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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

(2014) 6 MLJ 250(SC)

Jai Krishan(D) Thrs. Lrs

Vs

State of Uttarakhand and Ors

Date of Judgment : 1.7.2014

Property Laws – Land Acquisition – Enhanced Compensation – Principle of Belting – Land Acquisition Act, 1894, Sections 4, 23 (1A) and 28 – Pursuant to Notification under Section 4, land situated in Mussoorie was acquired and compensation awarded – Appellant filed reference claiming enhanced compensation on ground that Mussoorie is famous tourist place and its land is of immense potential value – Reference Court enhanced compensation – State and Union of India preferred appeal – Division Bench applied principle of belting and held that land in Mussoorie is sloppy and hilly, as such for assessing true market value, flat rate for entire land cannot be applied – Review by Appellant dismissed – Whether High Court was justified in applying principle of belting and denying additional compensation – Held, High Court without any basis or pleadings, presumed that total land in Mussoorie is sloppy and hilly – Without any basis, High Court observed that rate mentioned in exemplar sale-deed cannot be applied for entire land acquired – It cannot be ground that Mussoorie is hilly place and therefore, principle of belting area to be applied for determination of compensation – High Court failed to notice that Section 23(1A) of LA Act is mandatory - Claimants entitled to enhanced compensation under Section 23(1A) LA Act – Enhanced compensation awarded by Reference Court deposited after expiry of one year – Appellants entitled to interest per annum under proviso to Section 28 of LA Act – Award by Reference Court upheld – Appeals allowed.

(2014) 6 MLJ 597(SC)

Hindustan Petroleum Corporation Ltd

Vs

Dilbahar Singh

Date of Judgment : 27.8.2014

Tenancy Laws – Revisional jurisdiction – Powers of High Court – Re-appreciation of evidence – Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 20 – Haryana Urban (Control of Rent & Eviction) Act, 1973, Section 15 – Kerala Buildings (Lease and Rent Control) Act, 1965, Section 25 – Based on Rukmini Amma Saradamma v. Kallyani Sulochana and Others, Appellants contended that revisional Court not entitled to re-appreciate evidence – Whereas Respondent relied on Ram Dass v. Ishwar Chander and Others which held that “legality and propriety” enables revisional Court to reappraise evidence – Reference – Whether High Court in exercise of revisional jurisdiction can re-appreciate evidence in order to find out correctness, legality or propriety of impugned order or decision – Held, revisional jurisdiction is part of appellate jurisdiction but not vice-versa – Revisional court can interfere within permissible parameters provided in statute – Appellate jurisdiction involves rehearing while it is not so in case of revisional jurisdiction – Ram Dass does not lay down that revisional power of High Court under Rent Control Acts is as wide as Appellate Court to re-appraise or re-assess evidence to differ from finding of Court/Authority below – Ram Dass emphasizes that while examining correctness of findings of fact, revisional Court is not second Court of first appeal – Observation in Ram Dass that High Court in revision cannot reassess evidence is in accordance with Rukmini – Examination of evidence by High Court in revision under Rent Control Acts confined to finding of facts recorded by Court/Authority below is according to law – To satisfy itself to regularity, correctness, legality or propriety of impugned decision or order, High Court shall not exercise its power as appellate power to re-appreciate or re-assess evidence – Revisional power not and cannot be equated with power of reconsideration of all questions of fact as court of first appeal – Where High Court required to be satisfied that decision is according to law, it may examine whether order impugned suffers from procedural illegality or

irregularity – Revision does not lie to bring orders of Trial Court/Rent Controller and Appellate Court/Appellate Authority for re-hearing of issues raised in original proceedings – Reference answered.

2014 (3) CTC 830

Swiss Timing Ltd.

Vs

Organising Committee, Commonwealth Games – 2010, Delhi

Date of Judgment : 28.5.2014

Arbitration & Conciliation Act, 1996 (26 of 1996), Sections 8 & 11 – Contract Act, 1872 (9 of 1872), Sections 2(g), 2(h), 2(i) & 2(j) – Void Contract vis-à-vis Voidable Contracts – Power of Court to refer to Arbitration – Contract for providing TSR System in Commonwealth Games – Dispute between parties – Petition for constitution of Arbitration Tribunal – Contention of respondent that contract is fraud and thus, dispute cannot be referred to Arbitration – Held, when a contract is void on face of it, without need of any proof, Courts to decline reference to Arbitration – However, when contract is voidable, reference to Arbitration ought not to be rejected by Courts – Contingencies in Sections 12, 14, 15, 16, 17, 18 of Contract Act are voidable contracts – Courts to refer dispute to Arbitration when Contracts are merely voidable – Plea that contract is tainted by fraud to be decided by Arbitral Tribunal – Matter referred to Arbitration and Arbitral Tribunal constituted keeping in view mandate of Sections 8 & 11 – Petition allowed.

Arbitration and Conciliation Act, 1996(26 of 1996), Sections 8 & 11 – Petition for appointment of Arbitrator with relation to Agreement – Criminal proceedings between contracting parties pending – Reference to Arbitration, whether warranted – Reference to Arbitration cannot be denied merely on ground that Criminal case is pending against Chairman of one of contracting parties – Arbitration proceedings, held, can be conducted simultaneously with Criminal proceedings – In case of Criminal case leading to conviction and rendering contract void, enforcement/execution of Arbitral Award can be avoided – However, if Criminal case leads in acquittal and Arbitration was refused on account of pendency of Criminal case, undue delay would be caused in referring matter to Arbitration.

Arbitration and Conciliation Act, 1996 (26 of 1996), Sections 5, 6, 11 & 16 – Object of Legislation vis-à-vis Reference of dispute to Arbitration – By virtue of dictate of Section 16, Arbitration clause can be separated from underlying Contract – Courts to refer dispute to Arbitration as provided in Agreement between parties, unless established that non-reference of same would be in interest of all parties - Defence that underlying contract between parties is void, raised routinely by parties to frustrate reference of dispute to Arbitration – Held, Courts not to pay heed to said defence unless same is reasonable – Moreover, issue whether contract between parties is void or voidable can be referred to Arbitration – Decision of Apex Court in N. Radhakrishnan v. Maestro Engineers & Ors., 2010 1 SCC 72, held, per incuriam not laying down correct law.

AIR 2014 SUPREME COURT 1931

Soumik Sil

Vs

Subhas Chandra Sil

Date of Judgment : 25.3.2014

Civil P.C. (5 of 1908), O.7, R.11(a) – Rejection of plaint – Suit for declaration of title and injunction – Plaintiff vacated suit premises in compliance of High Court order – And thereafter filed application for deletion of name from suit – Foundation of suit was not subsisting after handing over possession of rooms in question to defendant – Order rejecting plaint for non-disclosure of cause of action, proper.

AIR 2014 SUPREME COURT 2210

Dr. Aloys Wobben and Anr

Vs

Yogesh Mehra

Date of Judgment : 2.6.2014

- A. Patents Act (39 of 1970), Ss. 64, 25(2) – Revocation of patent – Person interested who has filed notice of opposition to grant of patent – Cannot file petition for revocation of patent under S.64 or even counter-claim to infringement suit – Two remedies are granted as person who was not interested person at time of grant may become interested subsequently.
- B. Patents Act (39 of 1970), S.64 – Remedy of filing revocation petition under S. 64 – And of filing counter-claim in infringement suit – Cannot be simultaneously exercised by same person – Revocation petition filed before counter claim – Counter claim cannot be allowed to be pursued.

Civil P.C. (5 of 1908) S. 10.

- C. Patents Act (39 of 1970), S. 2(1)(t) – Person interested – Term is not static – Person who is not interested at time of grant of patent – Can because of his activities subsequently become interested person.

**SUPREME COURT CITATIONS
CRIMINAL CASES**

(2014) 7 Supreme Court Cases 291

STATE OF HARYANA

Vs

SATENDER

Date of Judgment : 23.5.2014

- A. Penal Code, 1860 – Ss. 302/34 – Murder in furtherance of common intention – Proved against two accused (R and B) out of six – Their convictions confirmed – Testimonies of eyewitnesses found reliable, unimpeachable and trustworthy – Evidence of eyewitnesses, corroborated by medical evidence – Recovery of murder weapon along with motorcycle used for crime, on basis of disclosure statement of prime accused – Conduct, behavior and active role of accused B, along with prime accused R, clearly depicts his knowledge as well as common intention of the two of them to commit crime – Motive established.
- B. Penal Code, 1860 – Ss. 302/34 – Murder in furtherance of common intention – No proof of accused S sharing the common intention – No overt act attributed to him by any of eyewitnesses – Eyewitnesses not even deposing that he was armed with any weapon – No allegation against him in FIR – He could not be identified by complainant at first instance – No proof regarding he having common intention along with the other two convicts, to kill deceased – Case against S not proved beyond reasonable doubt – His acquittal justified.

(2014) 7 Supreme Court Cases 323

SUMER SINGH

Vs

SURAJBHAN SINGH AND ORS

Date of Judgment : 5.5.2014

- A. Criminal Trial – Sentence - Principles for sentencing – Proportionality – Adequacy of sentence – Undue sympathy for accused unwarranted – Sentence should be proportionate to gravity of offence and should reflect conscience of society – Increase in amount of fine or grant of compensation cannot be a substitute for sentence of imprisonment – To best subserve the cause of justice balance should be struck between the two – In certain heinous crimes or crimes committed in a brutal manner the High Courts in exercise of the appellate jurisdiction have imposed extremely lenient sentences which shock the conscience – It should not be so
- B. Penal Code, 1860 – S. 326 – Sentence for causing grievous hurt – Adequacy – Brutality of the crime – Consideration of – Appellant victim's hand cut off from wrist when he tried to ward off sword attack on head – Trial court recorded conviction of respondent-accused inter alia under S. 326 IPC and imposed sentence of 4 yrs' RBI with fine of Rs 2000 and in default further 1 yr's RI – High Court while maintaining conviction under S. 326 sentenced respondent to suffer imprisonment for 7 days already undergone and to pay fine of

Rs. 50,000 to victim – Having regard to brutal manner in which crime was committed and gravity of offence, held, reduction of sentence of imprisonment not justified – Instead, 2yrs' imprisonment with fine of Rs 2000 awarded by trial court would be appropriate

- C. Penal Code, 1860 – Ss. 97 to 101 and 326 – Right of private defence – Exercise of – Plea of exercise of right of private defence taken in offence committed under S. 326 – Plea whether made out on facts – Land dispute – Appellant, having lawful possession over land, was peacefully carrying on agricultural activities there along with other PWs without any arms – Whereupon respondent-accused along with others came there armed with sword and lathis and attacked appellant party with their respective weapons causing grievous injuries to appellant and injuries with sharp weapon to others; whereas respondent-accused sustained only minor injuries – Held, defence failed to establish exercise of right of private defence- Respondent's conviction under S. 326, on facts, justified.
- D. Constitution of India – Art. 136 – Locus standi – Criminal appeal – Appeal by victim for enhancement of sentence of convict, reiterated, is maintainable – In such appeal, accused entitled to plead for his acquittal – Supreme Court, would appreciate evidence on record to determine whether conviction was justified – Principles analogous to S. 377(3) CrPC applicable which dealing with such appeal under Art. 136 – Criminal Procedure Code, 1973, S. 377(3)
- E. Penal Code, 1860 – Ss. 97 to 101 – Right of private defence – Exercise of – Exercise of right of private defence if not specifically asserted by accused in examination under S. 313 CrPC, reiterated, can be ascertained from facts and circumstances – Criminal Procedure Code, 1973, S. 313.

(2014) 7 Supreme Court Cases 405

UMAKANT AND ANR

Vs

STATE OF CHHATTISGARH

Date of Judgment : 1.7.2014

- A. Penal Code, 1860 – Ss. 304-B, 302, 498-A r/w S.34 – Murder trial – Appreciation of evidence – Dying declaration – Credibility – Conviction reversed
- B. Penal Code, 1860 – Ss. 304-B, 302, 498-A r/w S.34 – Murder trial – Appreciation of evidence – Dying declaration – Evidentiary value of dying declaration – Admissibility in evidence against general rule that hearsay evidence is not admissible – Principles governing, reiterated
- C. Criminal Trial – Circumstantial Evidence – Benefit of doubt – Burden of proof – Beyond all reasonable doubt - Lesser offence(s) not proved beyond reasonable doubt – Punishment for greater offence on same evidence - Unsustainability

2014 CRI. L. J. 2712

Lalit Kumar Yadav alias Kuri

Vs

State of Uttar Pradesh

Date of Judgment : 25.4.2014

- A. Criminal P.C. (2 of 1974), S. 154 – FIR – Delay in filing – Informant in FIR stating that his daughter aged about 18 years was found dead in agricultural field – FIR without mentioning name of accused stating

that some person incised her neck – FIR lodged two hours after occurrence at police station about 7 kms from village – Considering gravity of offence and shock of family members of deceased, it could be said that there is no delay in lodging FIR.

Penal Code (45 of 1860), S. 300.

- B. Evidence Act (1 of 1872), S.3 – Interested witness – Attempt to rape and murder case – Evidence of victim's father is quite convincing and worth to believe – Merely because he is father of deceased victim girl, his evidence cannot be doubted on that court in absence of any suspicion.

Penal Code (45 of 1860), Ss. 300, 376/511.

- C. Evidence Act (1 of 1872), Ss. 3, 27 – Evidence of witness to recovery – Reliability – Witness who came to participate in cremation accompanied police party to house of accused – His evidence that it was accused himself who had picked up sickle and handed over to Investigating Officer – Is corroborated with testimony of Investigating Officer and cannot be discarded on ground that he is related to deceased – Slight variance on point of time in preparing recovery memo is insignificant.
- D. Evidence Act (1 of 1872), S. 27 – Discovery statement – Reliability – Statement of accused so far as it relates to giving of information regarding hiding of sickle and recovery of same – Can be taken into account to prove truth of incident and to prove statements of other witnesses which corroborated same.
- E. Evidence Act (1 of 1872), Ss. 3, 45 – Dog tracking evidence – Credibility – FIR lodged without mentioning name of accused that victim was murdered – Investigating Officer took help of dog squad and sniffer dog tracked accused and he was formally arrested – Identification of accused by sniffer dog along with other evidence can be relied upon to prove guilt of accused.
- F. Penal Code (45 of 1860), Ss. 300, 376/511 – Murder and attempt to rape – Circumstantial evidence – Accused allegedly attempted to commit rape of girl aged about 18 years and killed her – Evidence of girl's father that a few days before date of occurrence, accused has teased his daughter and also threatened her – Is quite convincing and worthy of credit and it clearly reflects upon motive of accused – Police during investigation arrested accused in pursuance of proceeding of sniffer dog – Accused who was then taken into custody gave statement regarding commission of crime – Statement though not admissible but at his instance sickle as well as blood stained clothes were recovered – Evidence of doctor that injury caused upon victim could have been caused by weapon so recovered – Confessional statement of accused that since girl has refused sexual relationship with him he had murder her – No evidence showing that father of deceased had any enmity or grudge with accused – Circumstances proved that it is nobody else but accused who attempted to commit rape and murdered deceased.
- G. Penal Code (45 of 1860), S. 302 – Death sentence – Accused found guilty of attempting to commit rape and murder of deceased – Accused was aged about 21 years at time of offence – Considering the age of accused, possibility of reforming him cannot be ruled out – He cannot be termed as social menace – Case does not fall under the 'rarest of rare' category – Hence, death sentence of accused commuted to that of life imprisonment.

2014 CRI. L. J. 2941

Rajat Prasad

Vs

C.B.I

Date of Judgment : 24.4.2014

- A. Criminal P.C. (2 of 1974), S. 156 – Sting operation by enforcement agencies – Use of for crime detection and proof – Not yet recognized as absolute principles in other jurisdiction – Such operations by enforcement agencies not accepted in our legal system.
- B. Penal Code (45 of 1860), Ss. 107, 120-A – Sting operation by private person – Liability of sting operator for abetment/criminal conspiracy of offence detected in sting operation – Can be determined only after evidence is taken – Refusal to quash charge sheet filed against sting operator, proper.
- C. Penal Code (45 of 1860), Ss. 107, 120A – Constitution of India, Art 19(1) (a) – Sting operation – Framing of charge against sting operator for abetment or conspiracy – Plea that it would be against public interest – Not tenable as in case journalist or any person carrying out sting operation has no connection with favour sought in exchange of bribe – Question of imputing him with criminal intent would not arise.

HIGH COURT CITATIONS CIVIL CASES

2014 (5) CTC 11

K.G. Krishnamoorthi and Ors

Vs

The Sub-Collector, Pollachi, rep. by Tahsildar, Udumalpet and Anr

Date of Judgment : 25.4.2014

Land Acquisition Act, 1894 (1 of 1894), Sections 23(1-A) & 28 – Compensation – Interest on Compensation and Solatium – Compensation awarded by Collector was enhanced by Reference Court – Appeal filed by Government was dismissed and Cross-Appeal filed by claimant for enhanced Compensation allowed – Authorities deposited Compensation amount into Court – Execution Petition was filed with Memo of Calculation – Interest on Compensation – Computation thereof – Authorities have adjusted deposited amount of Compensation first towards principal amount – Contention of Claimant that deposited amount first should be adjusted towards Interest – Held, whenever amount is deposited, Interest has to be first adjusted and only thereafter, balance amount has to be given credit towards principal amount – Law laid down in Bharat Heavy Electricals applied and followed – Ratio laid down by Division Bench of High Court in 2003 (2) MLJ 7 was distinguished in view of subsequent authoritative pronouncement of law by Supreme Court in Bharat Heavy Electricals case.

(2014) 6 MLJ 8

S. Kamalam

Vs

Rajamani

Date of Judgment : 4.6.2014

Civil Procedure – Conditional order – Extension of time – Code of Civil Procedure, 1908, (Code 1908), Sections 148 and 151, Order IX rule 7 – Suit against Petitioner, who did not appear in trial – Ex-parte order passed – Application to set aside ex-parte order – Conditional order passed that Petitioner to pay sum of Rs.200/- as cost – On failure to pay cost, application dismissed – Petitioner filed application for extension of time for payment of cost – Application dismissed holding that prayer for extension of time not bonafide – Revision – Whether Trial Court was justified in dismissing application for extension of time – Held, if Court adjourned hearing after passing order to hear suit ex-parte, Defendant may appear and assign cause for non-appearance – No petition under Order IX Rule 7 of Code 1908 necessary for Defendant to take part in proceedings – Even after expiry of time granted in conditional order, Court does not become functus officio and can condone delay – No evidence recorded till Petitioners already filed plea of defence and can take part in subsequent proceedings even without order under Order IX Rule 7 of Code 1908 – Impugned order set aside – Revision allowed.

(2014) 6 MLJ 77

P. Sankaran

Vs

R. Somanathan and Through its partners and Ors

Date of Judgment : 22.5.2014

Civil Procedure – Inherent Power of Court – Abuse of Court – Misrepresentation – Code of Civil Procedure, 1908 (Code 1908), Section 151 and Order 39 Rule 1 and 2 – Respondent obtained interim injunction – Petitioner alleged that Respondent obtained injunction by giving wrong measurements of property and damaged property –

Petitioner filed application under Order 39 Rule 2(A) and Section 151 of Code 1908 to punish Respondent – Trial Court allowed petition and directed Respondents to pay fine – Respondent filed appeal against contempt order – Appellate Court held that Civil Court has no jurisdiction to exercise power under Contempt of Courts Act – Revision – Whether Appellate Court was justified in setting aside order of Trial Court punishing Respondent for contempt for misrepresentation and obtaining injunction – Held, Respondent cannot include Petitioner’s property with that of Respondent’s property and show single property and obtain order of injunction – It is proved by commissioner’s report that Respondent trespassed and damaged Petitioner’s property after obtaining injunction – Trial Court found that by giving wrong details about property, Respondents obtained injunction – Even if Contempt of Courts Act not applicable, Section 151 of Code 1908 can be invoked by Trial Court to punish abuser of court of law – If one party causes injustice by obtaining orders by wrong facts, Section 151 of Code 1908 can be invoked to do complete justice – Respondents be punished invoking Section 151 of Code 1908 – Order of Appellate Court set aside – Fine enhanced – Petition allowed.

2014 – 4 – LW.116

The United India Insurance Co. Ltd

Vs

Anthony Selvam and Ors

Date of Judgment : 4.7.2014

Motor Vehicles Act (1988), Sections 160, 163, 167,

Workmen’s Compensation Act (1923), Section 30.

Claim of compensation under M.V. Act and W.C. Act, when to be made – Election in one Act, when applies – Liability to pay, scope of – Bar to claim under both Acts when applies, principles governing, stated.

Principles ensure prevention of the claimants enjoying double benefit and employers being put to double liability.

Compensation against owner, insurer, claiming of, when possible – claim under M.V. Act made and allowed, claim cannot be made under W.C. Act – Dismissal under W.C. Act, not a bar under M.V. Act.

Owner of offending vehicle, when liable to pay, not employer of deceased or insured – Effect of – claim against employer in W.C. act, award passed,

Claim under M.V. Act on owner of vehicle, amount paid should be deducted.

First respondent was not an employee under the owner of the auto rickshaw – since his liability towards the owner of the vehicle was only to pay particular amount per day – As claim made was negative same will not provide a bar for making a claim under the MV Act against owner and insurer.

2014 – 4 – LW.176

R. Santhi alias Gowthami

Vs

Nallammal (decd.) and Ors

Date of Judgment : 26.6.2014

Transfer of Property Act (1882), Sections 5, 6(a)/.

Mere right to succeed, whether can be transferred – Chance to succeed to estate – Relinquishment of right to succeed to estate – scope of – succession opens only on death – Such a chance of succession cannot be subject a matter of transfer either by way of sale, gift or relinquishment.

(2014) 6 MLJ 190

A. Venkatesh

Vs

Dr. A. Ahmed Ali and Ors

Date of Judgment : 9.4.2014

Tenancy Laws – Eviction – Arrears of Rent – Landlord and tenant Relationship – Condonation of Delay – Re-opening Withdrawn Appeal – Tamil Nadu Buildings (Lease and Rent Control) Act, Sections 8(5) and 10(2) (i) – Limitation Act, Section 5 – Petitioner inducted as tenant by original owner and remained in possession without paying rent, even after original owner sold it to 1st Respondent and 1st Respondent to 2nd to 4th Respondents – Many proceedings at various levels initiated – Lastly, two revisions filed by both Petitioner and 2nd to 4th Respondents – Petitioner filed revision against dismissal of petition filed under Section 5 of Limitation Act to condone delay in filing petition to re-open withdrawn appeal – Another revision by 2nd to 4th Respondents seeking early disposal of miscellaneous petition in appeal – Whether delay in filing petition to re-open withdrawn appeal could be condoned – Whether Appellate Authority could be directed to dispose of miscellaneous petition – Held, Petitioner himself admitted that he was only inducted as tenant by original owner – Petitioner getting order to deposit arrears of rent shows that Petitioner inducted only as tenant – Unless position of Petitioner gets changed by virtue of sale deed alleged to be executed by owners or by virtue of decree by competent Court, his position continues only as tenant and not otherwise – Original owner sold property to 1st Respondent with whom Petitioner alleged to have entered into sale agreement, same rejected by Trial Court, High Court and also by Supreme Court – Certified copy of endorsement by Petitioner produced by Respondent and on basis of same, appeal permitted to be withdrawn – Based on wrong advice, if Petitioner withdrew appeal, course open to him is not against Respondent – Order by Appellate Authority that Petitioner re-opens appeal with intention to drag on litigation with Respondent not found fault with – Direction to Appellate Authority to dispose of miscellaneous petition at earliest – Petition filed by Petitioner dismissed – Petition filed by 2nd to 4th respondents allowed.

2014 –3– LW.385

Arun Kumar Jain @Bunty

Vs

Geeta

Date of Judgment : 9.6.2014

Hindu Marriage Act(1955), Sections 13(1)(i-a), (i-b), Divorce grant of, Cruelty and desertion, 'Irretrievable break down' ; ground whether available.

Divorce, grant of – Grounds of cruelty and desertion whether proved – Subsequent events taking note of, scope.

Attitude of respondent/wife, living separately for more than 9 years, effect of – 'Mental Cruelty' – What is – It is a state of mind and feeling of one spouse due to behavioural pattern of other – Matter of inference – Lodging of criminal proceedings by wife, family members of husband arrested and remanded, effect of.

'Irretrievable break down of marriage', whether available – whether appropriate for Courts to grant such relief – Lok Sabha yet to pass (amendment) Bill 2010 – Scope of – No need to decide that issue – Jayachandra (2005-2-L.W.149) and Samar Ghosh will prevail – Naveen Kohli (2006-2-L.W. 606) followed.

2014 –3– LW.405

The Divisional Manager, New India Assurance Co. Ltd., Thiruvannamalai

Vs

S. Syed Kadhar and Ors

Date of Judgment : 10.3.2014

Motor Vehicles Act(1988), Sections 166, 173, Compensation, under head of 'loss of love and affection'; to brothers and sisters, whether entitled.

Held : blood brothers and sisters entitled to compensation under 'loss of love and affection' – Contention that they are not dependents of the deceased, untenable – Brothers/sisters, who have lost a member in the family is certainly entitled to a reasonable compensation under the head loss of love and affection – Blood is thicker than water – Each of us need affection, more than anything in this world, but only few find it.

(2014) 6 MLJ 566

G. Mohandoss and Ors

Vs

G. Shanmugham and Ors

Date of Judgment : 28.3.2014

- A. Succession Law – Partition – Ancestral Properties – Separate Properties – Suit properties were purchased from sale proceeds of ancestral properties and business income – Grandfather of Plaintiff executed settlement deed in favour of his son/father of Plaintiff and 1st to 4th Defendants – Properties purchased in name of 5th Defendant/mother of Plaintiff and 1st to 4th Defendants from joint family income – Father of Plaintiff and 1st to 4th Defendants purchased some properties from business income – Leasehold properties belonging to Devasthanam also treated as joint family properties – Plaintiff filed suit for partition in suit properties alleging that documents obtained by 1st to 4th Defendants not valid – Suit partly decreed - Appeals – Whether suit properties were ancestral properties or separate properties of father of Plaintiff and 1st to 4th Defendants – Held, properties covered in A, B and C schedule were self-acquired properties of father of Plaintiff and 1st to 4th Defendants – Father of Plaintiff and 1st to 4th Defendants was competent to execute settlement deeds in respect of those properties in favour of 1st to 4th Defendants – PW-1 also aware of settlement deed executed by grandfather of Plaintiff and 1st to 4th Defendants in favour of father of Plaintiff and 1st to 4th Defendants – Not open to Plaintiff to challenge settlement deed after twenty years by alleging that those properties were joint family properties – Suit properties were separate properties of Plaintiff's father.**
- B. Succession Law – Partition – Ancestral Properties – Separate Properties – Whether item Nos. 1 and 2 of 'A' schedule properties did not belong to joint family as held by Trial Court – Held, item No.1 of 'A' schedule comprised in ExA.1 as item 26, same proved to be self-acquired properties of father of Plaintiff and 1st to 4th Defendants and settled under Ex.B.50 in favour of 2nd Defendant – Item No.2 of 'A' schedule was leasehold property and after death of father of Plaintiff and 1st to 4th Defendants, property surrendered and Defendants got it back in their individual name – Item Nos.1 and 2 of 'A' schedule not available for partition.**

- C. Succession Law – Partition – Ancestral properties – Separate Properties – Whether item Nos. 6 and 7 of ‘B’ schedule property were separate properties of 5th Defendant/mother of Plaintiff and 1st to 4th Defendants – Held, item Nos. 6 and 7 of ‘B’ schedule property were properties belonged to 5th Defendant/mother of Plaintiff and 1st to 4th Defendants and she proved the same – Even in absence of any means by her, having regard to fact that properties purchased in 5th Defendant’s name and when there was no joint family, those properties held to be self-acquired properties of 5th Defendant – Plaintiff cannot claim share in respect of properties of 5th Defendant – Item Nos. 6 and 7 of ‘B’ schedule property were separate properties of 5th Defendant.

2014 (4) CTC 836

M. Maniannan

Vs

B. Chandrika

Date of Judgment : 23.6.2014

Contempt of Courts Act, 1971 (70 of 1971), Section 10 – In Execution proceedings, Tenant invoking Section 47, C.P.C. stating that High Court “erred” in confirming Order passed by Lower Courts – High Court is empowered to take cognizance of this act of tenant before Subordinate Court also as it tends to lower authority of High Court and thereby interferes with administration of Justice – Costs of Rs.25,000/- slapped on tenant.

Code of Civil Procedure, 1908 (5 of 1908), Section 47 – Eviction proceedings under Tamil Nadu Buildings (Lease and Rent Control) Act – Tenant unsuccessful upto Revision – Thereafter invoking Section 47 to nullify Order of High Court passed in Revision – Amounts to an attempt to destroy hierarchy of institution itself amounting to an abuse of process of law – If party was aggrieved by Order of High Court, remedy was to take it up on Appeal to Supreme Court only and not challenge Order in Revision indirectly by filing a Petition under Section 47, C.P.C.

HIGH COURT CITATIONS CRIMINAL CASES

2014 – 2 – LW.(CrI.) 388

Lejeune Ramot Sarodja and Ors

Vs

Kavitha

Date of Judgment : 23.4.2014

Protection of Women (from Domestic Violence) Act (2005), Sections 2(s), 12.

Respondent filed a petition seeking an order restraining petitioners (mother-in-law and sister-in-law) from entering into any of the portions of the shared household – Claim for residence in ‘shared household’ – whether proper.

Property of mother-in-law whether is ‘shared household’, held – No – Property settled in favour of the mother-in-law before the respondent filed a petition, would not fall within the description of ‘shared household’ – An order of protection safeguarding residential rights would become necessary only when there is a right to reside in property.

2014 – 2 – LW.(CrI.) 393

Paulraj

Vs

State rep by its the Inspector of Police, Annadanapatty Police Station, Salem

Date of Judgment : 16.9.2014

I.P.C., Section 302 r/w. 109,

Criminal Procedure Code, Section 313, questioning of accused,

Criminal Trial/parameters of speedy trial, questioning of accused

Constitution of India, Article 21, Speedy trial, violation of,

Murder of woman – Trial – Parameters of speedy trial – whether violation of Article 21 – Examination of accused done in gross violation of fundamental principles of law – Framing one single question and confronting accused for answers – Extra Judicial Confession, acceptance of, without general corroboration – Sham trial – Case of witch hunting – Benefit of judgment extended to A3 though he did not appeal.

(2014) 3 MLJ (CrI) 394

G. Sekar and Anr

Vs

Inspector of Police, Vigilance and Anti Corruption Cell, Nagapattinam

Date of Judgment : 4.7.2014

Prevention of Corruption – Illegal Gratification – Conviction and Sentence – Validity of - Prevention of Corruption Act, 1988, Sections 7 and 13(1)(d) read with 13(2) – PW/Complainant gave application for transfer of patta in name of PW/Sister of Complainant – 1st accused/Village Administrative Officer was approached by complainant for

transfer of patta – Alleged that 1st accused demanded bribe for transfer of patta – Complaint made under Section 7 Act 1988 arrested – Trap proceeding initiated – 1st accused arrested - Lower Court found 1st accused guilty and awarded punishment – Appeal – Whether prosecution proved beyond reasonable doubt guilt of accused in receiving bribe – Held, evidence indicated that 1st accused was annoyed since he was persistently disturbed by PW by his constant nagging – PW/Sister of complainant also failed to support prosecution case – Allegation of payment of bribe and recovery of same from accused is suspicious when PW/Accompanying witness has not witnessed passing of tainted money to accused – Evidence of PW/Accompanying witness hear-say – Alleged occurrence and acceptance of bribe lacking – Complainant’s version coupled with evidence of accompanying witness indicated that tainted money was planted and complainant voluntarily kept money on accused table without any demand for bribe – Recovery of tainted money from accused not strong enough to sustain conviction – Prosecution failed to prove beyond reasonable doubt case projected – Benefit of doubt given accused – Appeal allowed.

(2014) 3 MLJ (CrI) 400

Rahul Dhoka

Vs

State, by The Inspector of Police, D-6, Anna Square Traffic Investigation, Chintadripet, Chennai -2

Date of Judgment : 18.7.2014

Bail – Grant of – Code of Criminal Procedure, 1973 (Code 1973), Section 439 – Indian Penal Code, 1860 (Code 1860), Sections 279, 337, 338 and 308 – Son of defacto complainant sustained grievous injuries on his legs resulting in amputation due to rash and negligent driving of Petitioner – wife of defacto complainant and another girl also sustained injuries – Petitioner booked for offences under Sections 279, 337, 338 and 308 of Code 1860 – Pending investigation, Petitioner prayed that bail may be granted to him – Whether Petitioner entitled to grant of bail – Held, in Petitioner’s case, offences under Sections 337, 338 of Code 1860 prima facie attracted – With reference to son of defacto complainant, plea as to whether offence under Section 308 of Code 1860 attracted is debatable – Considering manner of incident as mentioned in FIR, mental element required for offence under Section 308 of Code 1860 lacking – Investigation pending – Unlike other accused, Petitioner came forward to provide compensation to victim, same accepted by defacto complainant – Compensation awarded independent of compensation available to victim under any other Law – No point in keeping Petitioner in jail – Bail granted with conditions.

(2014) 3 MLJ (CrI) 407

State by : Inspector of Police, C.B.C.I.D., Idol Theft Prevention Section, Trichy.

Vs

Jacob and Ors

Date of Judgment : 26.6.2014

Criminal Laws – Conspiracy – Theft of idols – Indian Penal Code, 1860 (Code 1860), Sections 120(B), 457, 380 read with 109 – Loss of idols from temple – Allegation that A1 to A10 entered into criminal conspiracy, pursuant to which some of them entered into temple to steal idols and others waited outside to receive stolen goods – Trial Court acquitted all accused – Appeal by State – Whether Trial Court was justified in acquitting all accused – Held, allegation of defence that police failed to obtain signature of accused in confession statements does not hold good – Confessional statement of accused given to police should not contain signature of deponent – With regard to seizure, apart from evidence of IO (Investigation Officer) and PW 31, approver in evidence spoken about recovery – Because mahazar witnesses turned hostile, Court not to reject evidence of IO – Prosecution proved arrest, seizure and recoveries of idols beyond reasonable doubt – PW2/trustee of temple, PW 5 and PW 6, who perform pujas in temple, identified idols – All seized idols together with mutilated pieces were correlated with photographs of idols in photo album belonging to temple – Photo album proved through PW4 who was entrusted task of taking photographs of idols in temple – No hesitation in holding that idols belong to temple – Not necessary for all accused to be physically present for hatching conspiracy, because conspiracy is an inchoate offence – Evidence of approver makes it clear that operation was carried into by all accused – Approver’s evidence should not be corroborated minutely on every aspect but only general corroboration required – Recovery of idols from each of accused by police tallies with evidence of approver – Approver stated that idols stolen were more and only less idols were found to be missing in temple – Just because prosecution failed to explain as to what extra idols were, entire prosecution

case cannot be rejected – Sufficient materials present with regard to theft and recovery of idols from accused – A9 was engaged to transport stolen goods and was forced to drive van by accused – A9 not member of conspiracy and cannot be convicted – Acquittal of all accused except A9 set aside – Appeal partly allowed.

(2014) 3 MLJ (Crl) 456

S. Muthusamy

Vs

Ramathal and Ors

Date of Judgment : 8.7.2014

Criminal Procedure – Acquittal – Benefit of Doubt – Code of Criminal Procedure, 1973, Section 248(1) – Indian Penal Code, 1860 (Code 1860), Sections 147, 148, 294(b), 324, 427, 447 and 506(ii) – Private complaint against Respondents/accused for offences under Sections 147, 148, 294(b), 324, 427, 447 and 506(ii) Code 1860 filed by Appellant/complainant, same taken on file by Trial Court – Trial Court acquitted accused by giving them ‘benefit of doubt’ – Complainant filed appeal alleging that Trial Court should have seen that evidence of witnesses not contradictory and ingredients of offences levelled against accused made out – Whether Trial Court justified in acquitting accused by giving them ‘benefit of doubt’ – Held, Appellate Court can displace with acquittal, if it is rested on reasonable, legitimate and plausible grounds – Only if Judgment of acquittal of Trial Court perverse and based on irrelevant factors and materials, Appellate Court will interfere and that too for forceful reasons – Offences committed by Accused are to be proved beyond all reasonable doubt – Evidence of PW-1 and PW-3 who were interested witnesses, were not supported by evidences of PW-2 and PW-4 – Evidences of Prosecution witnesses contain discrepancies/contradictions with regard to charges levelled against accused, same would show that offences against them not made out beyond reasonable doubt – Trial Court correct in granting accused benefit of doubt and acquitting them – Appeal dismissed.

(2014) 3 MLJ (Crl) 513

Govindaraj and Anr.

Vs

State represented by Inspector of Police, Memcherry Police Station, Salem District

Date of Judgment : 4.8.2014

Criminal Laws – Murder – Circumstantial Evidence – Conviction and Sentence – Indian Penal Code, 1860 (Code 1860), Sections 302 and 201 – Indian Evidence Act, 1872 (Act 1872), Sections 24 and 26 – 1st Appellant convicted for committing offence under Section 302 – 1st Appellant and 2nd Appellant together convicted for committing offence order Section 201 r/w 302 mother/2nd Appellant/accused, same challenged – Whether prosecution established guilt of Appellants beyond reasonable doubt on basis of circumstantial evidence – Held, no scientific evidence to establish that body exhumed was that of deceased – Identification by PW-2 based on shirt was too weak, as no specific evidence adduced by him to show that shirt was that of his deceased uncle – Doctor who conducted post-mortem stated that thigh bone preserved for DNA test and skull also preserved for superimposition technique – Police could have obtained blood samples from 1st Appellant and established identity of dead person, but same was not done – Confession in nature, if given to Executive Magistrate during Inquest can be treated as extra judicial confession – But, confession by accused with police people around him, even if it is addressed to Tahsildar, would become irrelevant under Section 24 of Act 1872 – No specific explanation given by Inspector of Police as to why he did not arrest 1st and 2nd Appellants and allegedly arrested them late night at two different roadway junctions – Arrest in late night would show that either Appellants were never present during inquest or in order to get over bar under Section 26 of Act 1872, arrest was deliberately shown as if they came into police custody only in late night and in either case, benefit would go to accused – Defence established through cross examination of PW-5/second wife of deceased that she had stronger motive against deceased, same completely demolishes prosecution theory that deceased was more inclined towards family of PW-5 and he was neglecting accused – None of the circumstances relied upon by prosecution inspire confidence – Conviction and sentence imposed on Appellants set aside – Appeal allowed.

(2014) 3 MLJ (Crl) 538

P. Sankar

Vs

State rep. by The Inspector of Police, Karimangalam Police Station, Dharmapuri District

Date of Judgment : 14.7.2014

Criminal Law – Murder – Circumstantial Evidence – Indian Penal Code, 1860, Section 302 – Appellant/Accused son of PW’s brother charged for committing murder of PW’s mother and took away Articles of deceased – Trial Court found Appellant guilty of offence under Section 302 Code, 1860 – Whether motive to commit offence proved by prosecution beyond reasonable doubt through circumstantial evidence – Held, alleged confession leading to recovery of ornament of deceased proved – Ornament removed from body of deceased by causing lacerated injury – Allegation of Appellant that gold ear hearing described wrongly, not accepted – PW/Village Administrative Officer gave deposition regarding confession and recovery of ornament same cannot be disbelieved – PW had seen accused along with deceased on day of alleged offence – No delay in filing FIR – No error in deposition given by PW’s – Evidence adduced by prosecution acceptable, no contradiction – Nexus of accused to crime proved beyond any reasonable doubt – No reason adduced on side of Appellant to reject evidence of prosecution – Motive of accused proved by prosecution beyond reasonable doubt – No reason to interfere with impugned order passed by Trial Court – Appeal dismissed.

(2014) 3 MLJ (Crl) 584

T.N. Murugan

Vs

Raimon Jebaraj

Date of Judgment 21.7.2014

Criminal Procedure – Closure of Complaint – Non-appearance of Complainant – Code of Criminal Procedure, 1973 (Code 1973), Section 256(1) – Upon complaint by Appellant/complainant, Trial Court took cognizance and issued summons to Respondent/ accused – Main case posted for examination of witnesses, complainant examined as PW-1 and marked Exhibits – Matter posted for cross examination and examination of other witnesses – In examination of other witnesses, both complainant and accused called absent – Trial Court closed complaint under Section 256(1) of Code 1973, as both parties called absent – Complainant sought for relief of setting aside order of closure of complaint under Section 256(1) of Code 1973 leading to acquittal of accused – Complainant alleged that when main case posted for examination of other witnesses, presence of complainant not necessary and closing of complaint by Trial Court not valid – Whether closure of complaint for non-appearance of complainant in examination of other witnesses valid – Held, obligatory on part of complainant to be present on date of hearing, even when accused did not appear – If no reason given by complainant for his absence proper order to be passed by Court was acquittal order – Non-appearance of complainant in each and every date of hearing, acquittal order can not be passed – Just because Appellant did not appear on particular dates, case not be closed under Section 256(1) of Code 1973, since accused also absent on said day – Closure of case as held by Trial Court not valid – Trial Court did not exercise its judicial discretion in favour of Appellant and also did not adjourn case, when both parties remained absent – Trial Court order interfered and set aside – Magistrate directed to restore case on his file and to proceed further in manner known to law – Appeal allowed.

(2014) 3 MLJ (Crl) 597

Dr. B. Ramaswamy

Vs

R. Paranjothi

Date of Judgment 24.3.2014

Evidence - Professional Communication – Defamation – Indian Evidence Act, 1872 (Act 1872), Section 126 – Indian Penal Code 1860 (Code1860), Section 499 – Primary dispute between Petitioner and Respondent’s client arose out of action under Section 138 of Negotiable Instruments Act - Allegation against Respondent/complainant/Advocate spoken to in rejoinder notice of Petitioner was that Respondent Misbehaved against woman

– Respondent preferred complaint against Petitioner alleging commission of offence under Section 499 of code 1860 since rejoinder notice by Petitioner read by others – Petitioner alleged that rejoinder addressed personally to Respondent, same could not read as publication of defamatory imputations to attract offence under Section 499 of Code 1860 – Also, alleged that communication by Petitioner would fall within category of privileged communication protected against action under Section 126 of Act 1872 – Whether communication by petitioner would fall within category of privileged communication protected against action under Section 126 of Act 1872 - Held, Section 126 (1) of Act 1872 permits disclosure of communication made in furtherance of illegal purpose- Person having made public matters defamatory can avoid actions by resorting to preference of complaint, same would amount to permitting one wrong to defend another – If communication of defamatory matter found to be within scope of engagement of counsel, protection under Section 126 of Act 1872 available to Petitioner and if not, it would not, same is a question, which calls for answer by Trial Court – Trial Court directed to dispose of pending case – Petition dismissed.
