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## **IMPORTANT CASE LAWS**

*Compiled by*

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## SUPREME COURT CITATIONS CIVIL CASES

2013- 1-L.W. 886

Gaytri Bajaj  
Vs  
Jiten Bhalla

Guardians and Wards Act (1890), Hindu Minority and Guardianship Act (1956).

**Held:** It is not the better right of the either parent that would require adjudication while deciding their entitlement to custody – Desire of the child coupled with the availability of a conducive environment for proper upbringing, together with the ability and means of the concerned parent to take care of the child are relevant factors while deciding the issue of custody of a minor – Desire, interest and welfare of the minor are ultimate consideration.

Children expressed reluctance to go with mother, even for a short duration of time – Any visitation right to the mother would be adverse to the interest of the children.

2013 (1) CTC 418

Choloro Controls (I) P. Limited  
Vs  
Severn Trent Water Purification Inc. and Ors

Arbitration and Conciliation Act, 1996 (26 of 1996), Sections 2(b), 7 & 45 – Multiple Agreements – Principal Agreement containing Arbitration Clause and some Ancillary Agreements did not contain Arbitration Clause – Reference to Arbitration for dispute arising under Ancillary Agreement not containing Arbitration Clause, whether Warranted ? – Arbitration Clause in principal Agreement widely worded – Term ‘connection’ used in Arbitration Clause in Principal Agreement expands scope of disputes under Ancillary Agreements - Moreover, Principal Agreement itself by implication referring to all other Agreements – When Ancillary Agreements originated from Principal Agreement, terms and conditions of Principal Agreement are applicable to Ancillary Agreements – Signing of all agreements on same day also indicative of factor that Agreements entered into as a composite transaction – Established from conduct of parties and subsequent events that composite transaction contained in Principal Court as provided in Agreements not invoked by any of parties – Held, when parties to composite transactions provide for different alternative forums including Arbitration, real intention of parties deemed to be interpreted to refer entire subject matter to Arbitration and not to resolve disputes collectively by Arbitration – Arbitration Clause contained in Principal Agreement would, thus, stand incorporated in Ancillary Agreement.

Contract Act, 1872 (9 of 1872), Section 2(h) – Contract – Business Law – Joint Venture – Multiple Agreements between parties – Character of – Joint Venture entered into between parties provided under Principal Agreement, fulfillment of same subject of performance of Ancillary Agreements – All Agreements entered into between parties, ancillary/incidental to Principal Agreement – Segregation of Principal Agreement from Ancillary Agreements would render Ancillary Agreements ineffective – Principal Agreement would become inconsequential if Ancillary Agreements are not performed – All of other Agreements in one Agreement also indicates intention – Such agreements constitute integral parts of composite transaction and are covered under Principle of “Agreements within Agreements” – Implementation/execution of any one Agreement improbable and impossible without collective performance of all other Agreements.

Arbitration and Conciliation Act, 1996 (26 of 1996), Section 45 – Interpretation of provision – Provision, held, a self-contained code - Expression ‘person claiming through or under’ to take within its ambit multiple and multi-party Agreements – Non-signatory parties to Agreements can pray and be referred to Arbitration if prerequisites of Sections 44 & 45 satisfied with Schedule I – Court empowered to delete name of parties who are not necessary or proper to proceedings before Court – Discretion of Court for making reference to Arbitration of non-signatory Companies to be exercised in exceptional, limiting and befitting cases of necessity.

Arbitration and Conciliation Act, 1996 (26 of 1996), Section 45 - “Claiming through or under” – Several Agreements entered into between parties with one Agreement being the Principal Agreement – Parties to all Ancillary Agreements not common – However, interests of said parties not adverse to interest of Principal Company – Interest of said parties derived from principal Agreement and performance of all Ancillary Agreements to be in consonance with Principal Agreement – In such circumstances, said parties/Companies though not signatory to all Agreements, would be covered under expression ‘claiming through or under’ parties to Agreement.

Arbitration and Conciliation Act, 1996 (26 of 1996), Section 45 r/w Schedule I – Intention of Legislature – In order to uphold intention of Legislature, provision to be construed liberally – Reference to Arbitration to be made by Court when party or any person claiming through him approaches Court and Court is satisfied that Agreement is valid, enforceable and operative – Provision to be interpreted widely to achieve twin objectives of Arbitration – Legislative intent behind provision to hold parties to Arbitration by invoking Civil jurisdiction involving multifarious cause of action, parties and prayers.

Arbitration and Conciliation Act, 1996 (26 of 1996), Section 45 vis-a-vis Section 8 – Extension of term ‘parties’ – Section 8 refers to term ‘parties’ simpliciter – Section 45 uses term ‘one of parties or any person claiming through or under him’ – Thus, language of Section 45 has wider import, wherein request of party is considered and referred to an Arbitral Tribunal – However, under Section 8, Court may refer parties to Arbitration only upon Application of one of parties.

Arbitration and Conciliation Act, 1996 (26 of 1996), Section 45 – Code of Civil procedure, 1908 (5 of 1908) – Overriding effect of Section 45 of Act over Code, discussed.

Arbitration of Conciliation Act, 1996 (26 of 1996), Section 45 – Questions to be determined by Court at threshold? – Court to determine on ingredients of provision on its threshold itself and to decide on validity of Agreement in order to avoid multiplicity of litigation and re-agitating of issues over and over again – Jurisdiction of Arbitral Tribunal also to be determined at first instance – Held, determination of fundamental issues under Article 45 not only appropriate, but also in furtherance of intention of Legislature.

Arbitration and Conciliation Act, 1996 (26 of 1996), Section 45 – Precept of jurisdictional forum of parties – Determination of – Facts of case.

Arbitration and Conciliation Act, 1996 (26 of 1996), Section 45 – Validity of Arbitration Agreement – Factors to be considered by Court.

Arbitration and Conciliation Act, 1996 (26 of 1996), Section 45 – Convention on Recognition and Enforcement of Foreign Arbitral Award [New York Convention], Articles II(1) &(3) – ‘Legal Relationship’ – Term connotes relationship of party with person claiming through or under him – Persons, not signatory to Arbitration Agreement, would be parties claiming through or under parties signatory to Contract containing Arbitration Agreement on account of their cause of action being directly relatable to said contract.

Alternate Dispute Resolution – Arbitration – Multiple Agreements – Reference to Arbitration – Terms and conditions of Ancillary Agreement, integral part of Principal Agreement – Arbitration Clause in Principal Agreement wide enough to cover all Ancillary Agreements – Arbitration Clause in said Agreement governed by Indian Law – In such circumstances, when legal jurisdiction of US Courts not invoked by any of parties, as provided in Principal Agreement, invocation of Arbitration Clause provided in Principal Agreement would not be barred.

Alternate Dispute Resolution – Arbitration – Composite Transaction – Reference of non-signatory Company to Arbitration – When multiple Agreements are entered into between parties and all Ancillary Agreements are relatable to Principal Agreement and performance of all Agreements is intrinsically inter-linked, Arbitration Clause in Principal Agreement would bind parties of Ancillary Agreements, who were even not signatories to Principal Agreement, however, in such circumstances, conjoint reading of Agreements, intention of parties and attendant circumstances would be determining factors.

Alternate Dispute Resolution – Arbitration – Reference of non-signatory parties to Arbitration Agreement – Third parties, i.e. non-signatory parties, who claim through or are used as being directly affected through a party to Arbitration Agreement and said third parties are signatory to Subsidiary Agreement, which is totally originating from Principal Agreement containing Arbitration Clause, said third parties would be referred to Arbitration.

Alternate Dispute Resolution – Arbitration – Non-signatory to Arbitration Agreement – Theories binding said parties, discussed.

Alternate Dispute Resolution – Arbitration – Group of Companies – Non-signatory Company – Reference to Arbitration – Intention of parties - Significance of.

Alternate Dispute Resolution – Arbitration – Group of Companies – Non-signatory Company – Reference to Arbitration without prior consent – Factors to be considered by Court.

Alternate Dispute Resolution – Arbitration – Multiple Agreements – Different forums for adjudication of disputes – Real intention of parties – Reference to Arbitration – Justification of.

Alternate Dispute Resolution – Arbitration – English Law – Doctrine of Group of Companies – Agreement entered into by Company, which is one group of Companies, to bind its non-signatory Company, if mutual intention of all parties was to bind both signatory and non-signatory affiliates.

Arbitration and Conciliation Act, 1996 (26 of 1996), Sections 8 & 45 – Sukanya Holdings case, whether correctly decided – Sukanya Holdings arose under Section 8 – Chloro Controls (present case) arose under Section 45 – Sukanya Holdings related to Partnership dispute - Chloro Controls deals with Mother Agreement and Ancillary Agreements born from Mother Agreement - Ratio in Sukanya's case not applicable to chloro's case – Correctness of Sukanya Holdings need not be considered.

Arbitration and Conciliation Act, 1996 (26 of 1996), Section 11(6) – Matters determined by Court under Section 11(6) only to be disturbed by Court of competent jurisdiction and cannot be reopened by Arbitral Tribunal.

Arbitration and Conciliation Act, 1996 (26 of 1996), Section 50 – Findings of Court, whether appealable or can be re-adjudicated by Arbitral Tribunal? – When reference has been declined on account of Arbitration Agreement or Clause therein being null, void or inoperative/incapable of being performed, party aggrieved has remedy to Appeal under Section 50(1)(a) and Arbitral Tribunal would not deliver any determination on said issue.

Alternate Dispute Resolution – Arbitration – Kompetenz Kompetenz Principle – Principle requires Arbitration Tribunal to exercise jurisdiction over dispute under Arbitration Agreement – Challenge to validity or existence of Agreement would not prevent Tribunal from proceeding with hearing and ruling upon its jurisdiction – Positive effect of principle is that Arbitral Tribunal can make an award without waiting for decision of Court on issue of jurisdiction – Negative effect of principle is that jurisdiction determined by Tribunal is reviewable by Court in situation where Court is approached for enforcing or setting aside award – Thus, Courts are deprived of their jurisdiction – Arbitrators by virtue of principle determine issue of their own jurisdiction prior to any Court or Judicial Authority, thus, limiting jurisdiction of National Courts.

Doctrine of stare decisis – Observations in judgment, stared upon by Larger Bench would not constitute valid precedent by virtue of Principle of stare decisis.

Arbitration and Conciliation Act, 1996 (26 of 1996) – Part II, Chapter I to have precedence over procedure prescribed under Chapter II of Part II or over provisions contained in Part I.

Alternate Dispute Resolution – Arbitration – Essential characteristics of.

Arbitration and Conciliation Act, 1996 (26 of 1996) - Legislative intent behind.

Words and Phrases – “Connection” – Meaning and implication of.

2013 (1) CTC 743

Mohd. Mehtab Khan & Ors

Vs

Khushnuma Ibrahim & Ors

Code of Civil Procedure, 1908 (5 of 1908), Order 41 – Appeal against order refusing Interim Mandatory Injunction – Powers of Appellate Court – When relief is denied by Trial Court, Appellate Court ought not to have interfered as approach of Trial court was neither palpably incorrect or untenable – Act of Appellate Court in substituting its views by a different interpretation of facts of case, held, not proper approach for exercising jurisdiction while hearing an Appeal against a discretionary order – Order of Apex Court in *Wander Ltd. v. Antox India (P) Ltd.*, 1990 (Supp) SCC 727 relied upon.

Specific Relief Act, 1963 (47 of 1963), Section 6 – Code of Civil Procedure, 1908 (5 of 1908), Order 39, Rule 1 – Grant of Interim Mandatory Injunction – Grant of mandatory interim relief a rare power, which requires highest degree of satisfaction of Court

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## SUPREME COURT CITATIONS CRIMINAL CASES

2013 (2) CTC 232

Deoki Panjhiyara  
Vs

Shashi Bhushan Narayan Azad & Amr

Protection of Women form Domestic Violence Act, 2005 (43 of 2005), Section 2(a), 2(f) & 12 – Application for Maintenance filed by Wife – Husband resisted claim of Wife under Domestic Violence Act on ground that Wife had married him while her marriage with someone else was subsisting and in force – Husband did not get declaration that his marriage with Wife was void – In collateral proceeding for maintenance, mere production of Marriage Certificate evidencing subsisting marriage would not be sufficient to decide on martial status of parties – In absence of any valid decree of nullity of necessary declaration, Appellant-wife would be entitled to all claims and benefits under 2005 Act – Order of High Court interfering with grant of maintenance in favour of Appellant, set aside – Appeal allowed – Special Marriage Act, 1954 (43 of 1954) – Hindu Marriage Act, 1955 (25 of 1955), Section 11.

Law of Divorce – Matrimonial Law – If either spouse pleads marriage to be void for any reason, such spouse has to seek declaration before Competent Court and not seek to agitate it in collateral proceeding.

Hindu Marriage Act, 1955 (25 of 1955), Section 11 – Proof of void marriage – Allegation of Husband that marriage with Wife was null and void as Wife was previously married to another on date of marriage with Husband – Wife categorically denying to allegation made by Husband – Authenticity of Marriage Certificate produced by Husband questioned by Wife – Held, exercise of option under provision to seek declaration of nullity of marriage, not voluntary in all situations – Husband in instant case, bound to obtain declaration from competent Court to declare marriage between parties a nullity.

(2012) 10 Supreme Court Cases 433

KURIYA AND ANR

Vs

STATE OF RAJASTHAN

- A. Penal Code, 1860 - Ss. 302/34 and 364/34 – Applicability of S. 34 – Common intention to kill deceased – If established – Specific role not attributable to each accused – Large number of accused acting in concert – Effect – Principles, reiterated – Conviction of all accused with aid of S. 34, confirmed
- Dispute about agricultural land between deceased and accused persons, resulting in 15 accused persons (including appellant-accused) killing deceased, using axe, “kash” and “lath” – Evidence on record clearly established that all accused persons had come with weapons, assaulted deceased and taken him inside house of one of the accused where he was again assaulted by accused persons and after sometime, his body was dragged out by accused persons, including appellant and thrown near a hand-pump nearby – Held, this is clearly a case of common intention and object to murder – There was motive for accused persons to kill deceased, they had come out with common intention and object to assault and kill deceased, in which they succeeded – According to evidence, large number of persons (15) had attacked one person – Hence, witnesses cannot be expected to explain role in inflicting of injuries by each one of them individually and weapons used – Such conduct would be opposed to normal conduct of a human being – Fear for his own life and anxiety to normal conduct of a human being – Fear for his own life and anxiety to save victim would be so high that eyewitness(es) in such a situation cannot be expected to speak with precision with regard to injuries inflicted on body of deceased and role attributable to each of accused individually – In cases where it is not possible to

attribute a specific role to a particular accused, like present case, recourse to S.34, held, was appropriately made by prosecution – Evidence Act, 1872, Ss. 114 and 155

- B. Penal Code, 1860 – Ss. 302/34 and 364/34 – Murder trial – Proof beyond reasonable doubt – Cumulative effect of prosecution evidence – Natural witnesses – Motive established, even by testimony of defence witness – Conviction confirmed – Dispute over land – Key witnesses being young son of deceased and a passerby who was attracted to scene by screams of deceased while being assaulted by accused persons – Their evidence fully corroborated by medical evidence, inquest report, postmortem report, statement of IO and recovered items though two other eyewitnesses turning hostile
- C. Penal Code, 1860 – Ss. 302/34 and 364/34 – Murder trial – Appreciation of evidence – Medical evidence vis-à-vis ocular evidence – Conflict between regarding manner in which injuries were inflicted – Material inconsistency not made out on correct appreciation of the same – Conviction confirmed – Blunt side of sharp weapons – Injuries caused by sharp side of such weapons found on deceased – Clothes of deceased however found to be bloodstained – Held, this could be explained by fact that some blood from severe internal bleeding would have oozed out, due to severity of beating by 15 persons and dragging about of deceased while being assaulted and after he had succumbed and died.
- D. Criminal Trial – Appreciation of evidence – Credibility of witness – Generally – Witnesses of “sterling worth” – Meaning, explained – Linguistically, “sterling worth” means “thoroughly excellent” or “of great value” – This term, in context of criminal jurisprudence, held, cannot be of any rigid meaning and would mean a witness worthy of credence, one who is reliable and truthful – This has to be gathered from entire statement of witnesses and demeanour of witnesses, if any, noticed by court – Herein, statements of witnesses are reliable, trustworthy and deserve credence by court – They do not seem to be based on any falsehood – Conviction confirmed – Words and Phrases – “Sterling worth” and “witness of sterling worth” – Penal Code, 1860 – Ss. 302/34 and 364/34 – Evidence Act, 1872, S. 155
- E. Criminal Trial – Appreciation of evidence – Contradictions, inconsistencies, exaggerations or embellishments – Discrepancies or improvements in statements of witnesses – Principles reiterated – Discrepancies or improvements which do not materially affect case of prosecution and are insignificant cannot be made basis for doubting case of prosecution – Evidence Act, 1872, S.155
- F. Criminal Trial – Appreciation of evidence – Contradictions, inconsistencies, exaggerations or embellishments – Whether material and made out – Murder trial – Defence contention that PW 3 (eyewitness, son of deceased) had not mentioned presence of PW 15 (another eyewitness, passerby) at place of occurrence while, according to PW 15, he was present at site – Further, that witnesses had also stated that neck of deceased was broken, while according to PW 6 (doctor who conducted post-mortem), it was not so – That again, witnesses, including PWs 3, 7 and 15, held made definite improvements in their statements before court in comparison with their statements recorded under S. 161 CrPC by investigating officer – Therefore, defence contended that statements of witnesses were not of sterling worth and entire case of prosecution was based on suspicion – Tenability – Penal Code, 1860 – Ss. 302/34 and 364/34 – Criminal Procedure Code, 1973, S. 161
- G. Criminal Trial – Witnesses – Sole eyewitness – Testimony of – Conviction on basis of – When proper – Reiterated, there being no legal impediment court can and may act on testimony of a single eyewitness, provided he is wholly reliable and base conviction thereon – Evidence Act, 1872, S. 134
- H. Criminal Trial – Witnesses – Related witness – Testimony of – Admissibility – Reiterated, testimony of eyewitness, if found truthful, cannot be discarded merely because eyewitness was a relative of deceased
- I. Criminal Trial – Appreciation of evidence – Credibility of witness – Witness neither wholly reliable nor wholly unreliable – Corroboration of such testimony – Held, if statement of such witness is fully corroborated and supported by other ocular and documentary evidence, court may base its judgment

on statement of such witness – However, in such category of witnesses, court has to be more cautious and see if statement of witness is corroborated – Evidence Act, 1872, S.155

(2012) 10 Supreme Court Cases 451

**ALAGUPANDI ALIAS ALAGUPANDIAN  
Vs  
STATE OF TAMIL NADU**

- A. Penal Code, 1860 - Ss. 302 – Murder trial – Appreciation of evidence – Conviction confirmed – Appellant killed his stepmother by stabbing her with a knife – PW 1, brother of deceased, was staying with her – He was sleeping outside the house that night – He saw appellant running out of house with bloodstained knife – Knife and bloodstained shirt were recovered on confessional statement by appellant – Serological report clearly supported prosecution case – FIR registered on basis of statement of PW 1 within 11/2 hours – PW 1's presence was found natural and supported by PWs 11, 6, 14, and recovery of weapon of crime upon disclosure statement of accused, completed chain of events – Statement of PW 1 is fully corroborated by other witnesses, expert evidence and medical evidence – There was a clear motive as entire properties left by father of accused were being enjoyed by deceased herself – Accused had to ask for money from deceased and more often she refused to give him money, and otherwise also they had strained relations.
- B. Criminal Procedure Code, 1973 – S. 154 – FIR – Prompt FIR – Effect on credibility of FIR – Occurrence had taken place after 12 a.m./ midnight on 13.1.2002/14-2002 – FIR was registered at 10.30 hrs on 14-1-2002 on basis of statement of PW 1 – At best, there is nearly one and half hour's gap between time of occurrence and registration of FIR – If PW 1 was not present at house of his sister, who was stabbed to death by appellant at night while she was asleep inside, and PW 1 outside the house, then it could not have been possible for PW 1 to see accused running away after stabbing his sister and also he could not have met Sarpanch of village and then police officer within a short period of occurrence – PW 1 stated entire facts before PW 11, Sub-Inspector, whereupon FIR was registered – Held, there is no delay in lodging FIR, and in any event even delay of 1 or 1 1/2 hours is fully explained by conduct of PW 1
- C. Criminal Trial – Motive – Necessity of proving, if any – Establishing existence of a motive for committing a crime is not an absolute requirement of law but it is always a relevant factor, at it renders assistance to courts while analyzing prosecution evidence and determining guilt of accused
- D. Criminal Trial – Clues and Tell-Table Signs/Forensics – Bloodmarks/Trial and Bloodstains – Matching of blood group – Inference – As per serological report shirt of appellant-accused contained human blood of group A – Blood group of deceased was also A – Same blood group was also found on saree, jacet and gunny bag which were seized from place of occurrence – This is a very material and significant piece of evidence and was put to accused under S. 313 CrPC, but except vague denial accused which fully supports prosecution – Evidence Act, 1872 – S. 45 – Criminal Procedure Code, 1973, S. 313
- E. Criminal Trial – Witnesses - Child/Young witness – Reiterated, child witness can be a competent witness provided statement of such witness is reliable and truthful – While assessing evidence of a child witness court must carefully observe his/her demeanour to eliminate likelihood of tutoring – Conviction can be allowed to stand without any corroboration, but as a rule of prudence it is always desirable to seek corroboration of such evidence from other reliable evidence on record

- F. Criminal Trial – Examination – Non-examination/Failure to examine witness – PWs 7 and 8 were said to be child witnesses who had seen occurrence, being minor sons of deceased – Court put certain questions to these witnesses to form an opinion as to whether they would be able to depose – Trial court did not permit recording of statement of these witnesses being child witnesses – Legality or correctness of this direction of trial court was not questioned by either party – No arguments addressed even before Supreme Court by either party that these two child witnesses should have been examined and that it had caused any prejudice to any of the parties in present appeal – According to PW, these children had seen appellant-accused murdering their mother – Despite this statement if these witnesses have not been examined and parties have not raised any objection in that regard, no reason to record any findings on this aspect of case – Evidence Act, 1872, Ss. 136, 155 and 134
- G. Criminal Trial – Witnesses – Eyewitness – Stating exactly what he saw and no more – Effect on credibility of testimony – Interested/Related cannot be said to be an interested witness – Statement of every related witness cannot, as a matter of rule, be rejected by courts – Statement of PW 1(brother of deceased) inspires confidence and is truthful and reliable – His statement does not suffer from any material contradictions – If PW 1 intended to lie, nothing prevented him from saying that he was also an eyewitness to scene of stabbing of deceased by appellant-accused – He only stated that he had merely seen accused running out from house of deceased with a knife in his hand – Remaining facts were established by circumstantial evidence – Where a sole witness has stated exactly what he had actually seen and said statement otherwise fits into prosecution case, and is trustworthy, court normally would not be inclined to reject statement of such sole witness – Evidence Act, 1872, Ss. 6, 59, 134 and 155

(2012) 10 Supreme Court Cases 464

MUNISH MUBAR  
Vs  
STATE OF HARYANA

- A. Penal Code, 1860 - Ss. 302/34 and 404 – Murder trial – Circumstantial evidence – Murder soon after arrival at airport – Recovery of articles belonging to deceased and bloodstained clothes of deceased based on disclosure statement of appellant-accused; he also found to be present near place of occurrence at relevant time based on telephone call records; and non-explanation by appellant-accused regarding incriminating evidence against him – Conviction confirmed – Criminal Procedure Code, 1973 – Ss. 374 and 386 – Evidence Act, 1872 – Ss. 65-B, 7 and 27 – Telecommunications Laws – Mobile phone/Satellite phone/GPS devices – Data from – Forensic use.
- B. Criminal Trial – Circumstantial evidence – Failure to explain incriminating circumstances - Effect – It is obligatory on part of accused while being examined under S. 313 CrPC to furnish some explanation with respect to incriminating circumstances associated with him - Court must take note of such explanation even in a case of circumstantial evidence so to decide whether chain of circumstances is complete – It was the duty of appellant to furnish some explanation in his statement under S. 313 CrPC, as under what circumstances his car had been parked at Delhi Airport and it remained there for 3 hrs on date of occurrence during exactly the time period in which deceased was to arrive, and was then allegedly done to death by appellant
- C. Criminal Trial – Circumstantial evidence – Recovery of crime articles/incriminating articles/other articles – Non-examination of independent witnesses and reliance upon depositions of police officials in respect of recovery – Effect of – Defence did not raise this issue during cross-examination of IO as to why independent person was not made panch witness – Police witnesses were found reliable –



Contention of appellant regarding non-examination of independent person, rejected – Conviction confirmed – Evidence Act, 1872, S.27

- D. Criminal Trial – Circumstantial Evidence – Generally – Appreciation of evidence – Circumstantial evidence is a close companion of factual matrix, creating a fine network through which there can be no escape for accused – In a case of circumstantial evidence, circumstances must be fully established and all facts so established, must be consistent with hypothesis regarding guilt of accused – Circumstances of established should exclude every other possible hypothesis except one sought to be proved, as in present case
- E. Criminal Trial – Circumstantial Evidence – Motive – In a case of circumstantial evidence motive assumes great significance and importance – Absence of motive would put the court on its guard and cause it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take place of proof – However, evidence regarding existence of motive which operates in mind of an assassin is very often not within reach of others – Motive may not even be known to victim – Motive may be known to assassin and no one else may know what gave birth to such evil thought in his mind – If evidence on record suggests sufficient/necessary motive to commit a crime (as in present case), it may be conceived that accused has committed the same.

(2012) 10 Supreme Court Cases 517

MANHARIBHAI MULJIBHAI KAKADIA AND ANR  
Vs  
SHAILESHBHAI MOHANBHAI PATEL AND ORS

- A. Criminal Procedure Code, 1973 – Ss. 397, 401(2), 203, 200, 202 and 204 – Complaint case – Revision petition filed by complainant against dismissal of complaint under S. 203 – Opportunity of hearing to accused/suspect, held, is necessary
- Held, dismissal of complaint under S. 203, whether at stage of S. 200 itself or after following process contemplated under S. 202, culminates in termination of complaint proceedings - Therefore, when complainant files revision petition thereagainst before High Court or Session Judge, accused/suspect arraigned in complaint gets right of hearing before Revisional Court, as it expressly provided in S. 401(2), notwithstanding that order impugned in revision was passed without his participation
  - However, if Revisional Court remands impugned order to Magistrate for fresh consideration, accused/suspect arraigned in complaint would not be entitled to hearing before Magistrate until consideration of matter for issuance of process – Expression “prejudice”, “other person”, “in his own defence” occurring in S. 401(1) – Meaning of – Penal Code, 1860, Ss.420, 467, 468, 471 and 120-B
- B. Criminal Procedure Code, 1973 – Ss. 200 to 204 – Complaint – Summons or issuance of process – Hearing of accused/suspect – Preissuance and post-issuance stages, distinguished – Held, in proceedings under S. 202 accused/suspect is not entitled to be heard on question whether process should be issued against him or not – Up to stage of issuance of process, accused cannot claim any right of hearing
- C. Criminal procedure Code, 1973 – S. 202 – Twin objects of, restated

- D. Criminal Procedure Code, 1973 – S. 202 – Scrutiny of complaint by Magistrate under – Locus standi – Accused has no locus standi at this stage.
- E. Criminal procedure Code, 1973 – Ss. 203, 200 to 202 (Ch. XV), 204, 210, 156 and 190 – Dismissal of complaint under S. 203 – Nature of stage of – In exercise of power under S. 202, police directed to investigate allegations in complaint by Magistrate – Investigation report opining that no offence was made out – Accepting that report, complaint dismissed – In such circumstances, held, complaint was dismissed not at pre-cognizance stage but at post-cognizance but at pre-issuance of process stage – Cognizance had been taken when police was directed to investigate – Expressions “cognizance”, “takeing cognizance” – Meaning of

2013 (1) CTC 614

Vajresh Venkatray Anvekar  
Vs  
State of Karnataka

Judiciary – Crimes against Women – Sensitivity of Judges towards women’s problems – Significance of – Husband main accused in death of wife, who had committed suicide – Assaults on deceased woman resulted in loss of her eyesight – Categorical statement of Sessions Judge that one or two beating not cruelty to drive woman commit suicide - Grave insensitivity shown by Sessions Judge of serious crime committed against hapless woman – Held, judgment of Sessions Judge, perverse and portraying need for change in mindset – In age, where crimes against woman are no rise, emphasized that Judges, who are entrusted with job of doing justice, ought to be sensitized towards women’s problems.

Indian Evidence Act, 1872 (1 of 1872), Section 113-A – Indian Penal Code, 1860 (45 of 1860), Sections 306 & 498-A – Suicide by Married Woman – Abetment by Husband – Whether established? – Postmortem Report identifying that injuries were inflicted on deceased’s body prior to her death – Depositions by witnesses that deceased woman was physically and mentally harassed by Appellant/Husband – Fortnight prior to death, deceased visited Doctor for treatment of injuries, which she deposed, had been caused by Appellant – Established that deceased was assaulted in matrimonial home – In such circumstances, presumption under Section 113-A not rebutted by Appellant – Established by evidence on record that deceased was subjected to mental and physical cruelty by Appellant in their matrimonial home, which drove her to commit suicide – Appellant held, guilty of abetment of suicide.

Code of Criminal procedure, 1973 (2 of 1974), Section 154 – First Information Report – Delay in filing of – Whether Fatal? – Father, who loses daughter due to poisoning, bound to break down – Six hours delay in filing FIR would not make his case untrue – Moreover, father cannot be expected to give all minute details at time of filing of FIR – FIR not expected to be a treatise – Moreover, merely not naming husband of deceased daughter as responsible for her suicide, would not make FIR lodged after six hours suspicious.

2013 (1) CTC 714

Anju Chaudhary  
Vs  
State of U.P. & Anr

Code of Criminal Procedure, 1973 (2 of 1974), Sections 154 & 153(3) – Two FIRs, whether relating to same incident/occurrence? – Complaint filed by R2 relating to condolence meeting attended by large number of persons wherein communal speeches were delivered encouraging/provoking people to create disharmony amount communities and to commit Criminal offence – Complaint filed by R2 not relating to any event prior to said meeting – FIR filed by one ‘H’ relating to burning of shop prior to holding of meeting – Said FIR not intended to be nor in relation to a matter of investigation, or commission of offence alleged by R2 – Complaint of R2 general and relating to events that occurred subsequent to and as a result of meeting – Both FIRs relatable to different occurrences, investigation of one not dependent upon another and both neither inter-linked nor inter-dependent – Requirement of proof in both cases different and distinct – Second FIR lodged not for same occurrence and could be treated as FIR for all provisions of Code and not a form of statement under Section 162.

Criminal Jurisprudence – Principles of Natural Justice – Right of hearing before registration of FIR – Registration of cognizable offence, statutory duty of Police Officer – Right of hearing not provided under Code at time of registration of FIR, when suspect attains status of Accused or when report is filed terming suspect as Accused – Moreover, Court, in exercise of powers vested under Section 319, Cr.P.C., can summon person as Accused and at that stage too no hearing is contemplated under law – If pre-registration hearing is granted to suspect, it would frustrate purpose of fair and just investigation and pre-dominant possibility of suspect escaping process of law would arise - Liberty of individual not taken away or adversely affected by registration of FIR –

Person, after registration of FIR, has recourse to provisions of bail and anticipatory bail to protect his liberty as Code does not expressly provide for right to hearing at stage of registration of FIR – Absence of said provision demonstrates legislative intent and exclusion of hearing can be implied at stage of registration of FIR – Code of Criminal Procedure, 1973, Section 154, 156(3), 173 & 319.

Principles of Natural Justice – Rule of audi alteram partem – Exceptions – Exceptions to Rule of audi alteram partem may be provided by law or by necessary implication – Application of Rule can be excluded by exercise of legislative power, which would withstand judicial scrutiny.

Code of Criminal Procedure, 1973 (2 of 1974), Sections 154, 156 & 190 – First Information Report (FIR) – Whether there can be more than one FIR about an occurrence? – Two FIRs cannot be registered for same offence – Re-examination by Investigating agency on its own not to be permitted merely by registering another FIR with relation to same offence – Section 154 to be interpreted so in order to protect suspect and also to prevent abuse of investigating powers by Police – However, in case of separate incidents, similar/different offences or when subsequent crime is of such magnitude that it does not fall within ambit and scope of FIR registered earlier, second FIR could be recorded.

Code of Criminal Procedure, 1973 (2 of 1974), Section 154 – Two or more FIRs – Test of Sameness – Role of Courts – Courts after rationalizing facts and circumstances of case to apply ‘Test of Sameness’ to find out whether both FIRs relate to same incident/occurrence or are with regard to two or more parts of same transaction or relate completely to two distinct occurrences – Second Fir would be permissible when proved that it is a different version and relates to different incident/crime.

Code of Criminal Procedure, 1973 (2 of 1974), Section 154 – Two FIRs, whether in relation to same offence? – Whether subsequently registered FIR is about same incident/offence, a mixed question of fact and law and to be determined on merits of given case.

Code of Criminal Procedure, 1973 (2 of 1974), Section 154 – First Information Report (FIR) – Significance of - FIR, an important document which sets Criminal law in motion – Investigation in case, collection of evidence during investigation and formation of Final Report are sequence of events that occur after registration of FIR – Police Officer may receive more than one piece of information in relation to same incident involving cognizable offence – Other information/materials received by Police Officer would be statements under Section 162.

Code of Criminal Procedure, 1973 (2 of 1974), Section 154(3) – Power of Magistrate – Order of Magistrate under Section 156(3) ordering investigation or issuing warrant would not amount to taking cognizance – Section 202 would come into play when Magistrate takes cognizance and enquires into Complaint either himself or through other agency – Power and discretion of Magistrate under Section 156 (3) very limited – When Magistrate did not direct investigation in case on presumption that said case was similar to an FIR already registered and when said presumption was found to be erroneous, Order of High Court directing Magistrate to pass an order afresh under Section 156(3), not erroneous.

Criminal Jurisprudence – Several offences, whether are part of same transaction? – Test is to determine that offences are so related in cause and effect or as principal and subsidiary and in point of purpose that they result in one continuous action – Persons so involved can be accused of same or different offences ‘committed in course of same transaction’.

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## HIGH COURT CITATIONS CIVIL CASES

### 2013 (2) CTC 57

Branch Manager, Oriental Insurance Company Ltd., 555/1, GH Road, Theni  
Vs  
Mansoor Hussain and Anr

Motor Vehicles Act, 1988 (59 of 1988), Section 149 – Driver of insured vehicle having no licence at all – Liability of Insurance Company – Held, defence available under Section 149(2)(a)(ii) relating to duly licensed also includes no licence at all – When insured is guilty, victim cannot be made to suffer for negligence on party of insured in complying with Insurance Policy – Consequently, in cases of no licence, Insurance Company can be exonerated as per sub-sections (4) & (5) of Section 149, however, they can be directed to pay and recover.

Motor – Vehicles Act, 1988 ( 59 of 1988), Section 149(4) – Interpretation of – Held, Parliament in its wisdom has restricted defence of Insurance Company in cases of driving licence.

Motor Vehicles Act, 1988(59 of 1988), Section 149 – Tortious Claim – Defences available to Insurance Company – Held, Insurance Company by virtue of Section 149 becomes party in a tortuous claim – Insurance Company undertakes to indemnify insured on basis of Insurance Policy entered into by it with tortfeasor – In such circumstances, held, defences available to Insurance Company very limited.

### 2013 (2) CTC 89

P. Lakshmanan  
Vs  
Muniappan

Limitation Act, 1963 (36 of 1963), Articles 19, 21 & 62 – Registration Act, 1908 (16 of 1908), Sections 17 & 49 – Evidence Act, 1872 (1 of 1872), Sections 101, 102 & 103 – Suit for Recovery of money based on an unregistered Usufructuary Mortgage Deed dated 19.06.1998 – Suit filed on 16.6.2003 – Unregistered Usufructuary Mortgage Deed cannot be relied on to prove any right under mortgage due to its non-registration – Such document was marked only for collateral purpose of proving lending of money – Unless it is proved that a valid Mortgage Deed had been created, Plaintiff cannot contend that limitation for recovery of money is 12 years – Contention that period of limitation will start after expiry of five years found in document, rejected – Only Article 19, while prescribes period of limitation as three years from date on which loan is made, is applicable – Further Plaintiff himself has stated that within one month from date of execution of unregistered usufructuary Mortgage Deed, Defendant had trespassed into suit property – Hence, right to recover money with interest accrued on 04.07.1998 itself – Suit was not filed within three years thereafter – Loan document was executed on 19.06.1998 – If parties wanted to prescribe period of five years they would have simply stated five years' period or on or before 18.06.2003 – But a peculiar clause was incorporated under document – Though two Attestors have attested document, only one of them, being close relative of Plaintiff was examined – There are material inconsistencies regarding handing over of consideration – Place of execution also in doubt – Scribe also not examined – Contradictions cannot be brushed aside as insignificant or trivial – As per document, Defendant was required to pay interest – If possession was lost by Plaintiff within one month after execution of document and there was no interest, Plaintiff would not have waited for more than five years to file Suit – Suit notice claiming 18% interest issued – However, in Plaintiff no pre-suit interest was claimed – Transaction alleged by Plaintiff is not true – Suit is clearly barred by limitation – Findings of Lower Courts are perverse – Second Appeal allowed.

Code of Civil Procedure, 1908 (5 of 1908), Section 100 – Substantial Question of Law – Once Court admits Second Appeal, identifying and formulating Substantial Questions of Law, thereafter parties cannot raise any other Substantial Question of Law, without prior permission of Court – Leave of Court was sought to raise one more

additional Substantial Question of Law – Court, finding that such question arose in Second Appeal, framed additional Substantial Question of Law in interest of justice.

Registration Act, 1908(16 of 1908), Sections 17 & 49 – Unregistered Usufructuary Mortgage Deed – Amount sought to be secured is 1,45,000/- - Unregistered Usufructuary Mortgage Deed cannot be received as evidence for establishing any right in respect of property allegedly mortgaged or for enforcement of any right under mortgage – Document was produced only for a collateral purpose to prove loan transaction – Only in that sense said document was admitted in evidence – Reception of unregistered Usufructuary Mortgage Deed is not improper in Law.

2013 (2) CTC 152

Muthuramalingam  
Vs  
Raju and Ors

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (T.N. Act18 of 1960), Section 10 – Wilful default – Invocation thereof –Landlord retained substantial amount of more than one month advance and filed Application for eviction on ground of willful default – Landlord cannot retain more than one month advance – Landlord ought to have adjusted advance amount towards arrears of rent – It is not necessary that Tenant should approach Landlord with request to adjust arrears towards part of advance amount.

2013 (2) CTC 160

Pugazhenthii and Anr  
Vs  
Sundari Ammal and Ors

Deeds and Documents – Partition Deed – Validity of – Partition Deed executed by female heirs of joint family property – However, daughter of grandfather, who was entitled to 1/4<sup>th</sup> share in property not made party to Deed – Grandson, who was Karta of family though made a party of Deed, signatures not obtained on Deed from him on account of alleged unsoundness of mind – allegation of son being of unsound mind, not proved – Held, Karta of family kept in dark and Partition Deed executed behind his back – Partition Deed not including necessary parties, held, invalid, null and void document – All Sale Deeds entered into between parties pursuant to said Deed also void ab initio.

Hindu Succession Act, 1956 (30 of 1956), Section 6 [as amended by Amendment Act 39 of 2005] – Applicability of – Act applicable to female heir if succession had opened after coming into force of Amendment Act – In instant case, when succession in favour of Second Plaintiff had opened in 1982 on account of death of her brother, Amendment Act would not be applicable.

2013 (1) TLNJ 229 (Civil)

Subramaniya Pillai  
Vs  
Mannammal D/o.Manickam Pillai

Adverse possession –Suit for declaration and injunction – suit decreed and appeal allowed –on further appeal to High Court it was held that the possession claimed by plaintiff for any length of time with permission will not confer title unless such possession is converted into an adverse possession and proved to prolong over the period of limitation – Second Appeal dismissed.

2013 (1) TLNJ 257 (Civil)

Divisional Manager, New Inida Assurance Co Ltd, 30, Samiyannan Pillaiyar Kovil Street, Virudhunagar  
Vs  
P. Iruvalyee and Ors

Motor Vehicles Act 1998, Section 166 – Deceased travelled in Tractor which pulled the Tanker – accident – negligent driving – died – Tribunal awarded ₹ 2,00,000/- to dependants – High Court held that no evidence to show deceased travelled in mud guard of the Tractor at the time of accident and insurance was also in force – there is coverage for the deceased – appellant bound to indemnify the vehicle owner – High court held that Tribunal rightly find that Insurance Company is liable to pay the award amount – revision dismissed.

2013 (2) CTC 288

G. Lokanayaki  
Vs  
Venkatraj and Ors

Tamil Nadu Civil Courts Act, 1873 (T.N. Act 3 of 1873), Section 12 – Tamil Nadu Court Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1955), Section 37(1) – Court-fee – Partition Suit – Valuation for purpose of jurisdiction and Court-fee is share of Plaintiff and not entire value of property – Claim of ₹ 1.76 lakhs in Family property – Entire value of suit property amounting to ₹ 10.6 lakhs – Application to transfer Suit to Sub-Court rejected by District judge – Held, by virtue of Section 12 of 1873 Act, Sub-Court has jurisdiction to try Suit to value of ₹ 10,00,000/- - Reliance on valuation of entire property instead of District Judge directed to transfer Suit to Sub-Court for further proceedings.

2013 (2) CTC 291

Official Liquidator, High Court, Madras and Anr  
Vs  
R. Vijayakumar and Anr

Companies (Court) Rules, 1959, Rule 9 – Quashing of Criminal Proceedings in exercise of inherent power – Validity of – On account of fabrication of records to claim ownership over Government lands, Company Court ordered comprehensive investigation into matter by Police and CID – Order of Company Court directing Police to file charge-sheet was confirmed by Division Bench – Respondent, who was involved in Criminal case, paid partial amount due from him as full and final settlement of claims of Company – Company Court on basis of said payment made, quashed Criminal proceedings against Respondent even after completion of trial in case, in exercise of its inherent jurisdiction – Held, inherent jurisdiction of Court is to do justice and when substantive provisions are available in a particular situation, parties are bound to invoke such provisions – Respondent ought to have filed a Discharge Petition or a Revision Petition against order framing charges – Petition filed by Respondent five years after alleged discharge of Civil liability, belated – Moreover, respondent by making partial payment had only allegedly absolved himself from Civil liability, same, held, would not have any effect on offence committed by him against State – Company Court, held, cannot stifle a valid prosecution launched against accused – Order of Single Judge in exercise of its inherent power quashing Criminal proceedings, which were initiated on direction given by him and said direction being confirmed by Division Bench, held, erroneous and set aside.

Companies (Court) Rules, 1959, Rule 9 – Acceptance of part payment of dues outstanding towards Company as settlement of full liability – Validity of – Respondent a man of means, owed ₹ 47 lakhs to Company in liquidation; nonetheless, Company Court accepted ₹ 20 lakhs as full and final settlement of Respondent's liability – Held, Company Court is primarily concerned with creditors and interest of creditors was sacrificed by accepting partial amount from Respondent in discharge of his Civil liability – Order of Company Court absolving Respondent from his Civil liability by accepting partial payment, set aside.

Companies (Court Rules, 1959, Rule 9 – Order quashing Criminal proceedings – Nature of - Criminal proceedings against Respondent quashed on account of full and final payment made with regard to Civil liability of Respondent – Said order, held, would not be a compromise decree – Code of Civil Procedure, 1908, Order 23.

Jurisprudence – Exercise of Inherent Power – When warranted ?- In case there is no provision governing issue between parties, inherent power of Court can be exercised – Same, however, cannot be exercised when specific provisions redressing grievance of litigants are available – Inherent powers are self-regulated and are to be exercised in exceptional circumstances – Exercise of inherent powers must be to promote justice and not to conflict with express powers conferred by statute – Code of Civil Procedure, 1908, Section 151 – Code of Criminal Procedure, 1973, Section 482 – Companies (Court) Rules, 1959, Rule 9.

2013 (1) TLNJ 296 (Civil)

P. Sivabushanam and Ors  
Vs  
E. Sivamani and Anr

Transfer of Property Act 1882, Section 68 – Property settled by grandfather by registered deed but later was cancelled and property was sold – suit for declaration by beneficiaries under deed of settlement alleging that deed of revocation and subsequent sale deed as invalid – trial court held that revocation is valid and upheld subsequent sale deed as valid – appellate court confirmed trial court view – on further appeal the High Court considered the alleged circumstances of the execution of the settlement deed and expressed that execution to be proved by parties relying upon the document by examining at least one of the witnesses – further opined that unless validity of the settlement is established the question of revocation of settlement permissible – Second Appeal dismissed.

2013 (2) CTC 320

G. Ganesh Babu  
Vs  
A.P. Arthi

Hindu Marriage Act, 1955 (25 of 1955), Section 14 – Petition for Divorce – No Petition for Divorce to be presented within one year of marriage – Condition prescribing time limit for filing Divorce Petition is mandatory or directory – Wife filed Petition for divorce within one year of marriage without seeking leave of Court – Husband objected for maintainability of Petition – Subsequently wife filed Application seeking ex post facto leave of Court under Act – Family Court allowed Leave Application filed by wife – Revision – Held, seeking of leave of Court within one year from date of marriage to file Petition for divorce is directory and not mandatory – Law laid down in Indumanthi v. Krishnamurthy, 1999 (1) CTC 210 was followed and different view taken by Division Bench Karnataka High Court in Sharma H. Kasinath v. Shoba, AIR 2010 Kar. 168 distinguished.

Hindu Marriage Act, 1955 (25 of 1955), Section 14 – Time limit prescribed for filing Petition for Divorce within one year from date of marriage – Mandatory vis-à-vis directory – Act did not contain any provision for consequences of non-compliance of time limit prescribed under Act – Provision fixing time limit cannot be construed as mandatory and it is directory in nature.

Interpretation of Statutes – Legislative Intent – Whether particular provision of law is mandatory or directory – Test to be applied – Legislature not incorporated any provision in Act imposing consequences of non-compliance of particular mandate of Act – Mere negative language employed in statute would not qualify provision as mandatory in nature.

Practice and Procedure – Hindu Marriage Act, 1955 (25 of 1955), Section 14 – No Petition for Divorce should be entertained within one year of marriage without Application seeking leave of Court explaining exceptional hardship to parties – Direction issued to all Subordinate Courts in State for strict compliances of time limit



prescribed under section 14 of Act – Petition for Divorce filed within one year of marriage should be returned without numbering unless leave is obtained.

2013 (1) TLNJ 347 (Civil)

Saradhambal and Ors  
Vs  
Ramakrishnan and Ors

Civil Procedure Code 1908 as amended Order 20, Rule 12 – Partition Suit decreed and I execution proceedings mesne profits sought – executing court dismissed the petition as the same was not sought earlier in the suit or in the final decree proceedings – appellate court set aside the order and allowed the application – on revision the High Court following the Bench Judgment held that after passing of the final decree the relief of mesne profits can not be sought and granted – CRP (NPD allowed with observations).

2013 (1) TLNJ 360 (Civil)

Management, United Insurance Company Limited, Chennai  
Vs  
Kathaperumal and Ors

Workmen Compensation Act 1923 – Cleaner of bus while bringing the Aluminum ladder from the bus in order to attend some repairs to the bus accidentally had grazed against a live electric wire nearby and in the result, he was electrocuted and died on the spot – he was 20 years old and was survived by his mother and father – insurance company opposed the claim that the police holder is a different person and the deceased was not working under him, and insurance company can indemnify the policy holder alone – the Commissioner for Workmen Compensation awarded a sum of ₹ 1,88,824/- as compensation – High Court confirmed the view of the commissioner that travel agencies used to ply buses owned by other persons in their name and both the first and third respondents had not given any rebuttal evidence to prove that only buses owned by them were operated by them – further held that insurance company is liable – CMA dismissed.

2013 (1) TLNJ 366 (Civil)

R. Jai Ganesh  
Vs  
Mrs. C. Sathiya Bama Insane, rep by her Guardian and Father Thiru. P. Chittiraivel

Civil Procedure Code 1908 as amended, Order 32, Rule 15 – Petition filed for annulment of marriage alleging that respondent is of unsound mind-an application was also filed for appointment of a guardian for the respondent and that application was dismissed – On revision, High Court expressed that the court has to conduct enquiry before adjudging any person as unsound mind as per Order XXXII, Rule 15 of C P C – further when court comes to conclusion on the basis of the enquiry that such person by reason of mental infirmity is not capable of protecting her interest, can appoint a guardian or that person – it is not necessary that in all cases, before adjudging a person as unsound mind the person must be examined by an expert – CRP (PD) dismissed.

2013 (1) TLNJ 369 (Civil)

M. Rajarathinam  
Vs  
J. Babu Shanthy

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Sections 10(2)(ii)b, 10(3)(a)(i) and 14(1)(b) – Eviction petition on the ground of willful default, owners occupation and for demolition and reconstruction – rent controller rejected the ground of owner's occupation, but allowed R.C.O.P., on the grounds of willful default and for

demolition and reconstruction – the appeal by tenant was dismissed – on revision High Court expressed that if the tenant did not follow the procedure not entitled to plead that there was no wilful default on his part – further on the ground of demolition and reconstruction, the court opined that the landlord/landlardy need not prove his/ her financial capacity to raise new building and the landiady / landlord could produce the current approved plan for reconstruction and other requirement during execution and eviction cannot be denied on the ground – petition dismissed.

**2013 (2) CTC 369**

**Thilagarathinam Match Works and Ors**

**Vs**

**The Commissioner of Central Excise, Tirnelveli Commissionerate and Anr**

**Administrative Law Enquiry – Right to cross-examination – Annexure to Show Cause Notice issued to Petitioners containing statements recorded from certain persons and report of Energy Auditor – Held, Principle of Natural Justice that author of report and persons from whom statements were recorded to be made available for cross-examination – Held, factors of delay occasioned by Petitioners and interim reply offered by Petitioner not substantial enough to deny right of cross-objection available to Petitioners – Moreover, not necessary for Petitioners to provide any justification or reasons to cross-examine concerned persons – Fact that concerned persons had not retracted from their original statements would not have nay relevance on right of cross-examination available to Petitioners – In such circumstances, Enquiry Officer directed to make available concerned persons for cross-examination on date notified to Petitioners in advance – Petitioners, held, if do not make use of opportunity and ask for postponements, would be doing same at their own peril – Writ Petitions disposed off with directions.**

**2013 (1) CTC 395**

**Ramachandran**

**Vs**

**Baskar Sethupathi, rep. by Power of Attorney Agent, Seenuvasan**

**Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 17 & Order 2, Rules 2 & 2(3) – Suit for declaration and injunction – Application to include relief of possession – Documents produced by Defendant to prove that building was put up before filing of Suit not sufficient to prove that it was on suit property – Suit for recovery of possession would also lie against Defendant as same was not beyond limitation – Bar in Order 2, Rule 2 not absolute and party can pray for relief, which was not prayed for earlier by obtaining leave of Court by virtue of Order 2, Rule 2(3) – Application filed by Plaintiff under Order 6, Rule 17 would amount to obtaining leave of Court – Application rightly allowed by Lower Court – Civil Revision Petition dismissed.**

**2013 (1) TLNJ 469 (Civil)**

**Vasagam**

**Vs**

**Jothi and Ors**

**Civil Procedure Code 1908, as amended, Order 7, Rule 11 – Application filed for rejection of plaint on the main ground that there was no cause of action disclosed in the plaint and the Court fees paid after valuing the suit was also erroneous – application was dismissed by trial court – on revision held that serious legal issues involved in a suit could not be brought within the narrow campus of Order VII Rule 11 of the Code of Civil Procedure and the parties should go the whole hog in conducting trial and ultimately the Court has to render its decision – CRP (PD) dismissed.**

**2013 (1) TLNJ 472 (Civil)**

**M/s. Mahaveer Finance India Ltd., rep by its Director, No.151, Mount Road, Chennai 600 002.**

**Vs**

**Mr. K. Pandurangan**

**Arbitration and Conciliation Act, 1996, Section 8 – Suit for declaration declaring that the seizure of the plaintiff's vehicle defendant/revision petitioner is illegal, null and void and for mandatory injunction directing the revision petitioner to return the said vehicle in good running condition – Petition filed to refer the matter for arbitration – dismissed by trial court – on revision High Court held that when there is an arbitration clause and the dispute is covered under the arbitration clause, the civil court has no jurisdiction and the matter has to be referred to arbitration – CRP(PD) allowed.**

**2013 (1) TLNJ 476 (Civil)**

**Dr. C. Rajasekharan**

**Vs**

**V. Sridharan and Ors**

**Civil procedure Code 1908 as amended, Section 100, Order 41 Rule 31 and Section 106 of Transfer of Property Act – Suit Filed for eviction after issuing a fresh notice as required by Section 106 of transfer of Property Act – The earlier notice having been found to be not proper in a previous suit – The Courts below decreed the suit without formulating an issue or points for determination regarding resjudicata – In second appeal the defendants contention that the ingredients required for a judgment under Order 41, Rule 31 of CPC was not satisfied judgment erroneous – held that failure to formulate an issue or points for determination perse will not be fatal to the decision of the court if the parties knew that their respective stands were and led evidence on the disputed question – The irregularity in not framing the particular issue, points for determination will only be a formal defect and will not affect the decision of the court which is otherwise sustainable – Earlier suit was dismissed for want of proper notice of eviction under Section 106 of Transfer of Property Act and suit filed after issuing fresh notice is a suit on fresh cause of action – appeal dismissed.**

**2013 (1) TLNJ 551 (Civil)**

**M/s. FLSmidth pvt. Ltd., having its office at FL Smidth House, 34, Egatoor, Kelambakkam, Rajiv Gandhi Salai, Chennai – 603103, represented by its Power of Attorney Holder, Mr. V. Rajagopalan**

**Vs**

**M/s. Secan Invescast (India) pvt. Ltd., having its address at S.F.No.504/2C, L&T By Pass Road, Near ARC Parcel Service, Eachanari P.O., Coimbatore – 641 021.**

**Specific Relief Act, 1963, Section 41(e) – The principal company entered into an agreement with the agency vendor concern restraining its trade or business with the customer concerns of the principal company for certain prescribed period – It was alleged that agency company after ceasing relationship with principal company started dealings with the customers of principal company – therefore suit filed in High Court in invoking its original jurisdiction (civil) and obtained interim injunction – agency company entered appearance and contested the interim order – covenants could be enforced only during pendency of contract – on appeal to the intra court bench it was held that after expiry of agreement by efflux time, prima facie case cannot be said to be in favour of plaintiff principal company – further under section 41(3) of Specific Relief Act, no injunction can be granted to prevent breach of contract, a performance of which can be enforced through court of law – single judge's view confirmed and appeal dismissed.**

2013 (1) CTC 545

Sundar  
Vs  
Ramdass and Ors

Transfer of Property Act, 1882 (4 of 1882), Sections 3, 6, & 130 – “Actionable Claim” – Meaning – Transfer of actionable claim – Person claiming right to sue for defamation assigned his rights to Plaintiff – Plaintiff filed Pauper Petition to exempt him from payment of Court-fee – Mere right to sue for damages concerning defamation cannot be transferred by one person in favour of another – Right to sue for defamation is personal in nature – Act prohibits transfer of mere right to sue.

Jurisprudence – Legal Right – Personal Right – Right to sue for defamation and claiming damages – Right to sue is personal to party aggrieved.

2013 (1) TLNJ 610 (Civil)

Kotteswari and Ors  
Vs  
Murugesan Chettiar and Anr

Civil Procedure Code, 1908 as amended, Order II Rule 2 C.P.C. – Limitation Act, Section 3.

Limitation Act, 1963, Section 3 – Suit to declare sale deed executed by father of appellant in favour of second respondent as null and void and for to order permanent injunction form interfering peaceful possession – Dismissed by trial Court and confirmed by Session Court on appeal – Second appeal – plaintiffs not chosen to file any suit to cancel the sale deed with in three years even though he know the same was executed on 23.04.1984 – There is no proof that the executor when he was alive filed a suit in the year 1992 – If such suit filed then the subsequent suit filed by appellants would attract bar under Order II Rule 2 C.P.C – present suit filed in the form of a pauper O.P in the year 1997 even though the cause of action was said to have arisen between the year 1984 and 1989 – Hence suit had been filed long after the expiry of the period of limitation – Contend that such an issue was not raised by the respondents in their written statement and no issue was framed not acceptable since there is a clear plea that the suit was barred by limitation by the respondents – When it is abundantly clear from the pleading of the plaint itself that the suit had not been filed within the period of limitation, from the date of arisal of cause of action as per the plaint averments, it needs no further evidence to decide the question of limitation – second appeal dismissed.

2013 (1) CTC 791

A. Sivaprakash  
Vs  
Ammasaiathal @ Chinnammal (deceased) and Ors

Code of Civil Procedure, 1908 (5 of 1908), Order 22, Rule 9 & Order 21 Rules 97, 99 & 101 – Rule of Sufficient Representation – Suit for Specific Performance of Agreement of Sale – First Defendant died – Son of First Defendant, D2 & D3 already on record – Application of Plaintiff to permit D2 & D3 to represent estate of deceased Defendant allowed without objection – Ex parte decree passed in Suit – At stage of Execution proceedings, objection filed by wife of deceased against delivery of property as she had 1/3<sup>rd</sup> interest in same – Held, no objection made by D2 & D3 that their mother was not arrayed as LR in Suit – Existence of mother of Defendants not brought to notice of Court or to that of Plaintiff – In absence of any fraud or collusion on part of Plaintiff to implead one or more of several Legal Representatives, decree would not be invalidated – Held, as estate of deceased was sufficiently represented in Suit, order of lower Court excluding undivided share of mother from execution of decree unsustainable and set aside.

Code of Civil Procedure, 1908 (5 of 1908), Order 22, Rule 10-A – Purpose of provision, discussed.

2013- 1-L.W. 920

A.K. Sigabathullah

Vs

Minor Marica Durai Alias Syed Kuthubudeen, Rep. By his mother and next friend, Hameed Aysha Nachiar, W/o.  
Sathuillah Alias Haji Vappa

Gift / Oral, Revocation, after delivery of possession, when can be done,

C.P.C., Section 11/Res Judicata, Pleading, issues of earlier case, whether relevant.

Suit for declaration of title and Recovery of Possession – Pleadings and the issues to be considered when the issue of resjudicata is raised.

Findings in the earlier cases regarding the validity of Ex.A-2 would not amount to resjudicata, as the pleadings and issues in the previous case are not filed.

A gift may be revoked by the donor at any time before delivery of possession – A gift may be revoked even after delivery of possession in some cases.

Conditions regarding revocation of gift deed is not available in this case – There is no proof at all to show that there is valid cancellation of settlement deed.

2013- 1-L.W. 938

T. Balasubramanian

Vs

M. Kanthasamy

Promissory Note / Suit on, promissory note and hand loan, execution, denied, marking of signature, by hiding rest of document, Practice deprecated,

C.P.C., Order 8, Rule 1-A(3), any document, filing of, Scope,

Practice/ Marking of signature, by hiding other portions of document, deprecated.

Held: No reply to the pre-suit notice – Defendant denied execution of Ex.A1 pro-note – Signature was admitted.

Practice of getting only the signature portion marked in a document hiding the rest of the portion of the document is deprecated – If at all any signature has to be got marked, then the entire document should be shown to the witness concerned.

Order 8 Rule 1-A (3) would contemplate that any document, if the defendant is to file, it should be filed along with the written statement as otherwise only with the permission of the court, such document could be filed

No steps taken to get marked discharge receipt as per law – But got marked only the signature Ex.B1 in that alleged receipt - It would not amount to marking the receipt.

**2013- 1-L.W. 946**

**M. Murugesan  
Vs  
R. Rameswari and Ors**

**Civil Rules of Practice, Rule 74 / Production of records from Court, Certified Copies, Scope, Suit for declaration, Partition,**

**Evidence Act, Section 63/Secondary Evidence, Certified copies, production of,**

**Practice/Marking of documents, Original, with Court, Certified copies issued by Court, Production of.**

**Application was filed by the first respondent/plaintiff for reopening the evidence on his side and to sent for the documents from the Court of Judicial Magistrate No.I, Tuticorin.**

**Opinion of expert and original documents concerned are in Criminal Court.**

**Law envisages that a certified copy could be marked – Civil Court cannot doubt the certified copy issued by a Criminal Court.**

**Order of the lower Court in sending for the original documents from the criminal Court set aside.**

**2013- 1-L.W. 965**

**Jacob Nixon S/o.J.Victor  
Vs  
Nirmala W/o.Kannan and Ors**

**C.P.C., Order 21, Rules 102, 106/Right of judgment debtors to challenge execution, after sale, Setting aside ex parte order, Scope of,**

**Specific Performance/Agreement of sale, Subsisting interest of judgment debtors, after ale, Scope of.**

**Even after the sale of the property, judgment debtors, are in law bound to give clear title to the purchasers under Order 21 Rule 102 transferee pendent lite alone are prohibited from challenging the execution proceedings initiated by the Decree holder – Respondents-judgment debtors are not prohibited – Scope of Order 21 Rule 106 is to set aside the exparte decree on showing sufficient cause – Court need not go into the rights of the judgment debtors.**

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## HIGH COURT CITATIONS CRIMINAL CASES

2013 (2) CTC 1

Donatus Tony Ikwanusu

Vs

The Investigating Officer, NCB, South Zonal Unit, Chennai - 90

Code of Criminal Procedure, 1973 (2 of 1974), Sections 30, 31, 427 & 428 – Indian Penal Code, 1860 (45 of 1860), Section 64 – Default Sentence for non-payment of Fine – Whether can run concurrently? – Court empowered to order substantive sentences of imprisonment imposed on a person to run concurrently – Court empowered to impose default sentence for non-payment of fine – Imposition of default sentence for non-payment of fine, held, not a sentence but a penalty – No power vested on Court by virtue of Code to order default sentence of imprisonment for non-payment of fine to run concurrently – Power of Court to order concurrent running of sentences, specifically excluded in respect of default sentences – Default sentence, held, cannot be ordered to run concurrently.

Code of Criminal Procedure, 1973 (2 of 1974), Sections 30, 31, 427 & 428 – Power of Court to set off period of detention vis-à-vis default sentence for non-payment of fine – Power of Court under Section 428 to set off period of detention undergone by accused against sentence of imprisonment, held, not to be equated with ordering of default sentences to run concurrently.

Code of Criminal Procedure, 1973 (2 of 1974), Section 30 – Default Sentence – Nature of – Held, term of imprisonment in default of payment of fine, not a sentence but a penalty incurred on account of non-payment of fine.

Interpretation of Statutes – Code of Criminal procedure, 1973 (2 of 1974), Sections 30, 31, 427 & 428 – Intention of Legislature vis-à-vis Power of Court – Power of Court to order concurrent running of sentences, specifically excluded by Legislature in respect of default sentences – Held, Court cannot legislate and add or substitute words to any provision of Code – Court to only apply provisions of Code literally.

Tamil Nadu Prison Manual, Rule 242 – Code of Criminal Procedure, 1973 (2 of 1974), Sections 30 & 31 – Rule 242 expressly providing that sentence of imprisonment to be calculated independent of sentence imposed in default of non-payment of fine – No provision in Code empowering Court to order default sentence to run concurrently – In such circumstances, issue of Code prevailing over Rules, held, would not arise – Decision of Division Bench in *M. Balasubramaniam v. State* not concurred to

2013 (2) CTC 72

Katturaja and Anr

Vs

State, represented by the Deputy Superintendent of Police, Valliyoor Sub-Division, Nanguneri Sub-Division (i/c),  
Kalakkadu Police Station, Tirunelveli District.

Indian Penal Code, 1860 (45 of 1860), Section 302 – Code of Criminal Procedure, 1973 (2 of 1974), Sections 366, 173(8) & 367 – Murder – Sessions Court convicted accused persons and imposed death penalty for their gruesome act of murders – Sessions Court, after imposition of death penalty, referred for confirmation of sentence by High Court under Section 366 of Cr.P.C. – High Court is of view that material evidence available on record is not sufficient to convict accused persons and found various flaws in investigation – Whether it is permissible for evidence to elicit truth – Referred Trial is continuation of trial – Power to order further investigation can be invoked at any stage of case – Code empowered High Court to receive any additional evidence and to call any witness to

arrive at right conclusion – High Court has jurisdiction to order further investigation in Referred Trial case to do complete justice.

Code of Criminal Procedure, 1973(2 of 1974), Section 366 – Referred Trial – Offence of Murder – Confirmation of death sentence by High Court – Jurisdiction of High Court to order further investigation in Referred Trial case – Whether after filing of final report and completion of recording of evidence at Trial Court could order for further investigation where Court is satisfied that investigation flawed - Death sentence imposed by Trial Court is not executable unless it is confirmed by High Court – Referred Trial is nothing but continuation of trial and it cannot be construed as independent proceedings.

Code of Criminal Procedure, 1973(2 of 1974), Section 366 – Referred Trial – Murder – Confirmation of death sentence by High Court – High Court ordered further investigation due to flaw committed by Investigation Agency – Whether High Court can order further investigation without setting aside conviction imposed by Sessions Court Trial Court – Held, Referred Trial is continuation of trial, therefore, further investigation can be ordered without setting aside Trial Court Judgment imposing conviction and sentence.

Code of Criminal Procedure, 1973(2 of 1974), Section 366 – Referred Trial – Murder – Confirmation of death sentence by High Court – High Court ordered further investigation while considering Referred Trial case – Procedure to be followed after ordering further investigation – (a) After completion of further investigation if any fresh evidence is collected, High Court can receive same under Section 367 of Code to do justice (b) if it is found that there are other person, who are real assailants, in such circumstances High Court will have to set aside judgment of Trial Court and remand case to Trial Court to proceed with further Trial (c) if no evidence is collected on further investigation, High Court will have to answer the Referred Trial with available evidence on record.

2013 (1) CTC 372

Ganesan S/o Subramanian, Refugee's camp, Kammayapuram, Sivakasi Taluk, Virudhunagar District  
Vs  
State, rep by Inspector of Police, Alangulam Police Station, Virudhunagar District

Criminal Jurisprudence – Indian Penal Code, 1860 (45 of 1860), Section 299 & 300 – Culpable Homicide vis-à-vis Murder – Meaning – Nature and Scope – Distinction – Features – When Culpable Homicides are not amounting to Murder – Culpable homicide is genus and murder is species – Death of human being is caused by “act” falling within ambit of any one of three limbs of Section 299 of IPC, is culpable homicide – Some culpable homicides are “murders” in terms of Section 300 of I.P.C. and others are “culpable homicides not amounting to murder”.

Indian Penal Code, 1860 (45 of 1860), Section 299 & 300 – First Limb – Culpable Homicide – Murder – First Limb postulates “Intention to cause death” – Relative scope – Accused caused one injury on hand of deceased in which forearm severed and second injury, force used and weapon used, etc. – Accused has not intended to cause injuries on vital parts of deceased such as head, chest, abdomen with an intention to cause death - Act of Accused does not fall within First Limb of Sections 299 & 300 of IPC.

Indian Penal Code, 1860 (45 of 1860), Section 299 – Second Limb – Culpable Homicide vis-à-vis Murder – Relative Scope – “Intention of Accused to cause bodily injury as is likely to cause death” – Proof of – Significance of “Nature of intended injury” – To invoke Second Limb it is necessary to prove that intended injury is likely to cause death.

2013 (1) CTC 661

Alli Rani Joseph Mathew Ors  
Vs  
P. Arun Kumar



Code of Criminal Procedure ,1973 (2 of 1973),section 482 – Indian Penal Code, 1860 (45 of 1860), Sections 499 & 500 – Statements made in Civil Suits, whether defamatory? – Necessary for parties in Civil suits to make averments relevant to issues – Court would not permit evidence in absence of relevant pleading – Suit for Partition – Will executed by mother relied upon by Respondent to claim share in property - Averments made in Plaint touching upon character of Respondent and his relationship with mother – Said averments, held, relevant for Civil Court to decide issue whether will was executed in favour of Respondent – In absence of said averments, disproving of Will not possible – Said averments not defamatory per se – Prosecution under Section 500 of IPC against Petitioners, being highly premature and amounting to abuse of process of Court, quashed – Respondent at liberty to either approach Civil Court under Order 6, rule 16 or to wait for final outcome of Suit and thereafter to work out his remedies as per Law.

Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 16 – Indian Penal Code,1860 (45 of 1860), Sections 499 & 500 - Averments in Civil Suit – Private Complaint under Code – Whether justified? – Person aggrieved with averments in Civil Suit ought to file Application under Order 6, Rule 16, for striking out said averments – Only after Application is allowed by Civil Court, person would be entitled to approach Criminal Court that said averments were defamatory – Party precluded from filing Private Complaint, when averments are relevant to issue involved in Suit.

Indian Penal Code, 1860 (45 of 1860), Section 52 – Good Faith – Statements made in Suit for Partition, which were relevant to issue involved – Said statements cannot be said to be made without due care and attention.

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