



# TAMIL NADU STATE JUDICIAL ACADEMY

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## IMPORTANT CASE LAW



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# INDEX

S. NO.	IMPORTANT CASE LAWS	PAGE NO.
1	Supreme Court - Civil Cases	01
2	Supreme Court - Criminal Cases	04
3	High Court - Civil Cases	06
4	High Court - Criminal Cases	11

# TABLE OF CASES WITH CITATION

## SUPREME COURT - CIVIL CASES

SL. NO.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE NO.
1	Khenyei vs. New India Assurance Company Ltd	2015 (9) SCC 273	07.05.2015	Motor Vehicles Act, 1988 - Tort Law – Distinction between composite and contributory negligence	01
2	S.M. Asif vs. Virender Kumar Bajaj	2015 (9) SCC 287	12.08.2015	Order 12 Rule 6 C.P.C. - Interpretation of Statutes	01
3	Ramesh Chand vs. Asruddin	(2015) 7 MLJ 503 (SC)	06.10.2015	Specific Performance – Sections 20 and 20(2)(a) of Specific Relief Act	01
4	Neon Laboratories Limited vs. Medical Techonologies Ltd	(2015) 7 MLJ 618 (SC)	05.10.2015	Intellectual Property Laws – Infringement of Trademark – Interim Injunction	02
5	State of Gujarat vs. Kothari and Associates	(2015) 7 MLJ 729 (SC)	16.10.2015	Contract – Damages – Barred by Limitation	02

## **SUPREME COURT - CRIMINAL CASES**

<b>SL. NO.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>PAGE NO.</b>
1	Nizam vs. State of Rajasthan	(2015) 4 MLJ (Cri) 79(SC)	04.09.2015	Murder – Last Seen Theory	04
2	Raj Bala vs. State of Haryana	(2015) 4 MLJ (Cri) 108 (SC)	18.08.2015	Suicide – Abetment to Suicide – Reduction in Sentence	04
3	Indra Vijay Alok vs. State of Madhya Pradesh	(2015) 4 MLJ (Cri) 119 (SC)	31.08.2015	Prevention of Corruption – Witness – Credibility of – Presumption – Section 20 P.C. Act	04
4	V.K. Mishra vs. State of Uttarakhand	(2015) 3 MLJ (Cri) 727(SC)	28.07.2015	Criminal Laws – Dowry – Presumption – Sections 304B and 498A IPC	05
5	Darshan Singh Saini vs. Sohan Singh	(2015) 3 MLJ (Cri) 754(SC)	23.07.2015	Cognizance – Limitation – Alteration of Charge – Sections 216 and 468 Cr.P.C.	05

## **HIGH COURT - CIVIL CASES**

<b>SL. NO.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>PAGE NO.</b>
1	Duraisingam Vs S.R. Jagannathan and another	2015-5-L.W. 340	27.08.2015	Suit for specific performance – Time whether essence	06
2	Thyagaraya Nagar Social Club vs. Woodlands Tiffin Room	2015 (5) CTC 340	07.09.2015	Madras City Tenants Protection Act – Fulfilment of conditions by tenant	06
3	A. Saraswathy vs. Thangamuthu	2015 (7) MLJ 715	24.08.2015	Succession Laws – Hindu Succession – Female Heir	07
4	M. Ramamoorthy vs. R. Thirunavukkarasu	2015 (5) CTC 730	06.07.2015	Suit for bare Injunction – Specific Relief Act – Sections 37, 38 and 41	08
5	Velusamy vs. P.C. Pangajam	2015 (5) CTC 752	28.10.2014	Suit for Partition – Property of Female – Necessary parties	08
6	L. Stella vs. Ponnusamy	2015 (7) MLJ 792	11.09.2015	Divorce – Dissolution of Marriage – Divorce Act, 1869 – Special Marriage Act, 1954	08
7	Natarajan vs. Sathiyavani	2015 (7) MLJ 799	16.09.2015	Property Laws – Injunction – Boundary Line	09
8	New India Assurance Company Limited vs. U. Karmegam	2015 (7) MLJ 805	12.08.2015	Motor Vehicles – Compensation – Contributory Negligence	09
9	Hema vs. Kaveriammal (died)	2015 (5) CTC 892	31.07.2015	Section 144 C.P.C. – Application for restitution –Power of executing Court to order redelivery of possession of property	10
10	P. Sundaram and another Vs T. Balasubramanian (Died) and others	2015-4-L.W. 919	11.09.2015	Sub-tenancy - Proof of – Onus on landlord	10

## **HIGH COURT - CRIMINAL CASES**

<b>SL. NO.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>PAGE NO.</b>
1	I.Manikandan vs. State rep by Inspector of Police	(2015) 4 MLJ (Cri) 257	14.09.2015	Murder – Wrongful Restraint	11
2	K.Velu vs. State through the Intelligence Officer	(2015) 4 MLJ (Cri) 306	31.07.2015	Narcotics – Conspiracy – Narcotic Drugs and Psychotropic Substances Act	11
3	D.Sundareswaran vs. State rep by the Inspector of Police, Puzhal	(2015) 4 MLJ (Cri) 320	16.09.2015	Rape	12
4	M. Paties vs. State by the Deputy Superintendent of Police	(2015) 4 MLJ (Cri) 332	22.07.2015	Prevention of Corruption – Illegal Gratification	12
5	Krishnan vs. State rep. by Sub Insepctor of Police, other	(2015) 4 MLJ (Cri) 359	15.09.2015	Dowry – Demand of Dowry – 498-A and 304-B IPC	13
6	P. Ayyappan vs. Inspector of Police	(2015) 4 MLJ (Cri) 401	07.10.2015	Private Complaint – Cognisance – Section 200 Cr.P.C.	13
7	State rep. by Inspector of Police vs. Praansu Knits	(2015) 4 MLJ (Cri) 419	15.10.2015	Discharge – Section 239 Cr.P.C.	14
8	Sivalingam vs. State rep. by the Inspector of Police	(2015) 4 MLJ (Cri) 480	06.10.2015	Culpable Homicide – Trespass	14
9	S. Jayaraj vs. The State of Tamilnadu, rep. by the Sub-Inspector of Police, F4 Thousand Lights Police Station and another	2015-2- LW. (Cri.) 574	31.07.2015	Recalling Summons – Discharge – Sections 258, 300(5), 362, 397 and 401 Cr.P.C.	15
10	S. Muralidharan vs. Nogaraj and another	2015-2- LW. (Cri.) 580	27.07.2015	Return of Cattle – Prevention of cruelty	15





## SUPREME COURT CITATIONS CIVIL CASES

### 2015 (9) Supreme Court Cases 273

Khenyei

vs.

New India Assurance Company Ltd

Date of Judgment : 07.05.2015

- A. Motor Vehicles Act, 1988 – Ss. 166, 168 and 170 – Composite negligence – Joint tortfeasors – Liability – Joint and several nature of – (1) Apportionment of, nor, (2) determination of inter se liability, nor, (3) impleadment of all joint tortfeasors, held, required in case of joint and several liability – Entire compensation can be awarded against sole impleaded tortfeasor – Inter se liability of joint tortfeasors is to be worked out independently
- B. Tort Law – Contribution – Joint tortfeasors – Inter se liability – Modes available for settlement of
- C. Tort Law – Negligence – Composite and contributory negligence – Distinction between

### 2015 (9) Supreme Court Cases 287

S.M. Asif

vs.

Virender Kumar Bajaj

Date of Judgment : 12.08.2015

- A. Civil Procedure Code, 1908 – Or. 12 R. 6 – Power under – Nature of, and, considerations for exercise of – Held, expression ‘may’ suggests power of court under Or. 12 R. 6 CPC is discretionary and cannot be claimed as of right - Judgment on admission is not a matter of right – Where defendants raised objections which go to root of the case, it would not be appropriate to exercise discretion under Or. 12 R. 6 CPC – Words and Phrases – “May” – Interpretation of Statutes – Subsidiary Rules – Mandatory or directory – “May” – Use of
- B. Rent Control and Eviction – Eviction Decree/Order - Eviction decree on ground of admission of tenancy by tenant, while tenant not admitting any claim/ground on which eviction was claimed, while in fact he raised substantial objections in eviction suit – Propriety

### (2015) 7 MLJ 503 (SC)

Ramesh Chand

vs.

Asruddin

Date of Judgment : 06.10.2015

Contract – Specific Performance – Decree – Specific Relief Act, 1963 (Act 1963), Sections 20 and 20(2)(a) – Plaintiff/respondent No.1 entered into agreement with defendant No.1/appellant – Appellant agreed to sell his land to respondent No.1 – Plaintiff/respondent No.1 gave notice to appellant to execute sale deed but appellant failed to turn up to execute sale deed – Hence suit for specific performance of contract - Trial court came to conclusion that it is not fit case for specific performance of contract, and disposed of suit with finding that agreement executed was

in substance agreement of security for repayment of loan and directed appellant to pay back earnest money – On appeal, first appellate Court allowed appeal and directed appellant to execute sale agreement – High Court then dismissed appeal of appellant as well – Whether Court was right in granting decree of specific performance – Held, Section 20 of Act, 1963, provides that jurisdiction to decree specific performance is discretionary, and court is not bound to grant such relief merely because it is lawful to do so – Section 20(2)(a) of Act 1963 provides that where terms of contract or conduct of parties at time of entering into contract or other circumstances under which contract was entered into or such that contract though not voidable, gives plaintiff unfair advantage over defendant, decree of specific performance need not be passed – In present case, though execution of agreement between parties is proved, but it is nowhere pleaded or proved by plaintiff that he got redeemed mortgaged land in favour of defendant No.2 in terms of agreement, nor is it specifically pleaded that he was ready and willing to get property redeemed from mortgage – Court is of opinion that it is case where instead of granting decree of specific performance, plaintiff can be compensated by directing appellant to pay reasonable and sufficient amount to him – It would be just and appropriate to direct appellants to repay amount along with interest at rate of 18% per annum to L.Rs. of respondent No.1 – If they do so, decree of specific performance shall stand set aside – Appeal disposed of.

(2015) 7 MLJ 618 (SC)

Neon Laboratories Limited

vs.

Medical Technologies Ltd

Date of Judgment : 05.10.2015

Intellectual Property Laws – Infringement of Trademark – Interim Injunction – Trade Marks Act, 1999, Sections 34 and 47 – Predecessor-in-title of Respondents/Plaintiff invented trademark ‘PROFOL’ – Respondents succeeded to user of mark upon amalgamation with their predecessor-in-title – Later, Appellant/Defendant introduced same generic drug ‘ROFOL’ – Respondents filed suit for injunction, damages and profits on predication that ‘ROFOL’ is identical and deceptively similar to Respondents’ PROFOL’ – Trial Court granted injunction in favour of Respondents, same challenged – Single Judge held that Trial Court rightly granted injunction in favour of Respondents – Appeal – Whether prima facie case in favour of Respondents established – Whether prior registration would have effect of obliterating significance of goodwill that was established by Respondents – Held, if Appellant had commenced user of its trademark prior to or simultaneous with or shortly after Respondents’ marketing, on Appellant being accorded registration for ‘ROFOL’ which registration would retrospectively have efficacy, situation would have been favourable to it – But, after applying for registration of its trademark long back, Appellant took no steps in placing its product in market till specific year – Respondents alleged and have prima facie supported with proof that they have already been using their trademark well before attempted user of identical or closely similar trademark by Appellant – Respondents entitled to temporary injunction in light of ‘first in market’ test – Since Respondents made out prima facie case, balance of convenience and irreparable loss also in favour of Respondents – Appellant injuncted from using its mark – Orders of Trial Court and Single Judge reasonable and does not suffer from perversity – Appeal dismissed.

(2015) 7 MLJ 729 (SC)

State of Gujarat

vs.

Kothari and Associates

Date of Judgment : 16.10.2015

Contract – Damages – Barred by Limitation – Indian Contract Act ( Act), Section 73 - Limitation Act, 1963 (Act 1963), Sections 3, 18, 19, Articles 55 and 113 – Agreement made between Appellant/State and Respondent/partnership for providing lining to main canal line – Respondent could not complete work within stipulated time due to repeated and consecutive delays in handing over site – Respondent requested for extension of time, same granted – After completion of work, Respondent sought compensation for monetary loss due to extended time, same denied – Respondent filed suit for damages, same decreed – Appellant filed appeal and Respondent filed counter-claim seeking interest from date of written demand of suit claim – High Court dismissed appeal by Appellant and allowed Respondent’s cross objection – Appeal with allegation that suit barred by

limitation, as claims raised after lapse of stipulated period – Whether suit filed by Respondent for damages barred by limitation - Held, Section 3 of Act 1963 states that suit instituted, appeal preferred and application made after prescribed period shall be dismissed, although limitation not set up as defence – Appellant competent to raise such legal question in appeal or even in successive appeal, though did not raise it before Trial Court – Damages sought by Respondent are for work covered by contract and change in circumstances caused by breaches ascribable to Appellant – Damages incurred due to extension of contract period and resultant damages incurred by Respondent – Suit would fall within ambit of Article 55 of Act 1963 and Article 113 of Act 1963 cannot be resorted to – Contemporaneous with extensions granted, essential for Respondent to have initiated legal action and since it was not done, there would be presumption that claim for damages abandoned and given go-by by Respondent – Since payment of final bill and security deposit not construed to accept or acknowledge damages raised by Respondent, Section 19 of Act 1963 would not per se extend period of limitation – Also, no extension under Section 18 of Act 1963 – Since Respondent failed to file suit for damages within period prescribed, same required to be dismissed on that ground alone – Appeal allowed.

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## SUPREME COURT CITATIONS CRIMINAL CASES

(2015) 4 MLJ (Crl) 79(SC)

Nizam

vs.

State of Rajasthan

Date of Judgment : 04.09.2015

Murder – Last Seen Theory – Indian Penal Code, 1860 (Code 1860), Sections 302 and 210 – Evidence Act, 1872 (Act 1872), Section 106 – Appellants/accused convicted under Sections 302 and 201 on last seen theory, same confirmed on appeal – Appeal – Whether conviction of Appellant under Sections 302 and 201 justified – Whether Lower Courts right in invoking “last seen theory” – Held, only if prosecution succeeded in proving facts by evidence that deceased was last seen alive in company of accused, reasonable inference could be drawn against accused and only then onus can be shifted on accused under Section 106 of Act 1872 – In absence of evidence that Appellants and deceased were last seen together and when time gap is long, dangerous to conclude that Appellants are guilty of committing murder of deceased – In that regard, safe to look for corroboration from other circumstances and evidence adduced by prosecution – From facts and evidence, no other corroborative piece of evidence found corroborating last seen theory, but loopholes found in prosecution case – “Last seen theory” substantially weighed with Lower Courts – High Court brushed aside loopholes in prosecution case – None of the circumstances relied upon by prosecution and accepted by Lower Courts can be pointing only to guilt of Appellants – Conviction of Appellants not sustained, same set aside – Appeal allowed.

(2015) 4 MLJ (Crl) 108 (SC)

Raj Bala

vs.

State of Haryana and others

Date of Judgment : 18.08.2015

Suicide – Abetment to Suicide – Reduction in Sentence – Indian Penal Code, 1860 (Code 1860), Section 306 – Respondents 2 to 4 were convicted and sentenced for offence of abetment to suicide by Trial Court – on appeal High Court upheld conviction but reduced sentence imposed by Trial Court – Appellant filed present appeal against reduction in sentence – Whether High Court was right in reducing sentence imposed on respondents for offence of abetment to suicide – Held, once offence under Section 306 Code 1860 is proved, there should have been adequate and appropriate punishment – Trial Judge has, on basis of appreciation of evidence on record, come to conclusion that deceased was assaulted and being apprehensive of further torture, he committed suicide – Approach of High Court reflects more of casual and fanciful – Single Judge while dealing with appeal preferred by respondents has remained quite unmindful and unconcerned to obvious – Therefore, reduction of sentence by High Court to period already under gone is set aside – Appeal allowed.

(2015) 4 MLJ (Crl) 119 (SC)

Indra Vijay Alok

vs.

State of Madhya Pradesh

Date of Judgment : 31.08.2015

Prevention of Corruption – Witness – Credibility of - Presumption – Prevention of Corruption Act, 1988 (Act 1988), Section 20 – Appellant was convicted and sentenced under provisions of Act 1988 – Appellant contends

that panch witness has not supported prosecution case, as such courts below have erred in law in believing prosecution story – Whether testimony of prosecution witness is credible enough to convict appellant – Held, statement of PW -3 (complainant) gets corroborated by the statement of PW-4 (Deputy Superintendent of Police), as well as by Pw-2, Deputy Collector who is superior officer of the appellant’s own department – As such courts below have committed no error of law in relying on testimony of three witnesses as trustworthy, against statement of DW-6 – Merely for reason that DW-6 has not supported prosecution case, ring of truth in prosecution case is not shaken in when statements of remaining witnesses are credible and trustworthy – Presumption can be drawn under Section 20 of Act, 1988, regarding motive of receiving gratification unless it is rebutted – In present case presumption does not stand rebutted - Appeal dismissed.

(2015) 3 MLJ (Crl) 727(SC)

V.K. Mishra

vs.

State of Uttarakhand

Date of Judgment : 28.07.2015

Criminal Laws – Dowry – Presumption – Indian Penal Code, 1860 (Code 1860), Sections 304B and 498A – Dowry Prohibition Act (Act), Sections 3 and 4 – Indian Evidence Act, 1872 (Act 1872), Section 113B – Appellants were convicted and sentenced under provisions of Code 1860 and Act – Appellants denied making demand for dowry – Trial court’s verdict was upheld by High Court – Whether appellants are guilty of offences under Code 1860 and Act – Held, prosecution has established beyond reasonable doubts that ‘soon before her death’ deceased was subjected to cruelty and harassment by her husband and her in-laws in connection with demand of dowry – Accused were not successful in rebutting presumption raised under Section 113B of Act 1872 – Concurrent findings of courts below convicting appellants under Section 304B Code 1860 is based upon proper appreciation of evidence and convincing reasons – Courts below rightly convicted appellants under Sections 304B and 498A Code 1860 and Sections 3 and 4 of Act – Appeal partly allowed.

(2015) 3 MLJ (Crl) 754(SC)

Darshan Singh Saini

vs.

Sohan Singh

Date of Judgment : 23.07.2015

- A. Cognizance – Limitation – Alteration of Charge – Code of Criminal Procedure, 1973 (Code 1973), Sections 216 and 468 – Indian Penal Code, 1860 (Code 1860) – Respondent filed complaint against appellant under Various provisions of Code 1860 – High Court quashed proceedings in part while allowing proceedings to continue on other charges - Appellant challenges order on account of limitation and framing of charges – Whether High Court could not have taken cognizance in matter against appellant, on account of period of limitation depicted under Section 468 of Code 1973 and if High Court was right in altering charge against appellant – Held, legal position declared by Supreme Court has held that for purpose of computing period of limitation under Section 468 Code 1973 relevant date is date of filing of complaint or date of institution of prosecution and not date on which Magistrate takes cognizance – Keeping in mind allegations levelled against appellant by respondent, date of limitation had to be determined with reference to date of incident and date when complaint was filed by respondent – Section 468 of Code 1973 would not stand in way of respondent, in prosecuting complaint filed by him – Section 216 of Code 1973, postulates that it is open to “any court” to alter or add to any charge, at any time before judgment is pronounced – Appeal dismissed.
- B. Scheduled Castes – Prevention of Atrocities – Scheduled Castes and Scheduled Tribes (Atrocities and prevention) Act (Act) – Whether High Court was right in rejecting prayer for framing charges under Act against appellants – Held, High Court fully justified in rejecting prayer, on account of

**fact that respondent did not indicate in his complaint and also in statement made by him, before  
Judicial Magistrate that appellant belongs to uppercaste.**

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## HIGH COURT CITATIONS CIVIL CASES

2015-5-L.W. 340

Duraisingam

Vs

S.R. Jagannathan and another

Date of Judgment : 27.08.2015

Specific relief act (1963), Sections 16, 20.

Suit for specific performance – Time whether essence, answer of defendant ‘I do not know’, effect of – Plaintiff’s ready and willingness not proved.

Plaintiff himself witness under Ex.P1 sale agreement, within his knowledge period prescribed under the sale agreement is only three months – By consent of parties, time extended – sale agreement, assignment of – challenge to – conduct of plaintiff indicate interested in dragging matter for want of financial capacity – within a reasonable time plaintiff has not chosen to complete sale transaction.

2015 (6) CTC 340

Thyagaraya Nagar Social Club

vs.

Woodlands Tiffin Room

Date of Judgment : 07.09.2015

Madras City Tenants’ Protection Act, 1921 (T.N. Act 3 of 1922), Sections 9 & 9(1)(b) – Application to Court for directing Landlord to sell land – Whether particulars of construction have to be described mandatorily by Tenant in Section 9-Petition – Held, to invoke section 9, Tenant has to fulfill 4 conditions namely (1) He must be in possession of land, (2) Such Tenant should have erected superstructure on land in respect of which Tenant would be entitled to Compensation under Section 3 of Act, (3) Landlord should have filed Suit against Tenant for eviction/recovery of possession, (4) Tenant should have applied to Court for direction under Section 9 within 1 month from date of receiving summons in Suit – S.R. Radhakrishnan v. Neelamegam, 2003(3) CTC 488 (SC) followed – In Section 9-Application, Tenant is duty bound to furnish particulars regarding construction put up in demised property, which in present case, Tenant has failed to furnish – Mere vague description would not suffice – Under Section 9(1)(b), Court has to first decide minimum extent of land which may be necessary for convenient enjoyment by Tenant – Therefore, minimum requirement of land cannot be decided without ascertaining extent of constructed portion in occupation of Tenant – On facts of present case, Tenant/Respondent herein has failed to furnish material particulars such as nature and area of construction in each floors, portion in occupation of sub-tenant and main Tenant – Same does not fulfill Statutory requirements – Therefore, Section 9-Application is liable to be dismissed on this score alone – P. Ananthakrishnan Nair v. Dr. G. Ramakrishnan, 1987 (2) SCC 429 followed – Impugned Order set aside – Revision allowed.

Madras City Tenants’ Protection Act, 1921 (T.N. Act 3 of 1922), Section 9 – Maintainability of Application under – Actual physical possession of Tenant, whether mandatory to claim benefit – Held, Suit property was admittedly leased out to 1<sup>st</sup> Defendant, who in turn sublet to 2<sup>nd</sup> Defendant-Bank who was in possession of Suit property till Section 9-Petition was filed in May 2000 – Therefore, it can be safely concluded that main Tenant was not in possession of entire building from 1975 to 2000 – Said fact would clearly prove that main Tenant was not in need of entire superstructure for His business activities – Therefore, contention to contrary by main Tenant lacks bona fides – Moreover, in order to claim benefit of Section 9, it is mandatory for Tenant to be in actual physical possession -

Case-law discussed – Right conferred on Tenant under Section 9 is only privilege conferred on him, same could be exercised only by adopting proper procedure prescribed under Act – Therefore, Respondent/Tenant being not in actual physical possession, Petition seeking benefit under Section 9 is not maintainable – Moreover, Lower Appellate Court while setting aside Order of Trial Court has not discussed anything on merits of case and has not even rendered proper findings on issue – Same is legally perverse and requires interference – Impugned Judgment of Lower Appellate Court is set aside – Revision allowed.

Madras City Tenants' Protection Act, 1921 (T.N. Act 3 of 1922), Section 9 – Practice and Procedure – Manner of passing Order under Section 9 – Order of Lower Appellate Court is liable to be set aside on sole ground that same is not as contemplated under Section 9(1)(a) of Act – Court is bound to pass composite Order and not piecemeal Order – Order should make reference to right of Tenant to have land sold to him, extent of land and price at which Tenant has to buy land – P.T. Srinivasan v. Malleeswarar Devasthanam by Trustee, 1974 (2) MLJ 172 followed – Hence, even on this score Order of Lower Appellate Court is liable to be set aside – Revision allowed.

Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 17 – Amendment of Plaintiff – Trial Court erred in dismissing Petition for amendment on sole ground that said amendment would affect determination of issue arising under Section 9 pending before High Court in Revision – Order of Trial Court is not Order passed on merits and Court below should not resort to such short cut method of dismissing Petition – It is to be pointed out that Respondent did not oppose Petition on merits but opposed on ground that subletting was done with consent of Landlord – Judgment of Apex Court in Vidyabai v. Padmalatha, AIR 2009 SC 1433 would not be applicable to facts of present case, as issue before Apex Court was in respect of Specific Performance and Petition for amendment was filed much after framing of issues – In present case, admittedly trial is yet to commence, hence embargo provided under Proviso to Order 6, Rule 17 would not be applicable – Amendment sought for would also not alter character of Suit – Hence, Application for amendment is liable to be allowed – Order of Trial Court liable to be set aside – Revision allowed.

2015 (7) MLJ 715

A. Saraswathy

vs.

Thangamuthu

Date of Judgment : 24.08.2015

Succession Laws – Hindu Succession – Female Heir – Hindu Succession Act, 1956 (Act 1956), Section 23 – Hindu Succession Act, 2005 (Act 2005) – Appellant in second appeal filed suit for partition and separation of her  $\frac{1}{4}$  share in suit property – She claimed that said property was separate property of her father who died intestate about 35 years prior to filing of suit and that by virtue of rule of succession provided under Act, 1956 she became entitled to share in suit property as one of legal heirs – Whether suit for partition filed by Appellant who is female Class-I heir in respect of suit property is barred by Section 23 of Act, 1956, from seeking partition – Whether omission of Section 23 Act, 1956 by reason of Hindu Succession Amendment Act 2005 would also ensure to benefit of appellant/female heir to pending proceedings of second appeal – Whether finding of trial court that suit property was not proved to be purchased by father of heirs out of joint family nucleus is perverse – Held, evidence adduced on side of plaintiff are enough to prove her contention that her father died after Act, 1956 coming into force – Trial Judge, on proper appreciation of evidence, rendered correct finding of fact that appellant/plaintiff proved her case that her father died 35 years prior to filing of suit and in any event after Act, 1956 coming into force – Such clear finding of fact was unnecessarily and unjustifiably interfered with by Lower Appellate Court without proper re-appreciation of evidence – In this case though before filing of suit 1 respondent did not exercise his right of partition, he came forward not only to give consent for partition but also to enforce his right of partition after filing of suit, by seeking allotment of separate share to him – Hence finding of Lower Appellate Court that suit filed by appellant herein/plaintiff for partition was barred under Section 23 Act, 1956 has got to be set aside as erroneous finding on question of law – Attraction of bar provided under erstwhile Section 23 Act, 1956 is only academic, because said bar has been removed by Amendment Act, 2005 – Appeal allowed.



2015 (5) CTC 730

M. Ramamoorthy

vs.

R. Thirunavukkarasu

Date of Judgment : 06.07.2015

Specific Relief Act, 1963 ( 47 of 1963), Sections 37, 38 & 41 – Suit for bare Injunction – Whether maintainable - Suit for Injunction simpliciter filed by Plaintiff/Respondent – Defendant disputing title of Plaintiff to Suit property and nature of property, i.e. whether property was separate property of Seller or Joint Family property – Defendant questioned Sale Deed executed in favour of Plaintiff and alleged that it was concocted – Said issues, held, can only be determined in a Suit for Declaration of Title – In such circumstances, instant Suit for bare Injunction, held, not maintainable – Judgment and Decree of First Appellate Court decreeing Suit, unsustainable and set aside – Second Appeal allowed.

2015 (5) CTC 752

Velusamy

vs.

P.C. Pangajam

Date of Judgment : 28.10.2014

Hindu Succession Act, 1956 ( 30 of 1956), - Section 16 – Partition of Property of Female – Necessary parties – Property of a Hindu Female who died intestate, held, would devolve on her sons and daughter and her husband – Application in Suit for Partition for adjusting shares of a Hindu Female who died intestate, held, bound to include husband of deceased female – Instant case, an Application for adjustment of shares of Hindu Female did not include her husband, Order passed in said Application, held, unsustainable and set aside – Revision Petitioner/Applicants directed to file Application for impleading their father/husband of deceased – Trial Court directed to allow said Application and pass fresh Preliminary Decree by re-working of shares – Civil Miscellaneous Appeal allowed.

Partition – Suit for Partition – Inclusion of fresh property for Partition after 16 years of filing of Suit – Whether permissible – Suit for Partition filed in 1997 – Written Statement in Suit filed in 2001 – Application to include fresh properties in Suit made in 2012, i.e. 16 years after filing of Suit – No document produced to substantiate contention that properties sought to be included were purchased from income of pre-deceased son of Plaintiff – No proof that properties sought to be included were Joint Family Properties – In such circumstances, held, Order of Lower Court allowing Application to include said properties in Suit for Partition merely on bald statement of Defendant, erroneous and set aside.

(2015) 7 MLJ 792

L.Stella

Vs

V.Ponnusamy

Date of Judgment : 11.09.2015

Divorce – Dissolution of Marriage – Divorce Act, 1869 (Act 1869), Section 2 – Special Marriage Act, 1954 (Act 1954) – Wife/appellant is a Christian while husband/respondent is Hindu – Respondent had filed petition for dissolution of marriage which was allowed by Court – Appellant challenges order on ground that since parties were married under Act 1954, they can seek resolution only under Act 1954 – Appellant challenges order on ground that it was erroneously passed – Whether Court was right in granting relief under Act 1869 when parties were married as

per provisions of Act 1954 and if Court was right in granting relief of dissolution of marriage – Held, Act 1869 can be invoked to dissolve marriage when either of Petitioner or respondent professes Christian religion and where parties to marriage or domiciled in India at time of presentation of petition – In present case on hand, admittedly, Appellant is Christian and that Respondent/Husband is Hindu and both of them were domiciled in India at time of their marriage – Therefore, ingredients of Section 2 of Act, 1869 squarely applies to case of parties – Court holds that petition filed by Respondent/Husband on file of trial court is perfectly maintainable in law – Appellant/Wife had candidly admitted that she is living separately for 14 years – Further, direction was issued to Respondent/Husband to join Appellant/wife to lead matrimonial life – However, Appellant/Wife had not lived with Respondent/Husband – Trial court had rightly allowed petition filed by Respondent/Husband and granted decree of Divorce by Dissolving Marriage and same does not suffer from any infirmities, material irregularities or patent illegalities in eye of law – Appeal dismissed.

(2015) 7 MLJ 799

Natarajan  
Vs  
Sathiyavani

Date of Judgment : 16.09.2015

Property Laws – Injunction – Boundary Line – Appellant/ plaintiff had filed suit for permanent injunction against respondent/defendant – Trial Judge decreed suit and granted a decree for permanent injunction and also mandatory injunction for removal of construction put up on the encroached portion – On appeal, lower appellate allowed appeal, set aside decree passed by Trial Court and dismissed suit in entirety – Against said decree of lower Appellate Court present Second Appeal came to be filed by appellant herein/plaintiff – Whether lower appellate judge was right in holding that appellant/plaintiff had not proved that boundary was fixed – Held, appellant herein/plaintiff was able to substantiate his case that, at time of division, boundary line was clearly marked – 7 granite stones were implanted on earth along boundary line – It is quite obvious that measurements and extents as found in Partition Deed do not tally with measurements and extents actually available on ground – When such is case if boundary can be fixed with accuracy, boundary will prevail over extent or measurement – In case on hand, appellant herein/plaintiff was able to prove that boundary was fixed and on boundary line 7 granite stones noted by Advocate Commissioner were planted – Principle that boundary will prevail over extent or measurement gets attracted to case on hand – Therefore, contention of respondent herein/defendant that since there is an excess extent, she will be entitled to half (1/2) of that excess extent, cannot be countenanced – Lower Appellate Judge, on an erroneous appreciation of evidence, rendered an unsustainable finding to effect that plaintiff had not proved that boundary was fixed – Findings are not only erroneous but also perverse, as they are not supported by any reliable evidence, apart from being an inference which is against evidence adduced in case – Appeal allowed.

(2015) 7 MLJ 805

New India Assurance Company Limited  
Vs  
U.Karmegam

Date of Judgment : 12.08.2015

Motor Vehicles – Compensation – Contributory Negligence – Appellant is Insurance Company – Respondents filed claim petition after deceased was involved in accident with vehicle insured with Appellant – Tribunal came to conclusion that accident took place due to rash and negligent driving driver of vehicle validly insured with Appellant – As far as quantum is concerned, Tribunal taking into consideration age of First Respondent applied multiplier of 13 and awarded total compensation – Appellant is challenging impugned award before Court – Whether accident was caused by negligence of deceased and whether Tribunal was right in granting compensation – Held, Tribunal did not come to conclusion that there was contributory negligence on part of deceased – Furthermore, evidence of P.W.2 and P.W.6, makes it clear that accident had occurred due to parking of vehicle on highway and without blinking parking lights – It has been held that when vehicles were parked without

parking lights and abstracting free flow of traffic, negligence can be fastened on driver of vehicle – Appeal dismissed.

2015 (5) CTC 892

Hema

vs.

Kaveriammal (died)

Date of Judgment : 31.07.2015

Code of Civil Procedure, 1908 (4 of 1908), Section 144 – Application for Restitution – Power of Executing Court to order redelivery of possession of Suit property – Executing Court ordered delivery and consequently Court Amin taken possession of Suit property – Order of Delivery passed by Executing Court was set aside by High Court in Revision – Petitioner filed Application for Redelivery of Possession – Executing Court dismissed Application holding that Order of Delivery was not recorded and restitution can be granted only when a Decree passed in a Suit or Decretal Order passed in Application is set aside after execution of Decree – Held, Act of Court shall not prejudice any party – Failure to record Delivery Order would not curtail power of Court to order Restitution – Executing Court has jurisdiction to order Restitution in Execution proceedings – Order of Court below declining to order Restitution is bad in law.

2015–4–L.W. 919

P. Sundaram and another

Vs

T. Balasubramanian (Died) and others

Date of Judgment : 11.09.2015

Tamil Nadu Buildings (Lease and Rent Control) Act (1960), Section 10(2)(ii)(a).

Sub-tenancy – Proof of – Onus on landlord – Sub-letting is putting a third party in exclusive, legal possession of the premises – There must be written consent from the landlord for sub-tenancy.

Sub-tenancy could be proved by inference – When tenant without parting his legal possession does a business in the premises in association with a third party, will not amount to sub-tenancy.

Held: no evidence to show lease deed empowered main tenant to create sub-tenancy – No written permission from the landlord to the main tenant to sublet shop to second revision petitioner – clear case of creation of sub-tenancy.

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## HIGH COURT CITATIONS CRIMINAL CASES

(2015) 4 MLJ (Crl) 257

I.Manikandan

vs.

State rep by Inspector of Police

Date of Judgment : 14.09.2015

Murder – Wrongful Restraint – Indian Penal Code 1860 (Code 1860), Sections 299, 300, 302, 304 and 341 – Appellant is sole accused – Accused stood charged for offences punishable under Sections 341 and 302 of Code 1860 – Trial Court convicted accused to undergo imprisonment for life and other sentences have been ordered to run concurrently – Challenging said conviction and sentence, appellant has come up with this Criminal Appeal – Whether accused is guilty of offences under Section 302 and 341 of Code 1860 – Held, deceased would have provoked accused – It was only due to loss of control out of said provocation made, accused had cut deceased with aruval thrice – Thus, act of accused would fall within ambit of Exception 1 to Section 300 Code 1860 – Accused's act would fall under third limb of Section 300 Code 1860 and since his act would fall within ambit of Exception 1 to Section 300 Code 1860, same would not amount to culpable homicide, amounting to murder – But it is only culpable homicide not amounting to murder – Thus, act of accused would eventually, fall only under second limb of Section 299 Code 1860 – Therefore, accused is liable to be punished under Section 304 Part I of Code 1860 – Since origin of occurrence has not been clearly established, it is not sure as to whether accused restrained deceased or not – Therefore appellant is entitled for acquittal from charge under Section 341 of Code 1860 – Appellant is young man having big family to take care of – Appellant has no history of bad antecedents – The occurrence itself was out of provocation and not out of premeditation – There are lot of chances for his reformation – Having regard to all aggravating and mitigating circumstances imposing reduced sentence of rigorous imprisonment with fine would meet ends of justice – Conviction and sentence imposed on appellant by trial Court under Section 341 of Code 1860 is set aside and he is acquitted from said charge – Conviction and sentence imposed on appellant under Section 302 Code 1860 is set aside and instead, he is convicted under Section 304 Part-I of Code 1860 – Appellant is sentenced to undergo rigorous imprisonment for reduced term and to pay fine – Appeal partly allowed.

(2015) 4 MLJ (Crl) 306

K. Velu

vs.

State through the Intelligence Officer

Date of Judgment : 31.07.2015

Narcotics – Conspiracy – Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 1985), Sections 8, 21, 28 – Evidence Act (Act), Section 10 – Appellants are Accused Nos.1 to 5 – Appellants were tried and convicted under various provisions of Act 1985 – Accused 1 and 2 were convicted on basis of seized materials – Accused 3 to 5 were convicted on sole basis of confession statements of Accused 1 and 2 - Whether Accused 3 to 5 are guilty of offences under Act 1985 and their conviction can be sustained – Whether Accused 1 and 2 are guilty of offences under Act 1985 – Held, conspiracy got frustrated as accused after arrest were not free to take forward conspiracy to accomplish their common intention – Thus, at time when confession statements were made by Accused 1 and 2, conspiracy was not in force and therefore these statements cannot be used under Section 10 of Act against Accused 3 and 4 as substantive evidence – Therefore, statements would not fall within ambit of Section 10 of Act – Said statements cannot be made use of against accused Nos.3 to 5 – If confession statements of Accused Nos.1 and 2 are excluded from consideration against Accused Nos.3 to 5, there is no evidence against accused Nos.3 to 5

to prove charges framed against them – Prosecution has failed to prove charges against accused Nos.3 to 5 and therefore, they are entitled for acquittal – Confession statement of first accused could be used as substantive evidence as against first accused and same could be used against second accused under Section 30 of Act. Similarly, confession statement of second accused, could be made use of against second accused as substantive evidence and same could also be used against first accused under Section 30 of Act – Evidences of eye witnesses that first accused involved in crime are duly corroborated by confession statement of first accused and vice versa – Eye-witness account and confession statement made by first accused under confession statement of first accused themselves are sufficient to hold first accused guilty – From eye-witness account and confession of second accused, it can be safely concluded that prosecution has proved charges against second accused also – Thus, Court holds that so far as accused Nos.1 and 2 are concerned, prosecution has proved case beyond reasonable doubts – Appeals partly allowed.

(2015) 4 MLJ (Crl) 320

D.Sundareswaran

vs.

State rep by the Inspector of Police, Puzhal

Date of Judgment : 16.09.2015

Rape – Conviction and sentence – Indian Penal Code 1860 (Code 1860), Sections 376 and 511 – Juvenile and Justice (Care and Protection) Act, 2000 (Act 2000), Section 23 – Accused was arrested and tried on complaint filed by defacto complainant who is mother of prosecutrix/P.W 2 – Trial Court framed charges and on sole basis of defacto complainant's complaint convicted and sentenced appellant/accused – Whether appellant/accused is guilty of offences under provisions of Code 1860 and Act 2000 – Held, P.W.2 has not at all intimated nefarious acts alleged to have been committed by her father to her mother – If really such occurrence has taken place continuously for period of five years definitely prosecutrix would have stated to her mother – No explanation has been given on side of prosecution, with regard to silence on part of prosecutrix – Therefore, it is clear that prosecutrix is not at all believable witness and her evidence cannot be believed in – It has already been pointed out that both defacto complainant and accused are not having cordial relationship – Further accused has purchased some valuable immovable properties in name of defacto complainant – Under such circumstances, Court is of view that prosecutrix has been made as tool so as to solve problems that existed to in between defacto complainant and accused – Further, it has already been pointed out that prosecutrix is not at all believable witness and her evidence cannot be believed in - Trial Court without analyzing evidence given by prosecutrix properly, has imply relied upon same and invited conviction and sentence – Convictions and sentences passed by Trial Court are set aside – Appellant/accused is acquitted – Appeal allowed.

(2015) 4 MLJ (Crl) 332

M. Paties

vs.

State by the Deputy Superintendent of Police

Date of Judgment : 22.07.2015

Prevention of Corruption – Illegal Gratification – Prevention of Corruption Act, 1988, Sections 7, 13(1)(d), 13(2) and 20 – Appellant/accused convicted under Sections 7 and 13(1)(d) read with Section 13(2), same challenged – Whether prosecution proved charges against accused beyond reasonable doubt – Held, prosecution story relating to demand of illegal gratification not proved beyond reasonable doubt, as it was spoken to by PW-2 alone and his evidence is unreliable – Material contradictions in evidence of PWs.2 and 7 who alone supported prosecution case regarding demand – Improbabilities in evidence of PW-2 regarding demand and acceptance of illegal gratification will lead to conclusion that prosecution failed to prove charges against accused beyond reasonable doubt – But, numerous admissions by prosecution witness and evidence adduced through defence witness probablise defence theory of foisting case will lead to conclusion that accused proved his defence case by preponderance of probabilities - Trial Judge rendered finding that accused proved to have committed offences

under Sections 7 and 13(1)(d) read with Section 13(2), same erroneous, defective, infirm and perverse – Trial Judge erred in holding accused guilty under Sections 7 and 13(1)(d) read with Section 13(2) – Conviction recorded by Trial Court set aside – Appellant acquitted of offences with which he stood charged – Appeal allowed.

(2015) 4 MLJ (Crl) 359

Krishnan

vs.

State rep. by Sub Insepctor of Police, Attur

Date of Judgment : 15.09.2015

Dowry – Demand of Dowry – Cruelty – Indian Penal Code 1860 (Code 1860), Sections 304-B and 498-A – First appellant/accused is son of second appellant/accused - Deceased was wife of first appellant – Father of deceased filed complaint against appellants on death of deceased – Trial Court framed charges under Section 498-A and 304-B of Code 1860 and convicted appellants – Appellants are in appeal against conviction and sentence – Whether accused are guilty of committing offences punishable under Sections 304-B and 498-A of Code 1860 and if charges against accused have been proved – Held, it has been clearly stated that second accused used to deride deceased for giving birth to two daughters – It is stated that both accused have directed deceased to get sum of Rs.1 Lakh from her parents for purpose of constructing house – Therefore it is quite clear that on basis of cruelty alleged to have been made by both accused, first charge framed by trial court against them is perfectly correct – It has been pointed out that in first charge, no materials are available so as to infer that there is demand of dowry on part of both accused – Whereas in first charge, it has been simply mentioned that since deceased has given birth to two daughters, second accused has used to jape her – Accused 1 and 2 have made demand from deceased only for purpose of putting up construction of house – Further in first charge, no specific mention has been made with regard to demand of dowry – Since in first Charge, no materials are available so as to infer that both accused have made dowry demand from deceased, second charge framed under Section 304-B of Indian Penal Code is totally erroneous – Since second charge framed against both accused is totally erroneous, entire judgment passed by trial court is set aside – Convictions and sentences passed against appellants/accused set aside – Case remitted to trial court – Appeal allowed.

(2015) 4 MLJ (Crl) 401

P. Ayyappan

vs.

Inspector of Police

Date of Judgment : 07.10.2015

Private Complaint – Cognisance – Code of Criminal Procedure (Code), Section 200 – Revision petitioner/defacto complainant, claims to be owner of property – Petitioner alleged certain persons of trespassing and threatening him – According to petitioner, respondents did not take any action on basis of his complaint which necessiated him to file private complaint – Trial Court then dismissed private complaint – Petitioner is now before court in revision of order of Trial Court – Whether Trial Court was right in dismissing private complaint of petitioner – Held, when petitioner claims right over particular property in which somebody had allegedly trespassed, he is under obligation to produce some document to show nature of possession, right or ownership over such property – In present case petitioner did not produce any documentary evidence along with complaint before trial Court – In absence of production of any material evidence nor any documentary evidence by petitioner to show that he is in possession over property in dispute, trail court cannot be expected to take cognizance of complaint – It is also seen from records that petitioner has filed private complaint against respondents seeking for direction only to register first information report on basis of complaint given by him and not impleaded person named in complaint - Perusal of complaint discloses that petitioner has specifically named alleged trespasser in to his land – However, he has not chosen to implead him – Therefore private complaint filed by petitioner against respondents is not maintainable especially when petitioner did not implead person against whom he has given complaint - Haste with which petitioner has approached trial court by filing private complaint is not proper – Mere non-registering of first

information by respondents will not be ground for petitioner to file private complaint before trial court under Section 200 of Code – It is also seen from private complaint filed by petitioner that it was not signed by petitioner in affidavit form – When petitioner has chosen to raise certain allegations against third parties, private complaint ought to have been filed by means of sworn affidavit and private complaint filed as such is not acceptable – Revision dismissed.

**(2015) 4 MLJ (CrI) 419**

**State rep. by Inspector of Police**

**vs.**

**Praansu Knits**

**Date of Judgment : 15.10.2015**

Discharge – Code of Criminal Procedure, 1973 (Code 1973), Section 239 – Indian Penal Code, 1860 (Code 1860), Sections 120B, 420, 468 and 471 – Prevention of Corruption Act, 1988 (Act 1988), Sections 13(2) and 13(1)(d) - Respondents/accused charged for offences under Sections 120B read with 420, 468 read with 471 of Code 1860 and also under Section 13(2) read with Section 13(1)(d) of Act 1988 – After final report being filed, criminal case registered against accused and during pendency of same, accused filed petitions under Section 239 of Code 1973 to discharge them – Lower Court held that there is no mens rea on part of accused, since they paid entire amount – Revision cases with allegation that Lower Court without considering gravity of offences committed by accused, simply on basis of mere repayment erroneously discharged them – Whether common order passed by Lower Court discharging accused sustainable – Held, mere payment of money involved in criminal offence not sufficient to quash proceedings either in offences under Code 1860 or under Act 1988 – In instant case, accused faced charges not only under Code 1860, but also under Act 1988 – Further, in criminal case, mere repayment of money would not absolve liability of accused – Court has to primarily look into as to whether accused committed alleged offences – Further, it is a primordial duty of accused to repay money – Simply because, accused repaid same, he cannot be allowed to escape from clutches of law – Conclusion arrived at by Lower Court for discharging accused improper – Common order passed by Lower Court set aside – Revision cases allowed.

**(2015) 4 MLJ (CrI) 480**

**Sivalingam**

**vs.**

**State rep. by the Inspector of Police**

**Date of Judgment : 06.10.2015**

Culpable Homicide – Trespass – Indian Penal Code 1860(Code 1860), Sections 300, 302, 304 Part I and 449 – appellant/accused had suspicion that his wife had illicit intimacy with deceased – On night of event, accused caught deceased with his wife and he stabbed accused to death – Trial court framed charges and convicted accused under Sections 302 and 449 of Code 1860 – Challenging conviction and sentence, Appellant is before Court, with this appeal – Whether Appellant is guilty of offences under Sections 302 and 449 of Code 1860 – Held, it cannot be stated that accused had any premeditation to cause death of deceased – Presence of wife of accused and deceased together at midnight would go to indicate sexual intent on part of both – Having seen same, accused would have lost his self-control out of said provocation and at that stage, having lost his self-control accused had caused stab injury on deceased – For villager to carry knife in his waist is not something uncommon – Presence of wife of accused along with deceased at time of occurrence, has been spoken by P.W.1 and P.W.2 also – Act of accused would squarely fall within ambit of Exception (1) of Section 300 Code 1860 – Injuries on deceased were intended injuries, which were sufficient in ordinary course of nature to cause death – Act of accused would fall within third limb of section 300 Code 1860 – Accused is liable to be punished under Section 304 Part I Code 1860 – Accused did not enter into house of deceased, with premeditation to commit any murder – Accused went on to terrace of house of deceased only in search of his wife – Act of accused going to terrace of house, would not attract offence of house trespass – Conviction and sentence imposed on appellant/accused under Section 302 Code 1860 set aside – Instead, he is convicted under Section 304 Part I Code 1860 and sentenced – Conviction and

sentence imposed on Appellant/accused under Section 449 Code 1860 is set aside and he is acquitted of said charge – Appeal partly allowed.

2015-2- LW. (Crl.) 574

S. Jayaraj

vs.

The State of Tamilnadu, rep. by the Sub-Inspector of Police, F4 Thousand Lights Police Station and another

Date of Judgment : 31.07.2015

Criminal Procedure Code, Section 258, 300(5), 362, 397, 401.

Petition filed to recall summons and discharge from offence was dismissed – Revision against that order – Magistrate discharged petitioner but petition to recall was allowed – Whether proper.

Since the release of the accused under Section 258 of Cr.P.C, after stoppage of the proceedings, shall have the effect of an order of discharge, the said order is only a final order.

Once a person is discharged under Section 258 said person cannot be tried for same offence except with the consent of the Court as per Section 300(5) – It does not speak about reopening of case Magistrate cannot review his own order passed under Section 258 of Cr.P.C., by reopening the case – It is not an interlocutory order, it is a judgment – There is a clear bar under Section 362 – Court has no jurisdiction to review or recall the order of discharge – Impugned order set aside.

2015-2- LW. (Crl.) 580

S. Muralidharan

vs.

Nogaraj and another

Date of Judgment : 27.07.2015

Prevention of cruelty to animals act (1960),

Transportation of cattle in violation of legal provisions – Return of, to owners, set aside – cattle shall be maintained in the Goshalas, title the disposal of the cases.

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