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## **IMPORTANT CASE LAWS**

*Compiled by*

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## SUPREME COURT CITATIONS CIVIL CASES

(2013) 2 Supreme Court Cases 114

U. SREE  
Vs  
U. SRINIVAS

- A. Family and Personal Laws – Hindu Law – Hindu Marriage Act, 1955 – Ss. 13(1)(i-a) and 23 – “Mental cruelty” – question whether wife treated her husband with – Proof – Husband used to practice and learn music in presence of his father, who was also his “Guru” – Wife showing immense dislike towards “Sadhna” of her husband in music and exhibiting indifference and contempt of tradition of teacher and disciple – She having no concern for public image of her husband and putting him in embarrassing situations leading to humiliation including before his father and “Guru” – She making wild allegations about conspiracy in family of her husband to get him remarried for greed of dowry – No evidence to substantiate such allegations – Thus, apart from aspersions cast on character of husband, there were maladroit efforts to malign reputation of family of husband – On such facts, held, husband proved his case of mental and Phrases – “Cruelty” – Penal Code, 1860, S. 498-A
- B. Family and Personal Laws – Hindu Law – Hindu Marriage Act, 1955 – Ss. 25 and 23 – Decree of divorce – Grant of permanent alimony to wife – Factors to be considered – No arithmetic formula, held, can be adopted therefor – However, status of parties, their respective social needs, financial capacity of husband and other obligations must be taken into account – Duty of court is to see that wife lives with dignity and comfort and not in penury – Though living need not be luxurious, court has to act with pragmatic sensibility that wife does not meet any kind of man-made misfortune – In present case, husband, who was famous in world of music, had been performing musical concerts in India and abroad – Regard being had to status of husband, social strata to which parties belonged and earlier orders of Supreme Court in this case, permanent alimony fixed at ₹ 50 lakhs – Out of the said amount to be deposited before Family Judge concerned, ₹ 20 lakhs directed to be kept in a fixed deposit in name of son in a nationalized bank – Any amount deposited earlier, clarified, would stand excluded
- C. Evidence Act, 1872 – S. 65(a) – Secondary evidence – Admissibility of – Necessary requirements – Foundational evidence to be laid for leading secondary evidence – Absence thereof – Effect of – Secondary evidence, held, is inadmissible in such a case – Hence, in absence of said foundational evidence in present case, view taken by court concerned that when the alleged original letter was summoned and there was denial in respect thereof, secondary evidence in form of Photostat copy of that letter was admissible, held, not sustainable in law
- D. Evidence Act, 1872 – Ss. 62 to 65 – Reiterated, mere admission of a document in evidence does not amount to its proof – Therefore, it is the obligation of court to decide question of admissibility of a document in secondary evidence before making endorsement thereon
- E. Practice and Procedure – Issues in question/Issues pleaded only to be considered – No pleading or prayer made for divorce on ground of desertion – Conclusion as to desertion arrived at by courts below in case of – Held, erroneous – Hindu Marriage Act, 1955 – Ss. 13(1)(i-b) and 23 – Constitution of India – Art. 136 – Civil Procedure Code, 1908, S. 33 and Or. 20 Rr.4(2), 5 & 6 and Or. 14 Rr. 2 & 3 and Or. 6 Rr. 1 & 2 and Or. 7 Rr. 1 & 7

- F. Constitution of India – Art. 136 – Scope of interference under – Findings which are not based on perverse reasoning or not recorded in ignorance of material evidence or in exclusion of pertaining materials – Held, not liable to be interfered with under Art. 136

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**BHARAT HEAVY ELECTRICALS LIMITED  
Vs  
R.S. AVTAR SINGH AND COMPANY**

- A. Civil Procedure Code, 1908 – Or. 21 Rr. 1(1), (4) and (5) r/w S. 34 – Execution of money decree – Payment of interest – Part-payment of decretal amount deposited in court pursuant to its orders – Principle of appropriation applicable – Primacy of terms of decree/award – Decree consisting of award amount of ₹ 1.42 crores with interest @ 12% p.a. thereon from 12-3-1981 up to date of decree i.e. 31-5-1985 and in the event of non-payment, calculation of future interest at 12% p.a. from date of decree till realisation of award amount – Court directing payment of ₹ 1 crore as condition for grant of stay of decree – Execution of payment kept in abeyance by deposit of further amount of ₹ 1.95 crores – Appropriating payments first against interest and adjusting balance amount against principal, Single Judge of High Court ordering execution by calculating subsequent interest only on outstanding principal amount dismissing objections of appellant judgment-debtor that by virtue of payments made entire decretal amount was fully satisfied – Sustainability
- Held, it is the decree which has to be applied in letter and spirit to find out whether stipulations therein were duly fulfilled by judgment-debtor - Both, award of arbitrator and rule of court make a clear distinction between award amount and interest payable on award amount – When such a clear distinction was consciously made it cannot be stated that award amount and interest merged together and became payable as one sum which thereby became the decretal amount – Having regard to specific terms of part-payments were effected by appellant after date of decree i.e. 31-5-1985 on 18-10-1985 and thereafter on 13-12-2000 – Single Judges of High Court, held, correctly upheld action of respondent decree-holder in adjusting amounts received first against interest which had become due as on that date, and adjusting only balance amount against principal – Hence, Division Bench of High Court rightly affirmed Single Judge’s order which applied rule of construction of Or. 21 R. 1 based on Constitution Bench Ss. 29, 14 and 17 – Enforcement of award – Payment of interest – Principle of appropriation applicable – Arbitration and Conciliation Act, 1996 – Ss. 31 and 36 – Contract Act, 1872 – S. 59 – Interest Act, 1978, S.3(3)(C)
- B. Civil Procedure Code, 1908 – Or. 21 Rr. 1(4) & (5) and S. 34 – Interest, cessation of – Payment made towards satisfaction of decree – Part-payment by judgment-debtor by deposit in court – Liability to pay further interest, held, ceases thereafter on that part of principal sum which stands as paid after appropriation of amount which has been paid – Hence, held, since deposit of amount pursuant to order of Division Bench of High Court was made and was also withdrawn by respondent decree-holder from the date of service of notice as contemplated in Or. 21 R.1(2) the same was deemed to have been effected – Therefore, applying Or. 21 R.1(4), insofar as cessation of interest is concerned, same would operate upon that part of principal sum which stood paid – Hence, after last deposit of payment by judgment-debtor, decree-holder calculating/claiming interest on entire award amount (₹ 1,42,96,318) instead of on outstanding principal amount (₹ 1,19,61,134), held, rightly rejected by Single Judge and Division Bench of High Court
- C. Civil Procedure Code, 1908 – Or. 21 Rr. 1(1)(a), (b) and (c) – “All money payable under a decree” – Connotation of – Held, words used in sub-rule (1) mean whatever money that is due and payable under a decree, which could be paid in the manner stipulated in cls. (a),(b) and (c) of the sub-rule (1) – What is required to be scrutinized is as to how decree has been made while granting relief as regards

payment – Or. 21 R.1(1) does not refer to the decretal amount: rather expression used is “all money payable under a decree”

- D. Civil Procedure Code, 1908 – Or. 21 Rr.1(1), (2), (4) and (5) – Execution of money decrees – Rule of appropriation – General principles as laid down by Constitution Bench in Gurpreet Singh, (2006) 8 SCC 457, summarized.
- E. Interest Act, 1978 S. 3(3)(C) – Applicability – Decree directing payment of interest on delayed payment of award amount – Interest calculated as per decree of Court which made arbitral award rule of court – Challenge to, on basis it amounted to awarding interest upon interest – Held, there is no scope to apply S. 3(3)(c) as the controversy was subsequent to passing of decree where direction for payment of interest on award amount had been spelt out – Challenge is not to decree on footing that it was in violation of S. 3(3)(c), hence rejected – Civil Procedure Code, 1908 – S. 34 and Or. 21 R. 1- Arbitration Act, 1940 – Ss. 29, 14 and 17 – Arbitration and Conciliation Act, 1996, Ss. 31 and 26

(2013) 1 Supreme Court Cases 409

TAMIL NADU WAKF BOARD  
Vs  
SYED ABDUL QUADER AND ORS

- A. Rent Control and Eviction – Madras City Tenants’ Protection (Amendment) Act, 1994 (2 of 1996) – S. 3 – Effect of, on pending proceedings initiated by tenants – Held, all pending proceedings initiated by tenants of property owned by religious institution or religious charities stand abated and tenants cease to have any enforceable right over suit lands – Phrase “every proceedings” - Scope of – Held, is sufficiently wide to include proceedings initiated by tenants under S. 9 of Madras City Tenants’ Protection Act, 1921 – Words and Phrases – “Every proceedings”
- B. Rent Control and Eviction – Abatements of pending proceedings by statute – Proceedings instituted by tenant of property belonging to religious institution or religious charity standing abated after amendment of State Act concerned – High Court interfering with concurrent findings of fact without noticing implications of amendments and remanding matter to trial court for adjudication of proceedings initiated by tenant – Impropriety of
  - Appellant landlord filed suit for declaration that suit property was wakf property and for possession thereof – Respondent tenants filed an application for direction to landlord for sale of suit property to them – Considering materials on record, trial court decreed suit of landlord and that decree was confirmed by first appellate court – in second appeal, High Court remanded matter to trial court to consider application of respondent tenant and even review application filed by appellant landlord was dismissed – Held, by amendments to statute concerned all rights of tenants in respect of property belonging to religious institution or religious charity were extinguished – This aspect of amendment was not noticed by High Court – Hence tenants’ application was no longer maintainable – Therefore, High Court erred in remanding matter to trial court – Second appeal restored for fresh hearing – Madras City Tenants’ Protection Act, 1921 (3 of 1922) – Ss. 9 and 11 – Madras City Tenants’ Protection (Amendment) Act, 1994 (2 of 1996) – Ss. 2 and 3 – Civil Procedure Code, 1908, Ss. 100, 107, 114 and Or. 47 R.1

(2013) 1 Supreme Court Cases 625

VIRGO INDUSTRIES (ENG.) PRIVATE LTD  
Vs  
VENTURETECH SOLUTIONS PRIVATE LTD

- A. Civil Procedure Code, 1908 – Or. 2 Rr. 2(2) & (3) – Omission to claim one out of many reliefs that could have been claimed in suit – Bar of raising same in subsequent suit – Applicability – Held, subsequent

suit is not permissible when cause of action for later (subsequent) suit is the same as in first suit, unless leave of court is obtained in first suit as to filing of subsequent suit for omitted relief

- Suit claiming relief to which plaintiff may become entitled at a subsequent point of time – Maintainability – Claim for relief in question if ripe or mature – Determination of, and relevance
  - Two suits (first suits) filed for permanent injunction restraining defendant-appellant from alienating and encumbering suit properties for which there was agreement to sell with plaintiff-respondent – Subsequently, plaintiff-respondent filed two more suits (second suits) seeking relief of specific performance of said agreements – Maintainability
  - Objection that cause of action being the same for both sets of suits, plaintiff-respondent ought to have claimed both reliefs in first set itself and hence subsequent set of suits were not maintainable – Tenability – High Court in revision permitting subsequent suits holding that cause of action to seek relief of specific performance had not matured as on date of first set of suits and first set of suits were not disposed of – Legality
  - Held, in instant case, prior to filing of first set of suits, plaintiff-respondent was well aware of intention of defendant-appellant that he would not honour said agreements to sell and that fact was also brought out in first set of suits – Thus, cause of action for filing first suits’ relief of permanent injunction also furnished cause of action to sue for relief of specific performance – Also, though respondent-plaintiff prayed for leave of court to file suit for specific performance at a later stage, same was not granted
  - Further, plea that relief of specific performance was not claimed in first set of suits since said claim was premature as on date of filing of first set of suits rejected, since there is no bar to file a suit claiming relief to which plaintiff may become entitled at a subsequent point of time – Lastly, held, plaintiff need not wait for expiry of due date for performance of agreement for filing suit for specific performance, if plaintiff anticipates breach of agreement by overt acts of defendant
  - Thus, held, it was open to plaintiff to incorporate relief sought in subsequent set of suits (for specific performance) in first set of suits itself – As cause of action for both the sets of suits is one and the same, held, subsequent set of suits were not maintainable in the absence of leave of court for filing separate suits for omitted relief – Order of High Court set aside – Specific Relief Act, 1963 – Ss. 9, 10 and 38 – Premature suit for specific performance of contract – Maintainability – Words and Phrases – “Cause of action”
- B. Civil Procedure Code, 1908 – Or. 7, Or. 2 and S.9 – Premature relief – Entitlement and duty to claim – When arises – Claim if ripe or mature – Relevance
- C. Civil Procedure Code, 1908 – Or. 2 Rr. 2(2) & (3) and S. 11 – Omission to claim one out of many reliefs that could have been claimed in suit – Bar of filing subsequent suit/multiple suits on same cause of action – Objection and scope – Held, is to avoid multiplicity of litigations on same cause of action – Hence, bar of filing subsequent suit on same cause of action is applicable both during pendency of first suit, and also where first suit is disposed of
- D. Civil Procedure Code, 1908 – Or. 2 R. 2 – Applicability – Stage at which prior suit is at – Relevance – Disposal of first suit, held, not a requirement therefor Or. 2 R.2 applies even when subsequent suit is filed during pendency of first suit.

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## SUPREME COURT CITATIONS CRIMINAL CASES

(2013) 2 Supreme Court Cases 177

**MSR LEATHERS  
Vs  
S.PALANIAPPAN AND ANR**

**A. Negotiable Instruments Act, 1881 – Ss. 138 proviso and 142(b) – Dishonour of cheque – Repeated presentation/dishonour of cheque – Multiple causes of action/Cause of action if arises afresh each time – Held, prosecution based upon second or successive dishonour of cheque is permissible so long as it satisfies all the requirements stipulated in proviso to S.138**

- Hence, every time a cheque is presented in the manner and within time stipulated under proviso to S.138 followed by a notice within meaning of cl. (b) of proviso to S. 138 and drawer fails to make payment of amount within stipulated period of fifteen days after date of receipt of such notice, a proceedings for prosecution of drawer – There is no real or qualitative difference between a case where default is committed and prosecution launched immediately after very first dishonour of cheque and where prosecution is deferred till cheque presented again gets dishonoured for the second or successive time - Sadanandan Bhadrans, (1998) 6 SCC 514, comprehensively overruled – Multiple causes of action accrue to holder of cheque upon failure of drawer to make payment of cheque amount – Failure to prosecute on basis of first default in payment does not result in default that satisfies all three requirements of S. 138 proviso – Words and Phrases – “Cause of action” – Meaning of

**B. Negotiable Instruments Act, 1881 – S. 138 proviso – Dishonour of cheque – Conditions precedent to constitute offence under – cumulative nature of – Held, only upon satisfaction of all three conditions enumerated under cls. (a),(b) and (c) of proviso to S. 138 can an offence under S. 138 be said to have been committed by person issuing cheque**

**C. Negotiable Instruments Act, 1881 – S. 138 proviso cl. (a) – Offence of dishonour of cheque – A dishonour whether based on a second or any successive presentation of a cheque for encashment would be a dishonour within the meaning of S. 138 and cl. (a) to proviso thereof – thereof – There is nothing in S. 138 proviso to even remotely suggest that cl. (a) would have no application to a cheque presented for the second time or any successive time if the same has already been dishonoured once – So long as cheque remains valid and unpaid there is continuing obligation of drawer to make good the same**

**D. Negotiable Instruments Act, 1881 – Ss.138 and 142(b) – Failure to file complaint within limitation period after first notice issued – Prosecution based on subsequent or successive dishonour – Permissibility of – Held, by reason of a fresh presentation of a cheque followed by a fresh notice in terms of S. 138 proviso cl. (b), drawer gets an extended period to make payment and gets a further opportunity to pay, to avoid prosecution – Such fresh opportunity cannot help defaulter get a complete absolution from prosecution – So long as cheque is valid and so long as it is dishonoured upon presentation to bank, holder’s right to prosecute drawer for default committed by drawer remains valid and exercisable**

**E. Negotiable Instruments Act, 1881 – Ss. 138 proviso and 142(b) – Interpretation of, in a manner so as to reduce litigation – Holder/payee of a dishonoured cheque, held, not obliged to necessarily file a defers launch of very first dishonour of cheque – Interpretation which defers launch of prosecution may be based on financial accommodation given to drawer to arrange payments covered by the cheques of financial accommodation given in trade and business dealings – This would render time-consuming and generally expensive legal recourse unnecessary – Hence, by a process of interpretation, parties should not be forced to launch complaints where they can or may like to defer such action for good and valid reasons – Decision in Sadanandan Bhadrans, (1998) 6 SCC 514 which held that first default itself must result in filing of prosecution or else result in forfeiture of right to bring**

prosecution, by which avoidable litigation would become an inevitable bane of legislation, overruled – Interpretation of Statutes – Basic Rules – Purposive construction/interpretation – Avoidance of interpretation resulting in immediate institution of unnecessary proceedings/prosecution.

(2013) 1 Supreme Court Cases 327

**REVEREND MOTHER MARYKUTTY  
Vs  
RENI C. KOTTARAM AND ANR**

- A. Negotiable Instruments Act, 1881 – Ss. 118, 138, 139 and 142 – Dishonour of cheque – Dispute as to amount due under works contract – Amount in question not proved to be due to complainant by rebuttal of presumption of consideration under S. 118(a) by accused – Reversal of acquittal of accused without considering defence evidence led to rebut said presumption – Impropriety of Acquittal of accused, restored
- Works contract between appellant-accused and respondent complainant contractor for construction of old age home and chapel – Respondent complainant filed a case under S. 138 against appellant-accused for dishonor of post-dated cheque Ext.P-1 issued for sum of ₹ 25 lakhs – Held, all amounts received from appellant-accused were noted in Ext. P-9 but certain receipts were not entered in it – Out of agreed upon construction, flooring was done by appellant-accused on her own and that expense was not included in bill – Respondent complainant admitted that while construction work was to be completed for ₹ 78,70,678 but as per Ext.D-3, he had received ₹ 77,31,500 although he did not complete the agreed upon work – It was not disputed that final payment was to be settled only after completion of work – There was no evidence to indicate that measurement of work had been done and accounts were settled – Variations in reply notice and written statement of appellant-accused did not materially affect her case as there was overwhelming evidence in her favour – Fact that cheque was not in handwriting of appellant-accused strengthened her defence that it was not issued in favour of respondent complainant – There was no reliable evidence adduced by respondent complainant to prove that ₹ 25 lakhs were due to him warranting execution of cheque Ext.P.1 – Appellant-accused discharged initial burden on her by proving that there was no existence of any consideration due – Whether said presumption under S. 118 stood rebutted had to be inferred based on preponderance of probabilities, not only from materials on record but also from relevant circumstances – Criminal Procedure Code, 1973 – S. 255(1) – Criminal Trial – Appreciation of evidence – Minor contradictions or inconsistencies – Immateriality of
- B. Negotiable Instruments Act, 1881 – Ss. 118, 138, 139 and 142 – Rebuttal of presumptions under S. 118 by accused – Standard of proof – Preponderance of probabilities – Inference based on – Held, such inference can be drawn not only from materials on record but also from circumstances of case – If evidence is overwhelming then minor variations would be insignificant – Evidence Act, 1872, Ss. 4 and 114
- C. Negotiable Instruments Act, 1881 – Ss. 118, 138, 139 and 142 – Evidence to rebut presumptions under S. 118 – Cheque not in handwriting of accused – Significance of – Held, it strengthens defence version that cheque was not issued in favour of payee/complainant – Evidence Act, 1872, Ss. 45, 3 and 4
- D. Criminal Procedure Code, 1973 – Ss. 374, 378 and 386 – Disposal of appeal – Duty to consider material evidence brought to court's notice – Cardinality of

(2013) 1 Supreme Court Cases 395

**SUMIT TOMAR  
Vs  
STATE OF PUNJAB**

- A. Narcotic Drugs and Psychotropic Substances Act, 1985 – S. 15(c) – Search and seizure – Recovery of contraband – Independent witness K, a passer-by, joined by prosecution, not examined – Conviction based solely on testimonies of official witnesses – However, no animosity between accused and official witnesses and no other infirmity in prosecution case – Conviction, held, sustainable
- B. Narcotic Drugs and Psychotropic Substances Act, 1985 – S. 15(c) and Ss. 41 to 44 & 49 – Search and seizure – Recovery of opium powder kept in two plastic bags, from discy (boot) of car driven by appellant-accused – Contents of both bags were mixed and 2 samples of 250 gm each were taken out – Remaining contraband weighing 69.50 kg was sealed in 2 bags and samples were sent to forensic science laboratory (FSL) for examination – Appellant convicted under S. 15(c) – Defence submission that prosecution committed irregularity by mixing up contraband found in 2 bags and taking samples thereafter – That in view of S. 15(c), which prescribes minimum sentence of 10 years and which may extend to 20 years where contravention involves commercial quantity, mixing of two bags was a grave irregularity which affected interest of appellant – Tenability – Held, S. 15 speaks about punishment for contravention in relation to poppy straw – Merely because different punishments are prescribed under S. 15 depending on quantity of contraband, by mixing samples from said two bags, the same had not caused any prejudice to appellant – Even after taking 2 samples of 250 gm each, quantity measured comes to 69.50 kg which is more than commercial quantity (small quantity 1000 gm/commercial quantity 50 kg and above) – In view of same, contention that police should have taken 2 samples each from 2 bags without mixing is liable to be rejected.

(2013) 1 Supreme Court Cases 400

ANUP SARMAH  
Vs  
BHOLA NATH SHARMA AND ORS

Criminal Procedure Code, 1973 – S. 482 – Quashing of criminal proceedings – Hire-purchase agreement – Rights of financier vis-à-vis purchaser – Recovery of possession for vehicle by financier owner as per terms of hire-purchase agreement – Whether an offence

- Petitioner submitted that respondent financiers had forcibly taken away vehicle financed by them and illegally deprived petitioner from its lawful possession and thus, committed a crime – Complaint filed by petitioner had been entertained by Magistrate even directing interim custody of vehicle (Maruti Zen) to be given to petitioner – Respondents submitted that under hire-purchase agreement financier remains owner of vehicle till entire payment is made and, therefore, possession taken by financier for non-payment of instalments by petitioner could not be held to be an offence – High Court rejecting case of petitioner against respondents that they had forcibly taken custody of vehicle purchased by petitioner on hire-purchase from them – High Court thus quashing criminal proceedings against respondents

- Reiterated, in an agreement of hire purchase remains merely a trustee/bailee on behalf of financier/financial institution and ownership remains with latter – Thus, in case vehicle is seized by financier, no criminal action can be taken against him as he is respossessing goods owned by him – There is no cogent reason to interfere with impugned judgment and order – Contract Act, 1872 – S. 148 – Penal Code, 1860, Ss. 378 and 403

(2013) 1 Supreme Court Cases 550

SURESH AND ORS  
Vs  
STATE OF MADHYA PRADESH

- A. Narcotic Drugs and Psychotropic Substances Act, 1985 – S. 50(1) – Informing the suspect of his right to opt for being searched before a gazetted officer or a Magistrate – Requirement of, under S. 50(1) – Compliance with – What amounts to – Non-compliance therewith – Effect – Reiterated, said requirement under S. 50(1) is mandatory requiring strict compliance therewith – Failure to do so is

vitiabtive of conviction of person concerned if conviction is recorded only on basis of recovery of contraband from his possession – In present case, appellants were not apprised of their right to be searched before a gazette officer or a Magistrate – They were merely asked as to whether they would offer their personal search to police officer concerned or to gazette officer – Appellants gave their consent for their personal search by police officer concerned – Hence held, S. 50(1) not complied with in respect of recovery of contraband from the person of appellant – Conviction on basis of such recovery not sustainable in law

- B. Narcotic Drugs and Psychotropic Substances Act, 1985 – Ss. 50(1), 8 and 18 – Recovery of contraband from person of appellants in violation of S. 50(1) Recovery of portion of contraband also from vehicle, in which appellants were travelling to which S. 50 is not applicable – Effect – Conviction and sentence under S. 8 r/w S.18 – Sustainability – Quantity recovered from vehicle not falling within mischief of commercial quantity for imposition of present conviction and sentence – Considering length of period in prison and continuing as on date and in view of non-compliance with S. 50(1) in respect of recovery of contraband from appellants, conviction and sentence of 10 years RI with fine of ₹ 1 lakh each imposed on appellants under S. 8 r/w S. 18 by courts below, set aside.

(2013) 1 Supreme Court Cases 570

SHAHEJADKHAN MAHEBUBKHAN PATHAN  
Vs  
STATE OF GUJARAT

- A. Narcotic Drugs and Psychotropic Substances Act, 1985 – Ss. 8(c), 21 and 29 – Sentence – Mitigating factors – Appellants convicted under and sentenced to 15 years' RI with fine of ₹ 1.5 lakhs for carrying commercial quantity of brown sugar from one State to another – Appellants first-time offenders, having no past antecedents of involvement in offence of like nature – Held, sentence deserves to be reduced to minimum prescribed period of 10 years' RI – Criminal Trial – Sentence – Minimum sentence/Minimum statutory sentence
- B. Narcotic Drugs and Psychotropic Substances Act, 1985 – Ss. 8(c), 21 and 29 – Default sentence for non-payment of fine – Reduction – Mitigating factors – Appellants convicted under and sentenced to 15 years' RI and fine of ₹ 1.5 lakhs each and in default further imprisonment for 3 years' RI for carrying commercial quantity of brown sugar from one State to another – Sentence of 15 years' RI reduced to minimum prescribed term of 10 years on facts by Supreme Court – Appellants first-time offenders, very poor and maintaining their family – Held, default sentence of 3 years' RI would cause serious prejudice to appellants as well as their family members – Hence deserves to be reduced to 6 months' RI – Criminal Trial – Sentence – Imprisonment in default of fine
- C. Penal Code, 1860 – S. 64 – Default sentence – Nature- Not a sentence but only a penalty – Should not be harsh or excessive – Factors to be considered while imposing – Criminal Procedure Code, 1973 – S.30 – Criminal Trial – Sentence – Imprisonment in default of fine
- D. Penal Code, 1860 – Ss .63 to 70 – Sentence of fine – Should not be excessive save in exceptional cases, where substantial term of imprisonment is imposed – Criminal Trial
- E. Penology – Fine – Default sentence – Courts under duty to take into consideration relevant circumstances regarding offence and offender – Imposition of a long default sentence on penurious offenders may be harsh and excessive

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## HIGH COURT CITATIONS CIVIL CASES

2013(3) CTC 8

T. Ekambaram  
Vs.  
Bhavani Sagari

Madras High Court (Jurisdictional Limits) Act, 1927 (4 of 1927) – Madras High Court (Jurisdictional Limits) Extension Act, 1985 (42 of 1985) – Jurisdiction of Madras High Court – Amendments therein whether can be made by virtue of Government Order – Both enactments complimentary to each other and govern issue of territorial jurisdiction of Madras Courts – Any Amendment in jurisdictional area of Madras High Court, held can be done by amending enactments or by enacting new legislation – Jurisdiction of Madras High Court cannot be altered by means of Government Order – Mere addition of Kathirvedu Village to Chennai City Corporation by virtue of G.O.Ms. No.97 dated 19.7.2011, held would not bring said Village within jurisdiction of Madras High Court – Jurisdiction of City Civil Court Chennai is not automatically co-extensive with jurisdiction of Corporation of Chennai – Said G.O., held would only cover subject dealt with Chennai City Municipal Corporation Act – Chennai City Civil Court, held, would have no jurisdiction over instant Suit for injunction in respect of land situated in Kathirvedu Village – Suit transferred to file of District Munsif, Tiruvottiyur.

2013(3) CTC 68

C. Saroja  
Vs.  
Meeran Sahib and Ors

Specific Relief Act, 1963 (47 of 1963), Sections 37 & 38 – Tamil Nadu Court Fees and Suits Valuation Act, 1955 (14 of 1955), section 27(a) & (c) – Suit for Bare Injunction – Maintainability of – When should declaratory decree be sought – Duty of Court – Defendant contending that in respect of property regarding which relief is sought, she had earlier filed a Suit, in which injunction was granted in her favour and that property absolutely belongs to her – Question, whether present suit property is included in earlier Suit, is bone of contention – Normally Plaintiffs are expected to seek establishment of their title by praying for declaration – However, mere fact that declaration in respect of suit property has not been sought for, shall not be a ground on which Suit can be dismissed as not maintainable – Even in a Suit for bare injunction, Court can independently go into question of title – But as a Rule of convenience, if question of title is a complicated one and same cannot be conveniently dealt with in Suit for bare injunction, parties have to be relegated to a comprehensive Suit for declaration and injunction – There is dispute regarding title to suit property – Suit ought to have been valued under Section 27(a) of Tamil Nadu Court Fees and Suits Valuation Act, 1955 – Without measuring property by Commissioner with help of Surveyor, question of res judicata cannot also be resolved – First Appellate Court has wrongly placed burden of proof on Defendant – Judgment and decree passed by both Court – Direction issued for measuring property by Advocate Commissioner with help of Surveyor - Trial Court also directed to permit Plaintiff to amend valuation and Court-fees column in Plaint, to make it in consonance with Section 27(a) of Tamil Nadu Fees and Suits Valuation Act, 1955 and collect deficit Court fee, if any – Trial Court directed to disposed of Suit within six months – Second Appeal allowed.

Specific Relief Act, 1963 (47 of 1963), Section 34 – Tamil Nadu Court Fees and Suits Valuation Act, 1955 (14 of 1955), Section 27(a) – Declaratory Relief – Dispute regarding title to suit property admitted by both parties – Declaratory relief is required – Plaintiff permitted to amend Court-fee averment and value Suit under Section 27(a), Tamil Nadu Court Fees and Suits Valuation Act and pay deficit Court-fee.

2013(3) CTC 158

Loganayaki  
Vs.  
V. Sivakumar

Hindu Marriage Act, 1955 (25 of 1955), Sections 24 & 28 – Constitution of India, Article 227 – Order passed by Civil Court under Section 24, whether revisable ? – Section 28 is provision in 1955 Act that provides for appealable orders – Section 28(1) provides for Appeals against decrees passed by Civil Courts under Sections 9, 10, 11, 12, 13, 13-A, & 13-B – Section 28(2) provides for Appeals against orders passed by Civil Court under Sections 25 & 26 – Noticeable, Civil Court under Section 24 is consciously omitted from purview of Section 28(2) – Consequently, an order of Civil Court granting or denying maintenance under Section 24 is not appealable – No remedy of Appeal has been provided in Act against an order passed under Section 24 – Held, as Appeal is a creation of statute and no Appeal is provided in Act for same, Revision filed against an order under Section 24 is maintainable.

Hindu Marriage Act, 1955 (25 of 1955), Section 24 – Code of Criminal Procedure, 1973 (2 of 1974), Section 125 – Dismissal of Petition under Section 125, whether leads to bar for grant of maintenance under Section 24 – Held, finding recorded by Magistrate under Section 125 of Code not binding on Civil Court – Moreover, degree of proof and factors to be considered for grant of maintenance under Section 125 differ from considerations for grant of maintenance pendent lite and litigation expenses – Dismissal of Petition under Section 24 by Trial Court on ground that Petition under Section 125 was dismissed by Magistrate, erroneous.

Hindu Marriage Act, 1955 (25 of 1955), Section 24 – Petition for Divorce – Quantum of maintenance pendent lite and Litigation Expenses – Petition for Divorce filed by Husband, a Coolie – Maintenance pendent lite and Litigation Expenses claimed by Wife – Husband though having immovable property, fact that he derives annual income from same, not proved – Income of Husband doing work of Coolie estimated at ₹ 4,500/- - Wife, held, entitled to maintenance of ₹ 250/-p.m. from date of filing of Application till date of disposal of Petition for divorce – Husband also to make payment of ₹ 1,000/- as one time payment for Litigation Expenses.

2013(3) CTC 166

P.T. Lakshman Kumar  
Vs.  
Bhavani

Family Courts Act, 1984 (66 of 1984), Section 19(1) – Hindu Marriage Act, 1955 (25 of 1955), Section 24 – Code of Civil Procedure, 1908 (5 of 1908), Section 2(9) – Constitution of India, Article 227 – Order under Section 24 of 1955 Act if passed by Family Court, whether appealable? – Order passed by Family Court under Section 24 of 1955 Act, held, is a judgment - Same is appealable under Section 19(1) of 1984 Act – As remedy of Appeal is available against order under Section 24 passed by Family Court, Revision against same not maintainable – Instant Revision Petitions challenging order of Family Court directed to be converted in Civil Miscellaneous Appeals – Decisions of Full Bench of Allahabad High Court and Division Bench of Delhi and Uttarakhand High Court concurred with.

Hindu Marriage Act, 1955 (25 of 1955), Sections 24 & 28 – Family Courts Act, 1984 (66 of 1984), Section 19(1) – Order under Section 24 of 1955 Act, appealable, when order is made by Family Courts and not appealable, when same is made by Civil Court – Anomaly whether created ? – Appeal is creature of statute and Appellate Court has powers to reappreciate evidence, said power absent in Revision – In proceedings under Hindu Marriage Act, provisions of Evidence Act are strictly applicable to Civil Courts and order under Section 24 is made strictly on proof of facts as per Evidence Act – On other hand, order of Family Court is based on relevant, irrelevant, admissible and inadmissible evidence – Held, considering said distinction, Parliament in its wisdom has made orders passed by Family Court under Section 24 appealable and order passed by Civil Court under Section 24 as non-appealable – No dichotomy is created by said distinction.

Hindu Marriage Act, 1955 (25 of 1955), Section 24 – Direction under provision, whether an order or judgment - Section 24 conclusively deals with right of spouse to get monthly allowance till disposal of main case and also to get Litigation Expenses from other spouse – Order under provision finally determines rights of parties, without having any bearing on main case – Said decision, held, a judgment as defined in Section 2(9) of Code and a judgment for purpose of Section 19(1) of Family Courts Act – Code of Civil Procedure, 1908, Sections 2(9) & 2 (14) – Family Courts Act, 1984, Section 19(1)

Hindu Marriage Act, 1955 (25 of 1955), Section 24 – Decision under provision, held, even if presumed to be order, same would be an ‘intermediate order’ and not an ‘interlocutory order’, as it has no bearing on main case.

Family Court Act, 1984 (66 of 1984), Section 19 – Hindu Marriage Act, 1955 (25 of 1955), Section 28 – Overriding nature of Section 19 – Effect of – Section 19 of 1984 Act refers to Appeals and Revisions against judgment and orders – Said provision contains a non-obstante clause, and excludes application of ‘any other law’ – ‘Any other law’, held, would include 1955 Enactment – Section 28, not applicable to decree and orders of Family Courts.

Code of Civil Procedure, 1908 (5 of 1908), Section 2(9), Order 20, Rule 4(2) – Family Courts Act, 1984 (66 of 1984), Sections 2(e), 17 & 19 – Order 20, Rule 4(2) of Code states what a judgment should contain – Section 17 of 1984 Act also stipulates what a judgment should contain and is a verbatim reproduction of Order 20, Rule 4(2) of Code – Section 2(e) of 1984 Act contemplates that words, which are not defined in enactment, would have same meaning as assigned to them in Code – Consequently, definition of judgment as contained in Section 2(9) of Code would be applicable to term ‘judgment’ used in Section 19(1) of 1984 Act.

Code of Civil Procedure, 1908 (5 of 1908), Sections 2(2) & 2(9), Order 20, Rule 4(2) – Order and Judgment – Difference between – When by a decision there is no conclusive determination of rights of parties, same would be an ‘Order’ – On other hand, decision which conclusively determines rights of parties by adjudication, would be a ‘Judgment’ – Order only pertains to procedure regulating conduct of case.

Code of Civil Procedure, 1908 (5 of 1908), Section 2(9) – Letters Patent, 1865, Clause 15 – Judgment – Relative ambit of term – Held, term judgment to be received wider meaning under Clause 15 of Letters Patent and same to receive narrow meaning under Section 2(9) of Code – All judgments under Section 2(9) are judgments for purpose of Clause 15 of Letters Patent, however, same is not applicable vice versa – Decision of Apex Court in *Shah Babulal Khimji v. Jayaben D. Kania*, 1981 (4) SCC 8 relied upon.

Hindu Marriage Act, 1955 (25 of 1955), Sections 24 & 28 – Order passed by Civil Court under Section 24 whether appealable? – Section 24 consciously omitted by Legislature in Section 28(2), which provides for Appeals against orders passed by Civil Court – Order under Section 24 passed by Civil Court, thus, not appealable – Decision in *Loganayaki v. Sivakumar*, 2013 (3) CTC 158 referred to.

#### 2013(3) CTC 305

Shivsu Canadian Clear International Ltd, Shivsu Towers

Vs.

Freightcan Global Logistics Private Ltd

Code of Civil Procedure, 1908 (5 of 1908), Order 37, Rule 3(5), Section 115 – Constitution of India, Article 227 – Order dismissing Application to defend Suit – Whether can be challenged by way of Revision – Held, dismissal of Application to defend Suit filed under Order 37, Rule 3(5), disposes off defences available to Defendant as well disposes of Suit – Dismissal of said Application, automatically results in passing of a decree – As said dismissal terminates proceedings entirely, Defendant entitled to file Revision under Section 115 of Code or to approach High Court under Article 227.

Code of Civil Procedure, 1908 (5 of 1908), Order 37, Rule 3(5) & Section 115 – Constitution of India, Article 227 – Order of dismissal of Application to defend Suit – Remedies available to Defendant – Law laid down by Apex Court, summarized – Decree automatically follows, once Application to defend Suit, is dismissed – Defendant can challenge said dismissal under Section 115 or Article 227, without waiting for decree – However, if order made under Order 37, Rule 3 (5) is set aside Revision, decree in Suit would not be automatically set aside and Defendant to approach Trial Court to reopen decree under Order 37, Rule 4 – On other hand, Defendant can also wait for final decree in Suit and challenge same by way of Appeal and challenge to order of dismissal of Application can also be include in Appeal – Decisions of Apex Court in Wada Arun and Ajay Bansal, summarized – Decision of Single Judge in Praveen Kumar V. HSBC, 2013 (1) MWN(Civil) 213, declared as per incuriam.

Code of Civil Procedure, 1908 ( 5 of 1908), Order 37, Rule 3(5) – Decision of Apex Court in Ajay Bansal V. Anoop Mehta, 2007 (3) CTC 604 (SC) – Interpretation of – If once a first order is set aside, all consequential orders, which are “dependant orders” are automatically set aside – However, decision of Apex Court in Ajay Bansal case that decree passed in summary Suit after dismissal of Application under Order 37, Rule 3(5) though, a consequential order would not stand automatically dismissed as Defendant to approach Trial Court to reopen decree under Order 37, Rule 4 – Ruling of Apex Court that decree passed in consequence of dismissal of Application under Order 37, Rule 3(5) not a dependant order – However, said judgment by no means curtails right of Defendant to file Revision against dismissal of Application under Order 37, rule 3(5).

2013 (3) CTC 395

K. Baladhandayudam  
Vs  
P.S.R. Sathiyamurthy

Code of Civil Procedure, 1908 (5 of 1908), Order 2, Rule 2 – Cause of action in two Suits – Whether similar – Earlier Suit filed by Plaintiff contending that vendor of Plaintiff had executed Power of Attorney in favour of R4 and R4 in connivance with Revision Petitioner/D5 created invalid documents and tried to take forcible possession – As a result, earlier Suit was filed for relief of bare injunction – However, when property was sold by R4 to Revision Petitioner in spite of cancellation of Power of Attorney and Revision Petitioner tried to interfere with possession and enjoyment of property, instant Suit was filed for declaration of title and injunction – Held, cause of action in both Suits different – Relief of declaration not available to Plaintiff in earlier Suit – Consequently, omission to claim for relief of declaration in earlier Suit, would not bar instant Suit – Instant Suit, held, not barred under Order 2, Rule 2.

2013 (3) CTC 405

Srinivasa Naicker  
Vs  
Kaliappan alias Kalipandi and Ors

Evidence Act, 1872 (1 of 1872), Sections 65 & 66 – Secondary Evidence – When admissible – Document sought to be produced by Plaintiff, allegedly in possession of Defendant – Defendant served with notice to produce document – Defendant denying existence of document – In such circumstances, marking of secondary evidence of said document by Plaintiff, permissible and within contours of law.

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 14 – Document not referred to in Plaintiff – Consideration of – Document sought to be produced by Plaintiff neither mentioned in body of Plaintiff not categorized under Order 7, Rule 14 – Held, document cannot be shunned from consideration merely because it has not been mentioned in Plaintiff.

Code of Civil Procedure, 1908 (5 of 1908), Order 11, Rule 15 – Applicability of provision – Document sought to be marked by Plaintiff, not mentioned in Statement or Affidavit filed by Defendant – Plaintiff not bound by provision and not required to comply with provision before marking said document.

Palaniammal and Ors  
Vs  
K.R.C. Anbalagan and Ors

Registration Act, 1908 (16 of 1908), Sections 17(1-A) & 49 – Transfer of Property Act, 1882 (4 of 1882), Section 53-A – Unregistered Deeds – Admissibility of, to prove possession – Suit for Specific Performance and permanent injunction – Unregistered Agreement for Sale and unregistered Assignment Deed relied upon by Plaintiff – Held, when Plaintiff is claiming benefit under Section 53-A of 1882, documents are to be mandatorily registered under Section 17(1-A) of 1908 Act – As documents in instant case, not registered, Plaintiff cannot rely upon same for proof of possession – Held, when possession of Plaintiff was not established by evidence and documents relied upon by Plaintiffs were unregistered, decree of permanent injunction granted by Trial Court erroneous and set aside.

Specific Relief Act, 1963 (47 of 1963), Section 15(b) – “Representative in interest” – Scope and ambit of term – Term “representative in interest” used only in context of Specific Performance of contract and not in context of property rights – Term would include persons, who become entitled to benefit of contract – If contract itself either expressly or impliedly does not exclude assignment, term ‘representative in interest’ would include an assignee in interest, who is entitled to seek Specific Performance of contract – However, when there is prohibition on assignment of contract, representative in interest of deceased party entitled to enforcement of contract only when performance by deceased of his part of contract or performance by Legal Representative was accepted by other party – In instant case, Assignment Deed executed by P2 in favour of P1, assigning ‘Agreement of Sale’ entered into between P2 and D1 in favour of P1 – Said Assignment Deed, held, binding on D1 – However, as said deed was not registered, same cannot be relied by Plaintiffs – Registration Act, 1908, Section 17(1-A).

Specific Relief Act, 1963 (47 of 1963), Section 16 – Suit for Specific Performance of Contract – Readiness and willingness on part of Plaintiff – Plaintiff in Suit for Specific Performance of contract bound to set out Agreement, which Defendant has refused to perform – Plaintiff also to prove his readiness and willingness to perform contract for claiming relief – Plaintiff in Plaint has to plead his readiness and willingness to perform contract, failing which prayer of Plaintiff for Specific Performance is bound to be rejected – In instant case, no pleading in Plaint that P2 was ready and willing to perform his part of contract – Established from evidence that P2 did not have sufficient funds to pay balance consideration – Amendment in Plaint to incorporate plea of readiness and willingness of contract, rejected by High Court and Appeal filed in Apex Court withdrawn by Plaintiff – In such circumstances, Plaintiff, held, not willing and ready to perform his part of contract.

Specific Relief Act, 1963 (47 of 1963), Section 15 – Specific Performance of Contract – Persons entitled to relief – Privity of Contract, a pre-requisite for enforcement of contract – Only parties to contract entitled to enforcement of same – Third party for whose benefit contract has been made, entitled to sue contracting party for its own benefit.

Specific Relief Act, 1963 (47 of 1963), Section 16(c) – Readiness and Willingness – Distinction between terms – Readiness refers to financial capacity of party and Willingness refers to conduct of party claiming Specific Performance – Willingness is only mental process and Readiness is ultimate physical manifestation – However, both Readiness and Willingness necessary for claiming relief of Specific Performance of contract.

Registration Act, 1908 (16 of 1908), Sections 17(1-A) & 49 – Transfer of Property Act, 1882 (4 of 1882), Section 53-A – Registration of Agreement, when necessary, discussed.

2013 (3) CTC 498

Selvam  
Vs  
Premkumar and Ors

Code of Civil Procedure, 1908 (5 of 1908), Sections 100 & 151 – Second Appeal – Inherent powers of Court – Substantial question of law – Court cannot dismiss Suit for declaration of title to immovable property without considering Public records concerning suit property and summoning Public officials – Court has suo moto power and duty to summon Officials and records to verify character of lands in dispute.

Code of Civil Procedure, 1908 (5 of 1908) – Trial is voyage, in which discovery of truth is quest.

Practice & Procedure – Duty of Government – Government and its Officials should not abstain from Court proceedings, when they are arraigned as parties – Such Officials should file necessary pleading setting forth correct facts and produce necessary records dealing with same – Conduct of Government and its officials remaining ex parte in some matters, discussed.

2013 (3) CTC 577

S. Thirugnanasambandam  
Vs  
P. Kaliyaperumal and Ors

Code of Civil Procedure, 1908 (5 of 1908), Order 2, Rule 2 – First Suit for Injunction – Subsequent Suit for Specific Performance in relation to same property, whether barred – Notice issued by Plaintiff to Defendant for Specific Performance of Agreement of Sale – Execution of Agreement denied by Defendant vide Reply Notice dated 9.2.2002 – Held, cause of action for filing Suit for Specific Performance arose with said denial – Nonetheless, Plaintiff filed Suit on 11.10.2002 claiming relief of injunction with respect of suit property – No leave obtained from Court for filing separate Suit for Specific Performance – Time stipulated in Agreement, expired before filing of Suit for injunction – In such circumstances, instant Suit for Specific Performance, held, barred by virtue of Order 2, Rule 2 – Decision of Apex Court in Virgo Industries (Eng.) P. Ltd. V. Venturetech Solution P.Ltd., 2012 (5) CTC 359, relied upon.

Specific Relief Act, 1963 (47 of 1963), Section 16 – Evidence Act, 1872 (1 of 1872), Sections 101 to 104 – Suit for Specific Performance – Agreement of Sale – Proof of – Suit for Specific Performance of Agreement of Sale – Earlier Suit filed for injunction in respect of same suit property – Defendant in both Suits consistently denying signature on Agreement and execution of Same – Opinion of Handwriting Expert in earlier Suit that admitted signature of Defendant and signature on Agreement, not same – Depositions offered by Plaintiff, not believable – Severe discrepancies in evidence adduced by Plaintiff – Execution of document surrounded by suspicious circumstances – Deposition of Defendant in tune with his pleadings – Factum that Plaintiff was given possession of property in lieu of Agreement of Sale, not proved – Opinion of Handwriting Expert against claim of Plaintiff – Established that electricity connection obtained by Plaintiff by exercising his influence over officials – Not proved that Plaintiff ready and willing to performance, held, wrongly decreed by lower Courts – Second Appeal filed by Defendant allowed – Counter claim of Defendant for recovery of possession, also allowed – Plaintiff directed to reimburse Defendant for entire costs of litigation – Code of Civil Procedure, 1908, Order 8, Rule 6-A & Section 35.

Jurisprudence – Withdrawal of Suit to avoid unpleasant findings – Filing of subsequent Suit – Abuse of process of Court – Suit for injunction – Finding of Forensic Expert that admitted signature of Defendant and signature on Agreement of Sale produced by Plaintiff, not same – Plaintiff withdrawing said Suit after receipt of report of Forensic Expert – Subsequent Suit filed for Specific Performance – Held, intention of Plaintiff to withdraw earlier Suit to avoid finding in said Suit to be constituted as res judicata – Subsequent Suit, filed for Specific Performance, held abuse of process of Court.

2013 (3) CTC 729

Palaniammal and Anr  
Vs  
Pappathi and Ors  
With  
Paoopathi and Ors  
Vs  
Palaniammal and Ors

Hindu Succession Act, 1956 (30 of 1956), Sections 6 & 8 – Suit for Partition of Joint Family Property – Family consisting of ‘P’ and his two sons ‘S’ & ‘K’ – ‘P’ died in year 1976, leaving behind his two sons and daughter Palaniammal – ‘S’ died in year 1990, leaving behind two sons and a daughter – On death of ‘S’, his sons & ‘K’ constituted coparceners – ‘K’ died in year 1997, in an unmarried state – Palaniammal, sister of ‘K’ is not a Class I heir – On death of ‘K’, his 1/3<sup>rd</sup> share would go to two sons of ‘S’, by survivorship, since they are surviving coparceners.

Indian Evidence Act, 1872 (1 of 1872), Sections 68, 69, 90 & 114(e) – Indian Succession Act, 1925 (39 of 1925), Section 63(c) – Will Proof of – Exhibit B1 – Original Will not produced – Only registration copy of Will produced – Presumption under Section 90 of Evidence Act, not attracted – Both Attesting Witnesses not examined – No explanation as to absence of both Attesting Witnesses – Only scribe alone examined – Scribe deposed that Testator signed and Attesting Witnesses also affixed their signatures, even though he did not know identity of witnesses personally – Non-production of original Will cannot be taken as fatal – It is a singularly singular case in which during cross-examination nothing was suggested to scribe or to propounder that Attesting Witnesses were alive during trial – Though scribe did wax eloquence in concinnity with requirements of Evidence Act, in an overall manner, evidence has to be read and Court need not unnecessarily develop some hyper-technical suspicions to reject evidence of scribe – Registered document is having additional evidentiary value, as it attracts presumption of genuineness – Will executed by ‘P’, upheld.

Hindu Succession Act, 1956 (30 of 1956), Section 30 – Exhibit B1 – Will executed by ‘P’ in respect of entire Joint Family Property – ‘P’ had executed Will, as if entire property belonged to him – But ‘P’ had testamentary capacity only with regard to his 1/3<sup>rd</sup> share – Will is valid to extent of 1/3<sup>rd</sup> share of ‘P’ alone – Shares allotted proportionately.

Indian Evidence Act, 1872 (1 of 1872), Section 68 – Indian Succession Act, 1925 (39 of 1925), Section 63(c) – Exhibit A3-Will executed by ‘k’ in favour of sons of his deceased brother ‘S’ – Contention by Plaintiffs that by adopting different yardsticks, Lower Courts rejected Will executed by ‘K’ – ‘K’ was looked after by children of his deceased brother ‘S’ – Attesting Witnesses examined as PW2 – There is no reason to reject evidence of Attesting Witness of Will executed by ‘K’ – Findings rendered by Lower Courts, rejecting Will executed by ‘k’ set aside – Will executed by ‘k’, upheld – Shares allotted by Lower Courts confirmed – Second Appeal disposed off.

2013 (3) CTC 746

Nanjappa Gounder and Anr  
Vs  
Ashok Kumar

Specific Relief act, 1963 (47 of 1963), Section 16(c) – Evidence Act, 1872 (1 of 1872), Section 92 – Suit for Specific Performance – Execution of registered Sale Agreement and receipt of advance amount admitted – Contention that a lesser amount than actual price was quoted in Agreement, for reduction of Stamp duty – Stamp duty leviable for Sale Agreement, is only a fixed amount, unless possession is delivered in part performance of Agreement – No prudent person will agree to quote a lesser price – It shall be a potential danger to him to lose his property in case of default – Defendants cannot be permitted to lead oral evidence to vary terms of registered Agreement – Contention of Defendant rejected – Suit decreed.



Specific Relief Act, 1963 (47 of 1963), Section 16(c) – Readiness and Willingness – Readiness refers to financial position namely capacity of Plaintiff to arrange funds – Willingness means Plaintiff has not done anything to make Agreement unenforceable or has not committed any breach of Agreement – Defendants did not dispute signature found in Agreement and Receipt – Contention that signature was obtained by Plaintiff in a blank paper on assurance to discharge loan due to Cooperative Bank, is a far fetched story – Not necessary for Plaintiff to carry cash in his hands – Readiness and willingness has been pleaded and proved – Second Appeal dismissed.

2013 (3) CTC 770

Usharani & Ors  
Vs  
Rajaram & Ors

Legal Service Authorities Act, 1987 (39 of 1987), Section 21(2) – Award passed by Lok Adalat – Validity – Challenge to Award – Award passed by Lok Adalat in terms of settlement arrived between parties can be executed as decree of Civil Court – No challenge can be made against validity of Award – Plaintiff and Defendant entered into Compromise and Award was passed by Lok Adalat recording terms of Compromise – Plaintiff filed Execution Application for execution of terms of Award – Defendant challenged validity of Award on frivolous grounds by filing Execution Application – Plaintiff filed Civil Revision Petition to strike off Application filed by Defendant challenging validity of Award – Challenge made to Award cannot be entertained – Application filed by Defendant to thwart terms of decree liable to be struck off.

Legal Services Authorities Act, 1987 (39 of 1987) – Object and Reason – Intention of legislature – Benefits of Lok Adalat – Lok Adalat is another alternative to judicial justice – Lok Adalat is well accepted effective Alternative Dispute Resolution System – Implementation of provisions of Act emphasized.

2013 (3) CTC 782

Rizwanur Rahman  
Vs  
VMS. Seyedha and Ors

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (T.N. Act 18 of 1960), Section 10(8) – Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974, Rules 2(b) – Eviction Petition filed by Power Agent of Landlord – Maintainability of Eviction Petition – Power Agent filed Eviction Petition on behalf of Landlord and authorities concurrently ordered eviction of Tenant on ground of willful default – Civil Revision before High Court – Contention of Tenant that Eviction petition filed by Power Agent on behalf of Landlord is not maintainable – Tenant had not raised any objection in Counter Affidavit filed before Rent Controller with regard to maintainability of Eviction Petition filed by Power Agent – Tenant also cross-examined Power Agent and agitated matter without raising any objection – Competency of Power Agent to institute Eviction Petition is mixed question of law and fact – Objection raised by tenant for first time before Revision Court is untenable and cannot be countenanced.

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (T.N. Act 18 of 1960), Section 10 – Willful default – Adjustment of arrears of rent towards advance amount – Tenant failed to request Landlord to adjust arrears of rent towards advance amount – Adjustment of advance amount is not permissible when arrears of rent exceeds advance amount.

2013 - 2 – L.W 904

K.S. Ramanathan  
Vs  
N.K.T. Subramanian & Ors

Constitution of India, Article 227,

C.P.C., Order 18, Rule 17 / Applications to reopen case, receive additional written statement, recalling DW 1.

Suit is for partition – Petitioner/1<sup>st</sup> defendant filed three applications for the purpose of reopening the case, receiving additional written statement and for recalling D.W.1.

Court unable to see any malafide intention on the part of petitioner to fill up any lacuna.

In the additional written statement reason stated by the petitioner is that the Will was not available at the time of filing of the written statement and recording of evidence – Being a registered Will and admitted by P.W. 1, there could not have been any intention on the part of the 1<sup>st</sup> defendant to suppress the existence of the Will when he was in possession of the same at the earlier point of time.

No legal embargo to entertain the applications for reopening the case and recalling P.W.1 and to receive the additional written statement.

2013 - 2 – L.W 917

M. Thiyagarajan  
Vs  
Geetha D/o Ragavan

Hindu Marriage Act (1955), Section 13/ Irretrievable break down of marriage, Earlier divorce petition dismissed for non-prosecution, second petition, whether a bar,

Practice/Divorce Petition, earlier, filed, dismissed second petition, whether a bar.

Point is when an earlier petition for divorce was dismissed for non-prosecution, without restoring the same, can a fresh petition for divorce be filed after a lapse of four years.

It is not necessary for the appellant-husband to restore the said petition – For non prosecution –Expecting good gesture from his wife, deliberately allowed the matter to be dismissed – He was thinking that his wife may return back to lead matrimonial life.

In matrimonial matters, the Court cannot go strictly in accordance with CPC – Not filing restoration application and filing a separate divorce petition after four years by the appellant cannot be found against the appellant.

Parties living separately for almost two decades, it means that there is an irretrievable break down of marriage – It is a complete deadwood.

Decree of dissolution of marriage between the appellant and respondent granted.

2013 - 2 – L.W 958

R. Selvaraj  
Vs  
S. Latha

Evidence Act (1872), Section 118/Child witness, giving evidence, minor, whether can be examined, scrapping of,

Guardian and Wards Act, Section 10/ Custody of Child/Child witness, evidence, examination, Scrapping of,

Practice/Guardian, Custody, Child witness, examinations, Scope of.

Minor son was examined as R.W. 3 on the side of Respondent/Wife (Mother) and Court has come to a conclusion that the minor is competent to give evidence – Revision Petitioner/Husband filed application to scrap the evidence of minor.

Section 118 speaks of competency of witnesses – Intellectual capacity is the prime test of competence.

If a child is under 12 years of age, he need not be sworn – Test for appraising the evidence of child witness is for the Court of Law to find out whether there is a possibility of any tutoring.

Minor son has not sworn to any affidavit and affixed his signature.

Trial Court has committed an error in allowing the respondent to examine the minor – Said evidence of minor scrapped because of the simple reason that the trial Court at best can only ascertain the views/wishes of the minor child in regard to the custody issue.

2013 - 2 – L.W 964

Divisional Railway Manager [Commerical], Palakkad Division, Southern Railway, Palakkad  
Vs

Tirupur Railway Station, Daily Commuters' Association, Rep. by its President, No.1/424, Aram Nagar,  
Kalamkadu, Navathu Street, Veerapandi Road, Tirupur -4

C.P.C., Section 9/Jurisdiction, to challenge policy matters, Lease of Railway station, Parking area, abuse of process of Court,

Section 80/Statutory Notice, Lease of railway Station, parking area, requirement,

Order 1, Rule 8/Representative Suit, Scope of, Lease of railway Station Parking area,

Constitution of India, Article 227/Challenge to abuse of process of Court, Jurisdiction, to challenge policy matters, Lease of Railway station, Parking area,

Respondent filed the suit for declaring the classification of the Triupur Railway Station parking area as Grade 'A' as illegal and permanent injunction restraining the defendant from calling for tender in respect of the Vehicle Parking area at Triupur Railway station.

O.1, R.8 not been followed – Respondent association of daily commuters has got no personal right.

No civil right in respect of the reliefs sought for – This is a clear abuse of process of court – Section 80 of CPC was also not complied with.

Whether a railway station is to be classified as Grade 'A' is a policy matter of the railway authorities and no individual can have an civil right in respect of the same – Respondent/plaintiff has no civil dispute giving jurisdiction under Section 9 of CPC.

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## 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) 62

N. Vijayakumar and Ors  
Vs  
S. Geetha

Criminal Law – Domestic violence – Protection of Women from Domestic Violence Act, 2005, Sections 2(q), 12(3) & 2(a) – Quashing of proceedings -No domestic relationship between respondent/wife and first petitioner/ husband when application filed – Petition filed by respondent before trial Court not in Form No.II, as per Act – Question as to whether as per Section 2(q) of Act, only male person can be shown as respondent and not female person – Criminal Original Petition – Held, complaint can be filed against relative of husband or male – Relative is common term for both sex – Application to be in Form II not mandatory – Failure to file application as per Form No.II does not affect proceedings – Complaint lodged against petitioners 2 to 4, they alleged to have instigated First petitioner to ill-treated respondent – Definition encompasses into its ambit even past relationship – No valid point to quash proceedings – Petition dismissed.

(2013) 2) MLJ(CrI) 64

Maheswaran  
Vs

State rep by Inspector of Police, Kinathukadavu Police Station, Thamarikulam Village, Pollachi, Coimbatore District

Criminal Law – Motor Accident – Rash and negligent driving – Indian Penal Code (45 of 1860), Section 304(A) – Conviction and Sentence – Criminal revision petition – Whether order of conviction passed by Court below can be sustained – Held, contradiction in evidence of prosecution witness – Prosecution failed to prove rash and negligent act on part of driver of vehicle to seek for conviction – Accident took place beyond control of revision petitioner – Order of conviction and sentence passed by Court below set aside – Revision petitioner accepted to pay compensation to family members of deceased person – Revision allowed.

(2013) 2) MLJ(CrI) 104

P. Venkatesan and Anr  
Vs

Deputy Superintendent of Police, Economic Offence Wing, Admiralty Building,  
Omanthurar Government Estate, Chennai

Criminal Law – Purchase of property under attachment – Tamil Nadu Protection of Interests of Depositors(in Financial Establishment) Act, 1997 – Petitioner purchased property of accused which was under attachment for non-payment of amount invested by depositors – Discharge petition filed by petitioner dismissed –

Whether petition filed for discharge has to be allowed in view of subsequent development taken place in the case – Held, offence committed by accused/owner of property was permitted to be compounded and subsequently compounded upon compliance of all conditions – He was acquitted of all the charges – Once attachment of property has been lifted, after payment of money, petitioner cannot be said to have committed any offence – Entitled to be discharged from criminal prosecution – Petitioners liable to be discharged in view of subsequent development in case – Criminal Revision allowed.

(2013) 2 MLJ(Crl) 111

R. Maruthu @ Maruthupandian  
Vs

State, rep by Inspector of Police, Ponnamaravathi Police Station, Pudukkottai District

Criminal Law – Murder – Death sentence – Indian Penal Code (45 of 1860), Sections 84, 302 & 323 – Code of Criminal Procedure, 1973, Sections 335(2)(a) – Mental Health Act, 1987, Section 24 – Plea of unsound mind – question as to whether Trial Court was justified in rejecting plea of unsound mind and passing order of conviction – Held, medical records and evidence of D.W. 1 and D.W. 2 revealed that accused was suffering from paranoid schizophrenia – Evidence proved that accused was suffering from said mental disease before occurrence and continued to suffer from said disease at time of occurrence and subsequent to occurrence – Act of accused not an offence and falls within general exception contained in Section 84 of IPC – Appellant acquitted – Appellant released from prison and handed over to Institute of mental health for safe custody and treatment – Criminal appeal allowed.

2013 (2) MLJ(Crl) 436

C. Sonamuthu  
Vs.  
R.Barsha Beevi

Criminal Law – Dishonour of Cheque- Expert opinion – Negotiable Instruments Act ( 26 of 1881)- Material alteration alleged to have been done in cheque in issue by complainant- Petition by respondent/accused seeking expert opinion allowed – Criminal revision petition – Whether order of trial Court allowing petition seeking expert opinion can be sustained – Held, unless conditions in Section 138 of Act are satisfied no Criminal liability can be mulcted- Plea of material alteration take by Accused – Said application allowed to provide opportunity to accused to prove her case in manner known to law and in accordance with law – Valuable right of Accused cannot be taken away – No infirmity or illegality in order of trial Court – Criminal revision Petition dismissed.

(2013) 2 MLJ (Crl) 486

K. Jackuline Sathya Priya  
Vs

Inspector of Police, All Women Police Station, Srirangam, Trichy and Ors

Reinvestigation – Code of Criminal Procedure, 1973 ( 2 of 1974), Sections 161(3), 173(2)- Indian Penal Code(45 of 1860), Sections 420, 294(b), 506(i) – Tamil Nadu Prohibition of Women Harassment Act, Section 4- Petition seeking further investigation dismissed by Trial Court- Criminal Revision – Petitioner/ complainant in her statement implicated her husband and mother-in-law – She has not implicated other 10 accused though they have been mentioned in FIR lodged by her – Held, petitioner/ complainant has no locus – standi in Law to make a plea for further investigation – It is within realm and ambit of first respondent/ police to ask for reinvestigation based on fresh material which comes on surface- Petition not maintainable in Law – No infirmity in impugned order – Criminal revision dismissed.

(2013) 2 MLJ (Crl) 502

Balu @ Balamurugan  
Vs

State by Inspector of Police, Kai Kalathur, Perambalur District

Penal Law – Murder or robbery – Conviction and sentence – Indian Penal Code (45 of 1860), Sections 302 and 392 – Whether order of conviction passed by trial Court can be sustained – Criminal appeal – Held, no evidence to link appellant either with murder or robbery or theft or receiving of stolen property – Recovery of ornaments of deceased from possession of accused based on confessional statement not established – No independent witnesses examined – No independent witness attested recording of confessional statement – Conviction and sentence set aside – Criminal appeal allowed.

(2013) 1 MLJ(Crl) 634

C. Hari Sankar and Ors  
Vs

Deepa Lakshmi and Anr

Quashing of proceeding – Code of Criminal Procedure, 1973 (2 of 1974), Section 188 – Offence committed inside and outside India – Petitioner charged under Section 498-A, 294-B, 406, 506-II of Indian Penal Code and Section 3, 4 and 6 of Dowry Prohibition Act (28 of 1961) – Petition seeking discharge dismissed by trial Court – Criminal revision – Criminal original petition filed to quash proceeding as sanction not obtained – Held, no previous sanction required from Central Government upto stage of taking cognizance – To proceed further with trial previous sanction required – Court to proceed against accused in respect of offence committed in India – Not to proceed with trial for offence committed outside India without previous sanction – Entire proceedings not quashed – Criminal original petition and criminal revision petition disposed of,

(2013) 1 MLJ(Crl) 656

Muthuraj  
Vs

Ganesan

Dishonour of Cheque – Negotiable Instruments Act (26 of 1881), Section 138 – Expert opinion – Petition seeking permission to send cheque for examination to Forensic Expert dismissed – Criminal Revision – Held, blank cheque can be filled up by Holder – It is valid instrument in law – Section 20 of NI Act have no application when Drawer issues blank cheque after signing – Case posted for evidence being let in on side of petitioner/accused – Accused questioned under Section 313 of Cr.P.C – No favourable circumstances projected to allow application – Application filed to prolong pending proceedings – No irregularity or patent illegality in order of Trial Court – Criminal revision petition dismissed.

(2013) 1 MLJ(Crl) 720

M. Kaja Mohaideen  
Vs

Senior Intelligence Officer, Directorate of Revenue Intelligence Regional Unit, Coimbatore

Excise and Customs Law – Impounding of Passport – customs Act (52 of 1962), Section 135 – Petitioner/accused arrested and remanded to judicial custody in respect of offence under Customs Act (52 of 1962) – Passport seized – Petition filed to return of Passport dismissed by trial Court – Power of customs officer to impound Passport – Scope of – Criminal Revision – Held, impounding of Passport can only be done by competent authority prescribed under Passports Act (15 of 1967) and not by Customs Authority or Court of Law – Condition imposed on accused not to leave Country without express permission of Court – Such permission be granted only

after providing adequate opportunity of hearing to Respondent/Customs Authority – Customs Authority directed to return passport – Order of dismissal passed set aside – Criminal revision petition allowed.

(2013) 1 MLJ(Crl) 745

N. Ramaiah

Vs

State rep. by Inspector of Factories, Tuticorin

Dispensation of personal attendance of accused – Code of Criminal Procedure, 1973 (2 of 1974), Section 205 – Petition filed by accused seeking permission to dispense with his personal attendance – Admission petition also filed by him through his counsel pleading guilt and admitting facts – Impugned order rejecting admission petition – Criminal Original petition – Held, it is permissible for Court to dispense with personal appearance of accused under Section 205 and to record plea of accused through counsel for accused – No illegality if Magistrate records plea of guilty through accused's counsel in respect of offences punishable only with fine – Dispensation of personal attendance allowed by Court considering age and health of accused – Court not bound to accept plea of accused through his counsel – Same is purely within discretion of Court – Impugned order set aside – Petition allowed.

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