



TAMIL NADU STATE JUDICIAL ACADEMY

Vol: XIII

Part: 9

September, 2018

IMPORTANT CASE LAW



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SUPREME COURT – CIVIL CASES

2018 (2) TN MAC 149 (SC)

Shivaji Vs. Divisional Manager, United India Insurance Co. Ltd.

Date of Judgment: 09.08.2018

MOTOR VEHICLES ACT, 1988 (59 of 1988), Section 163-A – Claim under – Defence of Negligence on part of victim – If, can be raised by Insurer – Deceased Car Driver, tortfeasor and responsible for causing accident – High Court, if justified in holding that Claimants not entitled to award of Compensation – Issue no longer *res integra* in view of decision of Three-Judge Bench in *Sunil Kumar* (SC) – Permitting Insurer to raise defence of Negligence would bring proceeding under Section 163-A at par with proceeding under Section 166 – And, would defeat very legislative intent – Insurer, *held*, cannot raise defence of negligence on part of victim to counter claim under Section 163-A – Restoring Order of Tribunal, impugned Order of High Court absolving Insurer, set aside.

(2018) 7 SCC 319

Selvi Vs. Gopalakrishnan Nair

Date of Judgment: 15.05.2018

Civil Procedure Code, 1908 – S.97 and Order 7 Rule 7 – Challenge to correctness of preliminary decree in final decree proceedings barred when no appeal was preferred by defendant against preliminary decree Fundamental issue (as to boundaries and description of suit properties) consistently and sufficiently averred by defendant to warrant enquiry by trial court – However still not enquired into by trial court – Thus, even in absence of appeal against preliminary decree, since defendant had consistently raised fundamental averment in question, to warrant enquiry thereinto by trial court, matter remitted to trial court for consideration of disputed question on basis of evidence

(2018) 7 SCC 346

Telangana Housing Board Vs. Azamunnisa Begum

Date of Judgment: 01.05.2018

A. Tenancy and Land Laws – Revenue Records – Entry in revenue records – Substantive error or clerical error – Determination of – Appellant Housing Board acquiring and taking possession of entire Survey No.1009 – Allegedly survey records not depicting exact extent of land – Some additional area probably should have been included in description of Survey No.1009 – Respondent landowners, taking chance and claiming that additional area under said Survey was not acquired by filing application under S.87, Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli, for correction of clerical error – Said application, *held*, could not have been entertained – Firstly, because said error not a clerical or mathematical error but a substantive error

B. Tenancy and Land Laws – Revenue Records – Entry in Revenue Records – Locus standi – Land acquired for Housing Scheme – Beneficiary of

(2018) 7 SCC 374

Union of India Vs. Hardy Exploration and Production (India) Inc.

Date of Judgment: 01.05.2018

Arbitration and Conciliation Act, 1996 – Pt. I or Pt. II and S.34 – International commercial arbitration or Foreign-seated arbitration – Determination of – Award rendered in international commercial arbitration, as in the present case between the appellant (Union of India) and the respondent (foreign company) – Challenge to, under Section 34 in courts in India – “Seat” of arbitration – Determination and effect of on maintainability of such challenge, when the arbitration agreement specifies the “venue” for holding the arbitration but does not specify the “seat” – In the present case, exercising the power under Or.6 R.2 of Supreme Court Rules, 2013 appeal referred to larger Bench for hearing – Supreme Court Rules, 2013, Or.6 R.2

(2018) 6 SCC 389

Anu Bhandari Vs. Pradip Bhandari

Date of Judgment: 05.03.2018

A. Family and Personal Laws – Judicial Intervention/Family Courts/Judges/Officers – Family Courts Act, 1984 – S.9 – Duty Cast on Family Court to involve itself in process of conciliation and mediation to persuade parties to arrive at settlement – Jurisdiction of Family Court extends not only to decide disputes but also involving itself in process of mediation/conciliation – Such steps would assist in settlement of existing dispute and prevent sporadic litigation between parties

B. Constitution of India – Arts.142 and 136 – Exercise of extraordinary jurisdiction in matrimonial matters – Supreme Court involving itself in process of settlement of disputes between parties – Based on their settlement, brought an end to all litigations between them – In terms of settlement, parties restrained from engaging in fresh litigation on subject-matter without leave of Supreme Court – In peculiar facts of case, divorce by mutual consent granted by waiving condition of six months’ period

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SUPREME COURT – CRIMINAL CASES

(2018) 7 SCC 718

Devidas Loka Rathod Vs. State of Maharashtra

Date of Judgment: 02.07.2018

A. Penal Code, 1860 – Ss.84, 302 and 324 – Murder trial – Applicability of S.84 – Reasonable doubt regarding mental condition of accused at the time of incident – Created in the mind of court from materials and evidence available – Benefit of exception under S.84 IPC – Entitlement to – Prosecution failed to lead any evidence in rebuttal and was not able to establish its case beyond reasonable doubt – Conviction of accused under Ss.302 and 324 IPC, reversed

B. Evidence Act, 1872 – S.105 – Plea of insanity – Burden of proof – Upon whom – Principles reiterated – Held, law undoubtedly presumes that every person committing an offence is sane and liable for his acts, though in specified circumstances it may be rebuttable – Penal Code, 1860, S.84

C. Penal Code, 1860 – S.84 – Ingredients of – Principles reiterated

D. Evidence Act, 1872 – S.105 – Onus on accused under – When shifts on prosecution

E. Penal Code, 1860 – S.84 – Plea of unsoundness of mind – Standard of test to be applied

F. Penal Code, 1860 – S.84 – Defence plea of unsoundness of mind – Crucial point of time at which such unsoundness should be established – What is

G. Penal Code, 1860 – S.84 – Defence plea of unsoundness of mind – Reasonable doubt created in the mind of court – Effect – Held, if from materials placed on record, a reasonable doubt is created in the mind of court with regard to mental condition of accused at the time of occurrence, he shall be entitled to benefit of reasonable doubt and consequent acquittal

H. Penal Code, 1860 – S.84 – Defence plea of unsoundness of mind – Statement of injured witness/interested witness, that appellant-accused was not of unsound mind – Duty of prosecution in such case – Held, merely because of such statement, primary duty of prosecution cannot be absolved, to establish its case beyond all reasonable doubt, explaining why plea for unsoundness of mind taken by accused was untenable

I. Penal Code, 1860 – S.84 – Defence plea of unsoundness of mind – Nature of illness of appellant-accused and its correlation to nature of treatment required – Appropriately set out

J. Evidence Act, 1872 – S.165 – Duty of Judge to actively participate in trial – Principles reiterated

K. Criminal Trial – Appeal – Generally – Duty of appellate court to reappraise evidence itself – Principles reiterated

L. Constitution of India – Art.136 – Scope of interference under – Criminal matters – Concurrent findings of facts by courts below – Interference by Supreme Court – When warranted – Principles reiterated

(2018) 7 SCC 743

Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel

Date of judgment: 16.05.2018

A. Criminal Procedure Code, 1973 – Ss.211 to 213 – Framing of charge – Proper framing of charge – Cardinality and necessity of – Explained – Accused persons are entitled to know with precision what charge they are required to defend

B. Criminal Trial – Practice and Procedure – Judgment – Recording of findings – Necessity – 17 accused alleged to have murdered 3 persons and caused injuries to five others – Omnibus accusation that accused committed offences falling under Ss.143, 147, 148 IPC and were vicariously liable by virtue of S.149 IPC for offence under S.302 IPC – Absence of clear finding regarding existence of “unlawful assembly”, number and identity of participants by trial court – Strongly deprecated

C. Penal Code, 1860 – S.149 – Nature, Scope and Object of – Applicability – S.149 conceived in larger public interest to maintain tranquility of society and preventing offenders from claiming impunity on ground that their activity as member of unlawful assembly was limited – It propounds vicarious liability in two contingencies by declaring that if member of unlawful assembly commits offence in prosecution of common object of that assembly, every member is guilty of offence committed by other members of unlawful assembly and even in cases where some members do not share common object to commit particular offence but if they had knowledge of fact that some other members of assembly are likely to commit that particular offence in prosecution of common object, they would be liable – S.149 does not create separate offence but only declares vicarious liability of members of unlawful assembly in certain circumstances

D. Criminal Trial – Proof – Generally – Golden thread of proof beyond reasonable doubt embedded in criminal law – Need for circumspection – Possibility that too frequent acquittals of guilty may lead to toothless penal law, eventually eroding judicial protection of guiltless

E. Criminal Procedure Code, 1973 – Ss.386(b) and 357 – Retrial – When not advisable – Award of compensation to victims, instead of retrial, due to non-feasibility of latter

F. Penal Code, 1860 – Ss.147 and 148 – Nature of offences – Punishment for offence of rioting and punishment for offence of rioting armed with deadly weapons – Held, a person cannot be charged simultaneously with both offences by their very nature – Person can only be held guilty either under S.147 or S.148

G. Criminal Procedure Code, 1973 – Ss.211 to 213, 460 and 461 – Framing of charge – Defect/Omission in framing of charge – Effect – Reiterated that erroneous or irregular or absence of specific charge does not render conviction invalid unless failure of justice was occasioned thereby

H. Penal Code, 1860 – Ss.141 to 149 – Scope and amplitude – Explained

I. Penal Code, 1860 – Ss.146 and 148 – Distinction between – Held, to constitute offence under S.146, members of “unlawful assembly” need not carry weapons while person charged under S.148 must be armed with deadly weapon

J. Penal Code, 1860 – S.149 – Common object – Proof

K. Criminal Procedure Code, 1973 – Ss.211 to 213 and Or.14 R.1, Civil Procedure Code, 1908 – Framing of charge vis-à-vis framing of issues

L. Criminal Procedure Code, 1973 – Ss.143 and 149 – Vicarious liability – Membership of unlawful assembly – Inference

M. Evidence Act, 1872 – S.33 – Relevancy of certain evidence for proving, in subsequent proceeding, truth of facts stated therein – Marking of evidence recorded in another trial – Impermissibility – Held, such mode of proof of any fact not permitted barring exceptional situations contemplated in S.33

N. Criminal Procedure Code, 1973 – Ss.378 and 386 – Powers of appellate court – Reversal of acquittal – Grounds on which permissible

(2018) 7 SCC 781

Vaijnath Kondiba Khandke Vs. State of Maharashtra

Date of Judgment: 17.05.2018

Penal Code, 1860 – S.306 – Abetment of suicide – Ingredients for invoking of S.306 – Not made out – Allegations in FIR, relating to mental torture of deceased at the hands of his higher officers, in present case, held, completely inadequate not satisfying requirements under S.306 – Proceedings initiated against accused quashed

(2018) 3 MLJ(Crl) 282 (SC)

Alakh Alok Srivastava Vs. Union of India

Date of Judgment: 01.05.2018

Writ – Speedy trial – Offences against Children – Protection of Children from Sexual Offences Act, 2012 – Eight month old female child became victim of crime committed under Act – Petition filed raising issue of speedy trial and monitoring of trials under Act in child friendly court – Whether there should be speedy disposal of cases under Act – Whether child friendly atmosphere to be provided in Special Courts – *Held*, objective of Act was to protect child so that he/she did not feel sense of dis-comfort or fear or reminded of horrified experience and there had to be child friendly atmosphere – Directions issued so that legislative intent and purpose were actually fructified at ground level – Gap between legislation remaining mere parchment or blueprint of social change and its practice or implementation in true essence and spirit to be bridged – High Courts shall ensure that cases registered under Act were tried and disposed of by Special Courts – Presiding officers of said courts sensitized in matters of child protection and psychological response – Special Courts to be established, if not already done, and assigned responsibility to deal with cases under Act – Instructions should be issued to Special Courts to fast track cases by not granting unnecessary adjournments and following procedure laid down in Act – Trial to be completed in time-bound manner or within specific time frame under Act – Committee of Judges to be constituted to regulate and monitor progress of trials under Act – Director General of Police or officer of equivalent rank of States shall constitute Special Task Force which shall ensure that investigation is properly conducted and witnesses are produced on dates fixed before trial courts – Adequate steps shall be taken by High Courts to provide child friendly atmosphere in Special Courts keeping in view provisions of Act so that spirit of Act was observed – Petition disposed of.

(2018) 5 SCC 415

Osama Aziz Vs. State of Uttar Pradesh

Date of Judgment: 27.04.2018

Criminal Procedure Code, 1973 – Ss.482, 216, 173, 200 and 202 – Directions issued by High Court in petition filed under S.482 in interest of justice – Propriety of – Offence of attacking petitioner in courtroom in presence of Presiding Officer by advocates – While several persons attacked, charge-sheet submitted by police against three of them only – Prayers made before High Court in petition filed under S.482 pertaining inter alia to inclusion of certain provisions of IPC and other Acts in charge-sheet filed against three persons before trial court, framing of proper charges against one and taking cognizance against another person, discovering all accused

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MADRAS HIGH COURT – CIVIL CASES

(2018) 6 MLJ 523

Jebasundari Vs. S. Tharmar

Date of Judgment: 03.07.2018

Civil Procedure – Condonation of Delay – Restoration Application – Code of Civil Procedure, 1908, Order 9 Rule 9 – 1st Petitioner/wife of 3rd Plaintiff filed petition to condone delay of 2170 days in filing petition to restore suit which was dismissed for default – Trial Court dismissed petition, hence this revision – Whether trial Court was right in dismissing petition seeking to condone delay of 2170 days in filing petition under Order 9 Rule 9 – *Held*, if a litigant chooses to approach court long after time prescribed under relevant provisions of law, he/she cannot say that no prejudice would be caused to other side by delay being condoned – Explanation for delay given by Petitioners not acceptable and also, reasons for delay stated were not *bonafide* – Petition seeking to condone delay of 2170 days was filed in casual manner without giving proper reasons, much less acceptable reasons which could not be sustained – Petitioners had not shown sufficient cause to condone delay – Affidavit filed by 1st Petitioner before trial Court was vague and bereft of particulars without any convincing explanation for period commencing from date of dismissal of suit till date of filing of petition to restore suit – Petitioners failed to explain each and every day's delay – Trial Court rightly dismissed petition – Revision dismissed.

(2018) 6 MLJ 548

R. Thangam Vs. P. T. Ram Mohan

Date of Judgment: 06.07.2018

Property Laws – Possession of title – Boundaries – Plaintiff sold certain extent of lands to Defendant comprised in two Survey numbers under Ex.A.2 – Defendant interfered with Plaintiff's possession of suit property in distinct survey number claiming that it was also conveyed to him under Ex.A.2 – Suit filed for declaration of title and permanent injunction – Lower Courts decreed suit, hence this second appeal – Whether first appellate court right in not applying principles that boundaries prevail over extent especially when Ex.A.2 clearly gives four boundaries – Whether judgment and decree of first appellate court perverse for not considering oral and documentary evidence in its proper perspective – *Held*, boundaries prevail over extent was not absolute – It comes into play only when there was ambiguity in title document itself – There was clearly no ambiguity in Ex.A.2 – It was stated position of Defendant that there was 20 cents shortfall and that was in one of two Survey numbers under Ex.A.2 – Said survey number conveyed in Ex.A.2 was not contiguous to suit property – This shortfall theory and boundaries prevail over extent did not carry case of Appellant any further – No perversity in appreciation of evidence – No revenue records filed by Defendant to show that they were in possession and enjoyment of suit property – Plaintiff exhibited Ex.A.3/patta pertaining to suit property – Defendant had lodged caveat in trial court in which there was no mention about suit survey number – Even Defendant's anticipation was only with regard to two survey numbers under Ex.A.2 – First appellate court did not err in not applying principle of boundaries prevail over extent qua boundaries given in Ex.A.2 – Principle that any amount of oral evidence could not alter document was indisputable – Appeal dismissed.

(2018) 6 MLJ 556

Keselet Vs. Sathananthan

Date of Judgment: 05.07.2018

Civil Procedure – Execution Proceedings – Claim Petition – Code of Civil Procedure, 1908, Section 47 – Suit filed by 1st and 2nd Respondents for recovery of possession and mesne profits decreed by Trial Court and same confirmed on further appeals – 1st and 2nd Respondents filed execution petition for delivery of property – Application filed by Petitioner/2nd Defendant under Section 47 to reject execution petition, dismissed, hence this revision – Whether Petitioner could file claim petition under Section 47 and indirectly challenge judgment passed by this Court – *Held*, in execution proceedings, question of identification of property could not be raised – After passing decree in favour of 1st and 2nd Respondents, it was for Court and 1st and 2nd Respondents to look out question of identify of property – Petitioner who was judgment debtor could not canvass legality of decree in execution petition – Suit proceedings initiated by execution petition were strongly contested by Petitioner, who carried proceedings upto High Court – High Court, by its elaborate judgment, confirmed decree and judgment passed in suit – Petitioner had no right to question execution of decree in Suit – Not open to Petitioner to file claim petition under Section 47 and indirectly challenge judgment passed by this Court – Petitioner had taken all dilatory tactics to prevent 1st and 2nd Respondents from enjoying fruits of decree in suit – No illegality in order of Executing Court passed in execution application – Revision dismissed.

(2018) 6 MLJ 588

Puruvankara Projects Limited Vs. Ranjani Venkatraman Ganesh

Date of Judgment: 26.07.2018

Alternative Dispute Resolution – Arbitration award – Liquidated damages – Arbitration and Conciliation Act, 1996 (Act 1996), Section 34 – Indian Contract Act, 1872 (Act 1872), Section 74 – 1st Appellant/builder and 1st Respondent entered into agreements by which 1st appellant agreed to sell and construct Apartment for 1st Respondent as per specifications – Disputes between them referred to Arbitration – Arbitrator passed Award in favour of 1st Respondent – Petition filed by Appellants to set aside award was dismissed, hence this appeal – Whether Arbitrator had gone beyond scope of contract – Whether Arbitrator had given perverse, irrational, unfair or unreasonable reasons while passing Award that shocks conscience of Court to entitle Appellant to set aside Award under Section 34 of Act 1996 – *Held*, factual findings of Arbitrator were based on plausible reasons and thus, could not be disturbed in proceedings under Section 34 of Act 1996 – Patent illegality found in Award was that Arbitrator fixed higher amount per month towards liquidated damages for delayed delivery of flat, even though contract stipulated only lesser amount – Award of compensation for delayed delivery of flat patently illegal, unsustainable and amount to shocking conscience of this Court – Arbitrator arbitrarily awarded compensation for delayed delivery of covered car park even though contract did not provide for same – No clause in contract, stipulating compensation for delay in doing repair work and for arresting seepages but Arbitrator awarded compensation for same – Award relating to delayed delivery of apartment including non-delivery of car shed, 1st Respondent was entitled as per contract only to lesser sum and not amount arbitrarily awarded by Arbitrator – Excepting for this patent illegality, Award passed under various other heads was valid and enforceable and could not be interfered with under Section 34 of Act 1996 – Appeal partly allowed.

(2018) 6 MLJ 23

Periannan Vs. Kumaran

Date of Judgment: 04.06.2018

Property Laws – Easementary Right – Pipeline – Plaintiff and Defendants purchased lands from common owner – Plaintiff claiming that he had exclusive right over suit cart track laid pipe underneath cart track – Defendants also made attempts to lay underneath pipeline under cart track – Suit filed by Plaintiff for permanent injunction was dismissed by Lower Courts, hence this second appeal – Whether recital in Ex.A2 in favour of Defendants that they had right of easementary way over property forming subject matter of suit would enable them legally to burden said property by having pipeline underneath land – *Held*, right in suit cart track acquired by Plaintiff as well as Defendants from common owner who himself had acquired only limited right – Plaintiff as well as Defendants entitled to use common cart track jointly – Plaintiff had laid underneath pipeline for purpose of irrigating his lands – Defendants also would be entitled to lay underneath pipeline without detrimental to usage of suit cart track by joint owners – Entitlement of Defendants to lay underneath pipeline below suit cart track without causing interference of usage of cart track by Plaintiff and others upheld – Plaintiff not entitled to seek relief of permanent injunction without claiming relief of declaration in respect of suit cart track as belonging to him exclusively – Relief sought for by Plaintiff could not be granted – Appeal dismissed with costs.

(2018) 6 MLJ 78

Maarakkal Vs. R.Subbaiyan

Date of Judgment: 04.06.2018

Succession Laws – Partition – Will – Plaintiff represented by her daughter as power agent filed suit for partition against his son/Defendant – Pending suit, Plaintiff died leaving behind Will bequeathing right in suit properties in favour of his daughter/2nd Plaintiff – Defendant defended that pursuant to family arrangement Plaintiff had relinquished his rights in respect of suit properties in his favour and that Will was fabricated – Trial Court granted preliminary decree for partition which was set aside by first Appellate Court, hence this second appeal by Plaintiff – Whether execution of Ex.A5/Will by Plaintiff/since deceased was genuine – Whether lower appellate court committed error in law in accepting oral release in absence of any registered instrument evidencing release of Plaintiff of his share of property in favour of Defendant – *Held*, family arrangement pleaded and projected by Defendant and spoken by D.W.3 was found to be made only orally and since then only Defendant had been in exclusive possession and enjoyment of suit properties – No scrap of paper placed by deceased/1st Plaintiff to evidence his possession and enjoyment of suit properties as co-owner even after family arrangement – No valid reason to interfere with determination of First Appellate Court upholding oral family arrangement, thereafter, deceased/1st Plaintiff would not be entitled to claim any right or interest in respect of suit properties – 2nd Plaintiff failed to establish genuineness of Ex.A5 Will – Based on said Will, 2nd Plaintiff would not be entitled to lay any claim of interest or share in suit properties – First appellate Court justified in dismissing Plaintiff's case and upholding defence version – Appeal dismissed.

(2018) 6 MLJ 116

Ms. Kamala Vs. Ms. Arti Meenakshi Muthiah

Date of Judgment: 25.06.2018

Trust and Charities – Trust – Appointment of Administrator – Appellant/Plaintiff filed suit for relief of declaration and permanent injunction and appointment of Administrator for 4th and 5th Respondent Trusts on ground that 1st and 2nd Defendants were mismanaging running of schools – Applications filed claiming various interim reliefs during pendency of suit dismissed, hence these appeals – Whether interim orders could be passed to ensure smooth running of school, for proper maintenance of accounts and non-alienation of properties belonging to Trusts – *Held*, undertaking given by Respondent before this Court that they do not intend to sell, transfer or create any third party interest in property/assets owned by 4th and 5th Respondents, without leave of Court was recorded – Respondents directed to continue with this undertaking till disposal of suit – In pursuance of directions of this Court, Respondents submitted accounts for certain years – Respondents directed to submit accounts for further two years – No interference required with running of schools by appointing Administrator since it would directly affect rights of 1st and 2nd Defendants – In interest of schools, students, staff and public at large and in order to ensure that schools were run properly, neutral person to be appointed to act as Overseer to assess real situation prevailing in schools – Advocate appointed as Overseer who shall also file periodic reports in suit which would enable Court to give necessary directions, if required, depending on report of overseer – Appeals disposed of.

(2018) 7 MLJ 33

Arulmigu Abhinava Dharma Sivachariar Mutt Vs. P. Ekambaram

Date of Judgment: 31.07.2018

Trust and Charities – Resignation of Members – Approval by Trust scheme – 1st and 2nd Respondents/President and Secretary of Applicant/Plaintiff's Mutt resigned – 1st and 2nd Respondents with connivance of 3rd Respondent/Trustee passed resolution to operate bank accounts illegally – Applicant filed petitions seeking interim injunctions against Respondents to restrain them from acting as office bearers and operating its bank account – Applicant filed application seeking to appoint Advocate Commissioner to hold election – Whether interim injunctions restraining Respondents from acting as office bearers and operating its Bank accounts, to be granted – Whether application for appointment of Advocate Commissioner to hold election, sustainable – *Held*, resignation is not approved by beneficiary of Trust and not in accordance with scheme of Trust Deed – Same cannot be treated as resignation in law – As per Scheme, five members quorum necessary and resignations were to be approved by quorum – Same cannot be said that they resigned without proper approval or sanction as per scheme by way of majority – Resignation is not sanctioned as per scheme and trustees continue in office – No injunction can be against Defendants restraining from acting as office bearers and operating bank accounts – Election is necessary to fill up vacancies of Trustees in Plaintiff's Mutt – Applications for interim injunctions, dismissed – Application for appointment of Advocate Commissioner ordered.

(2018) 7 MLJ 118

Regeena Vs. Jeppiaar Sheela

Date of Judgment: 03.08.2018

Civil Procedure – Suit Against Trust – Leave to file suit – Code of Civil Procedure, 1908, Section 92 – Plaintiff, one of the previous Trustee filed Scheme suit with leave of this Court on grounds of alleged maladministration and irregularities in 1st Defendant/Trust – Applicant/7th Defendant filed application to revoke leave on ground that suit filed by Plaintiff was not in public interest but to launch herself in 1st Defendant Trust – Whether leave granted to institute suit liable to be revoked – *Held*, apart from allegation of transfer of land, allegations made in plaint that resolutions were passed without following mandatory period of notice and non-Christian member included as Trustee against norms of Trust Deed – All these allegations indicate that there was breach of Trust – 1st Plaintiff was one of the daughter of Founder Trustee and laid suit against family members and other members who were subsequently inducted on basis of resolution in certain year – Entire suit was not filed only to vindicate her right – Allegations in plaint had to be decided only in trial to find out as to whether scheme was necessary to run Trust – Misjoinder of cause of action alone was not ground to revoke leave and those allegations had to be seen at time of trial – Leave granted by this Court could not be revoked – Petition dismissed.

(2018) 7 MLJ 188

Dr. A.C. Murugesan Vs. C. Veluchamy (died)

Date of Judgment: 26.07.2018

Succession Laws – Will – Revocation – Indian Succession Act, 1925, Section 70 – Respondents/Plaintiffs, sons of testator through his second wife filed suit for partition of suit property against 1st Appellant/1st Defendant, son of testator through his first wife and 2nd Appellant/2nd Defendant, daughter of 1st Defendant – Appellants put forth Ex.B.1 = Ex.A.29/Will executed by testator in favour of 1st Appellant and Ex.A.36/Power of Attorney executed by testator by which suit property sold to 2nd Appellant – Trial Court dismissed suit, however, on appeal, suit decreed, hence this second appeal – Whether Ex.A.36 Power of Attorney document could be construed as revocation of Ex.B.1 = Ex.A.29/Will within meaning of Section 70 of Act – *Held*, Ex.A.36/Power of Attorney document had been signed by testator – Testator's signature was so placed that it was to give effect to document – Ex.A.36 was attested by two witnesses, each of two seeing testator sign in Ex.A.36, in presence of one another – Ex.A.36 qualified as document executed in manner in which unprivileged Will was required to be executed under Act – Sole beneficiary under Will had signed as one of two attesting witnesses – He reiterated by deposing about same in trial Court would show that it was declaration of intention of testator to revoke Will – Sole beneficiary under testament had been taken into confidence – Declaration of intention to revoke Will could clearly be inferred from manner in which Ex.A.36 had been executed – Ex.A.36 qualified as 'writing declaring intention to revoke same', being expression occurring in Section 70 of Act – Ex.A.36 Power of Attorney document revoked Ex.B.1 = Ex.A.29 Will – Appeal dismissed.

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MADRAS HIGH COURT – CRIMINAL CASES

(2018) 3 MLJ (Crl) 303

Thiruselvam Vs. State

Date of Judgment: 20.06.2018

Bail – Entitlement – Unlawful Activities (Prevention) Act, 1967 (Act), Sections 16, 18 and 43D – Code of Criminal Procedure, 1973 (Code 1973), Section 167 – Appellants in police custody of National Investigating Agency for investigation – Application filed by Special Public Prosecutor under Section 43-D of Act before Special Court seeking remand of accused beyond period of 90 days to complete investigation, allowed – Multiple Bail Applications filed by Appellants seeking statutory bail under Section 167(2) of Code were dismissed, hence these appeals – Whether Appellants entitled to statutory bail – *Held*, 90-day period qua Appellants was to expire on certain dates – In meantime, Special Public Prosecutor filed report under proviso to Section 43-D(2) of Act for extending period upto 180 days, on which, docket order passed – Only thereafter, accused filed petition for statutory bail which was not entertained by trial Court – Charge sheet filed by NIA against all accused – Failure of Judge to pass formal judicial order of extension of remand on application of prosecution was not ground for bail – No irregularity in impugned orders – Appeals dismissed.

(2018) 3 MLJ (Crl) 313

State Vs. V. Srinivasan

Date of Judgment: 19.06.2018

Illegal Gratification – Demand and acceptance – Prevention of Corruption Act, 1988, Sections 7, 13 and 20 – Respondent/accused charged for offence under Sections 7, 13(2) read with 13(1)(d) for demand and acceptance of illegal gratification from Complainant and for misconduct of abusing his official position to obtain pecuniary advance by corrupt or illegal means – Trial Court acquitted accused, hence this appeal – Whether trial Court erred in discarding evidence of PW-2 – Whether finding of trial Court perverse or against law – *Held*, in absence of proof for earlier demand and suspicion over case of prosecution regarding purpose of receiving tainted money from PW-2, trial Court had accepted explanation – Though explanation may not be sufficient enough to believe as true, probability could not be ruled out – There were two possible views and trial Court had taken view favourable to accused – Merely because tainted money had been recovered from accused, presumption under Section 20 could not be drawn – Receipt of money to meet out transport expense might not strictly fall within meaning of legal remuneration but when there was possibility of incurring expense during inspection of site and moving material to site, that had been accepted by trial Court – Order of acquittal by Special Judge confirmed – Appeal dismissed.

(2018) 3 MLJ (CrI) 319

Palani Kumar Vs. State

Date of Judgment: 06.06.2018

Quashing of FIR – Delay in lodging FIR – Criminal Procedure Code, 1973, Section 482 – Petitions filed to quash FIR registered for offences of cheating and forgery against Petitioners/1st and 3rd accused – Whether impugned F.I.R liable to be quashed – *Held, defacto* Complainant had nowhere averred that he was cheated and dishonestly induced to do any act but only stated that he was threatened by 1st accused – Offences of cheating and forgery were clearly not made out against Petitioners – *Defacto* Complainant had earlier filed criminal case against 2nd accused pertaining to very same property wherein same sequence of events set out herein had been narrated in said case – Principal Bench of this Court quashed said F.I.R – Criminal case lodged by Elder brother of *defacto* Complainant on same set of facts was closed as one of mistake of fact – Allegation was that 1st accused held out threats against *defacto* Complainant and his brother in certain year – There was gap of more than four years in lodging this complaint – Long delay in lodging this F.I.R in case of this nature by itself renders allegations inherently improbable – Impugned F.I.R quashed – Petitions allowed.

(2018) 3 MLJ (CrI) 323

A. Syed Abuthahir Vs. State

Date of Judgment: 20.06.2018

Abetment To Suicide – Dying declaration – Indian Penal Code, 1860, Sections 304(B), 306 and 323 – Trial Court convicted Appellant for offence under Section 306 for death of his wife by burn injuries, hence this appeal – Whether offence under Section 306 made out against Appellant – *Held*, except P.Ws.1 and 2, no other witnesses gave evidence regarding occurrence – P.Ws.1 and 2 were not eye witnesses – P.Ws.3 to 6 turned hostile – Dying declaration revealed that there was quarrel between deceased and Appellant and that occurrence was only due to accidental fire – Deceased did not commit suicide and no question of abetting suicide also – Though P.W.1 deposed that dispute was regarding balance of jewel to be paid as part of dowry, dying declaration clearly revealed that dispute was not regarding and dowry demand – Maximum allegation was that there was quarrel between Appellant and deceased and in that quarrel, accused assaulted deceased – Assault was also mutual – Maximum offence made out against Appellant under Section 323 only – Judgment passed by lower Court modified to effect that Appellant was found guilty under Section 323 – Appeal partly allowed.

(2018) 3 MLJ (CrI) 327

Loganathan Vs. State

Date of Judgment: 22.06.2018

Cheating – Intention – Indian Penal Code, 1860, Section 417 – Lower Courts found Petitioner guilty for offence under Section 417 on allegation that he had sexual inter-course with P.W.1 on false promise of marriage, hence this revision – Whether Petitioner was having intention to cheat P.W.1 after making false promise – Whether judgment rendered by Sessions Judge warrant any interference – *Held*, evidence given by P.W.1 established that Petitioner was biological father of child through which paternity of father was proved by prosecution – In order to know intention before occurrence, evidence given by P.W.1 to P.W.4 was cogent and convincing – Other witnesses told that many times P.W.1 and Petitioner accompanied with each other and so, if Petitioner was really not having any intention, there was no necessity to form continuous relationship with P.W.1 – Only with intention to cheat P.W.1, Petitioner committed offence – Petitioner committed offence under Section 417 – First Appellate Court only after considering said situation and other circumstances of Petitioner directed him to pay compensation which was legally justifiable one – Judgment rendered by Sessions Judge did not warrant any interference – Revision dismissed.

(2018) 3 MLJ (CrI) 330

Rakhi Banerjee Vs. Subhankar Mukherjee

Date of Judgment: 22.06.2018

Quashing of Complaint – Concealment of former marriage – Indian Penal Code, 1860 (Code 1860), Sections 34, 109, 112, 120B, 177, 182, 406, 494, 495, 496 and 497 – Code of Criminal Procedure, 1973 (Code 1973), Section 195 – Respondent/Complainant, married to 1st accused, filed private complaint against Petitioners/1st to 9th accused alleging that subsistence of earlier marriage of 1st accused with named person was suppressed by all accused with criminal intention to deceive Complainant – Magistrate took cognizance of offences under Section 494, 495, 496, 497, 406, 177, 182, 120B, 34, 109, 112 of Code 1860, hence these petitions to quash complaint – Whether proceedings liable to be quashed – *Held*, specific allegations of Complainant that all accused suppressed earlier marriage of 1st accused with named person and solemnized their marriage with criminal intention to defraud him – Proceedings initiated by Complainant could not be quashed – As regards offences under Section 177 and 182 of Code 1860, there was express bar under Section 195 of Code 1973 – Trial Court was wrong in taking cognizance of offence under said sections – Since 1st accused was woman, she could not be prosecuted for offence under Section 497 of Code 1860 and could not also be charged as affector to said offence – Trial Court committed error in taking cognizance of offence under Section 497 of Code 1860 as against 1st accused – No reason to quash entire proceedings – Offences under Sections 177, 182 and 497 of Code 1860 could not be proceeded with by Magistrate – Magistrate directed to dispose of same with regard to other offences – Petition dismissed.

(2018) 3 MLJ (Crl) 333

K.S. Kalinga Rayan @ Kalingaraju Vs. State

Date of Judgment: 25.06.2018

Illegal Gratification – Demand and acceptance – Prevention of Corruption Act, 1988, Sections 7 and 13 – Trial Court convicted Appellant/accused for offence under Sections 7 and 13(2) read with 13(1)(d) for demand and acceptance of illegal gratification for return of pension pass book of Complainant/P.W.2 – Appeal against conviction – Whether explanation of accused was plausible and sufficient to dislodge case of prosecution – *Held*, prosecution led clear and clinching evidence regarding demand of bribe by accused and handing over pension pass book after receiving bribe amount – Evidence of accused and testimony of DW.1/colleague of accused did not carry trappings of plausible explanation regarding custody of Pension Pass Book or for motive – Explanation given by accused that money was planted on his table did not carry merit – Explanation did not provide answer for presence of phenolphthalein in his hands and shirt pocket – Unimpeached testimony of PW.2 proved that accused demanded bribe for issuing computation order and to ensure collection, he had retained pension pass book – Appeal dismissed.

(2018) 3 MLJ (Crl) 340

Hari Har Raj Kalingarayar Vs. Aarti

Date of Judgment: 22.06.2018

Maintenance – Earning wife – Code of Criminal Procedure, 1973, Section 125 – 1st Respondent/wife filed petition against Petitioner/husband claiming maintenance for herself and their minor children/2nd and 3rd Respondents – Petitioner resisted claim on ground that she was working woman – Trial Judge order Rupees Fifty Five Thousand as monthly maintenance from date of petition, hence this revision – Whether sufficiently earning wife was entitled for monthly maintenance as matter of right – *Held*, 1st Respondent was drawing salary, higher in quantum than that of Petitioner – Provision of maintenance under Section 125 was neither penal nor compulsory – It was to be decided in light of financial capacity of wife to maintain herself – Order of trial judge suffered infirmity both on legal and factual basis – Petitioner had deposited amounts in name of 2nd and 3rd Respondents in fixed deposit and said amounts were deriving interest – Petitioner directed to pay sum of Ten Thousand Rupees towards monthly maintenance to 2nd and 3rd Respondents each per month – Order of maintenance towards 1st Respondent set aside, as 1st Respondent admits herself to be drawing salary of Forty Five thousand Rupees per month and also established by Petitioner that 1st Respondent possess sufficient means and source of income to maintain herself – Revision partly allowed.

(2018) 3 MLJ (CrI) 353

Alagusundaram Vs. State

Date of Judgment: 29.06.2018

Culpable Homicide not Amounting to Murder – Eye witness – Indian Penal Code, 1860, Section 304(ii) – Appellant convicted under Section 304(ii) for assaulting victim with firewood and committing murder, hence this appeal – Whether evidence of eye witnesses were strong enough to convict Appellant – *Held*, P.Ws.1 to 6, 12 and 13 were eye witnesses – Independent witness P.Ws.4 and 6 were no way connected with victim – Evidence of P.Ws.1, 5, 6, 12 and 13 co-relates evidence of P.W.9, auto Driver who took deceased to hospital – Evidence of P.Ws.10 and 12 reveals that there was injury on head of deceased – Words of Doctor could be relied upon only regarding medical evidence – When evidence of eye witness was strong enough, minor contradiction in evidence of Doctor was immaterial – Other discrepancies regarding time and regarding statement was not sufficient enough to affect prosecution case – Without any motive, Appellant attacked deceased in such manner so as to cause his death – No motive for P.Ws.1 to 6, 12 and 13 against accused to give false statement against him – Judgment of lower Court was correct in every aspect and nothing to interfere with Judgment of lower Court – Appeal dismissed.

(2018) 3 MLJ (CrI) 357

Muniappa Vs. State

Date of Judgment: 29.06.2018

Cruelty – Appreciation of evidence – Indian Penal Code, 1860, Section 498(A) – Appellate Court confirmed order of conviction passed by Trial Court, for offence under Section 498 (A) against Petitioner, hence this revision – Whether Appellate Judge had rightly come to conclusion based on evidence placed on record that Petitioner had committed offence under Section 498(A) – *Held*, PW-9/RDO on enquiry had come to conclusion that deceased self-immolated herself only due to cruelty and harassment meted out to her by accused person – Deceased subjected to mental cruelty and she decided to take extreme step to self-immolate herself not being able to tolerate cruelty and harassment meted out against her – Within three months from date of marriage, this incident had taken place – No woman would take such extreme step for small argument with her husband – No illegality, perversity or infirmity in finding of Appellate Court – Appellate Judge had rightly come to conclusion based on evidence placed on record that Petitioner had committed offence under Section 498(A) – Order of conviction passed by Trial Court as confirmed by Appellate Court confirmed – Period of imprisonment modified from two years to six months – Petition partly allowed.

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