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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS
CIVIL CASES

(2011) 6 MLJ 149 (SC)

Saradamani Kandappan and Anr
vs
S. Rajalakshmi and Ors

Indian Contract Act (9 of 1872), Section 55 – Effect of failure to perform at a fixed time in contracts – Suits for permanent injunction and specific performance – Concurrent findings – Cancellation of sale agreement – Default in payment of balance sale consideration – Non–adherence to stipulated time schedule for payment – Purchaser contends non–satisfaction about title as ground for non–Payment – Stipulation of payment on specified due dates establishes clear intention of parties for making time as essence of contract – Payment of balance price evidently not dependent upon satisfaction of purchaser about title – Failure of purchaser to adhere to payment schedule justifies cancellation of agreement – Grant of specific performance prejudices vendor where purchaser not ready and willing to perform his part of contract within agreed period and hence inequitable – Termination of agreement held, valid – Purchaser not entitled to relief of specific performance.

Indian Contract Act (9 of 1872), Sections 51 to 54 – Performance of reciprocal promises – Suit for specific performance – Cancellation of sale agreement - Default in payment of balance sale price – Non–adherence to stipulated time schedule for payment leading to cancellation – Non–production of original title deeds by vendor – Purchaser contends non–satisfaction about title as ground for nonpayment of balance price – Payment of sale price not dependent upon performance of any obligation by vendors – Purchaser obliged to perform his obligation of payment of price in absence of any express specification of order of performance of reciprocal promises in contract – Sale deed liable to be executed only after payment of complete sale consideration within stipulated time – Termination of agreement held, valid – Purchaser not entitled to relief of specific performance.

Transfer of Property Act (4 of 1882), Sections 55 and 34 – Suit for specific performance – Allegation of suppression of encumbrances against vendors – Fraud not specifically pleaded and proved – Examination of xerox copies of title deeds by purchaser's husband and legal advisor proves their satisfaction about title of vendors – No proof of suppression of information regarding pending encumbrances – Purchaser evidently aware of encumbrances – Absence of original title deeds not a ground for non–payment of balance price within stipulated time amounts to breach of terms of agreement – Termination of agreement vali – Purchaser not entitled to relief of specific performance.

Indian Contract Act (9 of 1872) – Suit for permanent injunction – Cancellation of sale agreement – Default in payment of balance sale price – Purchaser not in possession of suit property in part–performance of agreement – Purchaser not entitled to seek permanent injunction for protection of possession – Dismissal of suit for injunction, upheld.

RATIONES DECIDENDI:

I. **Cancellation of an agreement of sale due to non –payment of balance sale consideration within in stipulated time in terms of agreement will be valid if it is established that time regarding payment of balance price is the essence of such contract and there was a failure on part of purchaser to adhere to it.**

II. **The purchaser is not entitled to take refuge under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and 'non –readiness' where the purchaser does not take**

steps to complete sale within agreed period and vendor is not responsible for any delay or non –performance and any grant of relief of specific performance by the Courts in such case would prejudice the vendor in view of the galloping inflation and therefore inequitable.

III. **Purchaser is under an obligation to perform his part of payment of price within stipulated time in absence of any express specification of order of performance of reciprocal promises in contract.**

2011 CIJ 333 ALJ

Dr. Shehla Burney and Ors
vs
Syed Ali Mossa Raza (Dead) by Lrs. & Ors.

Code of Civil Procedure, 1908(5 of 1908) – O.VII R.5, 7 – Plaint – Relief – Decree – Respondents filed suit for possession against some of the defendants – Later, one more defendant was impleaded but relief of possession was not prayed for against him and pleadings for recovery of possession was also not available in the plaint – After trial, trial Court decreed the suit and granted possession against all the defendants which was confirmed in appeal against which the defendants / appellants preferred SLP – While the appellants contended that, there was no pleading to support recovery of possession and the relief of possession was also not prayed for against the 2nd defendant but was decreed which was bad in law which stand was opposed by the respondent by contending that the plea was raised for the first time before the Supreme Court – Held, the relief of possession could not be granted against the 2nd defendant as it was neither pleaded nor prayed for – Granting relief that was not prayed for goes to the root of the matter and could be raised for the first time before the Supreme Court – Appeal was allowed, decree passed by the High Court was set aside and that of the trial Court was confirmed.

Code of Civil Procedure, 1908(5 of 1908) – O.VII R.5, 7 – Plaint – Relief – Decree – In a case where prayer is not made against a particular defendant, no relief can be granted against him.

Ratio: In a case where prayer is not made against a particular defendant, no relief can be granted against him.

(2011) 6 Supreme Court Cases 385

ATMA RAM BUILDERS PRIVATE LTD
vs
A.K. TULI AND ORS

Rent Control and Eviction – Execution of eviction decree / order – Grant of time to tenant to vacate premises after eviction confirmed by Supreme Court – Abuse of process by tenant – Frivolous objections filed in execution proceedings initiating another round of litigation – District Judge staying warrants of possession – Contempt petition filed after premises not vacated within time granted – Relief / Directions – Held, it is regrettable that in litigations between landlord and tenant when tenant loses he starts a second innings through someone claiming to be a co-tenant / subtenant and matter remains pending for years and landlord cannot get possession despite even a Supreme Court order – Such malpractice must now be stopped – Supreme Court taking up case for hearing at 11.25 a.m. directing possession of premises to be handed over to landlord by 12.30 p.m on same day – Court posting matter for hearing again at 12.30 p.m. – Possession of premises delivered to landlord – Hence, contempt notice discharged – Further directions passed for initiating disciplinary action against contemnor District Judge – Directions issued for copy of order to be placed before Chief Justices of all High Courts for information and appropriate orders – Contempt of

Court – Civil contempt – General principles – Purging of civil contempt – Contempt of Courts Act, 1971, S.2(b).

Contempt of Court – Nature and Scope – Contempt by court, Judge, Magistrate or other person acting judicially – Contempt by Judge - Where Additional District Judge stayed warrants of possession superseding / overruling Supreme Court's order – Held, contemnor Judge had no business to pass such order – Order totally void, hence quashed – Further, Chief Justice of High Court directed to enquire into the matter and take such disciplinary action against contemnor Judge as deemed fit – Constitution of India, Arts. 144, 129 and 235.

Courts, Tribunals and Judiciary – Judiciary - Subordinate Judiciary – Orders based on extraneous considerations – Strongly deprecated – Need for such malpractices to be totally weeded out, stressed – Held, such Judges bringing a bad name to the whole institution must be thrown out of the judiciary.

2011-4-L.W. 423

Vedambal
vs
Ponnarasi and Anr

Minor, Eo-nomine party, Sale, Setting aside of, Relief of cancellation, Necessity.

In any transaction if a minor has been shown as 'eo nomine' party and he has been represented by his lawful guardian, the alleged transaction is binding upon him and he has to take steps for canceling the same – Present suit has been filed for the reliefs of partition and separate possession without seeking relief of cancellation of Ex.B.1 – Suit is not legally maintainable.

2011-4-L.W. 428

I. Subramanian
vs
C. Kuppammal

Hindu Marriage Act (1955), Section 13/Cruelty, Allegation of adultery, Complaint to Police Station, if amounts to.

Respondent made an allegation that the appellant had illicit intimacy with the servant maid, and he stated living with her in her house – She had also alleged that only because of the illicit intimacy of the appellant with the servant, she had to leave the matrimonial home.

A conscious and deliberate statement levelled with pungency and that too placed on record, through the counter statement, cannot be ignored – Allegations leveled against the appellant, per se is cruel in nature – In his petition for divorce, the appellant had stated that the allegations of adultery made against him by the respondent amount to cruelty and the complaint lodged by the respondent against the appellant before the Police amount to cruelty – Court below utterly failed to consider the same and it has not focused its attention on the real facts in issue – Respondent's baseless allegation of adultery is an act of cruelty.

The Court below ought to have independently considered as to whether the respondent/wife is entitled to get an order for Restitution of Conjugal Rights, but the Court below has granted the relief of Restitution of Conjugal Rights as a consequential relief on the dismissal of the petition for divorce. The said procedure adopted by the Court below is not in accordance with law.

2011 7 SCALE 566

HIMANI ALLOYS LTD
vs
TATA STEEL LTD

CIVIL PROCEDURE – C.P.C. – ORDER XII RULE 6 – Judgment on admission – Admission should be categorical – Unless the admission is clear, unambiguous and unconditional, the discretion of the court should not be exercised to deny the valuable right of a defendant to contest the claim – Respondent (TISCO) filed a suit against appellant for recovery of a sum of ₹2,02,72,505/- in regard to supply of steel – In the said suit, respondent filed an application praying for a decree upon admission for ₹74,57,074/50 alleging that the appellant had admitted liability for such sum, as per minutes of the meeting held on 9.12.2000 between representatives of respondent and appellant – Single Judge of the High Court granted a judgment on admission for a sum ₹47,06,775/- in favour of respondent plaintiff – Sum of ₹ 74,57,074/50 described as the amount admitted to be due by appellant, had nothing to do with appellant company – Respondent did not refer to or rely upon any other admission – Whether judgment of the High Court granting a judgment on admission was sustainable – Allowing the appeal, Held:

Order 12 Rule 6 of the Code provides that where admission of facts have been made in the pleadings or otherwise, whether oral or in writing, the Court may at any stage of the suit either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

2011 (4) CTC 574

SMS Tea Estates Pvt. Ltd
vs
Chandmari Tea Co. Pvt. Ltd.

Registration Act, 1908 (16 of 1908), Section 17 & 49 – Arbitration and Conciliation Act, 1996 (26 of 1996), Section 16(1) (a) – Admissibility of unregistered Lease Deed in evidence when it requires compulsory registration – Duty of Court – Document which requires to be registered compulsorily is not admissible in evidence except in two cases viz. (a) when it is as evidence of contract in Suit for Specific Performance; (b) as evidence of collateral transaction – But in case of collateral transaction unregistered document could be received in evidence – Arbitration Clause in contract is collateral transaction – Arbitration Clause is independent of other terms of contract – Even if contract containing Arbitration Clause is terminated, Arbitration Clause would still survive for purpose of resolution of disputes arising under or in connection with contract – Document affecting immovable property containing Arbitration Clause would also be of similar nature as Arbitration Clause is collateral term relating to resolution of disputes unrelated to transfer of immovable property – Arbitration Clause contained in Lease Deed which requires registration but unregistered would survive inadmissibility of Deed – Court should adopt procedure whereby it would (a) check whether document is sufficiently stamped (b) if insufficiently stamped impound document and follow procedure under Stamp Act (c) determine whether document is compulsorily registrable or not (d) if not compulsorily registrable act in terms of Arbitration Clause (e) if compulsory registrable and delink Arbitration Clause from main agreement as per Section 16(1)(a) except where Arbitration Agreement is void and unenforceable (f) plea of invalidity of document is raised it should also be considered by Court – Arbitrator appointed as per terms contained in unregistered Lease Deed, cannot receive deed in evidence and cannot enforce Lease Deed – Case remanded.

Words and Phrases – "Collateral Transaction" – What is – Collateral transaction is not transaction affecting immovable property but transaction incidentally connected with that transaction.

Contract Act, 1872 (9 of 1872), Sections 19 – Arbitration and Conciliation Act, 1996 (26 of 1996), Section 16(1) – Contract or instrument is voidable at option of one, creates invalidity regarding contract – Such invalidity may affect Arbitration Clause contained in such contract and render Arbitration Clause also as invalid.

Stamp Act, 1899 (2 of 1899), Sections 33 & 38 – Arbitration and Conciliation Act, 1996 (26 of 1996), Section 11 – High Court dealing with agreement containing Arbitration Clause should examine whether it is properly stamped – If not duly stamped it has to be impounded.

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SUPREME COURT CITATIONS
CRIMINAL CASES

(2011) 3 MLJ (Crl) 63 (SC)

Vishnu Agarwal
vs
State of U.P. and Anr

Code of Criminal Procedure, 1973 (2 of 1974), Section 362 – Recalling of order – Absence of Counsel for revision petitioner on posted date – Appearance on side of respondents – Passing of judgment – Filing of application for recall of order – Challenge against direction to recall order – Non-appearance of Counsel due to failure to note case in cause list – Human mistake – Application only to recall order, not review – Recall petition and Review petition – Distinguished – Order of court can be altered to correct a clerical error or arithmetical error under Section 362 – Interpretation of Section 362 in rigid and technical manner results in defeat of ends of justice – Order for recalling of order upheld.

RATION DECIDENDI: An order passed by the Court for recalling an order of the Court which is passed exparte due to the non-appearance of the party on account of not taking note of posting of case in the cause list can be sustainable under Section 362 of the Code of Criminal Procedure giving a liberal interpretation to the aforesaid Section.

(2011) 7 Supreme Court Cases 141

ABHAY SINGH CHAUTALA
vs
CENTRAL BUREAU OF INVESTIGATION

Public Accountability and Vigilance – Prevention of Corruption Act, 1988 – Ss. 19 and 13(1)(e) & (2) – Sanction - When not required – Same office held at different periods of time – Each tenure in same office, constitutes a distinct and separate office for purposes of S. 19 – Alleged offences committed during earlier period of time when appellants were MLAs or MP – No sanction obtained for prosecution in respect of offences committed during said earlier period – Prosecution and trial initiated at time when appellants were MLAs again (though of different State Assembly) – Sanction, held, was not required for prosecution in respect of the earlier offences, though same office was then held – Criminal Procedure Code, 1973, S. 197.

Public Accountability and Vigilance – Prevention of Corruption Act, 1988 – S. 19 – Sanction – When not required – Reiterated, if on the date of taking cognizance, accused continues to be a public servant but in a different capacity or is holding a different office than the one alleged to have been abused, then no sanction is required – Criminal Procedure Code 1973, S. 197.

Held: It may be that the appellants in this case held more than one offices during the check period which they are alleged to have abused; however, there will be no requirement of sanction if on the date when the cognizance is taken, they are not continuing to hold that very office. The relevant time, is the date on which the cognizance is taken. If on that date, the appellant is not a public servant, there will be no question of any sanction. If he continues to be a public servant but in a different capacity or is holding a different office than the one which is alleged to have been abused, still there will be no question of sanction. In case of the present appellants, there was no question of the appellants' getting any protection by a sanction. The High Court was absolutely right in relying on the decision in Parkash Singh Badal case to hold that the appellants in both the appeals had abused entirely different office or offices than the one which they were holding on the date on which cognizance was taken and, therefore, there was no necessity of sanction under Section 19, PC Act.

Where the public servant had abused the office which he held in the check period but had ceased to hold "that office" or was holding a different office, then a sanction would not be necessary. Where the alleged misconduct is in some different capacity that the one which is held at the time of taking cognizance, there will be no necessity to take the sanction.

Public Accountability and Vigilance – Prevention of Corruption Act, 1988 – S. 19 – Interpretation – Finding in Antulay case, (1984) 2 SCC 183 that no sanction is required in case of abuse of a particular office and accused is not continuing with that office or is holding an altogether different office, held, is not obiter – In fact it is on that very basis that judgment of Antulay case proceeded – Further, it has been the settled law for 25 years which has been followed right up to the decision in Parkash for 25 years which has been followed right up to the decision in Parkash Singh Badal case, (2007) 1 SCC 1 and even thereafter – And going as per the maxim stare decisis et non quieta movere, it would be better to stand by that decision and not to disturb it – Hence, plea for reference of said issue to a larger Bench, rejected – Constitution of India – Art. 141 – Reconsideration of decision not required – Ground that decision on issue was obiter, found to be incorrect – Criminal Procedure Code, 1973 – S. 197 – Precedents – Long –standing precedent should not be disturbed – Consistency is necessary to maintain certainty in law.

Held: The finding given in Antulay case which has been challenged herein was not in any manner obiter, requiring reconsideration. It cannot be said that the question decided by the Supreme Court in Antulay case regarding the abuse of a particular office and the effects of the accused not continuing with that office or holding an altogether different office was obiter. In fact it is on that very basis that the judgment of Antulay case proceeded. The question of an MLA not being a public servant was decided as a subsidiary question.

In Antulay case, the complainmant's main complaint was the abuse of the office of Chief Minister which the accused had ceased to hold and hence no sanction was necessary. In that case the complainant proceeded on the premise that the accused as an MLA was a public servant.

In Antulay case since the accused had ceased to hold the office of Chief Minister on the date of cognizance, there was no question of any sanction and that was the main issue which was decided in Antulay case.

Further, the law settled in Antulay case has stood the test of time for last over 25 years and it is trite that going as per the maxim stare decisis et non quieta movere, it would be better to stand by that decision and not to disturb what is settled. The decision in Antulay case has been followed right up to the decision in Parkash Singh Badal case and even thereafter.

Public Accountability and Vigilance – Prevention of Corruption Act, 1988 – Ss. 19(2) and (1) – Interpretation – Held, merely because a concept of doubt as to the correct sanctioning authority is contemplated in S. 19(2), it cannot mean that public servant who abused some other office than the one he is holding at time when proceedings are initiated, cannot be tried without sanction – In Antulay case, S. 6(2) [which is in pari material with S. 19(2)] was specifically interpreted as a whole – Furthermore, contention raised as regards Antulay case being per incuriam S. 6(2) is not correct – Prevention of Corruption Act, 1947 – S. 6(2) – Constitution of India – Art. 141 – Interpretation of S. 6(2), PC Act, 1947 in Antulay case, held, is not per incuriam – Criminal Procedure Code, 1973, S. 197.

Held: To base the interpretation of Section 19(1) on the basis of Section 19(2) would be putting the cart before the horse. The two sections would have to be interpreted in a rational manner. Once the interpretation is that the prosecution of a public servant holding a different capacity at the time of cognizance than the one which he is alleged to have abused, there is no question of going to Sections 6(2) / 19(2) at all in which case there will be no question of any doubt. It will be seen that this interpretation of Section 6(1) or, as the case may be, Section 19(1), is on the basis of the expression "office" in three sub-clauses of Section 6(1), or as the case may be, Section 19(1). For all these reasons, it cannot be held that Antulay case was decided per incuriam of Section 6(2).

Public Accountability and Vigilance – Prevention of Corruption Act, 1988 – S. 19(1) – Interpretation – Reiterated, giving a literal interpretation to S. 19(1) would lead to absurdity and some unwanted results – Therefore, contention that Antulay case had the effect of adding a proviso to S. 19(1) is not correct – Argument regarding addition of such a proviso must also fail as language of suggested proviso contemplates a different "post" and not "office", which are entirely different concepts.

Public Accountability and Vigilance – Prevention of Corruption Act, 1988 – S.19(1) – Interpreation – "Post" and "office" distinguished.

Public Accountability and Vigilance – Prevention of Corruption Act, 1988 – S. 19 – Interpretation of expressions "public servant" and "a person" – While different terms used in one provision would have to be given different meaning, it cannot be argued that by accepting interpretation of S. 19(1) in Antulay case, the two terms referred to above get the same meaning – Rationale for, stated – Criminal Procedure Code, 1973, S. 197.

Public Accountability and Vigilance – Prevention of Corruption Act, 1988 – Ss. 19, 2(c)(vii), (viii), (ix) and (x) – Public servants holdings posts for a limited period losing protection of S. 19 after the limited period – Held, does not cause a hazardous situation – Criminal Procedure Code, 1973, S. 197.

Public Accountability and Vigilance – Prevention of Corruption Act, 1988 – S. 19(1) – Applicability to MLAs and MPs, - MLAs and MPs, reiterated are public servants for the purposes of S. 19.

2011 CIJ 233 ALJ

Rajendra Harakchand Bhandari & Ors.
vs
State of Maharashtra & Anr.

Code of Criminal Procedure, 1973(2 of 1974) – Sec.320 - Indian Penal Code, 1860 (45 of 1860) – Sec.307 – Criminal trial – Attempt to murder – Compounding – Permissibility – Penology – Sentencing – Delay – Compromise – Antecedents – Appellants were charged of attempting to commit murder and convicted and their appeals were also dismissed – In SLP, they argued that the parties had entered into compromise and their relationship had become cordial and sought for reduction of sentence – Held, as the offence under Sec.307 was non-compoundable, it could not be compounded – Since the occurrence took place long back, relationship between the parties had become cordial, the accused had no criminal background and they had already undergone imprisonment for more than 2 years, sentence was reduced to the period already undergone – Appeal was ordered accordingly.

Code of Criminal Procedure, 1973(2 of 1974) – Sec.320 – Indian Penal Code, 1860(45 of 1860) – Sec.307 – Criminal trial – Attempt to murder – Compounding – Permissibility – Penology – Sentencing – Delay – Compromise – Antecedents – Offence punishable under Sec.307 IPC could not be compounded even if the parties agreed for such compounding – Absence of criminal background and the smoothening of the relationship between the accused and the victim of crime would be the relevant factors for showing leniency in sentencing.

Ratios:

a. **Offence punishable under Sec.307 IPC could not be compounded even if the parties agreed for such compounding.**
b. **Absence of criminal background and the smoothening of the relationship between the accused and the victim of crime would be the relevant factors for showing leniency in sentencing.**

(2011) 3 MLJ (Crl) 240 (SC)

Ram Chandra Bhagat
vs
State of Jharkhand

Constitution of India (1950), Articles 20(1), 21 – Indian Penal Code (45 of 1860), Section 493 – Scope and Applicability – Hindu Marriage Act (25 of 1955), Section 7(1) – After 9 years cohabitation resulting in birth of 2 children, appellant turning complainant out of his house – Conviction under Section 493, IPC – No finding that appellant, by deceit made complainant believe she lawfully married to him – Even as per complainant, appellant gave assurance he would marry her in future – Ingredients of Section 493, IPC not satisfied – Appellant entited to acquittal.

Indian Penal Code (45 of 1860), Section 493 – Scope and Applicability – Special Marriage Act (46 of 1954), Section 5 – Appellant and victim lady openly cohabited for 9 long years- Appellant executed agreement of marriage and filed application for registration of marriage under Special Marriage Act – Victim lady shown as appellant's wife in voter's list- As per social custom in their district, owing to many years of cohabitation with appellant, victim lady deemed to be appellant's wife – Appellant thus induced a belief in complainant that she lawfully married to accused appellant though they not married according to rituals – Appellant's guilt under Section 493, IPC, established.

RATIONES DECIDENDI:

Order as per Hon'ble Mr. Justice MARKANDEY KATJU

I. **There is no allegation that the appellant deceived the complainant, making her believe that they were lawfully married, by getting a ceremony performed other than that referred to under Section 7(1) of the Hindu Marriage Act, 1955 or by a purported civil marriage not in accordance with the Special Marriage Act, 1954, hence the ingredients of Section 493, Indian Penal Code, 1860, are not satisfied.**

II. **There is a difference between law and morality, many things being regarded by society as immoral but which may not be illegal.**

III. **A criminal provision has to be construed strictly otherwise there will be violation of Articles 20(1) and 22 of the Constitution of India.**

Order as per Hon'ble Ms. Justice GYAN SUDHA MISRA:

I. **Mere inducement of belief of a lawful marriage is sufficient to establish the guilt under Section 493, IPC.**

II. **Section 493, Indian Penal Code, 1860, does not presuppose a marriage between the accused and the victim necessarily by following a ritual or marriage by customery ceremony.**

III. **There was sufficient documentary evidence to induce a belief in the complainant lady that had been law fully married to the accused although they had not been married accordingly to rituals.**

(2011) 6 Supreme Court Cases 288

BRAHM SWAROOP AND ANR
vs
STATE OF UTTAR PRADESH

Criminal Procedure Code, 1973 – S. 174 – Purpose of holding inquest – Ambit and scope of inquest proceedings – Omissions in inquest report – Effect, if any – Principles

reiterated – In instant case, there were five blanks in inquest report – Crime number and names of accused were not filled up – Column for filling up penal provisions under which offences were committed was blank – Time of incident and time of dispatch of special report were not mentioned - Therefore, defence submitted that FIR was ante-timed and there was manipulation in case of prosecution – Tenability – Held, considering position of law regarding inquest, it cannot be held that any omission or discrepancy in inquest is fatal to prosecution case and such omissions would necessarily lead to inference that FIR was ante-timed – Herein, SI (PW 7) denied suggestion made by defence that till the time of preparing inquest report, names of accused persons were not available – He further stated that column for filling up nature of weapons used in crime was left open as what weapons were used in crime could be ascertained only by doctor – Thus, defence submissions, held, preposterous.

Criminal Procedure Code, 1973 – Ss. 157(1) and 154 – Delay in sending special report to Jurisdictional Magistrate – When not fatal – Principles reiterated – In instant case, there was delay of 5 days in sending special report – However, defence did not put any question in this regard to investigating officer (PW 10) – Thus, no explanation was required to be furnished by him on this issue – Thus, prosecution was not asked to explain delay in sending special report.

Criminal Procedure Code, 1973 – S. 154 – FIR – Ante-timed FIR – Whether was – Determination of – In instant case, held, submission by defence that FIR was ante-timed, cannot be accepted in view of evidence available on record, which shows that FIR was lodged promptly within 20 minutes of incident, as police station was only 1 km away from place of occurrence and names of all accused had been mentioned in FIR.

Criminal Procedure Code, 1973 – Ss. 154 and 174 – FIR – Contents of FIR – All essential features of prosecution case present in FIR – Many omissions in inquest report though – Effect – Held, herein, FIR contained all essential features of prosecution case including names of eyewitnesses, time and place of incident, names of victim, motive, names of accused persons, weapons in their hands and manner of assault – Thus, all these things lend a seal of assurance not only to presence of eyewitnesses at place of incident, but also to participation of appellant – accused in crime – Any defect in preparation of inquest report by investigating officer cannot lead to an inference that FIR was not registered at alleged time.

Criminal Procedure Code, 1973 – Ss. 154 and 161 – Prompt lodging of FIR and prompt interrogation of witness under S. 161 – Importance of – Held, courts attach great importance to promptness of aforesaid, as the same substantially eliminates chances of embellishment and concoction creeping into account contained therein – Herein, prompt lodging of FIR was proved chik report and statement of complainant under S. 161 was recorded immediately after lodging FIR.

Criminal Trial – Witnesses – Related witness – Testimony of – Reliability – Held, merely because witnesses are closely related to deceased victims, their testimonies cannot be discarded – Their relationship with one of the parties is not a factor that affects credibility of a witness – More so, a relation would not conceal actual culprit and make allegations against innocent person – However, court has to adopt careful approach and analyse evidence, to find out whether it is cogent and credible evidence – Defence has to lay factual foundation and prove false implication by leading impeccable evidence – Defence – False implication.

Criminal Trial – Witness – Injured witness – Testimony of – Reliability – Held, where witness to occurrence has himself been injured in the incident, testimony of such witness is generally considered to be very reliable, as he is a witness who comes with an in-built guarantee of his presence at scene of crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone – Convincing evidence is required to discredit an injured witness – Herein, testimony of injured witness, PW 1 cannot be discarded as his presence on the spot cannot be doubted, particularly in view of fact that immediately after lodging of FIR, he was medically examined without any loss of time on the same day – He was put through a grueling cross-examination but nothing could be elicited to discredit his testimony either.

Criminal Trial – Appreciation of evidence – Credibility of witness – Minor discrepancies and inconsistencies in depositions of witnesses – Effect, if any – Reiterated, while appreciating evidence of witness, minor discrepancies on trivial matters, which do not affect core of prosecution case, may not prompt court to reject evidence in its entirety.

Criminal Trial – Appreciation of evidence – Contradictions, inconsistencies, exaggerations or embellishments – Minor contradictions or inconsistencies immaterial – Irrelevant details, which do not in any way corrode credibility of witness, reiterated, cannot be labeled as omissions or contradictions.

Criminal Trial – Appeal – Appeal against acquittal – Interference with order of acquittal – When warranted – Principles reiterated – Criminal Procedure Code, 1973 – Ss. 378 and 386(a) – Constitution of India, Art. 136.

Criminal Trial – Appreciation of evidence – Infirmities / Lapses / Omissions – Names of fathers of accused persons, though mentioned in FIR, but could not be given in trial court, by informant (PW 1) – Whether fatal to prosecution case – In fact situation of present case, held, this factor alone could not discount involvement of accused in crime – More so, it is evident from record, that there was no suggestion to informant that names of fathers of accused persons were mentioned at the instance of some other persons – He was not asked as to how names of fathers of accused persons had been mentioned in FIR – No inference can be drawn by court without giving opportunity of explanation to informant.

Criminal Trial – Appreciation of evidence – Medical evidence vis-à-vis ocular evidence – In harmony with each other, clearly establishing guilt of accused – Consequent reversal of acquittal by High Court – Held, proper.

Penal Code, 1860 – Ss .302/34 and 307/34 – Murder trial – Appreciation of evidence – Conviction confirmed – Enmity between families of complainant (PW 1) and accused, led to appellant–accused (A-1 to A-6) killing and injuring members of complainant family with deadly weapons – Held, evidence of eyewitnesses was trustworthy and believed by courts below, hence question of motive becomes totally irrelevant – Merely because witnesses were close relatives of the deceased, cannot be a ground to discard their evidence – Prosecution examined an injured witness, whose presence on the spot cannot be doubted and his deposition is to be given due weightage – In facts and circumstances of case, there was no conflict between direct and medical evidence – Eyewitnesses were cross–examined thoroughly, but nothing useful to accused could be elicited from them – Testimony of eyewitnesses was credible and worthy of confidence – Acquittal of A-5 and A-6 by trial court was not based on cogent reasons – Hence, their acquittals were rightly reversed by High Court, but it rightly upheld their acquittal under S. 25, Arms Act – Thus, there are no cogent reasons to interfere with impugned judgment of High Court - Hence, conviction of appellants, confirmed – Arms Act, 1959, S. 25.

2011-4-L.W. 328

Sou. Sandhya Manoj Wankhade
vs
Manoj Bhimrao Wankhade & Ors.

Protection of Women against Domestic Violence Act (2005), Section 2(q)/Respondent, whether includes a female; Sections 12, 18, 19, 20, 22, 23,

Special Marriage Act (1954),

Criminal P.C., Section 482.

Appeal against the judgment passed by Bombay High Court directing the Appellant to vacate her matrimonial house and confirming the order of the Sessions Judge deleting the names of the other Respondents from the proceedings.

Held: Although Section 2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint – Appeal allowed.

Held: although Section 2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage.

The expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only.

In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the Domestic Violence Act.

(2011) 3 MLJ(Crl) 339

S.M. Omar and Anr
vs
Zackaria Thomas

Negotiable Instruments Act (26 of 1881), Sections 138(b) and 139 – Dishonour of cheques – Insufficiency of funds – Issuance of cheque towards debt of a company – Mere description of drawer of cheque by his position not to invalidate statutory notice – Statutory notice addressed to drawer with or without description of his position satisfies Section 138(b) when holder of cheque has intention to make demand for payment – No evidence relating to legal presumption of enforceability of debt – Erroneous appreciation of evidence and perverse findings – High Court entitled to interfere with order of acquittal – Matter remitted back for fresh disposal with liberty for parties to adduce additional evidence.

RATIONES DECIDENDI:

I. **Statutory notice under Section 138(b) of the Negotiable Instruments Act will not get invalidated by mere description of drawer of cheque by his official position when a cheque is issued towards the legally enforceable debt of accompany.**

II. **Under Section 139 of the Negotiable Instruments Act, the presumption is in favour of the holder of cheque and the initial burden is on the drawer to rebut the presumption.**

III. **The High Court is empowered to interfere in an order of acquittal when the appreciation of evidence and the findings suffer from patent erroneous approach and the findings are perverse.**

2011 CIJ 341 ALJ

J. Duraimunusamy etc
vs
State by CBI: SPE: ACB, Chennai

Code of Criminal Procedure, 1973(2 of 1974) – Sec 218, 219, 227, 482 – Criminal trial – Charges – Framing of charges – Quashing – Joinder of charges – Joint trial – On two different dates, two different question papers were leaked by a group of persons for which they were prosecuted – In both cases, few accused were common and others were arrayed as accused only in one case – Earlier the petitioners moved for discharge which was dismissed – After the charges were framed against them, they prayed for quashing the charges which was resisted by the respondent – The petitioners contended that the two occurrences were independent from each other and the accused were not common and thus there could not be single trial and common charges – Respondent resisted the same and contended that the petitioners had earlier tried to get discharge but failed and on the same ground they had sought for quashing the charges – Held, even when an attempt of the accused to get discharge failed, they could seek for quashing the charges framed under Sec.482 Cr.P.C – As the two occurrences were different and most of the accused were also not common, joint trial could not be held and the charges framed were not proper – Deposition of the witnesses in departmental proceedings and under Sec.164 Cr.P.C. could not be used to get the charges quashed as they were the matter for appreciation during trial – Petition was partly allowed, charges framed were quashed and separate trials were ordered in both cases after framing appropriate charges in both cases.

Code of Criminal Procedure, 1973(2 of 1974) – Sec.227, 482 – Criminal trial – Charges – Framing of charges – Quashing – Failure of the accused in getting discharge would not prevent him from challenging the charges framed by the Court.

Code of Criminal Procedure, 1973(2 of 1974) – Sec.218, 219 – Criminal trial – Joinder of charges – Joint trial – When the accused in two or more cases are not common, there could not be a single or joint trial.

Code of Criminal Procedure, 1973(2 of 1974) – Sec.227, 482 – Criminal trial – Charges – Framing of charges – Statement to Magistrate – Quashing – Statement of a witness recorded under Sec.164 Cr.P.C. could not be used by the accused to contradict him with the statement recorded under Sec.161 Cr.P.C. and thereby get discharge or charges framed by quashed.

Code of Criminal Procedure, 1973(2 of 1974) – Sec.227, 482 – Criminal trial – Charges – Framing of charges – Quashing – Newspaper article – In case of prosecution of a person, new published in a newspaper could not be a material to get the charges quashed.

Ratios:

a. **Failure of the accused in getting discharge would not prevent him from challenging the charges framed by the court.**

b. **When the accused in two or more cases are not common, there could not be a single or joint trial.**

c. **Statement of a witness recorded under Sec.164 Cr.P.C. could not be used by the accused to contradict him with the statement recorded under Sec.161 Cr.P.C. and thereby get discharge or charges framed by quashed.**

d. **In case of prosecution of a person, news published in a newspaper could not be a material to get the charges quashed.**

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HIGH COURT CITATIONS
CIVIL CASES

(2011) 6 MLJ 29

Sarangapani
vs
Kalidoss and Anr

Code of Civil Procedure (5 of 1908), Section 100 – Second Appeal – Suit for delivery of vacant possession – Plaintiff leased out a portion of schedule property to appellant / defendant – Defendant claiming title by adverse possession – Defendant not admitted the title of plaintiff – Person claiming title by adverse possession liable to admit title of real owner – Long possession not necessarily prove adverse possession – Unless there is evidence to prove animus to prove ownership of property, title by prescription of adverse possession cannot be acquired – Defendant failed to establish animus of adversity – Held, no prescription title by appellant / defendant – Second appeal dismissed.

Indian Evidence Act (1 of 1872), Sections 107 and 90 – Ancient Documents – Presumption as to thirty years old documents – Ancient documents prove themselves – Presumption of genuineness as regards Will – Executor not alive at time of admission of documents before trial Court - Death of executor proved – Production of documents from proper custody presumed as per Sectadminion 90 – Documents presumed to be genuine if it is free from suspicion and is produced from proper custody – Held, genuine.

RATIONES DECIDENDI:

I. **Title by prescription of adverse possession cannot be acquired despite long possession, unless there is evidence to prove animus to prove ownership of property.**

II. **If private documents of not less than thirty years old are produced from proper custody and which on its face are free from suspicion, the Court may presume that they have signed or written by the person whose signatures they bear or in whose hand writing they purport to be and that they have been duly attested and executed if they purport so to be.**

III. **Ancient documents prove themselves and it is immaterial that a witness to such documents is alive or present in Court.**

2011 (5) CTC 94

Vishwa Footwear Company Ltd., A-2 Third phase,
Guindy Industrial Estate, Chennai – 600 032, rep. by Director, V. Ravi
vs
The District Collector, Kancheepuram and Ors

Constitution of India, Article 226 – Tamil Nadu Patta Pass Book Act, 1983, (T.N. Act 4 of 1986), Sections 3, 4, 10, 11, 12 & 14 – Jurisdiction of Revenue Authorities – Respondent made Application to Revenue Divisional Officer to cancel Patta issued in favour of Appellant – Both parties claiming title and possession over property – Revenue Divisional Officer cannot decide title dispute between parties – Authorities exercising power under Section 12 can consider only prima facie case as to entitlement of person for issuance of Patta – When there is dispute as to title, parties should be directed to approach competent Civil Court of law for adjudication

of title dispute – Impugned order passed by Revenue Divisional Officer canceling Patta by deciding title disputes between parties is without jurisdiction – Writ Appeal allowed.

Constitution of India, Article 226 – Disputed questions of Fact – Maintainability of Writ Petition – Title dispute between parties – Writ Court normally will not entertain Writ Petition and adjudicate disputed questions – When order is challenged on ground of want of jurisdiction, Court can entertain Writ Petition.

2011 (5) CTC 109

Manivannan
vs
Thenmozhi

Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), Section 18(2) & (3) – Hindu Marriage Act, 1955 (29 of 1955), Section 55 – Divorce proceedings pending between husband and wife on account of desertion and cruelty of wife – Award of maintenance in favour of wife – Whether valid ? – Held, cumulative reading of Section 18(2) & (3) would demonstrate that a wife, not guilty of adultery or conversion, cannot be deprived of her right to maintenance – Thus, wife who is guilty of desertion or cruelty should not be made to suffer for want of maintenance, if she is not having enough wherewithal to meet her comforts – In instant case, no case of husband that wife is guilty of adultery or conversion – Moreover, Divorce proceedings initiated by husband cannot deprive wife a right of maintenance unless there are allowance even to a divorcee in form of maintenance is Rule – Wife is entitled to live incommensurate with status of her husband – Award of meagre sum of ₹2,500 as maintenance in favour of wife keeping in view of sufficient salary and income derived from landed properties of husband, held, a mere pittance and thus, upheld.

2011 (5) CTC 146

A.T. Raghava Chariar
vs
O.A. Srinivasa Raghava Chariar

Transfer of Property Act, 1882), Sections 6(h)(3), 7 & 58 – Contract Act, 1872 (9 of 1872), Section 11 – Person legally disqualified to be transferee – Whether minors can be transferees – Whether mortgage in favour of minor who advanced whole of mortgage money is enforceable by him – Held, minors can be transferees but not transferors – Though minor had no power to transfer mortgage money – If money has been advanced by minor by way of loan, mortgage can be enforced against mortgaged property on failure of repayment – Transfer of Property Act nowhere says that person cannot be transferee of property unless he is competent to contract.

Contract Act, 1872 (9 of 1872), Sections 2(g), 19, 64 & 65 – Void and Voidable Contract – Sale to minor – Is voidable – If infant chooses to avoid sale in his favour, transaction will be void ab initio – Minor is entitled to recover money which he paid to vendor as consideration on condition that property is restored to vendor.

Contract Act, 1872 (9 of 1872), Section 2(c) – Capacity of minor to accept promise – 'Promisee' – Minor being a promisee – Nothing in Contract Act prevents infant from being promisee – Where consideration passes from third party or 'competent' consideration passes from minor, minor can enforce promise of adult promisor – If consideration for promise is transfer of property by minor, promise would be unenforceable – Minor is wholly incompetent to transfer property.

Transfer of Property Act, 1882 (4 of 1882), Section 7 – Section 7 of T.P. Act does not declare that transfer by person incapable of contracting is wholly void – Nor does it prohibit it – Persons, who are incapable of contracting, are capable of transferring – If Section is construed as enacting transfer by incompetent person is wholly void, it would lead to result that minor

cannot even purchase anything for cash and every shopkeeper has to deal with public at his peril.

Interpretation of Statutes – Purposive Interpretation – Beneficial Provisions – Transfer of Property Act, 1882 (4 of 1882) – Contract Act, 1872 (9 of 1872) – Provisions for benefit of incapacitated persons in above Acts – Not to be interpreted to enable adult party to defeat or impair his obligation or to profit by fraud.

Registration Act, 1908 (16 of 1908), Sections 17 & 35 – Transfers of immoveable property – Capacity of minor to transfer – Held: Where transfer can only be made by registered instrument, minor may not be able to make transfer for instrument executed by minor cannot be admitted to registration.

Transfer of Property Act, 1882 (4 of 1882), Section 7 – Contract Act, (1872 (9 of 1872) – Rules governing contracts and conveyances – Rules governing contracts need not be same as those governing conveyances though capacity to contract is generally limit of capacity to transfer.

Transfer of Property Act, 1882 (4 of 1882), Section 5 – Contract Act, 1872 (9 of 1872), Section 2(g) – Void Contract / Transfer – Transfer in prohibited mode – Held: Where there is general competency to contract or to transfer property, but particular mode is prohibited, contract or transfer in prohibited mode, not void.

Specific Relief Act, 1963 (47 of 1963), Sections 27 & 30 – Specific Relief Act, 1877 (1 of 1877), Sections 35 & 38 – Rescission of Contract – Scope of Sections 27 & 30 – Whether fully performed contract also amenable to Sections – Held: Yes, both executed and executory contracts come under ambit of Section – Word contract in Section used in sense of both executed and executory contracts.

Transfer of Property Act, 1882 (4 of 1882) – Obligations attached to holding of property – Obligations attached to holding of property do not prevent vesting of property in minor by transfer – Obligations are attached to property and not considerations for transfer – But minor contracting liability or to perform covenants prevent transfer from taking effect.

Transfer of Property Act, 1882 (4 of 1882), Section 5 – Transfer in pursuance of unenforceable antecedent agreement – Whether transfer void – Held: If consideration passes at time of transfer, fact that antecedent promise was unenforceable does not matter – Position is same as if there was no agreement at all.

Transfer of Property Act, 1882 (4 of 1882), Sections 6(h)(3) & 7 –Void Transfer – Transfer cannot be void unless (1) transferor incompetent to transfer (2) transferee incompetent to hold property (3) transfer is conditional on passing of consideration and it did not pass (4) transfer is made in consideration of covenants or contracts to be performed by transferee and transferee cannot be compelled to perform them.

2011 CIJ 183 IPJ

Abraham Amalanathan.
vs
D.I.G. of Police, Chengai Range & Ors.

Constitution of India – Art.14 – Service – Departmental proceeding – Charge memo – Natural justice – Violation – Petitioner was alleged to have abused the Superintendent of police for ordering transfer – Though the S.P. failed to initiate action against the petitioner, later, on an anonymous petition received in that regard, the S.P. ordered preliminary enquiry - After approving the preliminary enquiry report, charge memo was served upon him and within a week, he ordered appointing enquiry officer – Petitioner challenged the charge memo by contending that as the S.P. was the aggrieved officer and his active participation in every stage caused him prejudice which was resisted by the respondent – Held, the events disclosed the active participation of the S.P. at every stage of the proceeding which was violative of the

principles of natural justice and vitiated the entire proceeding – Writ petition was allowed and the charge memo was quashed.

Constitution of India – Art.14 – Service – Departmental proceeding – Charge memo – Natural justice – Violation – In case of departmental proceeding, the officer personally aggrieved by the misconduct of the delinquent should not play and active role.

Constitution of India – Art.14 – Service – Departmental proceeding - Charge memo – Natural justice – Violation – If the departmental proceedings are tainted with bias and likelihood of bias, the same would not be permitted to continue.

Ratios:

a. **In case of departmental proceeding, the officer personally aggrieved by the misconduct of the delinquent should not play any active role.**

b. **If the departmental proceedings are tainted with bias and likelihood of bias, the same would not be permitted to continue.**

2011 (5) CTC 206

Manickam
vs
Chinnasamy and Ors

Code of Civil Procedure, 1908 (5 of 1908), Order 13, Rule 3 – Marking of Documents – Objection regarding - Suit for Partition – Defendant marking a document styled as Partition Agreement / Deed – Plaintiff contending that division had taken place under document, which is unregistered and unstamped and therefore, it cannot be marked – Objection as to admissibility of a document, ought to be determined by a Court of law when it comes up for consideration – Objection that mode of proof is irregular, should be taken before document is admitted – When a document is accepted before Trial Court, a party against whom it is being brought, is entitled to question it, on ground of inadmissibility – If it is later found that document is irrelevant or inadmissible in eye of law, it can be rejected at any stage of Suit – It is duty of Court of law to exclude all irrelevant or inadmissible documents, even if no objection has been taken by other side – To decide whether a document is a Partition Deed or only a Memorandum of Family Arrangement, recitals as well as surrounding circumstances, have to be looked into – A Court of law is expected to decide transaction, scrutinize its legal implications and legal consequences – Parties cannot violate statutory requirements by describing document as a Family Settlement or Arrangement, when in truth, it is a transfer of property – Observation made by Trial Court is only tentative and not conclusive – No illegality in procedure followed by Trial Court, in marking document in question – Marking of document is subject to objection – Suit is in part-heard stage and deciding admissibility and relevancy will affect progress of trial – Trial Court directed to render its decision as to admissibility and relevancy of Partition Agreement, in accordance with law - Civil Revision Petition dismissed.

2011-4-L.W. 237

Gladys Devavaram, w/o. Rev. E.G. Devavaram
vs
S. Subbiah and another

Specific Performance, Specific Relief Act (1963), Section 15/Who may obtain specific performance, Parties, Expression "respective in interest" or "any party thereto" as contemplated under Section 15(b) whether includes the transferees and assignees from the contracting party in whose favour the right exists; "Nominee" under the agreement and "Assignee" of agreement, Definitions, Distinction, Rights of such persons, Termination of an agreement, Scope,

(Indian) Contract Act (1872) Section 2/"a contract is a bilateral transaction between two or more than two parties".

Section 2(h):

"An agreement enforceable by law is a contract, Section 2(g) "An agreement not enforceable by law is said to be void,

Limitation Act (1963)/Specific Performance suit, Limitation is three years to be recokoned from the date fixed for the performance, or if no such date is fixed, when the plaintiff has notice the performance is refused.

No evidence is available on record in this case to prove that the first defendant ever consented for the assignment of the suit sale agreement in favour of the plaintiff by D2 – Alleged assignation of suit sale agreement under Ex.A2 made by the second defendant in favour of the plainfiff will not bind the first defendant as she had no knowledge and not consented for the same.

Trial Court has failed to see that when the agreement dated 10.04.1997 was not in force on 21.03.2000, the second defendant could not have assigned his right under the sale agreement in favour of the plaintiff.

Since the second defendant had failed to adhere to the norms and conditions stipulated in the suit sale agreement, the first defendant had proceeded to terminate the contract of sale and therefore, the suit itself is barred by limitation and this has also not been considered by the trial Court – Appeal allowed.

2011-4-L.W. 264

Sathiyamurthy
vs
R. Pavunambal and another

C.P.C., Order 2, Rules 2, 11(d), Order 7, Rule 11/Appeal (CMA) from order of lower court allowing application praying for rejection of plaint in suit for Specific Performance, Earlier suit to prevent the defendants from entering into the suit properties, Scope.

It is the submission of the learned counsel that the cause of action for the suits filed in O.S.No.82 of 2008 and O.S.138 of 2008 is totally different – Earlier suit was filed to prevent the defendants from entering into the suit properties.

Cause of action for filing both the suits arose based on the agreement dated 20.08.2007 – Cause of action for filing the suit for specific performance was available even on the date of filing the earlier suit for injunction.

Appellant ought to have obtained leave under Order 2 Rule 2 C.P.C. to file a fresh suit for specific performance.

Real test for entertaining Order 7 Rule 11 C.P.C. is whether cause of action for filing the present suit was available even on the date when the earlier suit was filed – Under Order 2 rule 11(d) C.P.C., the subsequent suit filed by the appellant is barred by principle of res judicata CMA dismissed.

2011 – 3 - TLNJ 294 (Civil)

Murugaiyan @ Subramanian and Ors
vs
Dhanasekaran

Civil Procedure Code 1908 as amended, Order 41, Rule 33 – Suit for injunction dismissed by trial court as plaintiff not having prima facie title to suit property – the appellate court felt that plaintiff's possession is sufficient to get decree of permanent injunction and

decreed the suit – on second appeal by defendants in the High Court, it was held that when defendants disputed title of the plaintiff in respect of the suit properties he ought to have amended the plaint – sought declaration besides relief of injunction – view of the appellate court; that title to suit property need not be investigated in a suit for bare injunction in particular when averment tracing the title is not made, is held as incorrect – second Appeal allowed with direction.

2011 – 3 - TLNJ 310 (Civil)

Nalini Muthu
vs
Muthu

Civil Procedure Code 1908 as amended Order 41, Rule 27(1)(b) – When additional documents were sought to be produced as exhibits in appellate court, the court held that unless tangible explanations were made for non production of the document earlier the same cannot be admitted in appellate stage – is not a matter of right to produce any document or examine any witness before appellate authority – cannot be allowed to fill up gap in evidence tendered earlier or cure weakness of the case - CMA dismissed.

Hindu Marriage Act 1955, Section 13(1)(ia) – Husband filed petition for divorce – alleged wife makes untrue allegations of extra marital relationship of husband with person working in his office – trial court opined that no evidence for the wife to prove allegations leveled against husband and granted divorce as prayed – on appeal by wife High Court held that allegations to be proved to the satisfaction of the court – when not proved by the person who made such allegations it constitutes cruelty resulting in mental agony and loss of peace of mind to the other spouse – CMA dismissed

2011-4-L.W. 322

Thamilarasi
vs
Selvam

C.P.C., Sections 96, 100/Appeal against findings by party succeeding, whether maintainable, Suit for permanent injunction to restrain the defendant from in any manner interfering with her alleged enjoyment and possession of the suit property.

Second Appeal raises an important substantial question of law as to whether an appeal would lie against a mere finding at the instance of the party who had succeeded in the suit or not?

As against certain findings recorded in the judgment against the party, who has succeeded in the suit, no appeal at the instance of such succeeding party shall lie because he cannot be termed as an aggrieved person in terms of Sections 96 and 100 of CPC – An appeal lies only against the decree and not against any finding recorded by the court at the instance of the party who has succeeded in the suit – Judgments of this court in R.Maria Siluvai's case, is not a binding precedent – Judgment of the first appellate court which has reversed only certain findings and not the decree is not at all sustainable.

2011 – 3 - TLNJ 329 (Civil)

Syed Mohindeen Syed Abdul Khader
vs
Periannan @ Ramaswamy Chinna Paiyyan @ Palani Goundar Sengottaiyan Palani Ammal

Specific Relief Act 1963, Section 34 – Suit for recovery of possession – defendants set up title by adverse possession – trial court decreed suit and rejected the plea of adverse possession – appellate court reversed finding holding that suit properties belong to Wakf and

plaintiff being only muthavallis and as the suit not filed as muthavallis of the wakf not maintainable – appellate court further held that defendants perfected their title more than 12 years – on further appeal by plaintiff, the High Court found that the inam is "Devadayam" and Minor Abolition Tribunal granted patta in favour of plaintiffs entitled to suit properties – further held that a person claiming adverse possession must prove that he is in possession of the properties, which belongs to others and without the knowledge of the true owner and he must also state the period from which he is in possession of the property adverse to the title of the real owner – held as defendants claim their rights from the original lessee not entitled to right over property by adverse possession – Second Appeal allowed.

2011 – 3 - TLNJ 365 (Civil)

K. Kanagammal and Ors
vs
Chandran @ G. Mani and Ors

Motor Vehicles Act 1988, Section 168 – The widow and son of the deceased out of a road accident filed claim petition – the driver of the vehicle was not having valid license at the time of accident – The tribunal exonerated the insurance company from liability – on appeal by the claimants it was opined that as the claimants are in a state of penury and compensation will not be immediately recoverable from the owner, it is necessary to direct Insurance Company to pay the compensation awarded and recover it from the owner following the view of the decision of the Supreme court in Jawhar Sing Vs. Bala Jain and others – CMA allowed with direction.

2011 CIJ 404 CTJ (1)

Union of India
vs
Shri A.S.A.Kabir

Customs Act, 1962(52 of 1962) – Sec.108, 135(1)(a), (b), 138A, 138B - Indian Evidence Act, 1872 (1 of 1872) – Sec.21, 114(g) – Bullion – Possession – Admission – Usage – Burden of proof – Charge – Sanction – Defect – Sentence – Delay – Respondent was accused of possessing gold and silver bars of foreign origin without proof of payment of customs duty – Respondent gave a statement to the authorities that they belonged to other persons who had paid the customs duty and also produced the receipt – In the trial, the respondent admitted the search and recovery of bullions from his possession – Trial Court held that the bullions produced before the Court were different from the one actually recovered from the accused, utilized the admission of the accused to the officers and the statement of the witnesses not examined before the Court and acquitted the accused against which the State preferred appeal – While the appellant / State contended that the statement of the accused could not be used in his favour and those of the witnesses could not be used in favour of the accused without examining them as witnesses and the articles produced before the Court were the same recovered from the accused, respondent resisted the same – Held, the admission of the accused could be used against him and not in his favour – Statement of the witnesses not examined in the Court could not be used by the Court – As the recovery of the bullion produced before the Court was admitted by the accused, burden of proof shifted to the accused and he had failed to discharge it by examining the persons who had allegedly imported it and paid the duty – Conviction under Sec.135(1)(b) was confirmed – Because of the protraction of proceedings for a long period, sentence of imprisonment was not imposed – Accused was convicted and a fine of Rs.75,000 was imposed – Appeal was partly allowed.

Code of Criminal Procedure, 1973(2 of 1974) – Sec.313 – Criminal trial – Questioning – Accused – Adverse circumstances – Failure – Effect – Any material which is not available on record and brought to the notice of the accused under Section 313 Cr.P.C., cannot be used against him.

Customs Act, 1962 (52 of 1962) – Sec.108, 135 – Indian Evidence Act, 1872 (1 of 1872) – Sec. 3 – Criminal trial – Accused – Statement – Appreciation – In the prosecution of the accused for the officers under the Customs Act, his statement recorded under Sec.108 of the Customs Act, 1962 could not be used as a substantive evidence – In the prosecution of the accused for the offences under the Customs Act, his statement recorded under Sec.108 of the Customs Act, 1962 could be used either for contradicting him or to corroborate his evidence.

Customs Act, 1962 (52 of 1962) – Sec.108 – Indian Evidence Act, 1872 (1 of 1872) – Sec.21, 31 – Criminal trial – Admission – Usage – The admission made by an accused can be used only against him and the same cannot be used in his favour except in certain conditions enumerated in Section 21 of the Evidence Act.

Customs Act, 1962 (52 of 1962) – Sec.108, 135 – Indian Evidence Act, 1872 (1 of 1872) – Sec.32 – Criminal trial – Witness – Statement – Admissibility – Statements of the witnesses recorded by the customs officials could not be used in the criminal trial when those witnesses were not examined in the Court.

Customs Act, 1962 (52 of 1962) – Sec.135, 137 – Indian Evidence Act, 1872 (1 of 1872) – Sec.3 – Criminal trial – Cognizance – Sanction – Proof –Officer – Examination – Necessity – In a case where the sanction order itself is so narrative, containing all the details reflecting the application of mind, there is no need to examine the sanctioning authority.

Code of Criminal Procedure, 1973 (2 of 1974) – Sec.215 – Criminal trial – Charge – Defect – Effect – Prejudice – No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Customs Act, 1962 (52 of 1962) – Sec. 135 – Bullion – Possession – Sentence – Delay – pendency of criminal proceeding for many years is a special circumstance to avoid the imposition of minimum imprisonment prescribed under the Act.

Ratios:

a. **Any material which is not available on record and brought to the notice of the accused under Section 313 Cr.P.C., cannot be used against him.**

b. **In the prosection of the accused for the offences under the Customs Act, his statement recorded under Sec.108 of the Customs Act, 1962 could not be used as substantive evidence.**

c. **In the prosecution of the accused for the offences under Customs Act, his statement recoded under Sec.108 of the Customs Act, 1962 could be used either for contradicting him or to corroborate his evidence.**

d. **The admission made by an accused can be used only against him and the same cannot be used in his favour except in certain conditions enumerated in Section 21 of the Evidence Act.**

e. **Statements of the witnesses recorded by the customs officials could not be used in the criminal trial when those witnesses were not examined in the court.**

f. **In a case where the sanction order itself is so narrative, containing all the details reflecting the application of mind, there is no need to examine the sanctioning authority.**

g. **No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.**

h. Pendency of criminal proceeding for many years is a special circumstance to avoid the imposition of minimum imprisonment prescribed under the Act.

(2011) 5 MLJ 413

T.R. Thangappan
vs
Chitra

Second Appeal – Suit for injunction – Averments in plaint exemplify that there is dispute between parties relating to title over specific extent of property – Plaintiff should have filed suit for declaration and for recovery of possession – Suit filed for bare injunction without seeking relief of declaration not maintainable – It is open to plaintiff to file appropriate suit seeking necessary reliefs – Second appeal disposed of.

RATIO DECIDENDI: When there is dispute between the parties relating to title over a specific extent of property, then the prayer for declaration is a must.

2011 – 3 - TLNJ 413 (Civil)

Girdharilal Chandak and Bros (HUF) represented by its Kartha, Mr. Girdharilal Chandak (died) and Anr
vs
S. Mehdi Ispahani and Ors

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 10(2) (i), 23(4) and 25 – Willful default - not paid the difference between the fair rent fixed by the Court and contractual rent – eviction ordered – Appeal dismissed – Revision against eviction in High Court – Held – If the conduct of the petitioner is looked into, the same makes it clear that though he challenged the orders of fixation of fair rent, he did not want stay of those orders – If the Court did not grant stay of those orders and if he himself did not seek stay of those orders, the consequences of the same would have to follow – A person who seeks stay and suffers a conditional order is worse off than a person who does not seek stay would be a travesty of justice – Petitioner not seeking a stay became liable to pay the fair rent – Court found petitioner guilty of willful default – CRP dismissed.

(2011) 5 MLJ 444

A.K. Balasundaram (died) and others
vs
Kruba

Code of Civil Procedure (5 of 1908), Order 6 Rule 17 – Amendment of pleadings – Application could not be entertained after trial commenced, unless Court comes to conclusion that in spite of due diligence, party could not raise matter before commencement of trial – As such, application filed by petitioners cannot be permitted – Courts below rightly rejected application for amendment of pleadings.

RATIO DECIDENDI: The Court may at any stage of the proceeding, on request by either party, amend the pleading, but no application could be entertained after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not raise the matter before the commencement of trial.

2011 (4) CTC 488

T.S. Malathi
vs
B. Arulmurugan

Hindu Marriage Act, 1955 (25 of 1955), Section 13(1)(ia) – Cruelty – Even a single instance of cruelty is sufficient to enable wife to obtain relief of divorce – Husband admitting that he locked his wife inside house – An inhuman act depriving wife her right of freedom to live in a free and calm atmosphere – Husband also not denying allegation of wife that husband has not been in a position to cohabitate with wife – Wife making out case for grant of decree of divorce under Section 13(1)(ia) viz., cruelty.

Held: Even a single instance of cruelty is sufficient to enable the wife to obtain the relief of Divorce. The husband has not denied the allegation made by the wife that he has not been in a position to cohabitate with her. When a serious allegation of this nature has been made against the Respondent/Husband, he has not denied the same in his evidence. Conversely, the fact that he has admitted in his evidence that he has locked her inside and even if he has done so, it is only on account of his possessiveness, care and affection and responsibility, is clearly an adverse circumstance, which goes against the case of the Respondent/Husband.

2011 (4) CTC 492

R. Shiva Subramaniyan
vs
Senior Manager, State Bank of India, Erode Branch, Erode and Ors

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) (SARFAESI Act), Sections 14, 13(2), 13(4) & 17 – Constitution of India, Article 300-A – Taking possession of Secured Assets – Procedure to be followed – Duty of Chief Metropolitan Magistrate or District Magistrate while ordering taking possession of secured assets – Duty to assign reasons – Non-speaking order – Non-application of mind – Magistrate passed one line order "Issue Warrant" – Order of Magistrate did not contain any reason whatsoever – Order must give reasons to enable aggrieved person to prefer Appeal – Non- speaking order without any reason is of no use as such aggrieved person may not any ground to raise before Appellate Authority – Order of Magistrate reflects total non–application of mind and is liable to be set aside – Matter remanded back for fresh consideration in accordance with law.

Constitution of India, Article 226 – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) (SARFAESI Act), Sections 14 & 17 – Maintainability of Writ Petition challenging order passed by Magistrate ordering taking possession of secured assets – Availability of alternative remedy of Appeal under Section 17 of SARFAESI Act – Rule of alternative remedy is not absolute bar to entertain Writ Petition is maintainable challenging any order which is ex facie illegal and cannot be sustained in eye of law – Law laid down in satyawati Tondon, 2010 (8) SCC 110 and in Noble Kumar case, 2011 (1) CTC 513 (DB) discussed and applied.

2011-3-TLNJ 497 (Civil)

K. Palanisamy
vs
K. Paramasivam and others

Civil Procedure Code 1908 as amended, Section 47 – Suit decreed for specific performance against Vendor – no decree against the party impleaded in the suit as party claiming under vendor – the impleaded party – sale deed was executed as per decree in favour of decree holder – decree holder tried to take possession through executing court and was opposed by the impleaded party as no decree was passed against him – petition filed by the impleaded party under Section 47 dismissed – on revision High Court held that possession can be asked and delivery can be ordered against such person too in a specific performance decree even though there is no decree of possession was granted – Revision by the person opposing possession was dismissed – CRP dismissed.

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HIGH COURT CITATIONS
CRIMINAL CASES

(2011) 3 MLJ (Crl) 5

Anbu @ Sivalingam
vs
State, rep. by Inspector of Police, CBCID, Vellore, Tirupattur Town Police Station

Code of Criminal procedure, 1973 (2 of 1974), Section 207 – Furnishing of copies – Accused not entitled to be furnished with copies of charge sheet translated in Tamil – Duty of Court – Translation not duty of Court and furnishing of copies alone is prime duty of the Court.

QUERY: Whether the Accused is entitled to copies required to be furnished under Section 207 of Cr.P.C. in a language known to him?

Held: A plain reading of Section 207 of Cr.P.C. would show that translation is not the duty of the Court and furnishing of the copies alone is the prime duty of the Court.

RATIO DECIDENDI: Furnishing of translated copies cannot be equivalent to the furnishing of copies as required under Section 207 of Cr.P.C.

(2011) 3 MLJ (Crl) 8

Madasamy Devar
vs
State, rep. by Sub-Inspector of Police, Sambavar Vadakarai Police Station, Tirunelveli, Tirunelveli District and Anr

Code of Criminal Procedure, 1973 (2 of 1974), Section 173 – Protest Petition – Application requesting Court to order for further investigation by some other Police Station – Application dismissed – Revision – Notice not issued from Court concerned to de facto complainant before taking cognizance of offence against accused – Hence all other subsequent proceedings have been vitiated – Absence of notice to de facto complainant / Petitioner is not mentioned in protest petition – Same cannot be bar for him to raise it before revisional Court.

RATIO DECIDENDI: When no notice has been issued from the Court concerned to de facto complainant before taking cognizance of offence against the accused, it would vitiate the entire subsequent proceedings and even though the absence of notice to defacto complainant is not mentioned in the protest petition, it cannot be a bar for him to raise it before the revisional Court.

2011 - 3 – L.W. (Crl.) 90

P.K. Chandrasekaran
vs
The Inspector of Police, CBI Chennai

Criminal P.C., sections 171, 172, 161(3), 482, Use of Diary by Police officials while giving evidence, Section 159/Refreshing memory, Section 145/Cross examination as to previous statements in writing and Section 161/Right of adverse party as to writing used to refresh memory,

Criminal Trial / Practice and Procedure, Use of Diary by a Prosecution Witness / Police Official, while giving evidence, for refreshing memory, Directions passed,

Prevention of Corruption Act, Section 7.

Objection was raised by the accused that PW 4 (Superintendent of Police) entered the witness box with case diary file pertaining to the petitioner's case and started deposing after perusing the C.D file – Contention urged that a statement under Sec.161(3) of the witness was recorded by the investigating officer one Mr.G.P. and therefore, the witness cannot peruse the C.D file and depose – Objection was overruled by the trial court – Therefore, the petitioner has come up seeking direction to the learned XIV Additional Special Judge for CBI Cases to record the evidence of P.W.4 (Deputy Superintendent of Police, CBI who was called as PW4) in C.C.No.13 of 2009 pending on the file, without allowing P.W.4 to peruse the C.D. File of the case.

Held: Court may permit the police officer who made the case diary to look at it for the purpose of refreshing his memory or may use the case diary for the purpose of contradicting such police officer – When a police officer is allowed to refresh his memory and does look at an entry in the diary for the purpose of refreshing his memory the accused is entitled to cross examine such police officer under sec.161 of the Indian Evidence Act – Person other than the police officer who made the case diary is allowed to look at the same.

Direction issued to call P.W.4 and allow him to look at the case diary only to refresh his memory in respect of those entries he made in course of his investigation and observe the above guidance issued by this court.

(2011) 3 MLJ (Crl) 159

Kanagaraj and Ors
vs
State, rep. by Inspector of Police, Pasuvandhanai Police Station, Tuticorin District

Indian Penal Code (45 of 1860), Section 302 – Double murder – Eye witnesses closely related to deceased – Not reliable – Evidence of hostile witness not to be rejected in toto – Delay in registering FIR – Inordinate and unexplained delay in despatching FIR to Magistrate's Court – Suppression of earliest report – Fabricated FIR – Infirmities and inconsistencies in prosecution case – Conviction set aside.

RATIO DECIDENDI: Inordinate and unexplained delay in despatching the First Information Report to the Magistrate's Court and such delay assumes importance in view of the infirmities and inconsistencies found in the prosecution case.

2011 CIJ 226 ALJ

Mr. K. Panchatcharam
vs
State

Code of Criminal Procedure, 1973 – Sec. 212, 218 – Indian Penal Code, 1860(45 of 1860) – Sec.409 – Criminal trial – Framing of charges – Joint trial – Misappropriation – Petitioner and the few other persons were accused of committing misappropriation of the funds of the Government during the period of about five years – Though a single FIR was registered, after investigation, the respondent filed six different final reports for six consecutive years which were taken on file by the Magistrate – Petitioner filed a petition before the Magistrate praying for joint trial of all the cases which was rejected against which he preferred revision – Petitioner contended that the accused was having liberty to seek for joint trial of all the cases – Since only one FIR was registered and the transaction was a continuous transaction six different cases for the same nature of offences during a particular period would prejudice him and he was willing for joint trial – Respondent objected the plea by contending that as the offences of misappropriation took place during a span of more than five years, single trial could be permitted only if the misappropriations were committed during the period of one year – Held, when the misappropriations were committed by a person during the span of more than one year, for the act of misappropriation committed during each year a separate trial had to be conducted – As the petitioner alone had sought for joint trial and there were other accused

also, prayer of the petitioner could not be granted – Order of the Magistrate was confirmed and the revision was dismissed.

Code of Criminal Procedure, 1973 – Sec. 212, 218 – Indian Penal Code, 1860(45 of 1860) - Sec. 409 – Criminal trial – Framing of charges – Joint trial – Framing of charges – Joint trial – Misappropriation – If the acts of misappropriations were committed by the accused during the span of more than one year, for the act of misappropriation committed during each year a separate trial had to be conducted.

Ratio: If the acts of misappropriations were committed by the accused during the span of more than one year, for the act of misappropriation committed during each year a separate trial had to be conducted.

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