 1963 – S. 14 – Doctrines and Maxims – Actus curias neminem gravabit – Allegans suam turpitudinem non est audiendus
- B. Civil Procedure Code, 1908 – S. 47 – Execution court cannot go behind decree

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**SUPREME COURT CITATIONS  
CRIMINAL CASES**

**(2014) 2 Supreme Court Cases 255**

**ESCORTS LIMITED  
Vs  
RAMA MUKHERJEE**

Date of Judgment : 17.09.2013

- A. Criminal Procedure Code, 1973 – Ss. 177, 178(d), 179, 397 AND 482 – Territorial jurisdiction of court to try offence under S. 138 of NI Act, 1881 – Principles reiterated – Relying on ratio laid in Nishant Aggarwal, (2013) 10 SCC 72, held, courts within whose jurisdiction cheque was presented and dishonoured also have jurisdiction to try offence under S. 138 of NI Act – Acts constituting offence under S. 138, NI Act, reiterated
- Respondent-accused issued cheque to appellant complainant in Kolkata – Cheque was submitted for encashment in Delhi – As cheque was dishonoured, notice was issued from Delhi and finally proceedings under S. 138, NI Act, 1881 initiated before Metropolitan Magistrate in Delhi – High Court ruled that courts in Delhi did not have jurisdiction to try complaint of appellant/complainant and liberty was given to appellant/complainant to prosecute his case before courts in Kolkata – Untenability of
  - Held, courts within whose jurisdiction cheque was presented for encashment would get jurisdiction to try case – Ingredients of offence under S. 138 of NI Act are : (i) drawing of cheque; (ii) presentation of cheque to bank; (iii) returning of cheque unpaid by drawee bank; (iv) giving notice in writing to drawer of cheque demanding payment of cheque amount; and (v) failure of drawer to make payment within 15 days of the receipt of notice – It is not necessary that all should be done at same place, and they may arise at different places – Wherever these acts have been performed, courts of such area get jurisdiction to try complaint under S. 138, NI Act – Hence, High Court erred in concluding that courts in Delhi did not get jurisdiction – Therefore, proceedings before trial court restored – As respondent-accused raised further plea on facts that cheque was presented for encashment in Faridabad, Supreme Court reserved liberty to respondent-accused to raise that plea before trial court
- B. Constitution of India – Art. 136 – Question of fact – New plea before Supreme Court, as to – Impermissibility of, reiterated

**(2014) 3 Supreme Court Cases 321**

**VIKAS  
Vs  
STATE OF RAJASTHAN**

Date of Judgment : 16.08.2013

- A. Criminal Procedure Code, 1973 – Ss. 319(2), 200, 2(a) and 73, 71 & 81 – Whether summons simpliciter, bailable warrant or non-bailable warrant would be proper to secure appearance of person other than accused under S. 319 – Held, court should first issue summons simpliciter or bailable warrant, failing which it should issue non-bailable warrant – Discretion of court to issue non-bailable warrant should be exercised judiciously and sparingly with circumspection and not in a routine manner – Court should arrive at its objective satisfaction by properly balancing personal liberty of such person and societal interest, considering totality of facts and circumstances of case and by following proper procedure requisite for fair trial in consonance with rule of law and basic tenets of criminal law jurisprudence – Constitution of India, Art.21
- B. Criminal Procedure Code, 1973 – Ss. 319(2), 200, 2(a) and Ss. 73, 71 & 81 – Non-bailable warrant to secure appearance of person other than accused – Conditions for issuance of
- C. Criminal Procedure Code, 1973 – Ss. 2(a), 73, 71 and 81 - Bailable and non-bailable offences – Distinction – Issuance of non-bailable warrant is left to discretion of court
- D. Constitution of India – Art. 21 – Fair trial – Non-bailable warrant – Issuance of, instead of bailable warrant in exercise of discretion by court – Affects his personal liberty – Hence court, while exercising its judicial discretion, should properly balance person’s right guaranteed under Art. 21 and societal interest – Criminal Procedure Code, 1973, Ss. 73, 71, 81 and 319(2)
- E. Constitution of India – Art. 21 – Court’s obligation – Court has duty to protect and promote citizen’s right and liberty guaranteed under Art. 21
- F. Criminal Procedure Code, 1973 – Ss. 437, 439, 73, 71, 81, 2(a) and 319 – Bailable and non-bailable offences – Difference and scheme of CrPC in respect of, explained

**(2014) 3 Supreme Court Cases 366**

**BADAL MURMU AND ORS**

**Vs**

**STATE OF WEST BENGAL**

Date of Judgment : 5.02.2014

- A. Penal Code, 1860 – Ss. 302/149 or Ss. 304 Pt. II/149 and S. 148 – Common object of murder – If present – Incident arising out of trivial cause escalating and taking ugly turn – Sharp edge of weapons not used, but only the blunt side, though death caused due to cumulative effect of injuries – Furthermore, none of eyewitnesses attributed specific role to any of the appellants – They did not state which appellant gave which blow and on which part of deceased’s body – Doctor did not state which injury was fatal – Undoubtedly, deceased had suffered two fractures and haematoma under the scalp, but nobody has said that any particular appellant caused these injuries – Thus, neither was conviction of all accused sustainable under Ss. 302/149, nor of any particular accused under S. 302 simpliciter – Hence, conviction of all accused altered to one under Ss. 304 Pt. II/149
- Appellants were armed with lathis, tangies, etc. – They started assaulting deceased and PW 7 (who had been summoned to S’s courtyard, to settle a dispute as to a stolen hen) with lathis – PW 7 managed to escape – Appellants continued to beat deceased – He was beaten to death – Trial court convicted and sentenced appellants under S.148 and S. 302 r/w S. 149 – Their conviction and sentence was confirmed by High Court – Injured witness and eyewitnesses corroborated prosecution version - Death was caused due

to injuries described by doctor: that the injuries could be caused by a blunt object like lathi – Though sharp-cutting weapon i.e. tangies were available, appellants did not use them – Held, it is not possible to hold that appellants shared common object to murder deceased and in prosecution of that common object they caused his death – Thus, sentence already undergone by them, of almost 14 yrs, is directed to be treated as sentence imposed on them under S. 304 Pt. II IPC

- B. Criminal Trial – Appreciation of Evidence – Attending circumstances – Social status of parties – Unusual case, where a trivial incident led to a murder – Conviction altered to S. 304 pt. II IPC – Penal Background/Station/Education of accused – When relevant
- C. Criminal Trial – Witnesses – Related witness – Credibility – Appreciation of evidence – PWs 1, 3, 6 and 7 are rustic witnesses and have candidly stated all that they had seen – PW 7 injured witness did not hesitate to name his brother as one of the assailants – No doubt, these witnesses are related to the deceased but the tenor of their evidence is such that it is not possible to say that they have falsely implicated the appellants – Their evidence has a ring of truth, and has rightly been relied upon – Penal Code, 1860, S. 304 Pt. II

**(2014) 3 Supreme Court Cases 383**

**BHASKAR LAL SHARMA AND ANR  
Vs  
MONICA AND ORS**

**Date of Judgment : 5.02.2014**

- A. Criminal Procedure Code, 1973 – S. 482 – Quashment – Core test that has to be applied before summoning the accused is that the facts stated against accused have to be accepted as they appear on the very fact of it – Appreciation, even in a summary manner, of averments made in a complaint petition or FIR is not permissible at the stage of quashment of criminal proceeding – Facts, as alleged, will have to be proved which can only be done in the course of a regular trial
- B. Penal Code, 1860 – S. 406 – Criminal breach of trust – Quashment, if warranted – Insofar as offence under S. 406 IPC is concerned, it is clear from averments made in complaint petition that it has been alleged that appellants (parents-in-law of respondent) were entrusted or had exercised dominion over the property belonging to respondent and further that the appellants had unlawfully retained the same – Statements also allege retention of cash and other gifts received by respondent complainant at the time of her marriage to R-2-accused – In the face of said averments made in complaint petition, it cannot be said that complaint filed by respondent is shorn of necessary allegation to prima facie sustain the case of commission of offence under S. 406 by appellants – quashment not warranted – Criminal Procedure Code, 1973, S. 482
- C. Penal Code, 1860 – S.498-A – Quashment – Manner of construing complaint of cruelty/FIR – “Cruelty” as defined in Explanation to S. 498-A IPC has a twofold meaning – While instances of physical torture would be plainly evident from pleadings, allegations as to conduct which has caused or is likely to cause mental injury would be far more subtle – Statements made in relevant paragraphs of complaint in present case can be understood as containing allegations of mental cruelty to complainant – Held, complaint, therefore, cannot be rejected at the threshold – Quashment not warranted – Criminal Procedure Code, 1973, S. 482

- D. **Constitution of India – Art. 32 – Maintainability – Efficacious alternative remedy – When enforcement and execution of an order passed under a statute is contemplated by statute itself, normally, an aggrieved litigant has to take recourse to remedy provided under the statute – Criminal Procedure Code, 1973 – S. 105 – Service of summons outside the territory of India**



**(2014) 3 Supreme Court Cases 421**

**BIRJU  
Vs  
STATE OF MADHYA PRADESH**

**Date of Judgment : 14.02.2014**

**Penal Code, 1860 – Ss. 302 and 301 – Murder – Death sentence – Aggravating circumstances – Criminal antecedents – Whether previous criminal record of accused to be taken note of as an aggravating circumstance (1) while awarding death sentence, or, in the alternative, (2) to award minimum non-remittable terms or RI**

- Mere pendency of criminal cases, as such, held, is not an aggravating circumstance to be taken note of while awarding death sentence, since the accused has not been found guilty and convicted in those cause – Even if Crime Test and Criminal Test have been fully satisfied, to award the death sentence, prosecution has to satisfy the R-R test – Maybe, in a given case, the pendency of large number of criminal cases against the accused person might be a factor which could be taken note of in awarding capital punishment – Thus, the same would be relevant in imposing a non-remittable minimum term of RI, as in present case
- Appellant fired a shot with countrymade pistol at right temporal area of one year old child which killed the child – Appellant involved in twenty-four criminal cases, of which three were for murder and two for attempting to commit murder – In such circumstances, if appellant is given a lesser punishment and let free, he would be a menace to the society – Since presence of accused could be a continuing threat to society, the same calls for a longer period of incarceration - This is a fit case where 20 yrs of rigorous imprisonment without remission, to appellant, in addition to the period which he has already undergone, would be an adequate sentence – Criminal Procedure Code, 1973, Ss. 432 and 433-A

**B. Penal Code, 1860 – S. 302 – Murder – Killing of one year old child in the arms of his grandfather – Conviction confirmed and non-remittable sentence of 20 yrs' RI imposed, in addition to period of RI already undergone – PW 1, complainant was standing at grocery shop of PW 2 holding his grandson aged one year old in his arms – PW 4 was also standing in front of said shop – Appellant came out there on a motorcycle and demanded Rs.100 from B who was also present there, for consuming liquor – B expressed his inability to give the money – Appellant abused him in the name of his mother and took out a countrymade pistol from his pocket and fired a shot, which hit right temporal area of infant – Trial court found accused guilty – PWs 1 to 4 and 7 fully and completely supported prosecution case – PW 1, grandfather of the child, PWs 2,3,4 and 7 depicted detailed picture of incident – Eyewitnesses' version is fully corroborated with post-mortem and FSL reports – Countrymade pistol used for committing the offence was subsequently recovered – Bullet had pierced through meningeal membranes and both the lobes of the brain – Prosecution has successfully proved cause of death and the use of firearm by accused – Findings of trial court, affirmed by High Court that offences under S. 302 IPC and S. 27 of Arms Act, 1959, have been made out, confirmed – Arms Act, 1959, S. 27**

**C. Criminal Trial – Witnesses – Hostile witness – Appreciation of evidence – Evidence of a hostile witness cannot be discarded as a whole and relevant parts thereof, which are admissible in law, can be used either by prosecution or defence**

**D. Criminal Trial – Sentence – Death sentence – Mitigating circumstances – Criminal Test – Possibility of reform/rehabilitation – Ascertainment of – Course to be followed by court – Guideline (3) in**

**Shankar Kisanrao Khade, (2013) 5 SCC 546 i.e. “(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated” – Application of – Held, while awarding sentence, in appropriate cases, while hearing the accused under S. 235(2) CrPC, courts can also call for a report from the Probation Officer, while applying the Criminal Test Guideline 3, as laid down in Shankar Kisanrao Khade case – Courts can then examine whether the accused is likely to indulge in commission of any crime or there is any probability of the accused being reformed and rehabilitated – Criminal Procedure Code, 1973 – S. 235(2) – Penal Code, 1860, S.302**

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## HIGH COURT CITATIONS CIVIL CASES

(2014) 1 MLJ 19

Anthonisamy Nadar And Anr  
Vs  
Kanikkai Marry and Ors

Date of Judgment : 6.9.2013

- A. **Succession Laws – Partition – Maintainability of suit – Dispute regarding property arose between 1<sup>st</sup> Respondent's husband and 1<sup>st</sup> Appellant who were brothers – Panchayat held, partition deed effected agreeing to divide properties and to enter into registered partition deed - Suit filed by Respondents 1 to 8 for partition of share in suit properties partly decreed – Preliminary decree passed in respect of specified items in schedule – Appellants and Respondents held liable to pay half amount of debts holding same to be incurred for family – In respect of two other schedules, suit dismissed – Appeal – Whether suit for partition filed by Respondents 1 to 8 is maintainable having regard to panchayat agreement – Held, cannot be stated that under panchayat agreement, parties agreed to divide properties – though panchayat agreement was entered between brothers, not brought into effect, parties agreed to have registered partition – Unless admitted by parties that under panchayat agreement joint properties divided between them, suit for partition maintainable, not affected by panchayat agreement – Appeal partly allowed.**
- B. **Succession Laws – Partition – Entitlement to share – Whether Trial Court right in granting preliminary decree in respect of specified schedule items declaring half share to Respondents 1 to 8 – Held, clear from exhibits that certain items of schedule properties purchased in name of 1<sup>st</sup> Appellant – No evidence let in to prove that properties acquired out of joint exertion of two brothers - Properties purchased by 1<sup>st</sup> Appellant out of his income are his separate properties, respondents cannot claim any share in those properties – Preliminary decree passed in respect of separate properties of 1<sup>st</sup> Appellant liable to be set aside – Certain items of properties purchased in name of mother by sons out of their income in her name – Mother settled 1 item in favour of 1<sup>st</sup> Appellant and 2 items in favour 1<sup>st</sup> Respondent's husband, those properties not available for partition – Admitted by 1<sup>st</sup> Appellant that certain items in both schedules to be common properties – Respondents 1 to 8 entitled to half share in common properties, Trial Court rightly held those properties liable for partition – Preliminary decree passed by Trial Court modified to the effect that common property liable for partition, suit dismissed in respect of other properties.**
- C. **Succession Laws – Debt – Liability to repay – Whether Trial Court right in holding that debts being incurred for family, Appellants liable to contribute half share in respect of schedule debts – Held, suit for recovery of debt filed against husband of 1<sup>st</sup> Respondent, cannot be stated that loan incurred for benefit of family – No evidence let in by Respondents 1 to 8 to prove that loans mentioned in schedule incurred for family – Schedule loans not incurred for family, Appellants not liable to share liability.**

(2014) 2 MLJ 56

Subbathal and Ors

Vs

A. Kaja Najmudeen and Ors

Date of Judgment : 30.10.2013

- A. **Motor Vehicles – Contributory Negligence – Liability – Claimants, wife and son of deceased filed claim petition for compensation from Respondents for death caused in accident – Tribunal held that accident caused by negligence of both drivers of vehicles involved in accident, apportioned negligence equally – After deducting sum for contributory negligence of deceased, Tribunal held claimants entitled to specific sum as compensation - Civil Miscellaneous Appeal for Additional Compensation - Whether contributory negligence fastened on deceased appropriate – Whether entire liability to be fastened on Insurance Company – Held, FIR filed against dead person – To prove contents of FIR, rough sketch absolutely necessary, same not marked by both parties – Contributory negligence, fastened on deceased, not appropriate – On respondents’ side, no oral or documentary evidence let in to rebut claim of claimants before Trial Court – Entire liability to be fastened on Insurance Company, since 2<sup>nd</sup> Respondent’s car insured with them – Civil Miscellaneous appeal allowed.**
- B. **Motor Vehicles – Additional Compensation – Reasonability of – Whether amount sought as additional compensation reasonable to be granted – Held, deceased’s age and fact that he was working as per evidence of claimant to be considered – Additional compensation comprises of amount under heads of loss of earning, loss of consortium, loss of love and affection, funeral expenses and transport expenses – Appeal value sought as additional compensation reasonable, considering age of deceased and dependants, amount granted.**

2014 – 2 – L.W. 113

K. M. Thangavel and Ors

Vs

K.T. Udayakumar and Anr

Date of Judgment : 28.2.2014

Hindu Succession Act (1956), Section 6, 8 Devolution of coparcenary property, daughter’s rights, amendment, Effect of,

Hindu Succession (Tamil Nadu Amendment) Act (1989), Section 29-A, daughter’s rights, Devolution of coparcenary property, amendment, Effect of,

Hindu Succession (Amendment) Act (2005), Section 6, daughter’s rights as coparcener, Scope of, Devolution of coparcenary property, amendment, Effect of,

Hindu Law/Mitakshara Hindu law, Joint family property, customary law, rights of son, law of succession, right of daughter whether existed.

Suit for partition was filed by son (U) against his father (T) (first defendant), mother(D2) and 3 sisters (D3 to D5) – Property was self acquired property of his grand father (MA), ancestral in character in the hands of his father (T) in which he will get a share equivalent to that of his father (T) – Plaintiff (U) and T (his father) inherit it as coparceners – Rights of daughters of T, sisters of plaintiff, U, what are – Scope of - Effect of Tamil Nadu amendment

and central amendment to Section 6, what is – TN amendment prescribed that daughter who married before 25.3.89, does not become coparceners - Daughter of first defendant (T) were all married prior to said date, none of them became coparceners, entitled to equal share to that of plaintiff as per TN Act.

Effect of Central Act 2005 on section 6, what is – Rights of daughters as coparceners – Scope of.

Central amendment does not prescribe daughter of a coparcener should have remained unmarried before the date of commencement of the amendment – Daughter of a coparcener are made coparceners.

Central Amendment Act whether has retrospective effect, Scope of, Amended Section 6(1) states that “the daughter of a coparcener” shall by birth become a coparcener in her own right – It does not say that a “sister of a coparcener” shall become a coparcener – It contemplates the father of such a woman to be alive on the date of coming into force of the amending Act.

Effect of amended Section 6 (Central Act) on devolution of interest – Commencement of 2005 Act, date, effect, what is – Date of death of father, coparcener, Effect on rights of daughter, Scope of.

In this case, father alive, both on the date on which the TN Act came into force and the date on which the Central amendment made by Act 2005 came into force – Father is alive even today – Daughters of the first defendant, become coparceners by virtue of new Section 6 introduced by the Hindu Succession (Amendment) Act, 2005 and they are entitled to equal shares as they would have had if they had been sons.

Plaintiff and defendants 1 and 3 to 5 shall be coparceners – All of them shall be entitled to 1/5<sup>th</sup> share.

C.P.C., Order 41, Rule 31 – Ingredients of, Non-framing of points for consideration, effect of, substantial compliance, what is.

C.P.C., Order 1, Rule 10/Non-joinder of necessary parties, Effect of, sisters of D1, as parties, necessity of, rights of daughters, Scope of, Transferee on record as successor-in-interest of daughters – Hence they are not necessary parties.

C.P.C., Order 41, Rule 27, 28 – Application for additional evidence when can be allowed, Procedure to be followed, what is.

Hindu Succession Act, Section 6, Hindu Law/self-acquired property, daughter, rights, succession, customary law, prior to Act coming into force.

Hindu Succession (Central Amendment) Act 2005/Section 6, amendment, Effect of, daughters are coparceners.

Hindu Succession Act (1956), Section 6/ Hindu Succession (Amendment) Act (2005), Section 6/Females rights as coparceners – Date of death of father – Effect of – When will she be entitled to a share as a coparcener.

If father of a female died prior to 25.3.89, she will not be entitled to under either of the amending Acts – If alive, on 25.3.1989 and she was unmarried then would be entitled to – Death of father after TN amendment Act but before Central Act 2005, unmarried daughter as on 25.3.89 will not be deprive her rights as a coparcener – Irrespective of married or unmarried on the date of 2005 Act, if father was alive on the date of commencement of the Act, she would become a coparcener in respect of the coparcenary property – Death of a coparcener after 25.3.89 but before commencement of Central Act 2005 will not make daughters as coparceners who married prior to 25.3.89 – ‘T’ is alive as of today – Plaintiff and defendants are all entitled to 1/5<sup>th</sup> share equally.

2014 – 2 – L.W. 242

Ramasamy Udayar  
Vs  
Pavoonamal

Date of Judgment : 26.2.2014

Evidence Act, Section 73, Promissory Note, comparison of signatures,

Negotiable Instrument Act (1881), Promissory Note, comparison of signatures, by Court.

Suit on Promissory Note – Execution denied – Denial of signature – Comparison with written statement, vakalath -Court's role to compare – Power of – Expert, need of.

**Held:** duty of plaintiff to establish when defendant denied the execution of the promissory note -Court compared the signatures whether proper – Power of – Scope – Plaintiff should have taken an application to send document to expert – Plaintiff failed to discharge the burden, cannot take advantage.

(2014) 1 MLJ 295

Ponnammal (died) and Ors  
Vs  
M. Harikrishnan

Date of Judgment : 27.6.2013

- A. Contract - Suit for specific performance – Transfer of Property Act, Section 53A – Specific Relief Act, Sections 16(c) and 20 – Defendants are co-sharers of suit Property – Agreement for sale executed by Defendants in favour of Plaintiff – Delay in execution of sale deed by Defendants – Suit for specific performance decreed by Trial Court and same confirmed by First Appellate Court – Second appeal – Whether Lower Courts failed to evaluate evidence to find out if Plaintiff was ready and willing to perform his part of contract – Whether Lower Courts failed to apply Sections 16(c) and 20 of Specific Relief Act – Held, Lower Courts failed to legally consider distinction between two principles, viz., (i) item is not essence of contract relating to specific performance of agreement to sell concerning immovable property, and (ii) limitation period of three years for filing suit for specific performance – Time was fixed for performance of agreement of sale – Original contract envisaged in Exhibit A-1 not enforceable in view of bar of limitation – Nothing to establish and prove that Plaintiff complied with Section 16(c) – Lower Courts failed to evaluate evidence to find out whether Plaintiff was ready and willing to perform his part of contract – Non-compliance with Section 16(c) made Plaintiff ineligible for relief under Section 20 – Lower Courts failed to apply Sections 16(c) and 20 of Specific Relief Act concerning specific performance – Judgment and decree of First Appellate Court set aside – Matter remitted to First Appellate Court – Second appeal disposed of.
- B. Property Law – Execution of power deed – Specific Relief Act, Section 12(3) – Limitation Act, 1963, Section 18 – Suit property projected as property belonging to seven Defendants – Endorsements made by D2, D3, D5 and D6, in respect of their 2/3 shares in entire suit property, not in respect of remaining 1/3 share, which belonged to D1, and D4 – Whether payments made by D2, D3, D5 and D6 attracted Section 18 of Limitation Act so as to enable Plaintiff to file suit – Whether endorsements by D2, D3, D5 and D6 had authority to bind D1 and D4 – Held, endorsements by D2, D3, D5 and D6 not sufficient to attract application of Section 18 of 1963 Act, as those endorsements emerged long after limitation period of three years and six months – D1 and D4 never executed any power deed or executed any authorization in

faour of other Defendants to act on their behalf – Shares of D1 and D4 over suit property cannot be construed and understood as ones affected by conduct of other Defendants – D1 and D4 cannot be held to be bound by endorsements by D2, D3, D5 and D6 – Only D2, D3, D5 and D6 bound in respect of their 2/3 shares over suit property – D2, D3, D5 and D6 did not commit any mistake or fault by making endorsements – Plaintiff should have been diligent in getting signatures of D1 and D4 on endorsements, but he failed to do so.

(2014) 1 MLJ 413

Krishnasamy  
Vs  
Kannika

Date of Judgment : 25.7.2013

Tenancy Law – Eviction – Wilful default – Pondicherry Buildings (Lease and Rent Control) Act 1969 – Petitioner/landlord filed petition for eviction of tenant on ground of willful default in payment of rent – Rent Controller allowed eviction petition, tenant failed to pay rent without just and reasonable cause – Tenant alleged that default occurred on different reasons beyond control – Appellate Authority dismissed eviction petition on ground no pre-suit notice given by landlord and before appearance in Court, tenant has paid entire arrears of rent – Revision by Landlord – Whether default committed by tenant in payment of monthly rent is willful and liable to be evicted – Held, no oral or documentary evidence placed to show that husband of tenant was taking medical treatment – Alleged compromise talk between parties was effected only subsequent to filing of petition, same was admitted by Respondent Witness in cross-examination – alleged demand of enhanced rent by landlord, not proved – When Rent Controller found reasons not proved, he need not exercise direction under proviso to Section 10(2)(i) and can order eviction directly – Appellate authority failed to consider vital aspects and rejected eviction petition, on erroneous ground – Tenant not absolved from his liability of establishing that default not willful, if he pays the entire arrears of rent before first hearing date – Tenant committed willful default, order passed by Appellate Authority liable to be set aside – Order of Rent Controller restored – Civil Revision allowed.

2014 – 2 – L.W. 486

Senthilselvan and Ors  
Vs  
Srinivasan rep. by his Power Agent Vijayarenga

Date of Judgment : 20.3.2014

Contract Act, Section 20/ Agent's authority, termination, when, effect of,

Registration Act (1908), Sections 64, 65, 82(b)/Power of attorney, registration and cancellation, how to be done.

Suit for declaration that sale deed not binding and for recovery of possession – Appeal by defendant – Plaintiff ought to have examined himself instead of power of attorney, who had no personal knowledge about plaintiff allegation – Effect of.

On date of execution of sale deed, authority given to first defendant as an agent was in force – Cancellation was not communicated to the first defendant – Effect – Presumption that Section 208 comes into operation – Scope of.

Power of attorney executed, registered in Tharangamabadi cancelled before the Joint Registrar, Mayiladuthurai – When plaintiff revoked power of attorney, the notice of revocation is to be given to the Registering Officer – Plaintiff not entitled to the declaratory relief.

**(2014) 1 MLJ 515**

**S.D. Ramanathan (died) and Ors**

**Vs**

**Baby Ammal (died) and Ors**

**Date of Judgment : 29.8.2013**

- A. Property Laws – Declaration of title – Probate – Indian Evidence Act, Sections 41 and 44 – Mother of respondent/plaintiff and appellant/defendant executed sale deed conveying suit property to her husband – Claim of respondent/plaintiff that settlement deed was executed – After death of mother, appellant/defendant refused to hand-over possession on ground that deceased mother executed Will bequeathing suit property to appellant/defendant – Respondent/plaintiff filed suit for declaration of title to suit property, recovery of vacant possession and mesne profit – Suit dismissed – On appeal, lower Appellate Court reversed judgment of trial Court – Second Appeal – Whether lower Appellate Court was right in holding that certified Xerox copy of Will was not proved in manner known to law under certified copy of orders of probate proceedings – Held, Section 41 makes grant made by competent probate Court conclusive proof of due execution and validity of Will – Order passed in probate proceedings probating Will binding on whole world including plaintiff – Granting of probate conclusive proof of due execution, validity and contents of Will – Will probated by District Judge, certified copy produced – Appellant/defendant omitted to make interested persons as parties to probate proceedings – Fraud played by appellant/defendant in obtaining order of probate – Lower Appellate Court rightly held that probate Order obtained by fraud and collusion – Will allegedly executed in favour of appellant/defendant not proved – Substantial question of law answered in favour of respondent and against appellant – Second Appeal dismissed.
- B. Property Laws – Adverse possession – Mesne profit – Whether lower Appellate Court was right in holding that registration copy of Settlement Deed was accepted and acted upon by settlees, when respondent/plaintiff themselves admitted that they had no knowledge about Settlement Deed and appellant/defendant are in possession and enjoyment of property for more than 30 years even after execution of Settlement Deed – Held, alternative and inconsistent pleas can be raised but such pleas should not be mutually destructive of each other – Plea of appellant/defendant that there was no real transaction of sale destructive of plea of adverse possession – For substantiating plea of adverse possession, animus to possess it adverse to that of real owner should be there – If person believes and claims property to be his own and in his possession, such possession not be adverse possession – Plea of adverse possession made by appellant/defendant miserably failed – Respondent/plaintiff entitled to mesne profits since appellant/defendant refused to deliver possession – Nothing wrong in fixation of mesne profits.

**2014 (2) CTC 655**

**Ferani Hotels Private Ltd**

**Vs**

**K. Raheja Development Corporation (KRDC)**

**Date of Judgment : 29.11.2013**



Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 17 – Revision against Order permitting Amendment of Plaint – No Application for amendment shall be allowed, if trial has commenced, unless Court comes to conclusion that in spite of due diligence, party could not have raised matter before commencement of trial – Court has to consider whether Amendment would prejudice opposite party and whether relief sought by Amendment is barred by limitation – No error or infirmity in permitting Amendment relating to payment of additional Court-fee – But Amendment seeking inclusion of relief of mandatory injunction is barred by limitation – Hence, prayer for mandatory injunction cannot be sought by way of Amendment – Civil Revision Petition partly allowed.

(2014) 1 MLJ 842

Shakeela Begum

Vs

Mohammed Yakkub (Deceased)

Date of Judgment : 16.7.2013

Civil Procedure – Partition suit – Non-joinder of necessary parties – Subsequent purchasers – Code of Civil Procedure, 1908, Order 1 Rule 10(2) – Dispute on claim for share in joint family property by plaintiff/daughter of deceased brother – 1<sup>st</sup> Defendant/brother of deceased alleged that plaintiff could claim share in properties available on date of death of her father, and cannot claim any share over other properties acquired later – Trial Court held plaintiff entitled to claim partition of properties acquired after death of father – Other Defendants gave power to a person who sold properties to third parties who had become necessary parties to suit – Trial Court also held that without impleading necessary parties, suit not maintainable and plaintiff not entitled to relief sought for – Appeal – Whether Trial Court right in dismissing suit for partition on ground of non-impleadment of subsequent purchasers, although plaintiff was entitled to share as prayed for in suit – Held, 2<sup>nd</sup> Defendant filed additional written statement, after suit was filed, made vague plea on sale to third parties – No particulars given during trial – Absence of particulars given by 2<sup>nd</sup> Defendant with regard to transferees pendent lite or transfer of properties prior to filing of suit – Plaintiff cannot be expected to implead them in suit and subsequent purchasers cannot be considered as necessary parties – Subsequent purchasers may be proper parties and their presence is required only at the time of final decree proceedings and those persons can also be impleaded at the stage of the final decree to work out their remedies – Trial court ought not to have dismissed suit for non-joinder of parties – Suit for partition in absence of particulars provided by Defendants with regard to subsequent transferees, cannot be dismissed – Appeal allowed.

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**HIGH COURT CITATIONS  
CRIMINAL CASES**

(2014) 1 MLJ (Crl) 641

Elumalai and Anr

Vs

State rep. by Inspector of Police, Chennai

Date of Judgment : 26.2.2014

- A. Criminal Procedure – Bail – Cheating – Allegation that accused A1 falsely promised de facto complainant to secure admission of his children in private medical college – Accused A1 demanded consideration – Part of money was paid to account of A1 and rest sum was paid directly at A1's house – Alleged that 1<sup>st</sup> and 2<sup>nd</sup> Petitioners were present – 1<sup>st</sup> Petitioner also gave assurance that his son/A1 would get admission as promised – Money was counted by 1<sup>st</sup> Petitioner and his other son – De facto complainant gave money but neither admission was secured nor was money repaid – Complaint registered on allegation of cheating – A1 is absconding and 2<sup>nd</sup> Petitioner was granted bail – Whether 1<sup>st</sup> Petitioner/father of accused A1 entitled to bail – Held, from FIR and other materials, seen that 1<sup>st</sup> Petitioner had role to play in commission of offence committed by A1 – As seen from FIR, money was paid only in presence of 1<sup>st</sup> Petitioner who counted money in presence of de facto complainant – Prima facie, 1<sup>st</sup> Petitioner played substantive role along with A1 – Accused neither secured admission in medical college nor returned amount – Prima facie this is calculated offence of cheating – 1<sup>st</sup> Petitioner cannot be granted bail – Petition dismissed.
- B. Criminal Procedure – Cognizable offence – FIR – Compulsory Registration – Code of Criminal Procedure, 1973, Section 154 – Case was registered only after 12 months, that too, after direction from Court under Section 482 Cr.P.C. – In Lalita Kumari v. State of U.P., Supreme Court issued eight directions to be followed by police throughout country on receipt of information relating to cognizable offence(s) – Whether police were wrong in not following directions issued in Lalita Kumari v. State of U.P. – Held, registration of FIR mandatory under Section 154 of Code, if information discloses commission of cognizable offence and no Preliminary Inquiry permissible in such situation – Police officer cannot avoid duty of registering offence if cognizable offence disclosed – Action to be taken against erring officers who do not register FIR, if information received discloses cognizable offence – Directions issued in Lalita Kumari v. State of U.P. case to be scrupulously followed by police – Action to be taken against police officers, who abdicate duty to register case(s) as directed.

(2014) 1 MLJ (Crl) 664

Pushpa and Anr

Vs

P.Balasubramanian

Date of Judgment : 4.10.2013

- A. Negotiable Instruments – Dishonour of Cheque – Conviction – Negotiable Instruments Act, Sections 138 and 139 – Accused borrowed money from complainant and on same day, issued three cheques to com-

plainant – All three cheques returned dishonoured – Legal notice issued to accused – Accused sought for extension of time and issue two new cheques – Both were dishonoured, same compelled complainant to issue fresh notice compelled complainant to issue fresh notice - Accused neither replied nor repaid money – Accused committed offence punishable under Section 138 – Lower court sentenced accused to undergo rigorous imprisonment for two months and pay fine – Being aggrieved against conviction, sentence and quantum of sentence, both accused and complainant preferred revisions – Whether accused guilty of offence under Section 138 – Held, only document to be relied on is Ex.P6 reply, which is issued to first statutory notice – Ex.P6 shows admission regarding loan transaction, quantum of loan amount, person from whom amount was borrowed and issuance of cheque for the amount so issued – Accused failed to adduce sufficient evidence to rebut presumption under Section 139 and even admitted complainant's case – Admission made by DW-1 in his Ex.P6 letter would shatter entire defence raised on side of accused – Accused guilty of offence under Section 138 – No illegality found in Lower Court order – Criminal revision case by accused dismissed.

- B. Negotiable Instruments – Dishonour of Cheque – Quantum of Sentence – Negotiable Instruments Act, Sections 138 and 139 – Complainant alleged that sentence awarded should be more adequate and proportionate to offence proved against accused – Whether sentence given to accused for offence under Section 138 justified – Held, quantum of compensation may be determined by taking nature of crime, justness of claim by victim and ability of accused to pay into account – payment may vary depending upon acts of accused – Reasonable period for payment of compensation may also be given, if necessary by instalments – Court may enforce order to pay compensation by imposing sentence in default – Decision in Hari Singh v. Sukhbir Singh applied – Sentence awarded by Lower Court enhanced by way of payment of compensation of twice the cheque amount by accused to complainant.

(2014) 1 MLJ (CrI) 752

P. Raju and Anr

Vs

State represented by its Deputy Superintendent of Police, CBI, Economic Offences Wing, Chennai

Date of Judgment : 11.02.2014

Criminal Procedure – Arraying of accused – Additional accused – Power to proceed against other persons appearing guilty – Code of Criminal Procedure, 1973, Section 319 – Respondent/CBI filed final report against three accused alleging commission of offences – Cognizance taken – 3<sup>rd</sup> accused prayed for discharge – But Trial Court, suo motu passed impugned order under Section 319 CrPC arraying Petitioners as additional accused A-8 and A-9 – Aggrieved, Petitioner filed revision – Whether Trial Court justified to array Petitioners as additional accused under Section 319 CrPC – Held, order under Section 319 CrPC can be passed by Trial Court only during trial and on evidence already let by prosecution – Trial Court cannot array accused as additional accused except on evidence already adduced – Any evidence brought on record after stage of taking cognizance such as evidence recorded under Sections 200 to 202 CrPC will fall within meaning of evidence in 319 CrPC – As soon as evidence in chief examination of witness is over, without waiting for cross examination, Court can resort to Section 319 CrPC – Impugned order passed not on evidence available on record, but on other materials filed along with final report, same is against mandate in Section 319 CrPC – Order passed by Trial Court erroneous, set aside – Revision allowed.

**(2014) 1 MLJ (CrI) 755**

**S. Karunanithi  
Vs  
Sivananda Rao and Anr**

**Date of Judgment : 7.03.2014**

**A. Criminal Procedure – Quashing of proceeding – Code of Criminal Procedure, 1973, Section 482 – Allegation that in presence of wife and others, 1<sup>st</sup> Respondent gave particular sum to Petitioner – Subsequently, when 1<sup>st</sup> Respondent demanded back money, Petitioner assaulted him and criminally intimidated him – Case registered under Sections 420 and 506(i) IPC – Investigation Officer, after examining witness and recording statements, filed final report that it is false case – Magistrate gave notice to 1<sup>st</sup> Respondent and took cognizance against Petitioner – Present petition under Section 482 CrPC – Whether criminal proceedings registered against Petitioner can be quashed – Held, High Court being established as Court of justice, has inherent power ‘to do justice and to prevent injustice’ – Section 482 CrPC ‘saves’, ‘preserves’ pre-existing power of High Court to do justice and interfere where there is injustice – None of the witnesses stated that Petitioner assaulted 1<sup>st</sup> Respondent/Complainant – No injury to 1<sup>st</sup> Respondent and no medical certificate – Analyzing evidence, Investigation Officer formed opinion about false case and accordingly filed negative final report before Magistrate – Magistrate disagreed with conclusion on Investigation Officer and took cognizance without following proper procedure and law – Magistrate not applied judicial mind in taking case on file – Injustice meted out to Petitioner, justice to be restored – Criminal proceedings quashed – Petition allowed.**

**B. Criminal Procedure – Cognizance of offences – Final Report – Code of Criminal Procedure, 1973, Sections 173, 190 and 204 – Constitution of India, 1950, Article 21 – Whether Magistrate took cognizance without following requirement of law and issuing summons under Section 204 CrPC to Petitioner militates against Article 21 of Constitution – Held, final report filed under Section 173 CrPC may be positive and negative – If final report is positive disclosing commission of offence, Magistrate to take cognizance thereon – Magistrate can disagree with negative final report filed by Investigation Officer and take cognizance thereon, if there are materials to do so – But before doing so, Magistrate to see if there is ground to proceed further – Magistrate must apply judicial mind and take decision – Taking cognizance against person has serious consequence – If not properly exercised, it will militate against Article 21 of Constitution – Merely on account of fact that 1<sup>st</sup> Respondent/Complainant objected to negative final report, Magistrate took cognizance and summoned Petitioner – Order by Magistrate directing Petitioner to face criminal case without applying judicial mind is illegal and unsustainable in law.**

**(2014) 2 MLJ (CrI) 1**

**State by the Inspector of Police.  
Vs  
Manoharan**

**Date of Judgment : 24.03.2014**

**(A) Criminal Laws – Murder – Gang Rape – Kidnapping – Circumstantial evidence - Indian Penal Code, 1860, Sections 120B, 364(A), 376(2)(f) and (g), 302 r/w 201 – Accused and deceased co-accused kidnapped ‘X’, ten**

year old girl and her brother 'Y', seven year old boy and raped 'X' – Subsequently, children were forced to drink milk mixed with cow-dung powder and were pushed into canal – Co-accused died before filing final reports – Trial Court convicted and sentenced accused to death for Section 302 r/w 34 IPC, sentenced to life for Sections 120B, 364(A), 376(2)(f) and (g) IPC and 3 years under Section 201 IPC – Referred Trial filed for confirmation of death sentence – Appeal against conviction filed by accused – Whether prosecution established case against Appellant/accused beyond reasonable doubt – Held, prosecution satisfactorily proved recovery of lunch box and snack box based on disclosure statement of Appellant/accused – Evidence of PW3/Priest satisfactory to prove fact that co-accused picked up two children – PW7 stated that deceased co-accused confessed to him that Appellant raped girl child and pushed both children in canal, no reasons to doubt his testimony – No reason to disbelieve testimony of PW 32 and his uncle, who cited floating body, they appear to be natural witnesses – Evidence of PWs20, 23 and 24 shows that deceased co-accused and Appellant were last seen with two children – Inescapable inference that Appellant joined deceased co-accused who already kidnapped two children – Appellant raped 'X' and also committed sodomy – Appellant shared common intention with deceased co-accused in murder of "X' and 'Y' by pushing them into canal – Murder committed to cover up offence of kidnapping and rape – No material to show that deceased co-accused and Appellant entered into criminal conspiracy to kidnap children for ransom – Conviction and sentence for Sections 120B and 364-A IPC set aside – Conviction under Sections 376(2)(f) and (g), 302, 302 r/w 34 and 201 IPC upheld – Appeal dismissed.

(B) Criminal Laws – Sexual assault – Indian Penal Code, 1860, Sections 120B, 364(A), 376(2)(f) and (g), 302 r/w 201 - Whether Appellant subjected 'X' to sexual assault – Held, panties recovered with hair in Maruthi van with help of PW 43/Scientific Expert and same sent to Court without delay – Court sent same to Forensic Department - Experts opined that DNA profile in public hair tally with that of Appellant – No doubt in testimony of PW24/Scientific Expert – Final opinion of Doctor stated that 'X' was subjected to sexual assault – Injury notice on penis of Appellant – Panties absent in dead body of 'X', present in Maruthi van and it was identified by 'X's father – Proved that Appellant subjected 'X' to sexual assault.

(C) Criminal Procedure – Confession Statement – Voluntary – Code of Criminal Procedure, 1973, Sections 164 and 313 – Confession statement of Appellant/ Accused recorded, but same later retracted – Accused also addressed letter to Trial Court, wanted it to be treated as written statement – Whether confession given by Appellant was voluntarily made – Held, confession statement should pass twin tests of voluntariness and truthfulness – Magistrate had put searching questions and after giving sufficient reflection time, recorded confession – Magistrate recorded statement after being satisfied that Appellant gave confession voluntarily – Judicial confession by Appellant was voluntarily made and retraction was clearly an after-thought-Letter sent by Appellant addressing Trial Court will come within meaning of word "matters" used in definition of expression "Proved" in Evidence Act – Explanation of Appellant in letter is patently false – Confession statement corroborated with evidence on record in all aspects, and is true.

(D) Criminal Procedure – Death sentence – Confirmation by High Court – Indian Penal Code, 1860, Sections 120B, 364(A), 376(2)(f) and (g), 302 r/w 201 – Whether death sentence is warranted in case of Appellant/accused – Whether death sentence to be confirmed or commuted to life – Held, two children kidnapped, one of them gang raped and both of them given poison and pushed into canal alive – Nothing to suggest that Appellant/accused suffered from emotional or mental imbalance or disturbance or was under external provocation while committing offence – Victims were 10 and 7 years old and were defenseless – Crime test satisfied – Appellant is able bodied person aged about 23 years and does not show any inkling of reformation, criminal test also satisfied – Appellant/accused will be menace to society as could be inferred in manner in which he raped 10-years old child and pushed 7-years old boy in canal – R.R. test satisfied – Death sentence of Appellant accused confirmed.

**(2014) 2 MLJ (Crl) 67**

**C. Ramalingam  
Vs  
S. Geetha and Ors**

**Date of Judgment : 28.2.2014**

**Criminal procedure – Anticipatory Bail – Cancellation of – Allegation that A1, in connivance with A2, with view to grab property, executed general power of attorney in favour of A3 – A3, being assistant of A1, acting on Power of Attorney, laid plots on property and sold to various persons – Alleged that A1 and A2 created and forged revenue records as if A2 had title for property – De facto complainant registered case against A1 to A3 for alleged Offence under Sections 406,420,465,467,468,471 r/w 34 IPC – A1 to A3 filed petitions seeking anticipatory bail, granted – Present petitions seek cancellation of anticipatory bail – Whether anticipatory bail granted to A1, A2 and A3 justified – Held, documents produced like Chitta and Adangal extracts and other revenue records were all forged and not issued by revenue authorities – By forging Chitta and Adangal extracts and other revenue records, A1 to A3 claimed title falsely, grabbed property and sold away to many innocent purchasers – De facto complainant's wife is one of victims of such fraud – By producing very same forged documents before Lower Court, A1 to A3 obtained anticipatory bail – Fraud played upon Court cannot be viewed lightly – Anticipatory bail granted to A1 to A3 cancelled – Petitions allowed.**

**(2014) 2 MLJ (Crl) 83**

**Ram @ Ramprasad  
Vs**

**State rep. by Inspector of Police, Cantonment Police Station (Law and Order), Trichy**

**Date of Judgment : 7.1.2014**

**Evidence – Electronic document – Furnishing of Compact Disc (CD) – Indian Evidence Act, 1872, Sections 3 and 65(B) – Indian Penal Code, 1860, Sections 29 and 29(A) – Petitioner/Accused involved in offences punishable under IPC – Petitioner filed petition seeking Judicial Magistrate to furnish copy of CD to cross-examine witness, same rejected – Respondent/State alleged that CD is not document as per Section 29 IPC and Section 3 of 1872 Act – Petitioner stated under Section 65(B) Indian Evidence Act compact disc is material document – Whether Petitioner entitled to get copy of CD as per Section 65(B) for cross – examination of witnesses – Held, allegation of Respondent that Section 29 IPC and Section 3 of Indian Evidence Act do not deal with electronic document, cannot be accepted – Under Section 65(B) Indian Evidence Act and Section 29(A) IPC, Petitioner entitled for copy of CD – Judicial Magistrate directed to proceed with matter after furnishing copy of CD to Petitioner – Impugned order of Magistrate set aside – Petition allowed.**

**(2014) 2 MLJ (Crl) 282**

**D. Sudhakar and Ors  
Vs**

**State of Tamil Nadu, rep by Inspector of Police, Neyveli Thermal Police Station, Neyveli**

**Date of Judgment : 7.3.2014**

- A. Criminal Law – Murder – Common intention – Conviction and Sentence – Indian Penal Code, 1860, Sections 299 Part II, 300 part I and II, 302,304(i) r/w Section 34 and 341 – Family dispute between A3 and A3 attacked deceased and his sons (PW1 and 2) with sticks – Trial Court convicted and sentenced all accused persons shared common intention in committing murder of deceased to attract first part of Section 300 IPC – Held, no evidence to show that accused knew that deceased suffered any illness so that by causing bodily injury to him, he would die, case does not attract second part of Section 300 IPC – No evidence by doctor that ninth injury on head sufficient in ordinary course of nature to cause death to attract third limb of Section 300 IPC – Accused, by beating deceased on his head cannot state that they did not have intention of causing such bodily injury likely to cause death within second limb of Section 299 IPC – A1 to A3 shared common intention to commit culpable homicide within second part of Section 299 IPC – A1 guilty of offence under Section 304 (i) IPC for causing fatal injury, sentence awarded – A2 and A3 convicted under Section 304(i) r/w 34 IPC - conviction and sentence of A1 to A5 under Section 302 set aside – prosecution evidence established that A1 and A2 wrongfully restrained victim party, conviction awarded by Trial Court under Section 341 upheld – Appeal partly allowed.
- B. Criminal Law – Murder – Common intention – Conviction and Sentence – Indian Penal Code, 1860, Sections 294B, 302 r/w Section 34,302r/w Sections 149 and 323 – Whether A4/Nephew of A3 had common intention with other accused so as to make him liable under Section 302 r/w 34 IPC – Held, A4 not closely related to deceased and no evidence to show that he had motive against deceased – A4 did not share common intention with other accused for causing death of deceased – A4 acquitted of offence under Section 302 r/w 149 IPC, as there was no unlawful assembly of five members – No evidence to convict A4 under Section 302 r/w 34 also – Conviction altered to Section 323 IPC for causing hurt to prosecution witness (son of deceased) and deceased – Charge against A5/wife of A3, for using foul language to abuse deceased proved, conviction and sentence imposed on A5 under Section 294B IPC maintained.

**(2014) 2 MLJ (Crl) 296**

**Lakshmanan and Anr**

**Vs**

**State of Tamil Nadu, rep by Inspector of Police, M1 – Periyanaickenpalayam Police Station  
Coimbatore District**

**Date of Judgment : 18.3.2014**

Evidence – Circumstantial Evidence – Indian Penal Code, 1860, Sections 302,392,449 and 34 – Appellants/accused convicted for murdering mother of PW-1 under Sections 449, 392 and 302 r/w 34 – Appeals by accused – Whether prosecution proved offences of accused under Sections 449, 392 and 302 r/w 34 based on circumstantial evidence beyond all reasonable doubt – Held, duty of prosecution is to prove each and every circumstance to link accused with crime without break- Error and contradiction in confession statements recorded by VAO – Alleged recovery of material objects on basis of confession also cannot be relied upon – PW-1/son of deceased, in his complaint did not state model of object which was alleged to have been recovered from Finance Company – During examination, object was not shown to PW-1 to identify the same as that of his mother’s – Name of 2<sup>nd</sup> accused missing both in complaint and FIR, but evidence mentioned names of both accused – Wooden log used for committing murder recovered from nearby place, no explanation offered by prosecution – Reason for not sending blood stained cloth recovered from place of occurrence and not offering explanation on side of prosecution also creates reasonable doubt – Prosecution failed to bring nexus of accused with crime and failed to prove their offence beyond all reasonable doubt – Trial Court order set aside – Accused acquitted – Appeals allowed.





**(2014) 2 MLJ (CrI) 305**

**Ragavan @ Puvial Ragavan and Ors**

**Vs**

**State of Tamil Nadu, rep by Inspector of Police, Thiruvaiyaru Police Station, Thanjavur District**

**Date of Judgment : 18.2.2014**

**Criminal Procedure – Kidnapping – Minor offences – Indian Penal Code, 1860, Sections 363,366 A read with 109 – Code of Criminal Procedure, 1973, Section 222 – Allegation that 1<sup>st</sup> Appellant/A1 and victim girl/PW5 loved each other and A1 taken away victim girl for marrying and had sex – 2<sup>nd</sup> to 5<sup>th</sup> Appellants/A2 to A5 abetted act – Appellants charged under Sections 366A and 376 r/w 109 IPC – Trial Court not found Appellants guilty under Sections 366A and 376 IPC but applying Section 222 CrPC, convicted 1<sup>st</sup> Appellant under section 363 IPC and 2<sup>nd</sup> to 5<sup>th</sup> Appellants under Section 363 r/w 109 IPC – Appeal – Appellants alleged that offence under Section 363 IPC is not minor offence within Section 222 CrPC and conviction and sentence not maintainable – Whether conviction of 1<sup>st</sup> Appellant under Section 363 IPC and 2<sup>nd</sup> to 5<sup>th</sup> Appellants under Section 363 r/w 109 IPC sustainable – Held, only if two offences are cognate offences wherein main ingredients are common, one punishable with lesser sentence can be regarded as minor offence vis-à-vis other offence – Section 363 IPC vastly different from Section 366A IPC – Section 363 IPC cannot be minor offence vis-à-vis Section 366A IPC within meaning of Section 222 CrPC – Under Section 363 IPC, basic constituent is that victim girl is under 18 years of age, enticed from lawful guardian – ship – No evidence that victim girl under 18 years of age at time of occurrence – Evidence indicates that victim left house voluntarily and went to various places with 1<sup>st</sup> Appellant on her own – No offence under Section 363 IPC attracted – Throughout trial, A1 asked to defend charge under Section 366A and 376 IPC and at no stage, Appellant was notified about trial under Section 363 r/w 109 IPC given to other Appellants – Serious prejudice as no notice of offence for which Appellants were tried given – Appellants not asked to explain points on which conviction is held to be bad – Conviction and sentence cannot be sustained, set aside – Appeal allowed.**

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