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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

(2013) 2 MLJ 291 (SC)

Gian Chand & Brothers and Anr
Vs
Rattan Lal @ Rattan Singh

Civil Procedure – Code of Civil Procedure (5 of 1908), Order 8 Rules 3, 4 and 5 – Burden of proof – Suit for recovery of money filed by Plaintiff firm against defendant – In transactions between parties, defendant acknowledged outstanding balance with his signature in account books of plaintiff – Defendant failed to return money and pleaded that his signatures were fraudulently obtained – Whether placing onus on defendant to disprove signatures was incorrect – Whether variance in pleadings and evidence regarding amounts were not appositely taken note of – Held, defendants cannot be permitted to lead evidence when nothing was stated in pleadings, except a bald denial of averments – Burden of proof correctly rests on defendant not on plaintiff – Variance does not remotely prejudice defendant – Evidence is in line with pleading and not in total variance with it, no contradiction – Books of accounts maintained by plaintiff firm in regular course of business should not have been rejected without rebuttal or discarded without reason – Appeal allowed.

(2013) 4 Supreme Court Cases 333

ASPI JAL AND ANR
Vs
KHUSHROO RUSTOM DADYBURJOR

- A. Civil Procedure Code, 1908 – Ss. 10 and 11 – Stay of subsequent suit(s) under S.10 – Applicability of – Object and conditions therefor – Held, for S. 10 to be attracted it is essential that entire subject-matter in controversy must be the same between previous suit and subsequent suit – Mere common grounds in previous suit and subsequent suit would not attract S. 10 – Words and Phrases – “Matter in issue” – Meaning of
- B. Civil Procedure Code, 1908 – S. 10 – Stay of subsequent suits, if warranted – Three suits for eviction filed on different causes of action – Trial of third suit stayed by courts below – Held, though the ground for eviction in all three suits was the same, but the suits were based on different causes of action – Hence, stay granted of third suit not proper – Stay vacated
- C. Rent Control and Eviction – Non-user/Misuser/Non-occupation of premises – Cause of action for eviction based on non-user of premises – When arises – Different periods of non-user, held, give rise to independent cause of action based on which independent suits may be filed – Grounds(s) of eviction may be the same, but causes of action would be distinct in each case

(2013) 4 Supreme Court Cases 396

SHANTILAL GULABCHAND MUTHA
Vs
TATA ENGINEERING AND LOCOMOTIVE COMPANY LTD AND ANR

- A. Civil Procedure Code, 1908 – Or. 8 R. 10 Or. 9 R. 13 Or. 20 Rr. 4 & 5 and Or. 14 R. 1 and S. 2(9) – Omission to file written statement – Power of court under Or. 8 R. 10 to pass judgment against

defendant in case of - Nature of power and duty of court, and relevant considerations, in exercise of such power – Obligation on part of plaintiff to prove facts mentioned in plaint even in such a case

- Reiterated, power to proceed to pass judgment under Or. 8 R. 10 is discretionary and must be exercised cautiously – Before exercising said power, court must be satisfied that there is no fact which needs to be proved in spite of deemed admission by defendant – Even issue of limitation, if involved, must also be decided – Facts and circumstances on basis of which court proceeded against defendant, and under what reasoning the suit has been decreed, must be stated clearly in judgment
- In present case, before passing judgment under Or. 8 R. 10, trial court did not examine as to whether suit was filed within limitation and whether on basis of pleadings, relief given could have been granted – It did not even examine the case prima facie – Hence, judgment of trial court set aside – Case remanded to trial court for decision afresh – Defendant given liberty to file written statement within the period specified herein, whereafter trial court to proceed in accordance with law – Limitation Act, 1963, S. 3

(2013) 4 Supreme Court Cases 546

GAREE MALLIKHARJUNA RAO (DEAD) BY LRS.
Vs
NALABOTHU PUNNIAH

Contract and Specific Relief – Specific Relief Act, 1963 – S. 20 – Discretionary jurisdiction of court to grant specific performance – Exercise of, held, not justified when facts pleaded and proved by plaintiff rested on untrustworthy and vague evidence

– Suit for specific performance of agreement of sale of immovable property – Agreement alleged by proposed vendor to be a fabricated document – Plaintiff raised mutually inconsistent pleas – While in pleadings plaintiff stated that agreement stipulated 4 months’ time for execution only after expiry of term of lease – Agreement deed transcribed on non-judicial stamp paper, not registered – Stamp paper purchased from a different place, 11 months prior to date mentioned in agreement and records not showing in whose name and who purchased the same – Scribe of agreement, an unlicensed deed writer, stated that neither vendor nor attesting witness known to him – Attesting witness deposed that he put his signatures on agreement under compulsion without knowing contents thereof – Handwriting expert, on basis of photocopies of admitted documents, opined that signatures on agreement did not tally with specimen signatures – Trial court, on proper appreciation of evidence, dismissed suit – Held, High Court, in appeal, erred in relying upon untrustworthy, shaky and vague evidence to grant discretionary relief of specific performance in contravention of mandate of S. 20 – Civil Procedure Code, 1908 – Ss. 96 and 100 – Evidence Act, 1872 – Ss. 45 and 73 – Handwriting expert’s opinion – Court should be slow to base its findings solely on such opinion, but should apply its own mind and take a decision.

(2013) 4 Supreme Court Cases 636

SHIVDEV KAUR (DEAD) BY LRS. AND Ors
Vs
R.S. GREWAL

- A. Family and Personal Laws – Hindu Law – Hindu Succession Act, 1956 – Ss. 14(2) and (1) – Applicability of S. 14(1) – Reiterated, S. 14(2) is an exception to S. 14(1) - Will creating only life interest in property in favour of appellant widowed daughter of testator – Held, S. 14(2) would apply excluding operation of S. 14(1) – Accordingly widow would get only limited interest i.e. life interest given by will and same would not get enlarged into absolute right to the property – Contention that as limited right was acquired by a destitute widow, same would get crystallized into absolute right, need not be considered in absence of any factual material showing widow was destitute – Whether a person is a destitute is a question of fact – Meaning of “destitute” stated – Words and Phrases - “Destitute”
- B. Family and Personal Laws – Hindu Law – Hindu Succession Act, 1956 – S. 14(2) – Limited right acquired under will allegedly in lieu of pre-existing right (of maintenance of destitute widow) – Need to raise pleadings in courts below and establish the same on facts

SUPREME COURT CITATIONS CRIMINAL CASES

2013–1- L.W. (Crl.) 175

Central Bureau of Investigation, Hyderabad

Vs

K. Narayana Rao

Criminal P.C. Section 209/Power of Judicial Magistrate, Committal Proceeding, Section 227/Roving enquiry, whether permissible,

Advocate/Bank panel, lawyer, responsibility of, in a criminal case against Bank officials, Professional Misconduct, what is,

Banking Sector, Legal opinion for granting of loans, Standard of professional skill,

Practice/Advocate, legal opinion, rendering of, Negligence, Professional Misconduct, what is.

Appeal to Supreme Court was filed by the CBI against order of A.P. High Court quashing charge against respondent (A-6) a Legal Practitioner/Panel advocate of the Vijaya Bank, who was arrayed as accused along with Bank Officials – For having conspired with private individuals, for defrauding the bank by sanctioning and disbursement of Housing loans to 22 borrowers – In violation of the Bank's rules and guidelines, and having thereby caused wrongful loss of ₹ 1.27 crores to the Bank and corresponding gain for themselves in furtherance of the said conspiracy.

Held: There is no material to show that the respondent herein joined hands with A-1 to A-3 for giving false opinion – He cannot be implicated as one of the conspirators of the offence punishable under Section 420 read with Section 109 of IPC.

Though a roving enquiry is not needed, however, it is the duty of the Court to find out whether there is any prima facie material available against the person who was charged with an offence under Section 420 read with Section 109 of IPC.

In the Banking Sector in particular, rendering of Legal Opinion for granting of loans has become an important component of an advocate's work.

A lawyer does not tell his client that he shall win the case in all circumstances – A Professional may be held liable.

Mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct.

A Judicial Magistrate enquiring into a case under section 209 of the Code is not to act as a mere post office and has to arrive at a conclusion whether the case before him is fit for commitment of the accused to the Court of Session.

There is no prima facie case for proceeding in respect of the charges alleged in so far as respondent herein is concerned – Appeal dismissed.

Ashwani Kumar Saxena
Vs
State of M.P.

Juvenile Justice (Care and Protection of Children Act (2000), Sections 6, 7, 7-A, Juvenile Justice (Care and Protection of Children) Rules (2007), Rule 12”Parens patriae”, Role Court,

Criminal Procedure Code, Section 2(g)”Inquiry”, Section 2h”Investigation”, Scope of the expression, Distinction, “Parens patriae”, Role of Court,

Application filed before Chief Judicial Magistrate (CJM) under Sections 6 and 7 of the J.J. Act claiming that the accused was juvenile on the date of the incident (on 19.10.2008), he was aged only 17 years, 11 months and 25 days, and criminal court had no jurisdiction – That case be referred to Juvenile Justice Board and he be granted bail.

Ossification test for determination of the age of the appellant directed to be conducted by the CJM for age identification of the body of the appellant by X ray and opinion of doctor (PW2) was that epiphysis of wrist, elbow, knee and iliac crest was fused, and he was of the opinion that the appellant was more than 20 years of age

CJM took the view that the appellant was more than 18 years of age on the date of the incident and dismissed the application – It was affirmed by Sessions Judge and the High Court – Appeal before Supreme Court arose from the said orders.

Held: Court is unhappy in the manner in which the C.J.M. Court, First Additional Sessions Judge’s Court and the High Court have dealt with the claim of juvenility Courts below have not understood content of Sec.7A of the J.J. Act read with Rule 12.

Section 7A obliges the court only to make an inquiry, not an investigation or a trial – An inquiry not under the Criminal P.C., but under the J.J. Act.

Procedure under the J.J. Act in conducting an inquiry is the procedure laid down in the statute itself i.e. Rule 12 of the 2007 Rules – We cannot import other procedures laid down in the Criminal P.C. or any other enactment while making an inquiry with regard to the juvenility of a person.

Duty is cast on Courts to seek evidence by obtaining the certificate etc. mentioned in Rule 12(3) (a) (i) to (iii). The courts in such situations act as a “parens patriae” because they have a kind of guardianship over minors.

Age determination inquiry contemplated under the JJ Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. – Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business – Only in case where those documents or certificates are found to be fabricated or manipulated, the Court, the J.J. Board or the Committee need to go for medical report for age determination.

Appellant was a juvenile on the date of the incident – Sentence awarded in sessions case by Sessions Court set aside – High Court directed to place the records before J.J. Board for awarding appropriate sentence in accordance with the provisions of Act, 2000 – Appeal allowed.

2013-1- L.W. (Crl.) 241

**National Bank of Oman
Vs
Barakara Abdul Aziz and Anr**

I.P.C., Sections 418, 420/Issuance of Process by Magistrate challenged – See Criminal P.C., Section 202.

Duty of a Magistrate receiving a complaint is set out in Section 202 of the Cr.P.C. – There is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court – Investigation under section 202 of the Cr.P.C. is different from the investigation contemplated in Section 156 – It is only for holding the Magistrate to decide whether or not there is sufficient grounds for him to proceed further – Enquiry under Section 202 is limited to the ascertainment of truth or falsehood of the allegations made in the complaint (i) on the materials placed by the complainant before the Court (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out.

High Court instead of quashing the complaint, should have directed the Magistrate to pass fresh orders following the provisions of Section 202 of the Cr.P.C. – Matter remitted to the Magistrate for passing fresh orders.

2013-1- L.W. (Crl.) 337

**Suresh & Ors
Vs
State of Madhya Pradesh**

Narcotic Drugs & Psychotropic Substances Act (1985), Section 8 r/w 18, Section 50/Concept of substantial compliance, not acceptable.

It is imperative for the empowered officer to inform the person concerned about the existence of his right that if he so requires, he shall be searched before a gazette officer or a Magistrate – Failure to do so will vitiate the conviction and sentence of an accused where the conviction has been recorded only on the basis of possession of the contraband - It is reiterated that the said provision is mandatory and requires strict compliance.

2013-1- L.W. (Crl.) 353

**Radhakrishna Nagesh
Vs
State of Andhra Pradesh**

I.P.C., Section 376(2)(f)/Rape, Evidence, Medical – Trial Court acquittal reversed by High Court on appeal by State,

Criminal Trial/Rape, Evidence, ocular and Medical Contradiction, to be specific, Absence of injuries, Adverse inference, Penetration, Hymen, Rupture, Effect of,

Plea of conflict between the ocular evidence and the medical evidence, has to be specific – Merely because, some fact was not recorded or stated by the doctor at a given point of time and was established by the expert report, the FSL Report, would not by itself substantiate the plea of contradiction or variation.

Absence of injuries on the body of the prosecutrix would not be of any advantage to the accused.

Fact that the hymen was intact and there was no actual wound on her private parts is not conclusive of the fact that the prosecutrix was not subjected to rape.

Penetration itself proves the offence of rape, but the contrary is not true i.e. even if there is no penetration, it does not necessarily mean that there is no rape – Explanation to Section 375 IPC has been worded by the legislature so as to presume that if there was penetration, it would be sufficient to constitute sexual intercourse necessary for the offence of rape.

There was limited penetration due to which probably the hymen of the victim girl was not ruptured.

Appellate Court has to be more cautious while dealing with the judgment of acquittal.

It does not mean that the appellate Court cannot disturb the finding of acquittal – There should be a compelling rationale and also clear and cogent evidence, which has been ignored by the Trial Court to upset the finding of acquittal.

HIGH COURT CITATIONS CIVIL CASES

(2013) 2 MLJ 86

Dr. A. Ahmed Ali
Vs
A. Venkatesh
And
A. Venkatesh
Vs
Dr. A. Ahmed Ali

Property Law – Suit for specific performance – Defendant offered to sell property to plaintiff, sale agreement entered into and plaintiff paid advance – Defendant demanded further sum towards balance sale consideration and when plaintiff refused, filed suit for eviction of plaintiff – Question as to whether plaintiff is entitled to relief of specific performance of contract – Held, no decree for specific performance could be comprehended on strength of Xerox copy of sale agreement, absence of persuading reasons for non-production of originals – Sale agreement not true, valid and is unenforceable – Plaintiff not ready and willing to perform his part of contract – Suit barred by limitation since plaintiff not initiated steps to get sale deed executed within 3 years from date of expiry of time limit agreed by parties for execution of sale deed - Plaintiff not entitled for relief of specific performance of contract – Appeal by defendant allowed, appeal by plaintiff dismissed.

(2013) 2 MLJ 102

P. Sivabushanam and Anr
Vs
E. Sivamani and Anr

Property Law – Suit for declaration – Settlement Deed executed was revoked – Sale Deed was registered for same property – Validity of – Second appeal – Held, not proof to show that settler understood contents of settlement deed and then signed it – Document not executed by Settlor after knowing contents of document – No valid execution of document In eye of law – Hence settlement deed is void – When settlement deed is invalid, settler has right to execute sale deed – Second appeal dismissed.

(2013) 2 MLJ 108

Ms. Sulochana
Vs
R. Pangajam and Ors

Tenancy Laws – Eviction – Wilful default in payment of rent – Rent Control Appellate Authority confirmed order of eviction – Civil Revision – Held, deposit of arrears of rent pursuant to order passed by Rent Controller will not erase wilful default committed by tenant – Tenant did not attempt to pay rent to respondents even after receipt of notice and was not regular in depositing rent – Wilful default proved – Eviction order confirmed – Revision dismissed.

(2013) 2 MLJ 113

Chinnaraju and Ors
Vs
S. Bhaskaran and Ors

- (A) Property Law – Suit for permanent injunction – Later, amended prayer for relief of specific performance – Trial Court decreed – First Appellate Court confirmed – Second Appeal – Sixth defendant challenged that Power of Attorney (POA) executed by First defendant is not binding on other defendants – Held, First defendant executed POA in the capacity of Kartha – Sixth defendant was minor at the time of execution of POA – First defendant executed POA on behalf of other defendants – First defendant not examined before Trial Court – Presumed that POA was executed for welfare of family – No document to show that suit property was earmarked to sixth defendant – Sixth defendant cannot make a claim over suit property.
- (B) Property law – Limitation Act (36 of 1963), Section 54 – Suit for permanent injunction – Later, amended prayer for relief of specific performance – Trial Court decreed – First Appellate Court confirmed – Second Appeal – Challenged on ground that suit is barred by limitation – Question as to whether amendment order would relate back to date of suit or whether it would be applicable only from date of application/order – Held, date on which the suit is filed is the starting point of limitation – Even if amendment relates back to date of filing of suit or date of application for amendment, in either case, suit is not barred by limitation – Time is not the essence of contract – Suit is not barred by limitation on date of application for amendment – Amendment Petition for relief of specific performance is within time – Suit not barred by limitation – Second appeal dismissed.

(2013) 2 MLJ 259

R. Chandrakesan
Vs

Church of South India Trust Association rep. by its Power of Attorney Agent, Rt. Rev. William Moses Bishop of
Coimbatore Diocese, Coimbatore

- (A) Property Law – Adverse possession – Plaintiff filed suit for recovery of possession, mes ne profits against defendant, alleged trespasser – Second appeal by defendant, complaining of acquiescence by plaintiff and claiming adverse possession – Whether defendant has prescribed title by adverse possession and hence recovery of possession cannot be ordered – Held, pleadings and proof are necessary to substantiate claim for adverse possession – No evidence or pleadings regarding adverse possession, plea rejected.
- (B) Property Law – Estoppel – Whether plaintiff having exhibited acquiescence, is estopped by his conduct – Held, mere silence on part of plaintiff will not amount to acquiescence – No proof to show that plaintiff encouraged defendant in expenditure of money in putting up construction – Facts and evidence do not support plea of acquiescence – Defendant to handover vacant possession to Plaintiff – Second appeal dismissed.

(2013) 2 MLJ 380

Indrani and Anr
Vs
A.P. Madhan and Anr

- (A) Civil Procedure – Additional evidence in Appellate Court – Code of Civil Procedure (5 of 1908), Order 41 Rule 27 – Suit for relief of declaration, possession and damages – Plaintiffs claimed title by inheritance from father, relief of declaration and recovery of possession granted and damages declined – During first appeal, defendants petition to produce sale agreement, based on which they

obtained possession, was dismissed – Second appeal filed – Whether dismissing application for reception of additional document is legal and sustainable – Held, plea regarding sale agreement, not raised in written statement – Evidence adduced without pleadings cannot be looked into – Mere agreement to sell, without fructifying it by getting decree for specific performance, cannot confer title to suit property – Filing of sale agreement is not going to improve case of defendants, dismissal of petition under Order 41 Rule 27 is justified.

- (B) Property Law – Suit for declaration – Whether plaintiffs are entitled to declaration of title – Held, defendants claim title through person, who is said to have obtained sale agreement from plaintiffs, it amounts to admission of title of plaintiffs – Defendants, having admitted title of first plaintiff, are estopped from contending that plaintiffs have not proved title – Admitted facts need not be proved – Admission, adverse to party to proceeding is admissible in evidence against that party for proving fact stated in admission – Possession in pursuance of agreement is protected possession, but person in possession must show that step was taken to perfect possession – Case of defendants remains in suspended animation for want of pleadings and proof, possession by defendants is not legal – Defendants are liable to surrender possession to plaintiffs – Plaintiffs entitled to relief of declaration and recovery of possession, relief of damages declined – Second appeal dismissed.

(2013) 2 MLJ 391

Smt. Viji @ Vijayalakshmi
Vs
Smt. Jayanthi

Property Law – Possession and enjoyment – Suit for perpetual injunction against defendant – Plaintiff in possession of suit property, claiming title through sister of predecessor in title – Husband of defendant claims purchase of suit property from daughter of predecessor in title – Whether plaintiff is entitled to perpetual injunction against defendant – Held, plaintiff claimed only possessory right – Possession for any length of time, without animus, will not confer any title on person in possession or better title as against real owner – Fact that predecessor in title had daughter has been suppressed by plaintiff – In presence of daughter, sister will not be heir, daughter being Class I heir will totally exclude sister – Derivative title of husband of defendant claimed through daughter, admitted and established – No injunction can be granted against true owner – Plaintiff neither perfected title by adverse possession nor showed better right failing short of title restricting right of title holder – Plaintiff not entitled to relief of permanent injunction – Second appeal dismissed.

(2013) 2 MLJ 430

Dr. C. Rajasekharan
Vs
V. Sridharan and Ors

- (A) Civil Procedure – Plea of res judicata – Suit for eviction – Plaintiff is absolute owner of suit property – First Defendant, tenant of plaintiff sub-leased portion of property to Second Defendant, appellant, and another portion to Third Defendant – Earlier suit for eviction dismissed since tenancy not terminated by issuing valid termination notice – Fresh notice issued, demand not complied with – Whether further suit for eviction filed even after issuing fresh notice would attract bar of res judicata – Held, earlier notice found to be defective and ineffective – When validity of earlier notice was not in accordance with law, plaintiff cannot be expected to pursue appeal against previous judgment – New cause of action created by issuing fresh notice, present suit based on subsequent cause of action, is maintainable – Second Defendant admitted plaintiff to be his landlord and he wants to squat on property, even after tenancy property terminated.
- (B) Civil Procedure – Failure to frame necessary issue – Code of Civil Procedure (5 of 1908), Order 41 Rule 31 – Whether giving finding without framing issue on principles of res judicata caused miscarriage of justice to Second Defendant – Held, irregularity in not framing particular point as issue will be only formal defect and same will not affect decision of Court – Parties knowing fully well that judgment in

previous suit, would constitute res judicata for present suit led evidence – Lower Courts considered plea of res judicata and evidence and rendered reasoned finding – Failure to frame necessary issue and necessary points for consideration has not resulted in miscarriage of justice – Second appeal dismissed.

(2013) 2 MLJ 438

P. Doraikannu
Vs
P. Istalingami

Property Law – Partition – Plaintiff claims charge over defendant's share after partition – Alleged unequal division in partition effected under registered partition deed – Suit for bare injunction filed – Lower Courts dismissed suit – Second Appeal – Held, plaintiff's possession after partition not admitted by defendant – No reliable evidence to show that there exists separate oral agreement – Plaintiff effected partition by selling his share to third party – Inequal division explained with reasons in partition deed – Plaintiff, volunteered to get lesser share in partition – Plaintiff having volunteered to get share of lesser value as his share in partition, cannot now challenge partition on ground of unequal division in absence of any other vitiating factor – No-interference with orders passed by lower Courts – Second appeal dismissed.

(2013) 2 MLJ 500

J. Nambikkai Mary
Vs
Kuzhanthai Therasu

Civil Procedure – Condonation of delay – Limitation Act (36 of 1963), Section 5 – Petition to set aside ex parte decree – Delay of 1434 days – Application to condone delay, dismissed – Revision – Held, when there is huge delay, there should be adequate explanation – No medical certificate was produced to support ground of ill health – Only based on vague reasons, huge delay cannot be condoned – No infirmity in impugned order – Civil revision petition dismissed.

HIGH COURT CITATIONS CRIMINAL CASES

(2013) 2 MLJ(CrI) 35

C. Sajit Lovely
Vs
V. Yesu Rajan

Code of Criminal Procedure, 1973 (2 of 1974), Section 245(2) – Discharge-Petition filed for discharge, dismissed – Criminal revision – Held, factual and legal pleas raised by parties – It can be looked into/gone into by trial Court at time of final hearing of main case – No power vested in the trial Court to discharge an accused person after being charged – Presumption is that Negotiable Instruments Act is supported by a valid consideration – Presumption is rebuttable in law – Criminal revision petition dismissed.

(2013) 2 MLJ(CrI) 39

Meeran @ Ashok
Vs

State rep. by the Inspector of Police, Tuticorin North Police Station, Tuticorin District

Murder – Indian Penal Code (45 of 1860), Section 302 – Conviction and sentence – Whether Order of conviction can be sustained – Held, evidence of witness partly believable and partly unbelievable – No other independent evidence to corroborate prosecution witnesses – Medical evidence contradicts oral evidence of witnesses – Not safe to convict appellant solely depending on evidence of prosecution witnesses – Alleged eyewitness to occurrence failed to identify weapons – Prosecution failed to prove case beyond all reasonable doubts – Criminal appeal allowed.

(2013) 2 MLJ(CrI) 44

P. Ramesh
Vs
Kalayarasi and Anr

Maintenance – Marriage between petitioner/husband and respondent/wife, not proved – Petitioner convicted for offence under Section 417 of Indian Penal Code and acquitted for offence under Sections 376 and 493 – Petition claiming maintenance filed by wife and daughter/2nd respondent – Claim for maintenance rejected for wife and allowed for daughter – Whether rejection of claims is proper – Held, illegitimate minor child entitled to maintenance – Revision Petitioner in his evidence and counter before trial Court accepted that Second Respondent was born to him - Forensic Science Report also proved same – Petitioner directed to pay maintenance – Criminal Revision petition dismissed.

2013-2- L.W. (CrI.) 88

S. Mukanchand Bothra
Vs

The Commissioner of Police, Egmore, Chennai 600 008 and Ors

State Emblem of India (Prohibition of Improper Use) Act (2005), Section 3,

Criminal Procedure Code, Section 473/To register complaint after 6 years, Scope of.

Petitioner gave a complaint on allegation that Ex.M.P. misused the Indian Government Emblem in his letter pad for lodging the complaint against the petitioner.

Complaint against petitioner was given by the said Ex.M.P. on 27.5.2006 and the present complaint by the petitioner was given to the police after lapse of six years.

As per Section 7 of the Act, the maximum punishment is only two years of imprisonment – As per the First Schedule, classification of offences against other laws, the offence being punishable with imprisonment for less than three years becomes non-cognizable offence – No direction can be given to the police to register a case on the basis of the complaint given by the petitioner.

2013 -1 – L.W. (Cri.) 103

B. Clement

Vs

Mrs. Mcthel Thanga Annam @ P. Mcthel

Criminal procedure Code, Section 125/ Maintenance claim by Husband against Wife, whether maintainable,

Section 482/Transfer of case, Maintenance petition filed by husband against wife, whether maintainable.

Petitioner-husband filed a case on the file of the learned Chief Judicial Magistrate, Dharmapuri, claiming monthly maintenance from the respondent/wife – Respondent filed a case before the learned Judicial Magistrate, Ambattur, Tiruvallur under Domestic Violence Act, wherein she has prayed for various reliefs including maintenance from her husband – Petitioner approached this court seeking transfer of the case from the file of the learned Chief Judicial Magistrate, Dharmapuri, to the file of the learned Judicial Magistrate, Ambattur.

Court raised a question as to how the case is maintainable under Section 125.

Held: maintenance case filed by the husband against the wife is not maintainable under Ch. X – Petitioner filed a memo expressing no objection for this court to quash the proceedings while dismissing the present petition for transfer.

2013 – 1- L.W. (Cri.) 105

Donatus Tony Ikwanusi

Vs

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

Criminal P.C., Sections 30, 31, 427 and 428/ Default sentence whether can run concurrently, Power of Court to impose,

Narcotic Drugs and Psychotropic Substances (NDPS) Act (1985), Sections 8(c) r/w 21(b), 23, 28, 29, 36-B, 67, Default sentence whether can run concurrently,

Tamil Nadu Prison Rules (1983), Rule 242(1), / Default sentence whether can run concurrently.

I.P.C., Section 64 / Default sentence whether can run concurrently, Power of Court to impose.

Question for decision to the Full Bench is whether there is any prohibition for the Court to order the default sentence of imprisonment imposed for the nonpayment of fine to run concurrently.

Held: No provision under the Code empower the Court to order the default sentences to run concurrently.

Court cannot add or substitute any additional words to any particular provision of the Code – Legislature specifically excluded such power to the court in respect of ordering the default sentences to run concurrently.

2013-1- L.W. (Crl.) 114

M. Kaja Mohaideen

Vs

The Senior Intelligence Officer, Directorate of Revenue Intelligence, Regional Unit, No. 1288 Trichy Road, Coimbatore 18

Passport Act (1967), Sections 10(3), 12, 14

Customs Act, Sections 132, 135,

Criminal P.C., Sections 93 to 101, 102 to 105.

Magistrate dismissed Crl.M.P. holding that if the pass-port is handed over to the Petitioner/Accused, then he will go abroad and that he may not appear during the trial of the case etc. – Revision arose against said order.

Contention urged that as per Section 104 of Cr.P.C., a Court of Law cannot impound the Passport of a Citizen, although, it can impound any other document or thing and that impounding of a Passport can only be done by the Passport Authority under Section 10(3).

Held: Setting aside the order, Respondent /Customs Authority is directed to retain a duly attested photo copy of the Passport for Producing as secondary evidence in the trial, in necessary – Passport shall be returned to the Petitioner on executing adequate bond to the satisfaction of the Learned Magistrate – On further condition that the same shall be produced before the Learned Magistrate as and when the same is necessary – Also, this Court imposes a condition (besides other conditions imposed on the Petitioner by the Magistrate by modifying that he shall not leave the Country without express permission of the Learned Magistrate.

2013-1- L.W. (Crl.) 158

K. Mohanan

Vs

Mrs. Saraswathy

Criminal P.C., Section 256(1) – Acquittal of accused due to non-appearance of complainant – Court's powers, exercise of, Direction for costs – Provision is directory, not mandatory.

Held: Absence of Complainant or his Counsel, on the date of hearing cannot be a reason for acquitting the Accused in a routine or in a domestic fashion.

Test is one of good faith and a short cut acquittal or disposal of the case cannot be resorted either as a matter of course or a matter of routine.

Appellant/Complainant(P.W.1) was chief examined – There is no considerable progress from that time – In the interest of justice, Court set aside order of acquittal and allows the Criminal Appeal – Subject to the condition that the Appellant/Complainant pays a sum of ₹ 500/- to the Mediation and Conciliation Centre attached to Madurai Bench of Madras High Court without fail-Appeal allowed.

2013-1- L.W. (Crl.) 270

N. Chellaiah

Vs

State by the Inspector of Police, Murappanadu Police Station

Indian Penal – Acquittal of accused due to non-appearance of complainant – Court’s powers, exercise of, Direction for costs – Provision is directory, not mandatory.

Criminal Trial/ Injuries, Cut at abdomen, with sickle, Septicaemia, result of, effect of, whether intention to cause death, culpable homicide amounting to murder,

Evidence Act, Section 32/Effect of 161 CrI. P.C. statement, as, dying declaration.

Criminal Procedure Code, Section 161/Effect of statement, as dying declaration, Section 162/Statement, Effect.

Dispute between the deceased and accused in respect of cutting of acacia trees – Accused cut deceased with sickle.

Injury was caused on the abdomen and it was intended injury – Death was postponed by 24 days because of the medical intervention.

Statement of the deceased under Section 161 – Said statement is a dying declaration within Section 32 – Proviso to Section 162, Effect of – Makes it clear that a statement, falling within the ambit of S.32 is admissible in evidence and the bar contained in S. 162 is not applicable.

Accused had definite intention to kill – Act would fall under the first limb of Section would fall under the first limb of Section 299 I.P.C. and so under the first limb of Section 300 I.P.C.

Point of difference is whether death was due to the injuries or due to the secondary cause namely, Septicaemia.

Act of the accused would fall under the first limb of Section 300 I.P.C. and therefore he is liable to be punished under Section 302 of I.P.C.

2013–1- L.W. (CrI.) 298

S. Shajin

Vs

The State, rep by Inspector of Police, Arumanai Police Station, Kanyakumari District

I.P.C., Sections 302, 449/Sustained Provocation, Scope of, Accused-a law college student, first exception of Section 300, whether attracted.

Evidence Act, Section 25/Admissibility of confession, Confession to a Police Officer, Reliability, in favour of accused, when, whether can be used against accused, Scope, Part of a confession statement, whether can be used, Scope of.

Held : Section 25 makes it clear that confession to a police officer cannot be proved against accused can be, proved in his favour – If the accused intends to use it in his favour, confession, though made to a police officer, while in custody, is still admissible in evidence under Section 24 – Part of the confession, which is in favour of the accused, is not believable, then, it will not be permissible for the Court to rely on the rest of the portion, where the accused had admitted his guilt.

Court can use it only in favour of the accused and not against him at all for any purpose.

Reluctance on the part of the defence lawyers to tacitly admit the confession of an accused in evidence – Practice – Apprehension of mind of legal fraternity – Effect.

Lack of understanding regarding distinction between using a confession made by the accused to the police against him a using the same in his favour.

In this case, Confession made by the accused to the police, during the course of investigation, in custody, has not been proved in favour of accused.

Accused went to the house with a formidable weapon-aruval – Nothing to suggest that the accused had acted out of loss of self control – Indicates the premeditation of the accused to kill the deceased – Act of accused does not fall within the first exception to Section 300 falls within the fist limb of Sec.300 – He is liable to be convicted under Sec.302.
