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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS
CIVIL CASES

2011 (5) SCALE 1

Janak Dulari Devi & Anr
vs
Kapildeo Rai & Anr

TRANSFER OF PROPERTY – TRANSFER OF PROPERTY ACT, 1882 – SECTION 8 & 54 – Passing of title – Intention of parties that title would not pass until the consideration was not paid – As consideration not paid, on execution and registration of the sale deed in favour of appellants, title did not pass to the purchaser – Second respondent, owner of the suit property executed a sale deed in respect of the suit property in favour of appellants, for a consideration of ₹22,000/- - Appellant filed suit for specific performance alleging that second respondent retained the registration receipt in regard to the sale deed and that on execution of the sale deed, by the second respondent, his right, title and interest in the suit property passed to appellants – Second respondent alleging that appellant did not pay any part of the consideration, therefore, he cancelled the said sale deed – Trial Court decreed the suit holding that on execution of sale deed by second respondent, title passed to appellants – On appeal, High Court dismissed the suit – Whether the appellants had paid ₹17,000/- towards sale price to second respondent – Held, No – Whether title to the property passed to appellants on execution of the sale deed – Held, No – Whether title to the property passed to appellants on execution of the sale deed – Held, No Whether second respondent, vendor was justified in cancelling/repudiating the sale on the ground that the sale consideration was not paid – Held, Yes – Whether the appellants were entitled to the relief claimed in the suit – Held, No – Dismissing the appeal, Held,

The first appellate court after analyzing the evidence held that the evidence was contrary to the pleadings and therefore liable to be rejected. When what is pleaded is not proved, or what is stated in the evidence is contrary to the pleadings, the dictum that no amount of evidence, contrary to the pleadings, howsoever cogent, can be relied on, would apply. The first appellate court also found that there was no endorsement in the sale deed by the Sub-Registrar about payment of ₹17000 in his presence, nor any separate receipt existed to show the payment of ₹17000prior to the preparation and the execution of the sale deed. The first appellate court believed the evidence of DW1 (attesting witness to the sale deed) and DW4 (the second respondent) that they did not go to the residence of the first appellant on 22.2.1988, but had gone directly to the Sub-Registrar's office; that by then the sale deed had already been got written by the first appellant's husband; that the sale deed was not read over to them; that the second respondent was informed that the sale price would be paid subsequently at the village and that sale could be completed and possession be delivered on payment and exchange of the Registration Receipt. The first appellate court also noted that the appellants alleged that there were two independent witnesses present at the relevant time, namely Dharmanand Pandey and Bindeshwar Pandey, but neither of them was examined. The first appellate court also referred to the recitals in the sale deed and the manner of the execution of the sale deed and concluded that no part of the sale consideration had been paid. This finding of fact recorded by the first appellate court, that the appellants had not established the payment of ₹17000, after consideration of the entire evidence, affirmed by the High Court in second appeal, does not call for interference, in an appeal under Article 136 of the Constitution in the absence of any valid ground for interference.

2011 (5) SCALE 32

Mritunjoy Sett (D) By Lrs.
vs
Jadunath Baskar (D) By Lrs.

RENT CONTROL – WEST BENGAL PREMISES TENANCY ACT, 1956 – SECTION 13(6) – TRANSFER OF PROPERTY ACT, 1882 – SECTION 106 – EVIDENCE ACT, 1872 – SECTION 17 & 21 – Notice of eviction – Validity of - Notice categorically mentioned that respondent's tenancy was in accordance with English Calendar – According to respondent tenant was in accordance with Bengali Calendar month and not as per the English Calendar month as averred and pleaded by appellant – Respondent placed reliance on the rent receipts issued by Smt. 'K', erstwhile owner of the property in question wherein a categorical endorsement was made that tenancy was according to Bengali Calendar month – Unequivocal admission made by respondent in his written statement filed in title suit admitting that he was a tenant under Smt. 'K' and the rent was ₹ 75/- per English Calendar month – Smt. 'K' was not produced as a witness – Trial court dismissed the eviction suit holding that the notice was not served in accordance with provisions of Section 13(6) of the Act as one month's clear time was not given to the respondent for vacating the premises – On appeal, appellant's suit was decreed – Appellate Court held that tenancy right in favour or respondent was regulated according to English Calendar – Second appeal allowed by the High Court while holding that no substantial question was involved in the appeal – Whether the Notice of Eviction served on respondent tenant, determining his tenancy, was valid, legal and in accordance with law – Allowing the appeal, Held,

In the light of Respondent's own admission, it leaves no doubt in our mind that it will hold good as long as it was not withdrawn or clarified by him. It is too well settled that an admission made in a court of law is a valid and relevant piece of evidence to be used in other legal proceedings. Since an admission originates (either orally or in written form) from the person against whom it is sought to be produced, it is the best possible form of evidence. In the factual context of this case, it may also be noted here that the 'rent receipts' issued by Smt. Kamala Sett, the predecessor-in-interest of the Appellant herein, being the documentary evidence adduced by the Respondent to prove his contention that the tenancy was as per the Bengali Calendar, was never substantiated by the witness' testimony of the abovenamed Smt. Sett in the course of hearings.

(2011) 4 Supreme Court Cases 363

Lanka Venkateswarlu (Dead) By LRS.
vs
State of Andhra Pradesh and Ors

Civil Procedure Code, 1908 - Or. 22 R. 4 & 9 – Condonation of delay in bringing on record LRS of deceased respondent – Discretionary power must be exercised reasonably – Death of sole respondent (original plaintiff) during pendency of appeal before High Court against judgment and decree passed against appellants (original defendants and appellants before High Court) – Intimation about death given before High Court by advocate appearing for deceased respondent – But appellants failed to bring on record LRS of deceased respondent – High Court directed Government Pleader to take steps to bring on record LRs but no action taken by Government Pleader – Consequently appeal stood abated and dismissed in terms of High Court's order – Applications filed for condonation of 883 days' delay in filing petition to set aside dismissal order and for condonation of 3703 days' delay in bringing on record LRs of deceased respondent – High Court, while finding absence of any explanation to justify delay as well as negligence on part of appellants and observing that in normal course it would have dismissed applications, allowed those applications taking view that delay was due to inefficiency, ineptitude and negligence of Government Pleader concerned – Held, High Court not justified in allowing applications for condonation of delay – High Court failed to exercise its discretion to condone delay in reasonable, impartial and objective manner – Hence application dismissed and appeal of respondents before High Court held to have abated – Practice and Procedure – Abatement.

Held:

The courts in this country, including the Supreme Court, adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act. However, the concepts such as "liberal approach', "justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation. Especially, in case where the court concludes that there is no justification for the delay. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally.

(2011) 4 Supreme Court Cases 374

Bharat Sanchar Nigam Limited
vs
Ghanshyam Dass (2) and Ors
with
Bharat Sanchar Nigam Limited
vs
Chhidu Singh and Ors

Service Law – Relief – Relief to non-applicants – Circumstances in which envisaged – Civil Procedure Code, 1908 – Or. 1 Rr. 8 and 10 – Specific Relief Act, 1963, S. 34.

Service Law – Relief – Relief to non-applicants – Sustainability – CAT vide order dt. 7-7-1992 directing Government to consider only applicants in OA for promotion to 10% posts in Grade IV scale on basis of seniority in basis cadres – Admittedly, respondents were not applicants and their cases did not fall within the scope of principles for extension of relief to non-applicants – Hence, held, respondents not entitled to claim promotion to Grade IV on basis of their seniority in basic grade pursuant to that order.

Held:

It is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief. This principle would apply only in the following circumstances:

(a) where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees;

(b) where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;

(c) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the court; and

(d) where the court expressly directed that the relief granted should be extended to those who have not approached the court.

On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others.

2011 (5) SCALE 391

Purshottam Vishandas Raheja and Anr
vs
Shrichand Vishandas Raheja (D) Through Lrs. and Ors

CIVIL PROCEDURE – C.P.C. – ORDER XXXIX RULE 1 & 2 – Interim relief – Dispute between brothers about the rights to a property which was being developed – Respondent 1-plaintiff claiming that he was the exclusive owner of that property and that he had taken steps to develop that property – Two buildings had already been put up on that property and the third one was under construction – It was his further case that since 1999, he had not been keeping well, and therefore, he executed three Powers of Attorney from time to time in favour of his brother, appellant for performing various acts and deeds on his behalf as his Constituted Attorneys in furtherance of this project – Allegations that respondent had opened joint bank accounts with appellant for carrying the transactions relating to the property but from time to time appellant 1 surreptitiously withdrew amounts from the joint accounts – Appellants pleaded that the Powers of Attorney were executed for valid consideration and the same were coupled with interest in the concerned property – Appellants pointed out that although the property was purchased in the name of respondent 1, almost ninety percent of the amount for the purchase was contributed by appellant 1 – Two sisters of respondent 1 and appellants filed affidavits supporting appellants with respect to family settlement – Whether prayer made by respondent for restraining appellants as attorneys or agents of respondent 1 or restraining them from entering into the property could be granted – Held, No – Whether Division Bench of the High Court was justified in holding that an interim order will have to be granted – Held, No – Allowing the appeal, Held,

The question which comes up for our consideration is whether the learned Single Judge exercised his discretion in such an arbitrary or perverse manner that the Appellate Court ought to have interfered with it? The Learned Single Judge has passed a detailed order explaining as to why he was constrained to grant only the limited interim relief. It was in the interest of both the parties as well as the flat purchasers. The Order passed by the learned Single Judge is also on the basis that anything beyond the limited protection given at that stage would deny the opportunity to the Appellants to establish their case at the trial when it is not in dispute that Appellant No. 1 contributed ninety percent of the purchase money to the property and he took steps all throughout to develop the property. Undoubtedly, there are many inconsistencies in the stories that are put up by both the parties, and an interlocutory stage is not the one where one can reach at a definite conclusion one way or the other, particularly where the fact situation is as above and it would result into non-suiting one party.

2011 (3) CTC 422

K.K. Velusamy
vs
N. Palanisamy

Code of Civil Procedure, 1908 (5 of 1908), Order 18, Rule 17 – Court can exercise power to recall any witness at any stage of Suit and such power can be exercised suo moto or on Application filed by any of parties to Suit – Such power is discretionary and be used sparingly – But power should not be used for filling up omission of witness who has already been examined.

Facts:

In Suit for Specific Performance the vendor pleaded that the agreement was actually a loan transaction. After the examination of witnesses and after arguments commenced, the Defendant sought to recall PW1 and PW2 and cross-

examine them on conversation found in the compact disc. These Applications were dismissed by Trial Court and Revisions were also dismissed by High Court.

Held:

Order 18, Rule 17 of the Code enables the Court, at any stage of a Suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18, Rule 17 can be exercised by the Court either on its own motion or on an Application filed by any of the parties to the Suit requesting the Court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the Court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. (Vide Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate, 2009 (4) SCC 410). Order 18, Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18, Rule 17 is primarily a provision enabling the Court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the Court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

Code of Civil Procedure, 1908 (5 of 1908), Section 151 – Section 151 cannot be routinely invoked for reopening evidence or recalling witness – It is not substantive provision which confers or creates any power or jurisdiction on Courts – It can be used for purpose for which there is no express or implied provisions in Code – Ends of Justice must warrant invoking Section 151 – Section 151 cannot be used when remedy or procedure is provided in Code – Court will be doubly cautious in exercising powers under Section 151 and it will depend on discretion and wisdom of Court and facts and circumstances of case.

(2011) 4 Supreme Court Cases 567

Gian Kaur
vs
Raghubir Singh

Civil Procedure Code, 1908 – S. 100 – High Court's interference on erroneous appreciation of admitted facts and question of law in second appeal with concurrent findings of courts below – Unsustainability – Suit seeking decree of declaration that plaintiff was owner in possession of suit land, with consequential relief decree for permanent injunction restraining defendant from alienating suit land or interfering with peaceful possession of plaintiff and alternatively for possession in case of dispossession of plaintiff by defendant during pendency of suit – Trial court framed issue of maintainability of suit but as same was not proved by defendant, it decided the issue against defendant – In first appeal issue of maintainability not raised and first appellate court affirmed findings of trial court and dismissed appeal – High Court while entertaining second appeal against concurrent findings held that suit was merely for declaration and not also for possession and as such was not, maintainable under S. 34 of Specific Relief Act in view of Supreme Court's decision in Ram Saran case, (1973) 2 SCC 60 – In view of prayers made in plaint by appellant-plaintiff, held, suit was not hit by S. 34 of the Act and decision in Ram Saran case was not attracted to facts of this case – Hence reversal of concurrent findings of trial court and first appellate court by High Court in second appeal on erroneous appreciation of admitted facts and also question of law relating to S. 34 of the Act cannot be sustained – Specific Relief Act, 1963, S. 34.

(2011) 4 Supreme Court Cases 741

Pramod Buildings and Developers Private Ltd
vs
Shanta Chopra

Contract and Specific Relief – Readiness and willingness to perform – Burden of proof - Held, in a suit for specific performance, burden lies on plaintiff to prove readiness and willingness to perform his obligations in terms of contract – If plaintiff was not willing to pay balance amount at the time of sale as agreed, he could not claim that he was ready and willing to perform his obligations – Concurrent findings of fact by courts below established that plaintiff was not willing to pay balance amount as per terms of agreement but was insisting on additional security for pending property tax – On the other hand, defendant seller proved readiness and willingness to perform her part of agreement by signing and attending Registrar's office to execute sale deed – Hence, held, no interference called for under Art. 136 with dismissal of suit for specific performance since judgments of courts below were based on pure finding of fact on appreciation of evidence – Appeal dismissed – Constitution of India – Art. 136 – Interference with pure finding of facts – Evidence Act, 1872 – S. 101 – Specific Relief Act, 1963, S. 16(c).

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SUPREME COURT CITATIONS
CRIMINAL CASES

2011 (3) CTC 234

Milind Shripad Chandurkar
vs
Kalim M. Khan & Anr

Negotiable Instruments Act, 1881 (26 of 1881), Sections 7, 8, 9, 142 & 138 – "Payee" – "Holder in due course" – Meaning – Respondent issued cheque in favour of Firm namely "V" – Complaint was not filed by sole Proprietor of proprietary concern – Whether person who is not sole Proprietor of proprietary concern can maintain Complaint under Act – Held, where "Payee" is Company or sole Proprietary concern, such issue cannot be adjudicated upon taking guidance from Section 142 of Act, but such cases shall be governed by general law – Complaint shall be maintainable in name of "Payee", proprietary concern itself or in name of Proprietor of said concern – Person can maintain Complaint provided he is either "Payee" or "Holder in due course" of cheque – Appellant failed to establish that he is sole Proprietor of proprietary concern, hence, he cannot claim to be payee of cheque nor can he be holder in due course – Appeal allowed.

Facts:

Appellant filed Complaint under Section 138 of Negotiable Instruments Act against Respondent for dishonor of Cheque. Court below convicted the Respondent. Appeal filed by Respondent was allowed by High Court solely on the ground, which the Appellant had failed to establish that he was the sole Proprietor of proprietary concern, since cheque was issued in favour of proprietary concern. Appeal filed by Respondent was allowed by setting aside the order of conviction passed by Court below. Hence, SLP was filed before Supreme Court of India.

Held:

This Court in Shankar Finance and Investments v. State of Andhra Pradesh & Ors., 2008 (8) SCC 536, dealt with the issue involved herein elaborately and held that where the "payee" is a proprietary concern the Complaint can be filed (i) by the Proprietor of the proprietary concern describing himself as the sole Proprietor of the "payee"; (ii) the proprietary concern describing itself as the sole Proprietary concern represented by its Proprietor; and (iii) the Proprietor or the proprietary concern represented by the Attorney Holder under the Power of Attorney executed by the sole Proprietor. However, it shall not be permissible for an Attorney Holder to file the Complaint in his own name as if he was the Complainant. He can initiate Criminal proceedings on behalf of the principal.

(2011) 5 Supreme Court Cases 258

Kulvinder Singh and Anr
vs
State of Haryana

Penal Code, 1860 – S. 302 – Murder trial – Circumstantial evidence – Guilt established – Appellant-accused alleged to have assaulted deceased with barchha resulting in his death – Motive for commission of crime proved – Appellants seen immediately before occurrence at place of occurrence and deceased had come there shortly thereafter – Thus, they had opportunity to kill deceased – After occurrence they were seen running away together from place of occurrence – Furthermore, bloodstained barchha recovered at instance of appellants from a place which was not visible to all – Extra-judicial confession made by the appellants before PW 10, completed chain of circumstances pointing to guilt of appellant-accused.

Criminal Trial – Circumstantial evidence – Generally – Proof beyond reasonable doubt in cases based on circumstantial evidence – Principles reiterated – Held, conviction of accused is generally based solely on oral or documentary evidence but in exceptional cases can be based solely on circumstantial evidence too – Prosecution has to establish its case beyond reasonable doubt and cannot derive any strength from weakness of defence put up by accused – However, a false defence may be called into aid only to lend assurance to court where various links in chain of circumstantial evidence are in themselves complete – Circumstances from which guilt is to be drawn should be fully established and should be of a conclusive nature and exclude all possible hypotheses except the one to be proved – Facts so established must be consistent with hypothesis of guilt of accused and chain of evidence must be so complete as not to leave any reasonable ground for a conclusion consistent with innocence of accused and must show that in all human probability the act must have been done by accused.

Criminal Trial – Circumstantial evidence – Motive – Significance – Held, absence of motive in a case depending on circumstantial evidence weighs in favour of accused – On facts held, motive for commission of crime viz, appellant was harbouring a suspicion that deceased was teasing his wife and sister was proved vide testimony of PW 2 (father of deceased) which was corroborated by PW 13 (independent witness).

Criminal Trial – Circumstantial evidence – Extra-judicial confession – Reliability – PW 10, ex-Sarpanch, deposing that appellants had approached him on 13.10.1997 at about 1 p.m. and confessed that they had murdered deceased, whereafter he took them to police station – Deposition of PW 10 remaining unchallenged and was corroborated by his statement recorded under S. 161 CrPC – Evidence indicating that appellants were arrested only on 13.10.1997, while incident occurred on 9-10-1997/10-10-1997 – Held, PW 10 was an independent witness who was neither biased nor inimical to accused and had no motive to falsely implicate appellants - Extra-judicial confession made to him was found to be trustworthy and rightly relied upon by courts below.

Criminal Trial – Circumstantial evidence – Last seen together – Necessary inference of accused and deceased being last seen together – When may be drawn – PW 2 stating that he had seen appellants at about 7 p.m. near scene of occurrence and deceased was returning home between 7.30 – 7.45 p.m. – PW 3 hearing cries from place of occurrence at about that time and seeing appellants running towards village – Post-mortem report indicating that deceased had empty stomach which showed that he was murdered before his evening meal – Held, PW 3 was a reliable witness and fact that he did not inspect place wherefrom shrieks were coming was not unnatural because he assumed that same were made by accused – Hence, though none of the witnesses had deposed that appellants and deceased were last seen together but as rightly found by courts below prosecution case was very close to circumstances of appellants and deceased being last seen together.

(2011) 4 Supreme Court Cases 426

Central Bureau of Investigation
vs
Abu Salem Ansari and Anr

Criminal Procedure Code, 1973 – Ss. 299(1) and (2) – Relative scope and applicability – Admissibility of evidence against absconding accused brought to trial – Conditions precedent – First respondent A was absconding – Arrested after trial of other co-accused was over – Prosecution wanted to rely on evidence recorded in earlier trial, against A – Designated Court held that prosecution may rely on earlier evidence against A subject to conditions precedent in S. 299(2) – A was absconding – A's case is already split up and he has to undergo trial – Hence, held, not S. 299(2) but S. 299(1) would apply – Prosecution may rely on evidence recorded in earlier trial against A subject to establishment of existence of any of the conditions precedent as described in S. 299(1) CrPC – Criminal Trial – Abscondence – Terrorist and Disruptive Activities (Prevention) Act, 1987, S. 14(5).

2011 – 1 – L.W. (Crl.) 520

Manoj Yadav
vs
Pushpa @ Kiran Yadav & Ors.

Criminal P.C., Section 125 (as amended by the Code of Criminal Procedure (Amendment) Act, 2001 deleting the words "not exceeding five hundred rupees in the whole"), Scope – After the Central Amending Act, all State amendments to Section 125 Cr.P.C. by which a ceiling has been fixed to the amount of maintenance to be awarded to the wife have become in valid.

Appeal from the Judgment of the High Court of Madhya Pradesh Judicature at Jabalpur, Branch at Gwalior dismissed.

(2011) 4 Supreme Court Cases 785

Mustafa Ahmed Dossa Alias Mustafa Majnu
vs
State of Maharashtra

Criminal Procedure Code, 1973 – S. 223 – Petitioner seeking joint trial but trial of co-accused already over – Therefore, prayer made by petitioner, held, infructuous – Co-accused of appellant having already been trial, Special Judge directed to conduct trial of appellant-accused expeditiously – Criminal Trial – Co-accused – Generally – Joint trial.

(2011) 4 Supreme Court Cases 786

State of Madhya Pradesh
vs
Ramesh and Anr

Penal Code, 1860 – Ss. 302 and 120-B – Murder of husband by wife and her paramour – Conviction restored – Cause of death, held, was asphyxia as a result of throttling – R-2 with a false name, filed an FIR that her husband C died after falling during a spell of giddiness – Another complaint filed by PW 2 along with PW 1, daughter of deceased and R-2 aged about 8 years, that both respondent-accused had murdered C – Trial court came to conclusion that injuries found on person of deceased could not have been received from a fall on the ground – Injuries found on his body were found to be in consonance with deposition of PW 1 – Trial court relying upon PW 1, convicted and sentenced both respondent – accused – High Court allowed appeal of respondent-accused and both of them stood acquitted – High Court found that conspiracy between the said two accused was not possible as R-1 was facing trial for committing rape on R-2 – Rape case remained pending for three years and R-1 got acquitted after death of deceased – In fact, the facts revealed that they were having illicit relationship for a period of more than 3 years, which R-2 failed to specifically deny in her deposition in her defence on entering the witness box under S. 315 CrPC – High Court brushed aside this finding without giving any cogent reason – Held, High Court has completely ignored the most material incriminating circumstances which appeared against respondent-accused – Findings recorded by High Court are contrary to respondent-accused – Findings recorded by High Court are contrary to evidence on record – Criminal Trial – Medical Jurisprudence/Evidence – Asphyxia/Throttling/Strangulation/Hanging – Criminal Procedure Code, 1973, S. 315.

Penal Code, 1860 – S. 302 – Murder trial – Child witness – Reliability of testimony of – Competent, unless court considers otherwise – Court may rely upon evidence of child witness, in case her deposition inspires confidence of court and there is no embellishment or improvement – Every witness is competent to depose unless

court considers that she is prevented from understanding the question put to her due to tender age, extreme old age, disease whether of body or mind – Only in case there is evidence on record to show that a child has been tutored, can court reject her statement partly or fully – An inference as to whether child has been tutored or not, can be drawn from contents of her deposition – Statement of PW 1 was affirmed by statements of other witnesses, proved circumstances and medical evidence – Her deposition being precise, concise, specific and vivid without any improvement or embroidery, is worth acceptance in toto – Conviction based on her testimony, restored – Oaths Act, 1873 – S. 5 –Evidence Act, 1872 – S. 118 – Criminal Trial – Witnesses – Child/Young witness.

Criminal Procedure Code, 1973 – Ss. 378 and 386 – Appeal against acquittal – Appellate court's power – Appreciation of evidence by appellate court – General principles – Presumption of innocence – Appellate court being the final court of fact is fully competent to reappreciate, reconsider and review the evidence and take its own decision - There is no limitation, restriction or condition on exercise of such power and appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides a further presumption in favour of accused.

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HIGH COURT CITATIONS
CIVIL CASES

(2010) 6 MLJ 113

Bafna Developers, a registered partnership firm
vs
D.K. Natarajan and Ors

Specific Relief Act (47 of 1963) - Code of Civil Procedure (5 of 1908), Order 2 Rule 2 - Suit for specific performance - Two earlier suits filed by plaintiff founded on same cause of action - Suit barred under Order 2 Rule 2 C.P.C.

FACTS IN BRIEF :

Aggrieved by the order passed by the trial Court dismissing the suit for specific performance, an appeal has been filed by the unsuccessful plaintiff.

QUERIES:

1. Whether the agreement has become infructuous as it became impossible of performance since it was impossible of getting the property freed from being acquired?

2. Whether the plaintiff has established the mandatory requirement of Section 16(c) of the Specific Relief Act proving his readiness and willingness?

3. Having regard to the filing of two earlier suits, whether Order 2 Rule 2 CPC is attracted in a suit for specific performance?

Held:

Clause 8 in Exhibit A-1 is emphatic i.e., if the contract becomes impossible of performance for getting the property freed from acquisition within three years from the date of agreement (2.7.1986). then the agreement for sale will become infructuous. It is only where contract is capable of specific performance and the plaintiff has done substantial acts of the contract, the Court would exercise its discretion in his favour. Considering the surrounding circumstances and conduct of the parties, the suit filed by the plaintiff in 1995 is not maintainable and the plaintiff is not entitled to any relief.

In the instant case, the evidence and circumstances would clearly indicate that the readiness and willingness contended by the plaintiff was only an empty averment in the plaint. Evidence and surrounding circumstances clearly indicate that the plaintiff was not ready and willing to perform his part of the contract.

(2010) 6 MLJ 166

Navinchandra Chandulal & Co., Rep. by its Partners
vs
Bhagawandass (Deceased) by LR's and Ors

Compromise - Joint memo of compromise between parties - Order and decretal order passed in terms of compromise memo - No right to petitioner to challenge order after reaping entire benefits under compromise decree.

FACTS IN BRIEF:

In view of the joint memo of compromise filed by both the parties, an order was passed in terms of the compromise arrived at between the parties. After reaping the benefits based on the order and decretal order passed pursuant to the compromise memo, the petitioner/tenant continued in possession of the rental premises and did not vacate the premises as per the order and the decretal order passed in the R.C.O.P, but filed petitions challenging the decree before the Executing Court. Aggrieved by the order dismissing the petitions, he has preferred present revision petition.

QUERY: Whether the tenant is justified in challenging the order and decretal order passed pursuant to the joint memo of compromise by the Rent Controller, when he has reaped the entire benefits under the decretal order?

Held:

Having voluntarily agreed for the terms and conditions stipulated in the joint memo of compromise and after having reaped the benefit of more than 3 1/2 years in possession and enjoyment of the premises, the petitioner/tenant herein has taken totally an unjust and unreasonable defence, by filing the petition in M.P. No. 458 of 2006 before the Executing Court, seeking an order to set aside the compromise decree and to declare the same as void and unexecutable, on the ground of nullity and also interim stay in M.P. No. 457 of 2006. It is not open to the petitioner herein to challenge the compromise decree, after having enjoyed the benefit for the period of 3 years and 6 months, Similarly, the petitioner herein has challenged the compromise decree to which he was a party and that too before the Executing Court. Hence, the Court could find no legal ground in this revision in favour of the petitioner/tenant.

2011 (3) CTC 168

Meenakshisundaram Textiles
vs
Valliammal Textiles Ltd.,

Code of Civil Procedure, 1908 (5 of 1908), Sections 2(9) & 96(2), Order 9, Rule 13 – Suit for recovery of money – Ex parte decree passed – Defendant sought to set aside ex parte decree – Application dismissed – Order challenged in Civil Miscellaneous Appeal – Question whether judgment comes within ambit of Section 2(9) and can be termed a 'judgment' – Judgment rendered ex parte and decree drawn, is appealable – In case judgment and decree became final, without there being any Appeal, decree is executable – There is no difference between a judgment and decree and an ex parte judgment and decree – In event Defendant is set ex parte, Court should be extra careful in such case – It should consider pleadings and evidence to arrive at a finding as to whether Plaintiff is entitled to a decree – An ex parte decree should show application of minimum requirement of consideration of pleadings and evidence – Judgment passed by Trial Court is not in conformity with provisions of Code of Civil Procedure – Impugned judgment and decree set aside – Trial Court directed to dispose of Suit by recording evidence.

Facts:

Defendant sought to set aside an ex parte decree passed in a Suit for recovery of money. Application was dismissed and Civil Miscellaneous Appeal was filed before the High Court. High Court held that the judgment passed by the Trial Court is not in conformity with the provisions of the Code of Civil Procedure and set aside the same.

Held:

As against the requirement of a judgment, Section 2(14) of the Code of Civil Procedure relating to an "order" is also referable. In terms of that Section, an "order" means the formal expression of any decision of a Civil Court which is not a

decree. When it comes to the judgment, it should state the grounds of a decree, which includes an order. Hence, there is a vast difference between a judgment, a decree based on such judgment and an order.

2011 (3) CTC 200

Union of India, represented by the Post Master General, Head Post Office, Chennai – 600 002
vs
M. Ravi, S/o Muthukrishnan and Ors

Law of Torts – Suit claiming compensation on account of death caused due to collapse of a compound wall – Contention of Defendant that Plaintiffs are unauthorized occupants residing adjacent to compound wall, not tenable – There is an obligation on owner to maintain wall – Evidence shows that wall collapsed due to stagnation of water – Concurrent findings decreeing compensation, held, justified.

Facts:

Defendant's compound wall collapsed due to torrential rain and claimed two lives. Plaintiffs instituted Suit claiming compensation. Trial Court as well as Appellate Court concurrently found that the wall was not maintained with proper care and it collapsed due to stagnation of water. Concurring with their views, the Hon'ble High Court upheld the decree and rejected the contention of the Defendant that the claimants are unauthorized occupants of the land residing adjacent to the compound wall.

Held:

The finding of the Lower Appellate Court that the act of the Defendant in allowing the rain water to stagnate inside the compound wall is the negligent act, is correct and proper in the facts and circumstances of the case and does not call for any interference.

The learned Senior Central Government Standing Counsel for the Appellant further contends that the Plaintiffs themselves unauthorisedly put up huts and they cannot claim compensation for the compound wall collapse. This contention is devoid of merit. There is an obligation on the owner of the premises for the safety of the structures which he keeps and if the structures fell into disrepair, the owner is liable to anyone who is injured or died by reason of the disrepair. The law is well settled in this regard. (Municipal Corporation of Delhi v. Subjagwnti and others, AIR 1966 SC 1750).

2011 (3) CTC 205

Narayanappa
vs
Sampangi Ramayya and Ors

Specific Relief Act, 1963 (47 of 1963), Section 16 – Suit for Specific Performance – Plaintiff filed Suit for Specific Performance of Agreement of Sale and was dismissed on ground that Agreement of Sale was not proved – Appellate Court reversed finding holding that Agreement of Sale was executed and granted decree of Specific Performance – Hence, Second Appeal – Plaintiff is not entitled to get decree of Specific Performance even though there is valid agreement and Plaintiff has come to Court within period of limitation – Plaintiff cannot get decree for Specific Performance merely on ground that Agreement of Sale was in his favour – Compliance of readiness and willingness has to be in spirit and substance and not in letter or form – Plaintiff not filed Suit immediately on coming to know of Sale Deed in favour of Appellant would prove that he was not ready and willing to perform his part of contract – Eventhough Agreement of Sale contemplates one year's time to complete contract, Plaintiff ought not to have waited for completion of period when he comes to know that property was sold by vendor to Appellant – Second Appeal allowed.

Facts:

Plaintiff filed Suit for Specific Performance of Agreement of Sale. Suit filed by the Plaintiff was dismissed by Trial Court allowed the Appeal and granted decree for Specifc Performance of contract. Aggrieved by the order of the First Appellate Court,. Appellant had filed this Second Appeal.

When the Agreement of Sale dated 5.7.1944 is upheld, the next question is whether the First Respondent is entitled to the relief of Specific Performance. It is settled law that in the case of Specific Performance, the person is not entitled to get the decree even though there is a valid agreement and the Plaintiff has come to Court within the period of limitation, when the Plaintiff is not able to prove his readiness and willingness to perform his part of the contract and the conduct of the Plaintiff would disentitle him to the relief of Specific Performance. Therefore, the Plaintiff cannot get a decree for Specific Performance merely on the ground that the Agreement of Sale was in his favour, the Agreement of Sale was a genuine one and the Suit was filed within the time. It being a discretionary relief, the Court has got to reject the claim of Specific Performance when it is proved that the Plaintiff was not ready and willing to perform his part of the contract. The Honourable Supreme Court has held in the judgment sited supra that the compliance of readiness and willingness has to be in sprit and substance and not in letter or form and if the allegations in the Plaint as well as evidence and the other circumstances lead to the conclusion that the Plaintiff was not ready and willing to perform his part of the contract, even though he filed the Suit within the period of limitation, the Court need not grant the relief of Specific Performance. Therefore, we will have to see whether the Plaintiff/the First Respondent herein was ready and willing to perform his part of the contract.

2011 (3) CTC 214

Kanniappan and Anr
vs
Ekambaram

Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rule 32(5) r/w Section 151 – Petitioners/decree holders filed Suit seeking for relief of declaration that they are exclusively entitled to pathway and for relief of recovery of possession and permanent injunction – Court below did not grant relief of declaration of title in respect of pathway but held that suit pathway was private passage and Petitioners were entitled to use same – Court below negative relief of recovery of possession and granted relief of permanent injunction – Decree holder filed Execution Petition for removal of bunk shop put up by Respondent – Executing Court dismissed Petition – Hence, Revision – Decree holder admitted that bunk shop was put up even before filing of Suit – Court below specifically rejected relief of recovery of possession – By virtue of decree of permanent injunction decree holder cannot seek for larger relief which was specifically denied by Trial Court as well as Lower Appellate Court – Executing Court cannot enlarge scope of decree to give different relief which was not granted by Court after full fledged trial – Revision dismissed.

Facts:

Decree holders filed Suit and sought for relief of declaration of title over the pathway and prayed for recovery of possession and consequential permanent injunction restraining the Defendant. Court below denied the relief of declaration of title and recovery of possession. Court below granted the relief of permanent injunction. Decree holder filed an Execution Petition under Order 21, Rule 32 (5) r/w 151 of C.P.C. for removal of the bunk shop put up by the Respondent. Executing Court dismissed the Petition on merits. Aggrieved by the order of the Executing Court the Petitioner had filed this Civil Revision Petition by invoking jurisdiction of High Court under Section 151 of C.P.C.

Held:

As rightly pointed out by the learned Counsel appearing for the Respondent, this relief of recovery of possession/handing over the possession was negatived by the Court below. In such circumstances, the only question to be considered in the present case is as to whether the Executing Court was bound to grant the relief sought for in the Execution Petition. It is a settled proposition of law that the Executing Court cannot go behind the decree. Likewise, the Executing

Court cannot enlarge the scope of the decree to give a different relief, which was not granted by the Court after full-fledged trial. It is seen from the averments made in the Execution Petition, the Petitioners have contended as if that after the decree was obtained, the Respondent had put up the bunk shop. In fact the averments in the Execution Petition is to the effect that the Respondent in utter disobedience of the decree has put up construction thereby preventing the access of the Petitioners in the suit pathway. This pleading is totally inconsistence to the Plaint averment as well not in consonance with the decree granted by the Courts below. In such circumstances, the said averment in the Execution Petition deserves to be rejected as being false and contrary to the pleadings in the Plaint filed in O.S. No. 626 of 1982.

2011 (2) TLNJ 225 (Civil)

M. Kittusamy Gounder
vs
C.V. Karthikeyan

Specific Relief Act, 1963, Section 16 – When the plaintiff has proved that he was always ready and willing to perform his part of the contract and the financial means to pay the balance sale consideration and that the sale agreement is a true and genuine document, he is entitled to get the equitable relief of decree of specific performance – Plaintiff also is entitled for permanent injunction restraining the defendants from disturbing the peaceful possession and injunction relating to encumbrance and alienation in the absence of proof that possession was handed over to the defendants.

2011 (2) TLNJ 260 (Civil)

S. Tajudeen
vs
S.V. Sambandan and Ors

Civil Procedure Code, 1908, Order VIII Rule 6A – The language employed in Order VIII Rule 6A C.P.C. speaks of a counter claim against the claim of the plaintiff in respect of a cause of action accrued to the defendant against the plaintiff either before or after filing of the suit – That means, whether the cause of action accrued to the defendant before filing of the suit by the plaintiff or after filing of the suit, in both circumstances, the same shall be claimed by the defendant before he has delivered his defence – Petition dismissed.

2011 (2) TLNJ 271 (Civil)

Sundarraj
vs
Soranam Ammal

Limitation Act 1963, Section 5 – Suit filed for partition filed in the year 1990 – Dismissed for default in the year 1996 – Suit restored to file on 29.7.1999 – Decreed in the year 2000 and preliminary decree passed – Second defendant filed petition for condoning delay in filing petition for setting aside ex-parte decree – Dismissed by trial Court – Revision in High Court filed – Held – Suit is for partition between the mother and brother and sisters – A perusal of the notes papers indicates 2nd defendant was set ex-parte only in the application for restoration of the suit – In reality he has not been set ex-parte in the main suit – Procedural irregularity committed – A party being called absent and set ex-parte by a court in respect of another Interlocutory Application, is quite different from he being set ex-parte in the suit – Civil revision allowed on the basis of Equity, Fair play, good conscience and also matter of prudence to set right the procedural irregularities committed by Trial Court.

2011 (2) TLNJ 281 (Civil)

Negalingam and Anr
vs
Central Bank of India South Car Street rep. By its Additional Divisional Manager and Ors

Civil Procedure Code 1908 as amended Section 47 – Civil revision in High Court against the order of Executing Court – Held – the ownership in respect of a property can be decided by a Court of law even at the execution stage – revision petitioners being the strangers to Section 47 is not entitled to maintain the said application in law – another important fact that the revision petitioners have filed an application in the file of the District Court praying for the relief of declaration that the auction sale in favour of the second respondent is only void – case disposed by directing the petitioners prosecute their remedies before the District Court for the relief sought – Petition closed with direction.

2011 (2) TLNJ 291 (Civil)

R. Ravindran
vs
M. Rajamanickam

Civil Procedure Code 1908, Order 17, Rule 2 and 3 – Suit for recovery of money filed – Plaintiff sought to mark the document as receipt – Objected by Defendant – Objection upheld by trial Court – Plaintiff filed civil revision petition – Citing the pendency of the C.R.P. plaintiff obtained adjournments – on 10.8.2004 the trial Court passed an order dismissing the suit for default stating " No stay order produced from the High Court and plaintiff present but not willing to continue his evidence – Plaintiff filed application under Order 9 Rule 9 C.P.C for restoration – Petition dismissed by trial court holding that evidence of the plaintiff is to make an appeal and not to file an application for setting aside – Civil Miscellaneous petition filed in High Court – Held – Order 17 Rule 3 comes in to play only when presence is to proceed with the case but default is committed in any one of the three way mentioned in Rule 2 or explanation to Rule 2 – these are cases in which some materials are there for the court to decide the case on the materials and not the case where decision could only be for default that is clear from combined reading of Rule 2 and 3 and the explanation – In this case none of the conditions are present and decision is evidently for default – Rule 2 alone is attracted – appeal will not lie – Decision of the lower court was only one of dismissal for default and not one on the merits of the case – C.M.A allowed.

2011 -2 - TLNJ 317 (Civil)

Minor Divya and Ors
vs
Sengamalai and Ors

Tamil Nadu Court Fees and Suits Valuation Act 1955, Section 40 – (in a suit for cancellation value of the property is the value stated in the document and not actual market value when the suit is instituted) – Suit for partition and for cancellation of earlier partition – Check slip was issued by court fee examiner and Trial Court directed plaintiff to pay court fee for the relief of cancellation of the deed of partition and to pay a further sum means the market value of the property or the value specified in the document – the legislative intention is very clear that what was intended was only the value shown in the document – there is nothing to suggest that the amount or value of the property should be construed as one of market value the expression "value" as found under Section 40 of the Act must be treated as the value shown in the document and not its market value – CRP allowed.

2011 -2 - TLNJ 334 (Civil)

P. Arumugham and Ors
vs
Sri Vinayagar & Sri Mariamman Koil, rep.by its Trustee Govindasawamy & Ors
with
T. Perisaswami (deceased) and Ors
vs
R. Ramaraj (Takkar and Admn) Officer, Mariamman Koil Sooramangalam, Salem -5 & Anr

Hindu Religious and Charitable Endowments Act 1959, Section 101 – Suit filed in DMC to set aside an order of DC (Admn.,) HR & CE Department – decreed and appeal by contesting defendants allowed – on second appeal the High Court clarified that orders passed under section 101 of the Act in relation to Math or temple in Presidency town, the Chennai City Civil Court, and in relation to Math or temple in other places the District Court alone have jurisdiction – further held that trial court taken suit on its file can grand a decree if it has no jurisdiction but to return the plaint – Second Appeal dismissed.

2011 (3) CTC 363

K. Kolandan
vs
M. Murugesan and Ors

General Clauses Act, 1897 (10 of 1897), Sections 10 & 27 – Counting days for purpose of limitations – Service by post – First day of order is to be excluded for reckoning limitation – Application was sent by Speed Post on last date of limitation – Such filing was within period of limitation – Applications sent by post on particular day was attempted to be served on same day – Held, Application was within period of limitation.

Facts:

Sale of immovable property on 18.3.2008 was challenged by Application on 17.4.2008. Application was sent by post on 17.4.2008 and received by the Authority on 21.4.2008. The Application was sought to be served by postman on 17.4.2008 itself but office refused to receive it on the ground that officer concerned was not available on that day. Hence, it was served on 21.4.2008.

Held:

The sale in question was conducted at 3.30 p.m. on 18 March 2008. In case the period of thirty days is computed from 18 March 2008, in effect, it would be less than thirty days. Therefore, necessarily, date of sale has to be excluded.

Section 27 of the General Clauses Act, 1897 deals with service by post. The said provision reads thus :

27. Meaning of service by post – Where any (Central Act) or Regulations made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

2011 -2 - TLNJ 374 (Civil)

Lakshmi and Ors
vs
Prasanna Mani and Anr

Civil Procedure Code 1908 as amended, Order 7, Rule 11 – Suit filed after unsuccessful earlier attempt for declaration of marital status, partition and possession – revision filed by defendant in High Court under Article 227 of Constitution of India to strike out plaint as abuse of process of court – opposed as suit cannot be dismissed as bared without proper pleadings, framing issues and taking evidence and without proper application for rejection of plaint – High Court expressed than no party can be allowed to re litigate the same matter and to prevent abuse of process of court the Courts can stop such vexatious proceedings summarily at the earliest point of time – civil Revision Petition allowed.

2011 -2 - TLNJ 385 (Civil)

S. Mylathal
vs
N. Ayyasamy and Ors

Civil Procedure Code 1908 as amended, Section 64(1) – Suit decreed for payment of money – after decree judgment Debtors transferred the property in favour by settlement – executing court ordered attachment – one revision High Court held that the transfer was only to defeat the decree and as the transferee being the mother of JDS., the transfer made without consideration, the order of attachment cannot be said as illegal and no error in ordering attachment of the property – Civil Revision Petition dismissed.

2011 -2 - TLNJ 388 (Civil)

Mrs. M. Anitha Devi
vs
Mr. A. Govndarajan

Tamilnadu Buildings (Lease and Rent Control) Act (Act 18 of 1960) – Section 10(2)(1) – Eviction petition filed on the ground of willful default and additional accommodation – rent controller ordered eviction on the ground of willful default in payment of rent and rejected claim under section 10(3)(c) – on appeal by tenant the appellate authority reversed the finding and dismissed eviction petition on the ground of willful default too – on revision by land lady the High Court expressed that the ledger books maintained tenant cannot be rejected as self serving documents – Civil Revision Petition dismissed.

2011 -2 - TLNJ 392 (Civil)

Kulandaisami Gounder and Anr
vs
R. Srikumar and Anr

Specific Relief Act 1963, Section 22 – Suit for performance – father and brother of vendor claimed share on the property and opposed specific performance – suit decree and appeal dismissed – on second appeal High Court held that transfer of ownership of the property to the

subsequent purchasers with the notice of prior agreement, is only for the benefit of the agreement holder – purchaser need not ask for a specific prayer to set aside the subsequent sale of vendor and impleading subsequent purchasers and prayer to direct them to execute the sale deed along with the original vendor of the property sufficient – second Appeal dismissed.

2011 -2 - TLNJ 405 (Civil)

Jagadambal
vs
Sankari and Ors

Indian Succession Act 1925, Section 63 – The testatrix had executed the Will in the presence of all the three daughters and they have also attested the Will – The non-mentioning of date of execution by the witnesses does not affect the credibility of the Will in any way – the testimony of the attesting witness D.2 is convincing and trustworthy and there is no reason to disbelieve the same – suspicious circumstances regarding the execution of the Will not alleged in the pleadings – Will is true and valid document – Appeal Suit dismissed.

2011 -2 - TLNJ 426 (Civil)

Ka. Kistama Naidu and Ors
vs
Pushpa and Ors

Civil Procedure Code 1908 as amended, Section 100 – The crucial question arises as to what prompted D1 to D3 to enter into the agreement to sell with the plaintiffs hardly a day after the agreement to sell was entered into with D4 – courts below failed to take into consideration all the salient features and simply dismissed the suit as though D4 is a bonafied purchaser – case remanded to the 1st appellate court for summoning D2 and D3 to appear before the court and dispose on facts relating to the case – SA disposed of accordingly.

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HIGH COURT CITATIONS
CRIMINAL CASES

(2011) 2 MLJ 127

Sundar @ Sundararajan
vs
State by Inspector of Police, Kammapuram P.S.,

Indian Penal Code (45 of 1860), Section 201, 302 and 364-A – Kidnap and murder of child – Demand of ransom – Rarest of rare cases – Award of death penalty – Charges proved beyond reasonable doubt – Death penalty confirmed.

FACTS IN BRIEF:

Appeal has been filed by the accused against the judgment of conviction and sentence passed by the trial Court for the commission of the offences of kidnapping and murder of a 7 year old child on demand of ransom punishable under Section 364-A, 302 and 201 of the Indian Penal Code and awarded death penalty and a fine of ₹1000/- each on the first two charges and also 7 years rigorous imprisonment with a fine of ₹1000/- on the third charge.

QUERIES:

1. Whether the trial Court is justified in accepting the evidence of the test identification parade?

2. Whether the case on hand would fall into he category of 'rarest of rare cases' for awarding a death penalty?

3. Whether evidence of a child witness is admissible in evidence?

Held:

In the case on hand, a child of 7 years old was kidnapped by A-1 from the place for a demand of ₹5 lakhs ransom, and when it was not met, he has mercilessly and brutally murdered the child. It is not only gruesome, but also merciless act. Ordinarily, it would shock the conscience of the society. In a case like this, when an illegal demand of ransom is made, and if not met. Whether a young child could be murdered. Here is a case where the act of A-1 would not be compatible to the human behaviour, and it is, no doubt, inhuman. It can even be commented that like a beast, he has acted so and that too mercilessly. It remains to be stated that from the evidence of P.W.1, it is quite clear that she has got three daughters, but only one son namely the deceased young child. This Court is conscious of the fact that the life sentence is the rule, and the death sentence is an exception. This Court is also mindful of the caution made by the Apex Court that the death sentence could be imposed in rarest of rare cases. The case on hand would fall under "rarest of rare cases".

2011 – 1 – L.W. (Crl.) 513

S. Kannan
vs
State Rep. by Inspector of Police, Ponneri, Thiruvallur District and Anr

Criminal P.C., Section 438/Petition for Anticipatory Bail in the High Court, Maintainability,

Criminal P.C., Section 88/Court's power to direct a person to execute a bond and produce the sureties, Scope,

Negotiable Instruments Act, Section 138.

Crl. O.P. was filed under Section 438 praying to enlarge the petitioner on interim bail in the event of his arrest by the respondent police – Held : this petition is not at all maintainable, since the offence under Section 138 of N.I. Act and relief under Section 438 of Cr.P.C. is available only in respect of a case involving non bailable offence.

Decision in R. Sarathkumar's case and Regupathi's case cited are not in consonance with the judgments of the Hon'ble Supreme Court and also the provision contained in Section 438 of Cr.P.C. – Therefore, these two judgements are per incuriam and so they are not binding precedents.

Learned Magistrate was well within her powers under Section 88 Cr.P.C to direct the petitioner to produce two sureties and execute bond.

Direction issued by the learned Magistrate is fully justified in law, and the same does not require any interference at the hands of this Court – Crl.O.P. dismissed.

Prayer to enlarge the petitioner on interim bail in the event of his arrest by the respondent police. Petitioner stated that as per direction of his Hon'ble Court passed in the earlier Crl.O.P. he appeared before the learned Magistrate with a petition under Section 70 (2) of Cr.P.C. to recall the non-bailable warrant and with further direction to the learned Judicial Magistrate to recall the same.

Held:

At the outset, it is needless to point out that this petition is not at all maintainable. Since the offence under Section 138 of Negotiable Instruments Act is bailable. Though there may be apprehension of arrest at the hands of the police, still for the said apprehension, a petition for anticipatory bail cannot be entertained. The relief under Section 438 of Cr.P.C. is available only in respect of a case involving non-bailable offence.

In R. Sarathkumar's case cited supra, the learned Judge, has in more than one place, stated that the petition for anticipatory bail is not maintainable in a case falling under Section 138 of the Negotiable Instruments Act because the offence is bailable. However, the learned Judge at last granted anticipatory bail.

2011 – 1 – L.W. (Crl.) 542

Palaniappa Mills rep. by its Partner & Anr
vs
A. Vaithiyalingam

Negotiable Instruments Act, Section 138/"Holder in due course", who is.

Question considered was whether mere signature of the holder on the back side of the cheques in question amounts to due endorsement evidencing the transaction between the original lender and the complainant and vests the complainant with the right to maintain any proceeding as holder in due course - Held : In the present case, there is no endorsement found in the document and the passing of consideration is also not duly proved by the complainant by summoning the said M whose signature is found on the back side.

Complainant failed to prove that he is the holder in due course and hence, has no locus standi to maintain the complaints - On this score alone, the judgments of the courts below are to be necessarily set aside - Criminal revisions allowed.

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