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IMPORTANT CASE LAWS

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HIGH COURT - CRIMINAL CASES

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SUPREME COURT CITATIONS CIVIL CASES

(2014) 9 Supreme Court Cases 185

Singh Ram

v.

Sheo Ram

Date of Judgment : 21.8.2014

- A. Limitation Act, 1963 – Art. 61 – Usufructuary mortgage – No time-limit fixed for usufructuary mortgagor to seek redemption and recovery of possession of immovable property mortgaged – Right to seek redemption, held, would accrue not from date of creation of mortgage but from date of payment of mortgage money out of usufructs or partly out of usufructs and partly on payment or deposit by mortgagor as provided under S.62 of TP Act – Until then, limitation would not start under Art.61 and as such, mere expiry of period prescribed thereunder would not extinguish mortgagor's right of redemption and entitle mortgagee to seek declaration of title and ownership over mortgaged property – Property Law – Transfer of Property Act, 1882 – S.62 – Civil Procedure Code, 1908, Or.34 R.7
- B. Property Law – Transfer of Property Act, 1882 – S. 62 – Right provided by - Held, right of usufructuary mortgagor though styled as “right to recover possession” is for all purposes, the right to redeem and to recover possession.
- C. Property Law – Transfer of Property Act, 1882 – Ss.62, 60 and 58 – Usufructuary mortgagor's right to seek redemption and recovery of possession – Distinguished from redemption right of other mortgagors.

(2014) 9 Supreme Court Cases 350

V. Sreermachandra Avadhani

v.

SK. Abdul Rahim

Date of Judgment : 21.8.2014

Family and Personal Laws – Muslim Law – Gift – With conditions – Validity – Gift of corpus, or, gift of usufruct of property – Distinctive effect on validity of conditions attached therewith – Gift by transfer of corpus of immovable property has to be absolute – Such gift would be valid while any condition attached thereto which derogates from absolute dominion over property gifted would be void – But gift of usufruct of property with conditions, held, is permissible – Whether gift contemplated transfer of corpus or gift of usufruct is to be determined on consideration of text of gift deed – On examination of contents of gift deed in question, held, gift envisaged transfer of corpus of immovable property by donor to his wife and the same was valid – However, conditions stipulated in gift deed denying donee's right of alienation of gifted property and entitling donee to enjoy the property during her lifetime only, whereafter property was to devolve upon her offspring and in the absence of children, reversion thereof to the donor or his successors, amounted to imposition of restrictions on donee's absolute dominion over property, hence void

2014 (6) CTC 445

Inbasegaran

v.

S. Natarajan (Dead) through L.Rs.

Date of Judgment : 29.10.2014

Code of Civil Procedure, 1908 (5 of 1908), Order 2, Rule 2 – Suit to include whole claim – Relinquishment of part of claim – Omission to sue for one of several reliefs – Leave to sue for further relief – Distinct Cause of Action – Different Cause of Action – Meaning – Duty to seek comprehensive relief – Plaintiff/Agreement-holder filed Suit for Permanent Injunction to restrain Defendant from interfering with peaceful possession on basis of Sale Agreement – Suit for Injunction filed on cause of action that Defendant is acting in breach of Sale Agreement – Plaintiff has not obtained any leave of Court in First Suit before filing Second Suit for Specific Performance – When bar under Order 2, Rule 2 of Code would apply – Two Suits filed by Plaintiff on different and distinct cause of action – When Suits are filed and relief claimed therein on same cause of action, bar would apply – Pleadings of Plaintiff would disclose that both Suits filed on different cause of action and subsequent Suit is not barred under Order 2, Rule 2 – Law laid down in Virgo Industries case distinguished – Appeal remanded to High Court for fresh disposal.

2014 (2) TN MAC 546 (SC)

Saraladevi

v.

Divisional Manager, Royal Sundaram Alliance Ins. Co.Ltd.

Date of Judgment : 20.8.2014

MOTOR VEHICLES ACT, 1988 (59 OF 1988), Sections 173 & 168 – Appeal against Award of Compensation – Deceased aged 58 years, while riding Motorcycle dashed by another Motorcycle causing fatal accident – Tribunal holding rider of offending Motorcycle negligent, awarded Compensation of Rs.37,33,248 – High Court in Appeal reduced same to Rs.15,84,750 attributing Contributory Negligence on part of deceased to extent of 25% - Appeal before Apex Court – Loss of Dependency : Tribunal taking monthly income at Rs.50,809 p.m. on basis of Salary Certificate, applied Multiplier of 8 to annual income of Rs.6,09,708 p.a. [Rs.50,809 x 12] and arrived at Rs.48,77,664 : Deducting 1/4th as Personal Expenses i.e. Rs.12,19,416, Loss of Dependency awarded at Rs.36,58,248 : High Court in Appeal, taking income as per Salary Certificate at Rs.6,09,708 p.a. [Rs.50,809 x 12], deducted 10% towards Income-tax and arrived at Rs.5,48,708 [Rs.6,09,708 – 61,000] rounded off to Rs.5,49,000 : Applying Split Multiplier of 2 & 7 arrived at Rs.30,19,500 [Rs.5,49,000 x 2 + Rs.5,49,000 x 50% x 7] and further deducting 1/3rd as Personal Expenses, High Court arrived at Rs.20,13,000 [Rs.30,19,500 – 1/3rd i.e. Rs.10,06,500] : Deducting 25% as Contributory Negligence, High Court awarded Loss of Dependency at Rs.15,09,750 [Rs.20,13,000 – 25% i.e. Rs.5,03,250] : Held, not proper : Apex Court dictum in Sarla Verma not been followed by High Court while deducting Personal Expenses at 1/3rd and applying Split Multiplier of 2 & 7 : Further, finding of Contributory Negligence recorded even in absence of evidence on record contrary to principles in Jiju Kuruvila : Loss of Dependency as awarded by Tribunal at Rs.36,58,248 restored : Tribunal correctly deducted 1/4th as Personal Expenses in view of number of dependants and correctly applied Multiplier of 8 in accordance with dictum in Sarla Verma – Award of Rs.10,000 towards Loss of Consortium, Rs.50,000 towards Loss of Love & Affection, Rs.10,000 as Loss of Estate and Rs.5,000 as Funeral Expenses though not in consonance with dictum in Rajesh, not interfered with – Interest : Tribunal as also High Court awarded 7.5% p.a. even though Claimants entitled to 9% p.a. as per Uphaar Tragedy : difference of 1.5% interest would take care of amount required to be deducted towards Income-tax – Setting aside Order of High Court, Compensation as awarded by Tribunal restored.

PERSONAL EXPENSES – Deduction – Deceased aged 58 yrs. – Claimants : Wife, 2 children and mother of deceased – Considering number of dependants, Tribunal rightly deducted 1/4th as Personal Expenses – Deduction of 1/3rd by High Court, held, not in accordance with dictum in Sarla Verma.

MULTIPLIER – Proper Multiplier – Deceased aged 58 years – Application of Split Multiplier by High Court, held, not proper – High Court erred in not following principles in Sarla Verma : Multiplier of 8 as applied by Tribunal confirmed and restored.

NEGLIGENCE – Finding of – Interference with recording finding of Contributory Negligence on part of deceased to extent of 25% in absence of evidence on record – Held, erroneous in law and contrary to decision of Apex Court in Jiju Kuruvila – Finding of Contributory Negligence as recorded by High Court set aside.

2014 – 4 – LW.785

Shree Ram Urban Infrastructure Ltd.

v.

The Court Receiver, High Court of Bombay

Date of Judgment : 9.5.2014

C.P.C., Order 40, Rule 1/Court Receiver, powers,

Transfer of Property Act (1882), Section 106, notice, period.

Court Receiver, Appointment of, Powers, Scope of – He has right to institute suit for preserving the estate – Court Receiver holding property ‘custodia legis’ – Obtaining leave of court before instituting suit, need for – Non-obtaining not fatal.

Service of notice – Period short of, amendment effect.

SUPREME COURT CITATIONS CRIMINAL CASES

(2014) 9 Supreme Court Cases 281

State of Madhya Pradesh

v.

Bablu

Date of Judgment : 26.8.2014

- A. Criminal Trial – Sentence – Principles for sentencing – Generally – Solemn duty of court while imposing sentence – What is – Just, adequate and proportionate punishment – Imposition of – Principles summarised – Held, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law – It is the duty of every court to award a proper sentence having regard to the gravity and nature of the offence and the manner in which it was executed or committed
- B. Penal Code, 1860 – Ss. 323 and 354 – Assault to outrage modesty of woman – Conviction under Ss. 323 and 354 maintained by High Court – But six months' sentence, reduced to 21 days' of imprisonment already undergone, on ground of accused being first offender, in a very casual manner – Such view, held, would embolden accused to repeat such crime, which is totally detrimental to society – Sentence by trial court, restored

(2014) 9 Supreme Court Cases 299

Raju

v.

State of Chhattisgarh

Date of Judgment : 21.8.2014

- A. Penal Code, 1860 – Ss. 34 and 120-B – Common intention and conspiracy – Ingredients – Reiterated, common intention and conspiracy are matters of inference – If while drawing an inference, any benefit of doubt creeps in, it must go to accused
- B. Penal Code, 1860 – S. 302 r/w Ss. 34 and 120-B – Conspiracy by stepmother-in-law leading to murder of her stepdaughter-in-law by hired killers in furtherance of common intention - Sole child eyewitness, a servant (boy of 13 yrs of age) – Testimony of – Found credible – Test identification parade – Proper conduct of – Identification of accused persons by child witness, reliable – No ulterior motive in identifying accused present – Accused not acquainted to boy – False implication and tutored identification ruled out – Presence of servant boy at place of incident, natural – No delay in TI parade – Recovery of knife (murder weapon) from accused who stabbed deceased victim – Motive also present – Out of four accused, guilt of one accused however not proved beyond reasonable doubt, as he was only seen by witness standing outside house where incident occurred – No evidence of his playing any part in crime – Hence, conviction of three accused confirmed except one, who stands acquitted – Criminal Trial – Identification – Test Identification Parade – Proper conduct of – Witnesses – Child/Young witness – Testimony of – Found credible – Evidence Act, 1872, Ss. 9 and 27
- C. Penal Code, 1860 – S. 302 r/w Ss. 34 and 120-B – Conspiracy leading to murder in furtherance of common intention – Persons who may be held liable – Nothing to show that A-3 did any act in furtherance of conspiracy or in furtherance of common intention of the others – A-3 was merely seen by sole eyewitness, PW 21 as standing outside house where incident occurred – He did not even act as a guard to

prevent PW 21 (Sole eyewitness) from entering the house – There is no evidence of formation or sharing of any common intention with other accused – There is no reference about him in FIR and no evidence that he came with other accused or left with them – No weapon was seized from him, nor was any property connected with crime, seized – Hence, having regard to role attributed to him and absence of incriminating factors, held, it is not safe to convict A-3 of offence of murder with aid of Ss. 34 and 120-B.

(2014) 9 Supreme Court Cases 365

Ramaiah

v.

State of Karnataka

Date of Judgment : 7.8.2014

- A. Penal Code, 1860 – Ss. 304-B, 498-A, 201 and 176 – Dowry death – Key ingredients of S. 304-B not proved – Unnatural conduct of family of deceased – Prosecution version believed by other facts – Presumption as to dowry death – When may not be invoked – Demand for dowry not proved – Hence, held, question of drawing any presumption by invoking S. 113-B of the Evidence Act would not arise – S. 304-B cannot be invoked only on the basis that deceased had died under unnatural circumstances soon after the marriage – Thus, acquittal restored
- B. Criminal Procedure Code, 1973 – S. 154 – FIR – Delay when affects credibility of prosecution case – Absence of explanation for delay – Held, delay per se does not render prosecution case doubtful – However, credible explanation has to be put forth for such delay, which was absent in present case
- C. Penal Code, 1860 – Ss. 304-B and 498-A – Dowry demand – Proof of – Circumstances to be considered – No specific allegations of dowry demand against appellant husband – Fact that dowry articles were given at time of marriage also not established – Accused incurring all marriage expenses and marriage was performed at their residence – Amity between the two families
- D. Penal Code, 1860 – Ss. 304-B and 498-A – Dowry demand – Proof of – Circumstances to be considered – PWs accepting that appellant wanted to marry deceased because of her beauty – Held, though a man marrying a woman for her beauty does not rule out possibility of dowry demand but the same need to be viewed with all attendant circumstances
- E. Penal Code, 1860 – Ss. 304-B and 498-A – Dowry demand – Proof of – Documentary evidence – Held, may not be available since evidence regarding acceptance of dowry in form of record would not be kept since it is not a commercial transaction – Further held, non-production of independent witnesses to prove dowry demand is also not necessarily fatal to prosecution case if evidence of family of deceased inspires confidence – Dowry Prohibition Act, 1961, Ss. 2 and 4.
- F. Evidence Act, 1872 – Ss. 58, 17 and 62 – Document produced by prosecution but not exhibited/formally proved – Held, can be relied upon by defence even without formal proof thereto by prosecution, to falsify prosecution version – Thus, mahazar/site plan drawn by IO, PW 8 produced by prosecution itself and even without formal proof thereto by the prosecution, held, could be relied upon by defence to falsify prosecution version – Criminal Procedure Code, 1973, S. 174

(2014) 9 Supreme Court Cases 457

Union of India

v.

Nirala Yadav

Date of Judgment : 30.6.2014

- A. Criminal Procedure Code, 1973 – S. 167(2) proviso – Default bail – Right to, upon expiry of prescribed period without charge-sheet having been filed – Indefeasible, non-discretionary and mandatory nature of – Application for extension of period of custody without charge-sheet, for filing charge-sheet (when such extension is permissible), held, cannot be entertained if the prior prescribed period has expired
- B. Precedents – Implied overruling – Earlier ruling of smaller Bench stands overruled, if a subsequent larger Bench lays down law to the contrary – Constitution of India, Art.141
- C. Constitution of India – Art. 141 – Precedential or binding strength of a decision, held, is the total strength of Judges on the Bench which decided the case, regardless of there being a dissenting opinion

2014 (6) CTC 460

Jaiminiben Hirenbbhai Vyas

v.

Hirenbbhai Ramesbbhchandra Vyas

Date of Judgment : 19.11.2014

Code of Criminal Procedure, 1973 (2 of 1974), Sections 125 & 354 (6) – Order of Maintenance – To be granted from date of Application or from date of Order – Application for Maintenance filed by wife and minor daughter decided by Family Court by awarding Rs.5,000/- only to minor daughter – Maintenance denied to wife on ground that she was working before marriage and could maintain herself by working again – High Court, in Appeal, reversed Order of Family Court and granted maintenance to wife from date of Order – Held, Section 125, enabling Court to grant maintenance either from date of Application or from date of Order – Section 125 to be read with Section 354(6), wherein stipulated that Final Order Section 125, ought to contain points for determination and reasons for decision – Consequently, Court under Section 125, ought to accord reasons for awarding maintenance from date of Application or from date of Order – In instant case, no reasons accorded by High Court for not granting maintenance from date of Application – Considering that wife had not worked after marriage, grant of maintenance from date of Application, warranted – Maintenance directed to be ordered from date of Application – Appeal allowed.

HIGH COURT CITATIONS CIVIL CASES

2014 – 5 – LW. 29

Pavayammal (Deceased) and another

v.

Thangammal (Deceased) and others

Date of Judgment : 25.08.2014

C.P.C., Order, 21, Rules 64, 90, auction sale, setting aside of, material irregularity, proof of, locus to file application.

Money decree – Auction sale – 1st appellant (deceased) third party, mother of judgment debtor (deceased) filed application to set aside auction sale – Locus to file application, whether – Appellant and her daughters have right in the property – Can maintain application to set aside sale, Sale of portion of a property to meet decree – extent of – Scope – sale not in accordance with order 21 rule 64.

Executing Court has not considered whether sale of a portion of the property would suffice to satisfy the claim made in the execution petition – It has ordered for sale of the entire extent of the land – There is a clear material irregularity in the auction sale conducted by the Court below.

(2014) 8 MLJ 81

Balusamy

v.

Sengoda Gounder

Date of Judgment : 12.08.2014

Property Law – Common Pathway – Right to Use – Partition Deed – Easement Act, Sections 13, 15 and 18 – Appellant/Plaintiff filed suit praying for declaration and injunction – Declaration was with respect to right of Respondents/Defendants to make use of common pathway in respect of properties belonging to Plaintiff, which were not covered in partition deed – Suit decreed – On appeal by Defendants, decree and judgment of Trial Court set aside – Second appeal – Whether right to use common pathway available only to properties covered under partition deed or available in respect of other lands also – Held, perusal of partition deed would show that right to use pathway made available to parties to partition deed only and properties covered are lands covered under partition deed alone – Right to pass and re-pass granted to 1st Defendant apart from others only in respect of particular area of lands in partition deed and not for other lands – For benefit of other lands, some other pathway prescribed and not suit pathway – 1st Defendant can make use of common pathway in respect of lands belonging to him, but not covered under partition deed, only if it does not cause prejudice to rights of other parties to partition deed – When it is proved that using common pathway would cause prejudice to rights of members of partition deed, Plaintiff cannot be permitted to use pathway in respect of other land, which is not covered in partition deed – Based on equitable considerations, right to use pathway cannot be granted and Plaintiff's claim upheld – Suit decreed – Appeal allowed.

2014 – 5 – LW. 324

Mallika Dharmaraj and another

v.

Executive Officer, etc. Temple of Tirupur of Tirupur and another

Date of Judgment : 28.10.2014

C.P.C., Sections 10, 26, 9/Order 4, 14, settlement proceedings, patta, whether suit, stay of,

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari Act (1963) settlement proceedings, patta, whether suit, stay of,

Whether settlement proceedings under Ryotwari act, a suit to attract Section 10.

held: “Issue” and not “dispute” must be same between the same parties – To invoke section 10 both proceedings must be Suits – Patta proceedings before the settlement tahsildar under Inams Abolition Act, cannot be construed as a suit.

2014 – 5 – LW. 365

D. Meera and another

v.

V. Saroja Devi

Date of Judgment : 9.9.2014

C.P.C., Section 9/suit for ejection, civil suit, maintainability,

Tamil Nadu Buildings (Lease and Rent Control) Act (1960), Section 10(3)(a)(i), Rent controller’s jurisdiction G.O.Ms. No.55, dated 10.7.2006, extension to, Chitlapakkam village panchayat notification issuance of, necessity,

Tamil Nadu District Municipalities Act (1920), Section 3-B(1), 4, suit for ejection, civil suit, maintainability.

Suit for ejection – objection to jurisdiction, maintainability of – contended that petition before rent controller ought to have been filed as suit property situated at Chitlapakkam, upgraded as town panchayat – Effect of G.O.Ms.No.55 dated 14.7.2006.

held: Issuance of G.O. not sufficient to bring jurisdiction of rent controller for trying a petition for eviction in respect of any premises situated within Chitlapakkam town panchayat – No notification issued by the Government conferring jurisdiction to try the eviction petition by the learned Rent Controller – Burden to prove that a notification was issued under Section-3-B, appellants failed to discharge burden that a subsequent notification was issued.

2014 (2) TN MAC 567 (DB)

Managing Director, TNSTC Limited

v.

Lakshmi

Date of Judgment : 7.8.2014

INCOME – Fixation of - Deceased aged 30 years, a Junior Officer in a Company, earning Rs.9,000 p.m. as per claim – Appointment Letter/Ex.A11, Salary particulars/Ex.A7 and Attendance Register of Company/Ex.A8 marked – Ex.A7 showing Rs.4,000 as Basic Pay and other allowances and monthly salary as Rs.8,000 p.m. - PW3/Co-employee stated in his evidence that deceased was a Junior Officer in Company and earned Rs.1,00,000 p.a. and was entitled to promotion once in 5 years – Tribunal, therefore, rightly fixed income at Rs.8,000 p.m. – Ad-

dition of 30% as Future Prospects cannot be interfered with, when for person below 40 years, there must be addition of 50% - Supreme Court followed – Income fixed being below Rs.1,00,000 p.a., no question of deduction towards Income-tax.

PERSONAL EXPENSES – Deduction - Deceased aged 30 years – Claimants : Wife, son and mother of deceased – Deduction of 1/3rd towards Personal Expenses proper.

MULTIPLIER – Proper Multiplier – Deceased aged 30 years – Application of Multiplier of 17 as per dictum in Sarla Verma (SC), held to be proper.

MOTOR ACCIDENT CLAIM – Compensation – Award of, under Conventional heads – Deceased aged 30 years – Claimants : Wife, son and mother of deceased – Loss of Consortium : Rs.15,000 awarded by Tribunal being on lower side enhanced to Rs.50,000 – SC in Rajesh followed – Loss of Estate :Rs.10,000 awarded by Tribunal, on lower side considering aged of deceased and child : Enhanced to Rs.50,000 – Transportation & Funeral Expenses : Rs.5,000 awarded by Tribunal enhanced to Rs.15,000 [Rs.5,000 + Rs.10,000].

MOTOR VEHICLES ACT, 1988 (59 of 1988), Sections 173 & 168 – CODE OF CIVIL PROCEDURE, 1908(5 of 1908), Order 41, Rule 33 – Enhancement of Compensation in absence of Appeal or Cross-Objection by Claimants – Scope – Section 168 empowers Court to award “Just Compensation”, which could be more than amount claimed – Order 44, Rule 33, CPC empowers Appellate Court to grant relief to person, who has neither appealed nor filed and Cross-Objection to do complete justice – Therefore, in order to award Just Compensation, Court at Appellate stage empowered to enhance Compensation even without filing of Appeal or Cross-Objection by Claimant – SC followed.

(2014) 7 MLJ 583

Syed Nizamuddin

v.

Shaik Akbar

Date of Judgment : 25.04.2014

Partnership and Joint Ventures – Partnership properties – Suit for declaration – Indian Partnership Act – Two partners converted joint business into partnership firm mentioned in A, B and C schedule – Properties acquired jointly were made as partnership properties – Both partners died leaving behind Respondents/Plaintiffs and Appellants/1st to 10th Defendants as legal heirs – Plaintiffs as legal heirs claimed 50% interest in properties jointly purchased by original partners – Suit for declaration – Trial Court held that Plaintiffs entitled to claim partition – Appeal – Whether suit is maintainable – Whether Plaintiffs having pleaded that properties were properties of partnership firm can file suit for declaration that they are entitled to 2/14 share each in one half of A and B schedule properties, without seeking relief under Partnership Act – Held, properties were jointly purchased in name of partners – Acquired properties to be treated as assets of partnership firm – Suit for partition in respect of partnership properties not maintainable – When partnership firm dissolved by death of one of partners, Plaintiffs to take recourse of Indian Partnership Act – Judgment and decree of Trial Court set aside – Appeal allowed.

(2014) 7 MLJ 616

Vellaigounder

v.

Chinnasevi Gounder

Date of Judgment : 9.10.2014

Civil Procedure – Suit in representative capacity – Impleadment of objectors – Code of Civil Procedure, 1908, Order 1 Rule 8 – Respondents/Plaintiffs filed suit in representative capacity for mandatory and permanent injunction – Public notice issued – Out of 119 objectors, 15 persons submitted before Court citing no objections against Plaintiffs to sue in representative capacity – Remaining 104 objectors had objections against Plaintiffs in filing suit in representative capacity – Court below allowed application filed by Plaintiffs observing that objectors not

filed any petition to implead themselves as party-defendants and at liberty to implead themselves as Defendants – Whether objectors appeared before Court in pursuant to public notice issued under Order 1 Rule 8 CPC objecting to filing of suit by Plaintiffs in representative capacity, have to be impleaded as party-defendants – Whether Plaintiffs can be permitted to continue suit in representative capacity without impleading those objectors as party-defendants – Held, person/persons having no objection need not come to Court and say that they have no objection – But persons who have objections will have to appear before court and file objections – If such objections raised and filed, duty of Plaintiffs to make them as party-defendants, without driving them to file petitions on own to get themselves impleaded as party-defendants – Court below not justified in holding that objectors at liberty to implead themselves as Defendants in said suit, without directing Plaintiffs to implead them as party-defendants in suit – Plaintiffs to implead all objectors as party-defendants – Petition disposed of.

(2014) 7 MLJ 707

Minor Mahema

v.

E.K. Lingamoorthy

Date of Judgment : 08.10.2014

- A. Family Law – Natural Guardian – Power to sell minor’s properties – Hindu Minority and Guardianship Act, 1956, Section 8(2), (4) and (5) – Properties bequeathed in name of minor Petitioners – In best interest of minor, Petition filed by minor Petitioners, represented by mother as natural guardian, seeking permission of Court to alienate subject property of minors by way of sale – 3rd Parties/objectors filed objection petition stating that mother of minor Petitioners not fit person to act as guardian and objected selling petition scheduled property – Objectors alleged that petition mentioned property was subject matter of pending suit – Trial Court dismissed petition and denied permission to sell minors properties – Appeal – Whether reasons assigned by Court below in not granting permission to mother of minors to sell property of minors liable to be set aside – Held, Trial Court after considering all material placed on record concluded that Petitioners owning several residential houses – Trial Court rightly held that petition mentioned property situated in prime locality and market value of land likely to be increased every year – Court below rightly rejected to grant permission to sell property when petition scheduled property is subject matter of suit pending – No infirmity in order passed by Court below – Appeal dismissed.
- B. Family Law – Natural Guardian – Power to sell minor’s properties – Permission of Court – Hindu Minority and Guardianship Act, 1956 (Guardianship Act), Sections 6 and 8(2) (4) and (5) – Guardian and Wards Act, 1890, Sections 10 and 29 – Objectors alleged that to sell property of minor, under Section 29 Guardian and Wards Act, person needs to be appointed as guardian of minor or property or both by competent Court – Without being appointed as guardian of minor, person cannot invoke Section 8(2) of Guardians Act – Whether mother of minor Petitioners entitled to invoke Section 8(2) of Guardians Act seeking permission of Court to sell minors’ property without getting herself appointed as guardian of minors’ property by order of competent Court – Held, Section 29 of Guardians and Wards Act does not state about requirement for natural guardian to get appointed as guardian of property of minor before selling – What was required under Section 8(2) of Guardianship Act for natural mother, is only permission from Court to sell property – Permission could be obtained by natural guardian by filing application under Section 8(2) of Guardianship Act before competent Court by establishing necessity for selling property – Absolutely no need for natural mother to get herself appointed as guardian of minor’s property for seeking permission of Court to sell property of minor – Combined reading of Section 8(5) of Guardianship Act and Section 29 of Guardians and Wards Act show that application by natural mother to be treated as application by person appointed as guardian of minor’s property under Section 29 of said Act – No infirmity in filing application by mother under Section 8(2) of Guardianship Act seeking permission to sell property of minors without obtaining orders from Court to appoint herself as guardian of minor.

- C. Family Law – Natural Guardian – Power to sell minor’s property – Hindu Minority and Guardianship Act, 1956 (Guardianship Act), Section 8(2) – Objectors alleged that in claim petition MCOP for compensation of death of father in road accident, proposed guardian not acted as guardian and represented by grand-father – Allegation that guardianship cannot be changed case to case – Whether mother of minor Petitioners can represent as natural guardian in petition filed under Section 8(2) of Guardian ship Act when in another proceedings in MCOP, minor Petitioners were represented by maternal grand-father as guardian – Held, maternal grand-father not appointed by competent Court as guardian of minors in said MCOP to claim compensation against Insurance Company – Unless person other than natural guardian appointed as guardian by competent Court, representation made by said person in other legal proceedings as guardian of minor will not prevent natural guardian to file petition under Section 8(2).

(2014) 7 MLJ 732

P. Thillai Selvan

v.

Shyna Paul

Date of Judgment : 19.09.2014

Civil Procedure – Rejection of Plaintiff – Maintainability of – Code of Civil Procedure, 1908, Order 7, Rule 11 – 1st Respondent/Plaintiff filed suit for declaration to declare gift deed and sale deed as null and void, for possession of suit premises and for injunction restraining Defendants from alienating, encumbering and transferring suit property in favour of third parties – Petitioner/2nd Defendant filed application for rejection of plaintiff alleging that suit barred by limitation and it was not properly valued, same dismissed – Revision petition – Whether application by Petitioner seeking rejection of plaintiff maintainable – Held, valuation of suit property and payment of Court fee are not purely question of law, but it is mixed question of law and fact – Plaintiff cannot be rejected based on objection raised in respect of valuation of suit property, especially when such objection opposed and denied by Plaintiff – Allegation regarding limitation is also mixed question of law and fact and plaintiff cannot be rejected even before trial is conducted to find out as to whether such allegations are true and sustainable in eye of law – No irregularity or infirmity found in impugned order – Trial Court directed to take up suit and dispose of same on merits and in accordance with law – Petition dismissed.

2014 – 4 – LW. 822

Western Carriers

v.

KEC International Limited and another

Date of Judgment : 18.9.2014

Carriers Act, Section 8,9.

Goods entrusted to carrier to be handed over to consignee – passing of title to goods, when happens – Consignee, plaintiff’s agent, effect of – Where there was no sale of goods, the ownership continues to vest with the consignor – Suit maintainable.

HIGH COURT CITATIONS CRIMINAL CASES

(2014) 4 MLJ(Cr) 257

Ayyappan

v.

State

Date of Judgment : 08.10.2014

Murder – Culpable Homicide – Indian penal Code, 1860, Sections 304(ii), 302, 300, 299 and 294(b) – Appellant/accused convicted and sentenced for offence under Sections 294(b) and 302, same challenged – Whether Appellant's conviction under Sections 294(b) and 302 justified – Held, presence of PW-1/brother of deceased and PW-2/wife of deceased along with deceased corroborated by evidence of PW-3/other witness – Injury No.2 not noted in Accident Register/Ex.P11, but Post-mortem Doctor stated that death was due to injury No.3, which was sutured incised wound on forehead of deceased – No evidence to show as to whether injury No.2 was recent one or old one – But, injury No.3 tallies with injury No.1 in Accident Register/Ex.P11 – Plea of Appellant that deceased went out of hospital and sustained injuries cannot be accepted – Prosecution proved that Appellant assaulted deceased with stick/MO-1, as spoken to by PW-1 and PW-2 – Also proved through evidence of PW-1 that Appellant verbally abused deceased and charge under Section 294(b) established – Death was also not instantaneous, as deceased died three days later – No pre-meditation or intention to cause death – Act of Appellant was culpable Homicide, but same did not fall under any of the Clauses of Section 300 – Even to bring offence under third Clause of Section 300, no evidence to show that bodily injury intended to be caused sufficient in ordinary course of nature to cause death – Act of Appellant will come within meaning of last Clause of Section 299 and same punishable under Section 304(ii) – Conviction and sentence of Appellant under Section 302 set aside – Appellant convicted for offence under Section 304(ii) – Appeal dismissed.

(2014) 4 MLJ(Cr) 313

C. Thangavel

v.

P. Vijayalakshmi

Date of Judgment : 25.09.2014

Evidence – Birth during marriage – Presumption of Legitimacy – Conduct of DNA Test – Indian Evidence Act, 1872, Section 112 – Petitioner and 1st Respondent are husband and wife and 2nd Respondent is their son – Petitioner filed HMO Petition seeking divorce – Disputing parentage of 2nd Respondent son, Petitioner filed Application in HMOP seeking conduct of DNA test, same dismissed – Petitioner filed petition seeking conduct of DNA test towards determining parentage of child – By order under challenge, Court below dismissed such petition – Petitioner alleged that 1st Respondent/wife conceived even before marriage and conduct of DNA test essential to prove Petitioner's case – Revision – Whether Courts below was justified in denying plea to conduct DNA test to prove legitimacy of child – Held, presumption that Section 112 of Indian Evidence Act provides is In nature of conclusive proof – No attempt by Petitioner to inform that he had no access to 1st Respondent/wife during relevant period – Also in earlier HMOP, Petitioner specifically pleaded that child was born to him and 1st Respondent/wife – Revision dismissed.

(2014) 4 MLJ(CrI) 385

Anand

v.

State

Date of Judgment : 17.09.2014

Murder – Suicide – Indian Penal Code, 1860, Section 302 – Deceased was wife of Appellant – Suspecting deceased’s fidelity, Appellant doused her with kerosene and set fire – When taken to Government Hospital, deceased told PW 15/doctor that Appellant poured kerosene and set her on fire – PW12/Head Constable and PW21/Judicial Magistrate recorded statement with same version – Convicted and sentenced – Whether Trial Court was justified in convicting and sentencing Appellant – Whether death of deceased was suicidal or homicidal – Held, Chemical Examiner stated that kerosene detected in clothes of deceased and Appellant – No hesitation that deceased died of burn injuries caused and kerosene used for causing burn – PW4 who took deceased to hospital stated that Appellant poured kerosene and set deceased on fire – When deceased taken to Government Hospital, deceased told doctor same story – Similarly, deceased maintained same story when examined by Head Constable and Judicial Magistrate – Answers given by deceased does not create any suspicion nor be disbelieved – Prosecution proved fact that Appellant suspected fidelity of deceased wife – No injuries sustained by Appellant – Circumstance that Appellant gone to house of PW 1/neighbor and given false information that deceased attempted to self-immolate also goes against Appellant – Prosecution established that death of deceased wife was unnatural and due to burns suffered by her – Conviction and sentence confirmed – Appeal dismissed.

(2014) 4 MLJ(CrI) 389

S. Ramasamy

v.

State

Date of Judgment : 01.08.2014

Prevention of Corruption – Discharge – Rejection of – Code of Criminal procedure, 1973, Section 173 – Indian Penal Code, 1860 (IPC), Section 109 – Prevention of Corruption Act, 1988 (PC Act,) Sections 13 (2), 13(1) (e) – Case of prosecution that A1 while holding position as public servant acquired pecuniary recourses and properties in his name and in name of first wife (A2) and second wife (A3) – A4 to A6 are private individuals who facilitated A3 to use bank accounts for converting ill-gotten money into legal money – Respondent/Police filed final report against A1 to A6 – Allegation that A1 to A3 committed offence under Sections 13(2) r/w 13(1)(e) of PC Act – And A4 to A6 committed offence under Section 109 IPC r/w Sections 13(2) r/w 13(1)(e) of PA Act - Petitioner/A4 filed discharge petition claiming that A4 was unnecessarily implicated without any legal evidence to connect with other accused persons, same rejected – Revision – Whether Trial Court was justified in rejecting discharge petition – Held, at time of framing charge, evidence not to be weighed with meticulous consideration – Even strong Suspicion based on material and presumptive opinion would enable Court of Law in framing charge against accused – Not open Court of Law at time of framing of charge to evaluate material to bring home guilt of accused – Enough if material on record supports triable issues – Court not expected to go into probative value of materials value of record, nor required to discuss every material placed by police – In-depth appreciation of evidence not permissible at time of framing of charge but only prima facie cause to be looked into – Trial Court taken into account broad probabilities of case and came to prima facie conclusion that discharge petition not maintainable – Trial Court rightly rejected since in Discharge Petition evidenciary value of witnesses and documents proposed to be produced by prosecution cannot be appreciated - Court while dealing with Discharge Petition should not embark upon process evaluating materials collected/evidence by prosecution, by deciding its worth or credibility – Petition dismissed.

(2014) 4 MLJ(CrI) 399

P. Rajakumari

v.

Additional Director General of Police

Date of Judgment : 24.09.2014

- A. First Information Report – Registration of FIR – Inquiry – Code of Criminal Procedure, 1973, Section 176(I-A) – Police Standing Orders 151(4), 151(7) and 152 – Petitioner’s mother arrested and taken into custody at 4th Respondent’s Police Station – Present writ petition alleging that police officers subjected Petitioner’s mother to torture by injecting needles into her fingers, nails and hand, beaten mercilessly and hanged upside down and that police coerced to confess crime – Writ Petition to conduct inquiry for custodial rape and violence committed by police and for further investigation by independent agency – Whether direction can be issued to order inquiry – Held, Remand Magistrate, Government Hospital, Medical Officer at Central Prison and Judicial Magistrate have all recorded injuries on person of Petitioner’s mother – Police Standing Order 151(7) (PSO) makes it obligatory for every officer to inform Revenue Divisional Officer, immediately upon receipt of complaint of torture – Even if information received by way of vague rumour, officer should inform Revenue Divisional Officer to commence enquiry – Since same not done, PSO 151(4) not applicable – PSO 152 provides that Government can appoint Commission of enquiry consisting of two officers – Since sufficient evidence available even without investigation by Special Commission, prosecution can be launched – Section 176(1-A) provides for inquiry by Judicial Magistrate, in addition to inquiry held by police – Since police not even registered any FIR on basis of allegations, Section 176(1-A) cannot be invoked – Magistrate did not perform his/her duties properly and effectively – After noting injuries on person of victim, Magistrate ought to have checked whether guidelines issued in D.K. Basu v. State of West Bengal were followed – No question of entrusting investigation to jurisdictional Magistrate – Enough material to warrant registration of FIR even without fact finding mission either by Magistrate under Section 176(1A) of Code or by Revenue Divisional Officer under PSO 151 – Registration of FIR mandatory.
- B. Investigation – Independent Agency – Whether investigation could be entrusted to some other agency like Central Bureau of Investigation – Whether compensation can be granted – Held, once hierarchy of State Police decide to defend Inspector of Police and Constables in question, not fair and proper to entrust investigation at hands of State Police – Case not only concerns alleged violation of fundamental rights but also concerns alleged custodial violence against woman – Victim’s cry for help and justice not heard either by Subordinate Judiciary or by Superior police Force – Allegations made by victim very serious and such allegations deserve registration of FIR at earliest point of time – Central Bureau of Investigation directed to register FIR against Police Officers identified by victim – State to provide interim compensation – Once FIR registered, open to State to place named officials under suspension and initiate action in accordance with law.

(2014) 4 MLJ(CrI) 438

A.L. Ramachandra

v.

Commissioner of Police, Coimbatore

Date of Judgment : 13.10.2014

Bail – Inter-State Anticipatory Bail – Code of Criminal Procedure, 1973 (Code 1973), Sections 438 and 439 – Constitution of India, 1950, Article 226 – Indian Penal Code, 1860 (Code 1860), Sections 420, 406, 504 and 506 – Apart from case filed against Petitioners in specific State, case under Sections 420, 406, 504 and 506 of Code 1860 also registered against them – When 3rd Respondent/Inspector of Police threatened to arrest them, Petitioners

sought inter-State anticipatory bail to go to specific State in order to approach concerned Court for relief – Government Advocate resisted that since Section 438 of Code 1973 envisaging granting of anticipatory bail deleted in specific State, inter-state anticipatory bail cannot be granted to Petitioners – Whether inter-State anticipatory bail could be granted to Petitioners – Held, grant of anticipatory bail cannot be restricted to Courts within whose jurisdiction, offence alleged to have been committed – If person is to be arrested within its territorial limits, High Court or Sessions Courts could grant interim anticipatory bail notwithstanding fact that offences committed beyond their territorial limits – But, bail should be for limited duration enabling accused to approach concerned Court in another State to seek appropriate relief – Decision in S.P. Shanthi Swaroop v. State of Tamil Nadu applied – Though in specific State, provisions of Section 438 of Code 1973 enabling grant of anticipatory bail deleted, still Courts have power to grant inter-state bail – Even in specific State, High Court can grant anticipatory bail under Article 226 of Constitution in appropriate cases – All Courts can grant interim bail under Section 439 of Code 1973 – Inter-State anticipatory bail could be granted to Petitioners for limited period to enable them to seek appropriate bail orders from concerned Court.

(2014) 4 MLJ(Crl) 478

Kannan

v.

State by the Inspector of Police

Date of Judgment : 27.08.2014

Murder – Death of unborn child – Circumstantial Evidence – Indian Penal Code, 1860, Sections 302, 316, 376 r/w 511 and 397 – Appellant alleged to have lecherous eye on deceased sister-in-law and accordingly raped and murdered deceased with knife – Appellant convicted and sentenced for murder of deceased by stabbing with knife u/s 302 IPC and for death of foetus in womb u/s 316 IPC – Trial Court also convicted and sentenced Appellant u/s 376 r/w 511 IPC for attempting to rape deceased and for robbing deceased's jewellery u/s 392 r/w 397 IPC – Appeal – Whether conviction and sentence of Appellant was justified – Held, prosecution proved that Appellant stalking deceased sister-in-law with lascivious eye – On previous night of incident, Appellant and deceased were along at home and Appellant caused some disturbance to deceased – Appellant present with dead body of deceased when PW1/landlady and her son PW2 came to place next day – Last seen theory satisfactorily proved – Appellant gave false explanation to OW1/landlady that when he got up in morning he saw deceased dead and that someone had taken away her gold ornaments – When PW1/landlady wanted to call police, Appellant persuaded her not to call police – Prosecution established that deceased having dead male foetus of 7 months old in uterus whose death caused by stab injury – Conviction and sentence u/s 302 IPC and 361 IPC confirmed – No evidence for convicting Appellant for offence u/s 376 IPC r/w 511 IPC – No link evidence to show that gold ornaments recovered from Appellant belonged to deceased – Conviction and sentence u/s 376 r/w 511 and 397 IPC set aside – Appeal partly allowed.

(2014) 4 MLJ(Crl) 493

A. Thayalan

v.

S.S. Mani

Date of Judgment : 08.10.2014

Negotiable Instruments – Dishonour of cheques – Appeal against acquittal – Legally enforceable liability – Negotiable Instruments Act (NI Act), Section 138 – Alleged that cheques issued by Respondent/accused toward Appellant/Complainant for repayment of loan dishonoured – Trial Court ordered acquittal finding Respondent not guilty under Section 138 NI Act – Appeal – Whether Trial Court justified in ordering acquittal holding that Appellant failed to prove that Cheques given against legally enforceable liability or loan – Held, to warrant prosecution under Section 138 NI Act, necessary that cheque be issued for existing debt or other legal liability – When Respondent deposed of not obtaining any loan and of not issuing cheques in question, burden on Appellant to prove that Cheques received for discharge of debt – Clear contradiction regarding receipt of cheques by Appellant from Respondent as

seen from dates of cheques – Appellant not clear about own case as to whether Respondent issued cheques for borrowed sum or for previous land transaction – Appellant failed to prove Legally Enforceable Debt against Respondent – Appellant failed to prove that cheques given by Respondent towards discharge of liability in respect of loan or debt – Appeals dismissed.

2014 – 2 – LW. (CrI.) 642

R. Kasinathan

v.

State

Date of Judgment : 10.07.2014

Essential Commodities Act, Sections 7(1)(a)(ii), 10, 3 – Serious irregularities – conviction fair price shop.

Tamil Nadu Scheduled Commodities (Regulation and Distribution by Card System) Order (1982), Clause 6(2)(3).

Appeal against conviction – Serious irregularities found on A1(fair price shop) and A2(sales man) – Trial court convicted A1 & A2 on evidence of P.W.2.

Held: Evident from records that amount siphoned off by A1 & A2 – Defence not able to demolish evidence of P.W.2
Authorised dealer shall supply commodities only to card holders under clause (6) – Distribution Register (Ex.P6) shows items sold to various card holders – Presumption of culpable mental state against accused and burden on accused to disprove – It was not done.

2014 – 2 – LW. (CrI.) 666

Naresh Kumar

v.

State

Date of Judgment : 2.09.2014

Criminal P.C., Section 439.

Bail – Grant of – Onerous condition, imposing of – Challenge to – Modification – Plea of – Swindling cash while transporting to ATM – Misappropriation – Condition to deposit 10 lakhs, held, is onerous.
