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## **IMPORTANT CASE LAWS**

*Compiled by*

**Tamil Nadu State Judicial Academy  
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## **HIGH COURT CITATION OF CRIMINAL CASES**

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## SUPREME COURT CITATIONS CIVIL CASES

(2013) 3 Supreme Court Cases 409

PARAM PAL SINGH THROUGH FATHER  
Vs  
NATIONAL INSURANCE COMPANY AND ANR

- A. Family and Personal Laws – Hindu Law – Adoption – Deed of adoption – Need not necessarily be registered – Valid adoption – Requisite proof of – Adoption in question took place through a simple ceremony, though not a mantra ceremony, in which deceased J expressed that he being a bachelor thought it fit to take appellant in adoption – Biological parents of appellant also willing to give him in adoption – Process of adoption carried out in presence of respected persons of panchayat in a ceremony where goods and sweets were distributed – Adoption deed written by the then Sarpanch of the village – Adoption deed bearing left thumb impression of J as well as signatures of biological parents and three witnesses – Appellant was three years old when adopted – In ration card, name of J indicated as father of appellant – Said facts, held, conclusively proved that appellant was adopted son of J – High Court erred in taking a contrary view – Hindu Adoptions and Maintenance Act, 1956 – Ss. 6, 7 and 9 to 11 – Registration Act, 1908 – S. 2(d) - Claimant, if adopted son of deceased employee – Evidence Act, 1872, Ss. 72, 61 and 62
- B. Tort Law – Workmen’s Compensation Act, 1923 – S. 3 – Applicability – Expression “personal injury caused ... by accident arising out of and in the course of his employment” – Scope of – Requirement of causal connection between the death of workman and his employment – Fulfilment of – J employed as a truck driver by R – He while driving truck in connection with trade and business of R, felt giddy – So he parked the truck on the side of the road – But immediately thereafter he died – Held, J would have definitely undergone grave strain and stress due to long distance driving (of about 1152 km) which materially contributed to and accelerated his unexpected death – Thus, there existed a causal connection between the death of J and his employment – Said untoward mishap could be described as an accident arising out of and in the course of employment of J with R – Hence, order of Commissioner of Workmen’s Compensation holding so and awarding compensation to adopted son of deceased, held, was proper – Conclusion to the contrary arrived at by High Court, set aside – Words and Phrases – “Accident”, “arising out of and in the course of”, “arising out of and in the course of employment”, “causal connection” – Motor Vehicles Act, 1988, S. 147(1) Proviso(i)

2013-2-L.W. 564

Joseph John peter Sandy  
Vs  
Veronica Thomas Rajkumar and Anr

Settlement Deed/ Settlement Deed by father, mistake, rectification, Scope of, non-examination of father-settlor, Effect of, Undue influence to execute, whether exists, Agreement of exchange, Scope of,

Specific Relief Act (1963), Section 26/Rectification of instruments/Settlement Deed, mistake, rectification, who can ask for, Scope of,

Contract Act, Section 16/Undue influence, Rectification Deed, Execution of, Agreement of exchange, execution, undue influence, whether, onus of proof on whom, Scope,

C.P.C., Order 18, R.16/Examination of witness, Settlement deed, Settlor's examination, Proof of, Rectification deed.

By the settlement deed given, 'S' realized that the House No.23 which was given to the daughter, ought to have been given to son and House No. 22 to daughter – Parties to give effect to the real intention of their father decided to exchange the properties given to them, and executed a Agreement Deed-Ex.A3.

Since the said agreement was not given effect to be respondent no.1, the appellant filed a suit for direction to the respondent no.1, daughter to execute a Deed of Rectification – During pendency of suit, appellant and his father executed a Rectification Deed (Ex.A-6) by which property in Door No.23 was given to the appellant.

Respondent filed suit for declaration that the agreement Ex.A3 an unregistered document, was null and void, etc. and she has under undue influence put her signature on blank non-judicial Stamp Papers.

Held: S.26 is applicable only where it is pleaded and proved that through fraud or mutual mistake of the parties, the real intention of the parties is not expressed in relation to an instrument.

Only the parties and attesting witness to the Rectification Deed, were examined – Appellant did not examine his father-settlor who was alive – Appellant could have taken resort to O.18, R.16, to examine this witness immediately.

Appellant did not examine either the attesting witnesses of the document, nor proved its contents – Ex.A-3 cannot be read as an agreement to exchange – It can be read only as a rectification deed, which could have been done only by the settler and not by the contesting parties – Section 26 of the Act, provides for rectification of a document if the parties feel that they have committed any mistake – It was only, the father of the parties who could have sought rectification of the deed – Mere rectification by parties herein does not take the case within Section 26.

2013-2-L.W. 610

M/s Bagai Construcion Thr. Its Proprietor Mr. Lalit Bagai  
Vs  
M/s Gupta Building Material Store

C.P.C., Section 151/Order 18, Rule 17/Application for placing on record documents, seeking permission to recall PW1 for proving documents by leading additional evidence,

C.P.C., Order 7, Rule 14/Application for placing on record documents.

During entire trial, documents remained in exclusive possession of the plaintiff – Plaintiff has not placed these bills on record – After the conclusion of the evidence, final arguments and after reserving the matter for pronouncement of judgment plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him.

2013-2-L.W. 615

Mata Prasad Mathur (Dead) by LRs.  
Vs  
Jwala Prasad Mathur & Ors

C.P.C., Order 22, Rule 4/Defendant, set Exparte, death of, substitution of LRs, dispensing of,

Question is whether the suit abated on the failure of the plaintiffs to file an application for substitution of the legal representatives of one of the defendants.

'V' was proceeded ex parte – Substitution of the legal representatives of such a defendant could be dispensed with by Order 22, Rule 4(4).

Order 22 Rule 4(4) – Abatement of Suit – Power of exemption available to Court – Scope of.

Substitution of LRs of non-contesting defendants – Order 22 Rule 4(4) incorporated with a specific view to expedite the process of substitution of the Lrs of non-contesting defendants – Failure to bring the legal representatives did not result in abatement of the suit – It can be sustained on the strength of the power of exemption that was available to the Courts under Order 22 Rule 4(4) – Suit had not abated.

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## SUPREME COURT CITATIONS CRIMINAL CASES

2013-2-L.W. 60

Deoki Panjhiyara

Vs

Shashi Bhushan Narayan Azad and Anr

Domestic Violence Act (2005), Section 2(a)'aggrieved person', 2(f)'domestic relationship', Section 12/Damages, maintenance; Claim of, production of marriage certificate to declare earlier marriage, whether sufficient to reject claim of maintenance,

Special Marriage Act (1954), Section 13/Marriage Certificate, Claim for maintenance,

Hindu Marriage Act (1955), Section 11, Void marriages, 13/Marriage Certificate, Proof of, earlier marriage, whether sufficient in collateral proceeding for maintenance.

Section 11 given an option to either of the parties to a void marriage to seek a declaration of invalidity/nullity of such marriage.

Mere production of a marriage certificate issues under Section 13 in support of the claimed first marriage of the appellant not sufficient, to render a complete decision with regard to the marital status of the parties in a collateral proceeding for maintenance – Until the invalidation of the marriage between the appellant and the respondent is made by a competent court appellant continues to be the wife of the respondent so as to entitle her to claim all benefits under the DV Act.

(2013) 3 Supreme Court Cases 425

LIFE CONVICT BANGAL ALIAS KHOKA ALIAS PRASANTA SEN

Vs

B.K. SRIVASTAVA AND ORS

- A. Penal Code 1860 – Ss. 53 secondly, 53-A(1), 55 and 57 and Ss. 302/34 – “Life imprisonment” – Meaning of – Reiterated, unless properly remitted by competent authority, means imprisonment for entire lifetime of convict – Remission – Entitlement to
- Petitioner serving sentence of life imprisonment for offence under Ss. 302/34 IPC – Competent authority considering antecedents and other factors, and rejecting petitioner’s prayer for remission – Even after factors, and rejecting petitioner’s prayer for remission – Even after Supreme Court’s direction for reconsideration, competent authority once again rejecting same after due and proper consideration – Held, in absence of order of remission by competent Government either based on S.57 IPC or any other provision of CrPC, life convict cannot be released – Power of remission lies within exclusive domain of appropriate Government under S. 432 CrPC – Neither S. 57 IPC nor any rules or local Acts (in the case on hand, 1992 W.B. Act) can stultify effect of sentence of life imprisonment given by court under IPC – Therefore, contempt petition against authorities for not granting remission and releasing petitioner (life convict), dismissed – Petitioner to serve out sentence of imprisonment for the rest of his lifetime – Criminal Procedure Code, 1973 – Ss. 432, 433 and 433-A – W.B. Correctional Services Act, 1992 (32 of 1992), S. 61 Expln.

- B. Practice and Procedure – Directions to “consider”/Liberty given by Court – Import and meaning of – Held, such direction does not mean that authority concerned must grant relief prayed for – It only means that authority concerned must duly apply its mind to question whether relief that is prayed for, ought to be granted or not – Direction given by Supreme Court to reconsider matter whether petitioner’s sentence of life imprisonment could be remitted – Authority concerned after duly and properly reconsidering matter, still coming to conclusion that petitioner was not entitled to remission – Same, held, not violative of direction to “reconsider” – Hence, cannot be contemptuous – Contempt of Court – Civil contempt – Instances of civil contempt – Court’s directions to “consider” – Compliance with – What amounts to – Contempt of Courts Act, 1971 – S. 2(b) – Constitution of India, Arts. 129 and 215

(2013) 3 Supreme Court Cases 440

OMA ALIAS OMPRAKASH AND ANR  
Vs  
STATE OF TAMIL NADU

- A. Penal Code 1860 – Ss. 395, 396 AND 397 – Case of dacoity with murder – Death sentence – Principles for award of, restated – “Special reasons” under S. 354(3) CrPC – What may be – Individual predilections/inclinations of Judge concerned – Exclusion of, from sentencing process – Necessity of – Judge-centric approach – Impermissibility – Trial court awarded death sentence to accused after finding them guilty under Ss. 395, 396 and 397 – Justifiability of reasons given by trial court in imposing death sentence to accused, examined – Held (per curiam), none of the reasons which weighed with Sessions Judge in awarding death sentence can be countenanced – Reasons stated by Sessions Judge while awarding death sentence, expose ignorance of Judge of criminal jurisprudence of India, and were purely Judge-centric – Nor did trial Judge consider circumstances of the criminal, which is mandatory, in addition to considering the circumstances of the crime, when drawing up balance sheet of aggravating and mitigating circumstances and his approach was purely “crime-centric” – Held, per Misra, J. (supplementing), a Judge, while imposing sentence, should not be swayed away with any kind of sensational aspect and individual predilections – Criminal Procedure Code, 1973, S. 354(3)
- B. Criminal Trial – Practice and procedure – Generally – Proper methodology and procedure for deciding criminal case by criminal courts, highlighted – Opinion versus binding precedents – Need to discuss applicability of precedent concerned to facts of case – Need to cite proper source/citation of judgment being relied on as precedent – Instructions regarding, given to National Judicial Academy and State Judicial Academies – Civil Procedure Code, 1908 – Or. 20 Rr. 4 and 5 – Criminal procedure Code, 1973 – S. 354 – Constitution of India – Arts. 141, 144 and 215 – Criminal Trial – Presiding Judge – Role and duties of

(2013) 3 Supreme Court Cases 462

VIJRESH VENKATRAY ANVEKAR  
Vs  
STATE OF KARNATAKA

- A. Constitution of India – Arts. 21 and 14 – Right to dignity – Wife-beating leading to suicide – View that one or two beating not sufficient in ordinary course for a woman to commit suicide – Held, not acceptable – Assault on woman cannot be accepted as social norm – What impact an assault will have on a woman would depend upon circumstances of each case and court cannot proceed with any fixed rule – Courts should be sensitive of women’s problems – Penal Code, 1860 – Ss. 306 and 498-A – Constitution of India – Art. 21 – Protection of Women from Domestic Violence Act, 2005 – S. 3 – Words and phrases – “Violence”, “domestic violence” – Family and Personal Laws – Matrimonial Discord/Disputes/Offences

- B. Evidence Act, 1872 – S. 113-A – Presumption as to abetment of suicide – Failure to rebut – Conviction confirmed – Evidence of mental torture and physical assaults – Wife committed suicide in her matrimonial home within 7 years of marriage – Medical evidence showing consumption of cyanide as cause of death and that post-mortem indicated assaults on her prior to consuming cyanide – As per deposition of PWs, on earlier occasions also deceased had been beaten in her matrimonial home – Testimony of witnesses pointing to guilt of appellant husband withstood cross-examination and was corroborated by attendant circumstances and evidence on record – Explanation offered by appellant in his statement recorded under S. 313 CrPC not convincing – Held, appellant husband failed to rebut presumption under S.113-A of Evidence Act – Evidence established that deceased was subjected to physical and mental cruelty by appellant husband in their matrimonial home which drove her to commit suicide – Penal Code, 1860, Ss. 306 and 498-A
- C. Criminal Procedure Code, 1973 – S. 154 – Delay in lodging FIR – Suicide committed by woman in the afternoon in her matrimonial home while FIR was lodged in night at 2215 hrs – 6 hrs' delay in lodging FIR by deceased's father – Held, not unreasonable in view of mental shock received by him due to loss of his daughter – Trial court erred in taking view that unexplained delay of 6 hrs in lodging FIR was fatal to prosecution case
- D. Criminal Procedure Code, 1973 – S. 154 – FIR – Need not contain minute details

(2013) 3 Supreme Court Cases 594

STATE REPRESENTED BY INSPECTOR OF POLICE, CHENNAI  
Vs  
N.S. GNANESWARAN

- A. Public Accountability, Vigilance and Prevention of Corruption – Vigilance Authorities – CBI and CBI Investigation – Initiation of investigation by CBI – Norms applicable – CBI, reiterated, must comply with CBI (Crime) Manual, 2005 – Non-compliance with S. 154 CrPC will not vitiate CBI investigation if the same is in compliance with CBI (Crime) Manual, 2005 – Police – CBI (Crime) Manual, 2005 – Paras 8.26, 8.27, 8.28, 10.1 and 10.2 – Delhi Special Police Establishment Act, 1946 (25 of 1946), Ss. 2 and 3
- B. Criminal Procedure Code, 1973 – Ss. 154(2) & (1), 156 & 157 and S. 482 – Provision in S. 154(2) for issuing copy of FIR to informant – Nature of – Mandatory or directory – Vitiative effect, if any, of non-compliance therewith – Prejudice from non-supply of copy of FIR – Need for showing power of CBI to investigate in such case, if any – Quashment of proceedings on ground of non-compliance with S. 154(2) – Untenability
- S. 154(2), held, is merely directory and not mandatory – Hence, unless the informant could show any resultant prejudice or injustice caused to him, an FIR showing prima facie cognizable offences, would not stand vitiated merely on account of non-compliance with S. 154(2)
  - In any case, in view of procedure prescribed by CBI (Crime) Manual, 2005, FIR disclosing commission of cognizable offence and registered under S. 154(1) for purpose of conducting investigation under Ss. 156 and 157, held, did not stand vitiated for non-compliance with S. 154(2) – Hence, High Court erred in quashing proceeding against respondent on this ground – Proceeding restored – Police – CBI (Crime) Manual, 2005 – Paras 8.26, 8.27, 8.28, 10.1 and 10.2 – Delhi Special Police Establishment Act, 1946 (25 of 1946) – Ss. 2 and 3 – Penal Code, 1860 – Ss. 420, 467, 468, 471 and 120-B – Prevention of Corruption Act, 1988, Ss. 13(2) & (1)(d)
- C. Administrative Law – Natural Justice – Audi Alteram Partem – Right to Hearing – Adverse Material, Awareness/Supply of – Doctrine of prejudice – Applicability of – Held, unless in a given situation,

aggrieved person makes out a case of prejudice or injustice, technical infraction of law would not vitiate order/enquiry/result – In judging a question of prejudice, court must act with a broad vision and look to the substance and not to technicalities

(2013) 3 Supreme Court Cases 684

VIPIN JAISWAL (A-I)

Vs

STATE OF ANDHRA PRADESH REPRESENTED

- A. Penal Code, 1860 – Ss. 304-B and 498-A – Dowry death alleged – Suicide by wife – Husband accused of abetting the same and causing dowry death – Suicide note allegedly written by deceased found – Said note holding no one responsible for her death – Proof of suicide note – Evidence of husband, that aforesaid note was written by deceased herself and was signed by her and that he was acquainted with her handwriting and signature – Courts below by their own imaginary reasoning disbelieved statement of husband – Impropriety of – Proper course to be taken by courts below – What should be – Held, trial court and High Court could have recorded a finding one way or the other by comparing handwriting and signatures under S. 73, Evidence Act – In the alternative, trial court and High Court could have sought for an expert’s opinion under S. 45, Evidence Act, on whether handwriting and signature were that of deceased – But neither trial court nor High Court resorted to these provisions of Evidence Act and instead by their own imaginary reasoning disbelieved statement of appellant-accused (husband), which was not proper – Evidence Act, 1872, Ss. 73 and 45
- B. Penal Code, 1860 – Ss. 304-B and 498-A – Dowry demand – What is – Held, evidence of PWs 1 and 4 (father and mother of deceased, respectively) is that demand of ₹ 50,000 by appellant husband was made six months after marriage and that too for purchasing a computer to start his own business – Both trial court and High Court failed to appreciate that such demand, if at all made by appellant from deceased, was not in connection with marriage and was not really a “dowry demand” within the meaning of S.2, dowry Prohibition Act, 1961
- C. Penal Code, 1860 – Ss. 304-B and 498-A – Culpability under – Establishment of – Requirements – Principles reiterated
- D. Penal Code, 1860 – Ss. 304-B and 498-A – Dowry death – Wife committing suicide – Death due to burn injuries – General allegations made against accused husband by PWs and suicide note exonerating husband – Reasonable doubt – Conviction reversed – Held, evidence of prosecution witnesses, and in particular PWs 1 and 4, shows that they have made general allegations of harassment by appellant towards deceased and have not brought in evidence of, any specific acts of cruelty or harassment by appellant of deceased – Again, suicide note left by deceased appears to be written according to her free will saying that nobody was responsible for her death and that her parents and family members have harassed her husband and she was taking the step as she was fed up with her life – Evidence Act, 1872, S. 113-B

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## HIGH COURT CITATIONS CIVIL CASES

2013 (2) TLNJ 1 (Civil)

Kasthuri Ammal and Ors  
Vs  
G. Sampath

Civil Procedure Code 1908 as amended, Section 100 – Suit for declaration recovery of possession - High court decreed the suit and the appeal was dismissed-on further appeal High court on the ground that some of the material evidence not considered – held that it can interfere – when material evidence have been ignored or High Court held that it can interfere if any material evidence not considered - held that it can interfere- when material evidence not considered-the matter without evidence can be interfered - SA dismissed

2013 (2) TLNJ 20 (Civil)

United India Insurance Co, Ltd.,  
Vs  
Velumyil and Ors

Motor Vehicles Act 1988, Section 166, 163 – Petition against quantum of compensation by insurance company and cross objection by claimants-A student of first year engineering while traveling along with his friend in a car hit by a lorry-died-Tribunal found that accident was due to rash and negligent driving of lorry-High court held that 50% is required to be deducted towards personal expenses as the deceased was a bachelor – Also held that appropriate multiplier for the age of 44 being the mother's age, multiplier '14' is to be adopted instead of '15' as adopted by the Tribunal – High Court further held that monthly income of Deceased to be taken as ₹ 7,500/- and total compensation of enhanced from ₹ 6,50,000 to ₹ 12,00,000/- - CMA disposed of with enhanced compensation.

2013 (2) TLNJ 39 (Civil)

Babu Jeevanatham  
Vs  
Azhaguvel Mudaliar

Indian Stamp Act 1899, Section 35 – Postal Stamp affixed instead of Revenue Stamp on the Demand Promissory Note – defendant wanted rejection of plaint – Trial Court held that Suit cannot be rejected and permitted petitioner to pay Stamp Duty with penalty – on Revision High Court held that procedural law cannot be allowed to fail to provide relief – when substantive law gives the right – held that order of Trial Court valid and permitted petitioner to pay penalty – CRP (NPD) dismissed.

2013 (2) TLNJ 49 (Civil)

A.G.Sivanandam  
Vs  
S. Arokyasamy

Tamil Nadu Buildings (lease and Rent Control) Act, 1960, Section 25 and Section 10(2)(1) and 3(a)(i) - Eviction Sought on the ground of Wilful default and owners use – dismissed on both grounds by controller - appeal was also dismissed - on revision it was held that for getting an order of eviction on a bonafide requirement it would be sufficient if the landlord has been making bonafide arrangement of



commence his business-unemployed son with necessary qualification is sufficient to prove bonafide -  
eviction ordered-CRP (NPD) allowed.

2013 (2) TLNJ 61(Civil)

Krishnaswamy  
Vs  
Shanam Ammal and Ors

Indian Succession Act. 1925,Section 68 – Suit for partition and separate possession dismissed by trial court but reversed on appeal – and further appeal the High court held that mere admission of signature of testators could not relive Propounder of the will and the will has to be proved by other grounds also –the decree of appellate court modified – SA allowed.

2013 (2) TLNJ 66(Civil)

Balasundaram Pillai and Anr  
Vs  
Lalitha and Ors

Civil procedure Code 1908 as amended, Order 41 Rule 27 - Suit for declaration and permanent injunction decreed by trail court – on appeal defendants sought permission to mark additional documents but was rejected on the ground that marking of such documents were already rejected on the ground that marking of Such documents were already rejected by trial court – on revision the High Court felt that no Prejudice would cause to the plaintiff by Marking additional documents which are of the Years 1992 and 2001 and the CRP allowed in Part.

2013 (2) TLNJ 74(Civil)

Azeezhur Rahman  
Vs.  
Aysa Begam and Ors

Limitation Act, 1963, Section 5 – Petition to condone delay in filing petition seeking restoration of appeal dismissed for default – dismissed by lower court and on revision High Court expressed that the remedy against such order of dismissal made on merits of the appeal is by way of appeal or revision and not by seeking any relief in the same court – further held that the reasons shown are not valid and taking more than three years time after counsel's death can not be an acceptable reason to condone delay- CRP (NPD) dismissed.

2013-2-L.W. 84

R. Arumugam  
Vs  
PR. Palanisamy & Anr

C.P.C., Order 7, Rules 11, 13/Suppression of material fact'; whether ground to reject plaint.

Questions, which can be decided as preliminary issues, cannot be made as grounds for rejection of the plaint unless the ground is brought within the purview of Order 7 Rule 11 CPC – Without the aid of the defence pleadings or any other document, the statements made in the plaint themselves should make it appear that the suit is barred by any law for the time being in force.

“Suppression of fact” alone shall not be the ground for holding that the planit lacks pleadings regarding cause of action – Question whether a cause of action is true or not cannot be the scope of enquiry in an application under Order 7, Rule 11.

Sustainability of the prayer for declaration in the absence of a prayer to set aside the document – Scope of.

2013 (2) TLNJ 120 (Civil)

V. Jeganathan alias V. Jayakumar  
Vs  
V. Thiagarajan alias V. Devarajan and Ors

Indian Registration Act 1908, Section 17(1)(b) – Suit for partition – Defendant alleged prior partition and relied up on an unregistered document evidencing prior partition – accepted by trial court and first appellate court holding that the document recording the past transaction relating to partition is admissible and dismissed the suit- on further appeal the High Court held that a document containing mere recital of what has already taken place will create any right and there would be no necessity of registering such a document can be admitted in evidence even though they are unregistered, to prove the fact of partition that happened earlier – Second Appeal dismissed.

2013 (2) TLNJ 161 (Civil)

Chennappan and Ors  
Vs  
Vedichi and Anr

Civil Procedure Code 1908 as amended, Order 26, Rule 9 – Petitioner / Defendant filed an application before the trial court for reissuing the warrant to the commissioner directing him to note down the physical features relating to the boundary descriptions in respect of the suit property and to note the variations in level of 14 cents and to direct him to file an additional report and plan drawn to scale in respect of the suit survey no. 115/10 – While dismissing the application the trial court categorically observed that the advocate commissioner had filed his report and plan on 04.09.2009 and even though an opportunity was given till 25.09.2010 to file objections the same was not filed and when the original suit has been posted in the list the defendants belatedly filed the application for reissuing the commissioner’s warrant there is no necessity to direct the advocate commissioner to file a report – In revision filed by the defendants they contended that report filed by the commissioner is bereft of details no plan filed along with the report and only FMB Sketch has been filed and that suit was decreed exparte only after setting aside the same the present application was filed – the high court opined that order 26 Rule 9 of the Civil Procedure Court is not to assist a litigant to gather evidence where he himself can obtain the same – The power to appoint advocate commissioner is discretionary in nature – the court while exercising its discretionary power should do it with utmost care and caution – CRP (PD) Dismissed – Trial Court Order upheld.

2013 (2) TLNJ 196 (Civil)

Saharban Beevi  
Vs  
S. Mumtaj

Civil Procedure Code 1908 as amended, Order 26, Rule 10 A – Suit filed by the plaintiff for specific performance on the basis of sale agreement executed by the defendant – The Defendant disputing his signature in the agreement moved an application under Order 26 Rule 10 A to send the agreement for the opinion of the Handwriting expert – The Trial Court dismissed the application on ground that the defendant quoted incorrect/wrong provision of law, the admitted signature of the defendant for the purpose of comparison with that of the disputed signature was not made available and no detail has been furnished about the availability of the admitted signature – On Revision filed by the defendant the high court analyzing the scope of questions – and holding that Order 26 Rule 10 A of the civil procedure code provides for issuing commission for scientific examination and that the court below entertaining narrow understanding of the phrase scientific investigation had dismissed the petition – both the reasoning that wrong provision of law has been quoted, that petition can be

dismissed for quoting wrong provision of law or incorrect – it is for the court to apply the correct principle of law even if wrong provision of law is quoted – it was the defendant who filed the application which should have been filed by the plaintiff to prove his case – CRP allowed – Order of the Trial court set aside.

2013-2-L.W. 244

**M. Govindasamy  
Vs  
S. Sulochana and Ors**

Hindu Law / Joint family property/Ancestral property, Right of grandson, share; scope; self acquired property, division among heirs/sharer, scope of, Succession opened prior to amendment Act (2005), Effect of.

Hindu Succession Act (1956), Section 8, 15(1) (a)/Partition, Ancestral, Self, acquired, joint family property, Division, succession prior to Amendment Act (2005), benefits whether available, Scope of,

Hindu Succession (Amendment) Act (2005), Partition, Self acquired, separate, succession opening of, prior to act, benefits under Act, whether available,

Partition / Hindu Law, joint family property, self acquired, separate, Division, shares, scope of.

Benami Transactions (Prohibition) Act (1988), Property purchased in female's name, Scope of,

Plaintiff and 2<sup>nd</sup> defendant are daughters of 'MC' – 1<sup>st</sup> Defendant is son of MC.

First defendant only male legal heir of MC is entitled to ½ share in the said ancestral property along with his father MC – After death of MC, plaintiff and defendants are entitled to 1/6<sup>th</sup> share each in MC's share of the suit property – Trial Court, erroneously, held that the plaintiff is entitled to 1/3<sup>rd</sup> share in the Schedule '2'.

Schedule '3' properties are joint family properties – MC and his son entitled to ½ share each in the property – After the death of MC, his ½ share devolved equally among his heirs – After the death of D, Wife of MC, the plaintiff and defendants are entitled to 1/6 share each in the Schedule '3' of the suit properties.

Schedule '4' was purchased in the name of a female, said property can be construed only as the separate property of D- Under Section 15(1)(a), property would devolve equally among her heirs (i.e.) the plaintiff and the defendants. Succession opened prior to the amended provisions of the Act, The plaintiff cannot claim the benefits under the Amendment Act.

2013-2-L.W. 255

**Kasthuri Ammal & Ors  
Vs  
G. Sampath**

Evidence Act, Section 68/Will, unregistered, Proof of, testator a document writer, Scribe a teacher, Non-mentioning of Will in Sale deeds, Effect of, Suspicious Circumstances, whether,

Will/Suspicious circumstances, unregistered Will, testator a document writer, Scribe a teacher, Effect of, beneficiary not disclosing Will, Produced after 20 years, non-mentioning in sale deed, Effect, averment to exclude natural heir, Effect of – Non-specification of the unregistered will in the sale deed, Effect of.

Held: If the beneficiary despite arisal of demanding necessity, fails to disclose the unregistered Will, then his conduct in not disclosing would be proved to be a grave suspicious circumstance.

Mere admission of signatures of the testator in two papers would not relieve the propounder of the Will, from proving the Will in accordance with S. 68.

Testator was a document writer and scribe a teacher and near relative also; but no step was taken to get the Will registered.

Absence of an averment relating to the exclusion of the testator's Class I heir, Plaintiff – Effect of.

2013 (2) CTC 626

Selvam and Ors  
Vs  
Mangaiyarkarasi

Hindu Minority and guardianship Act, 1956 (32 of 1956), Section 8(2) – Sale of Property of Minor without obtaining permission of Court – Rights of purchaser – Share of Minors in suit property sold by Mother without obtaining permission of court – Contention of Mother that sale was made for educational purposes of Minors, untenable as educational expenses during those times were very negligible – Sale, held, effected by Mother only for her personal benefit and not for benefit of Minors and thus, in contravention to Section 8 – However, on account of violation of requirement enshrined in section 8, purchaser, who purchased property from Mother, cannot be penalised – Mother, held, cannot unjustly enrich herself by obtaining sale consideration and subsequently assisting Minors to get Sale Deed set aside – In such circumstances, Sale Deed, though declared not binding on Plaintiff/Minors, Purchaser given liberty to proceed against guardian/Mother for appropriate relief.

Property Law – Property bought by Father in name of Wife and Sons, whether a Benami Transaction – No proof or allegation in instant case that property purchase by Father with intention of evading public revenue or for any illegal purpose – No veiled agenda on part of Father to purchase property in name of wife and Sons – In such circumstance, held, property bought by Father intended for benefit of Mother and Children

Property Law – Joint family Property or Self-Acquired Property – Father owning small share of property, burdened with responsibility of bringing up four Sons and two Daughters – Suit property purchase by Father of high value – Held, considering meagre extent of property owned by Father, moreover, same having no irrigation facilities, and responsibilities imposed on Father, Father not having enough income to purchase suit property – suit properties, thus purchased by Father in name of wife and Children not joint family properties, but separate properties of Wife and Children.

Property Law- Sale of Property belonging to Minors by Mother – Attestation of Father on Sale Deed – Effect of – Held, Sale Deed effected by Mother, even if executed by Father, same would sale executed by Mother and not by Father.

2013-2-L.W. 993

R. Chandra  
Vs  
Nallammal & Ors

Limitation Act (1963), Article 136/Delay in Representation of E.P; Condoning of,

Application for getting condoned 1495 days delay in representation of EP, was dismissed – CRP was filed against that order dismissed.

Courts while condoning such delay, would be quick in stipulating a condition – Judgment debtor should not be mulcted with liability to pay interest – Order set aside.

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## HIGH COURT CITATIONS CRIMINAL CASES

(2013) 1 MLJ(Cr) 25

Rudramurthy  
Vs

Inspector of Police, B-3, Kanchi Taluk Police Station, Kancheepuram and Ors

Code of Criminal Procedure, 1973 (2 of 1974), Section 319 – Implead person as accused – Application to implead third respondent as one of accused dismissed – Appeal – Held, prima facie evidence available on record to show presence & involvement of third respondent in offence – Guilt of persons can be established only during course of trial – Person impleaded as accused prove their innocence after trial – Petitioner made out prima facie case for impleading third respondent as accused – Trial Court ought to have allowed the application – Impugned order passed by trial Court set aside – Criminal Revision Case allowed.

(2013) 1 MLJ(Cr) 101

K. Ramar  
Vs

State of Tamil Nadu, rep. by the Inspector of Police, Vembakottai Police Station, Virudhunagar District

Code of Criminal Procedure, 1973 (2 of 1974), Section 451 – Custody of vehicle – Subject matter of offence seized – Petition for interim custody of vehicle, dismissed – Criminal Revision filed – Interim custody – Maintainability of – Held, vehicle seized not to be kept in custody of Court or police for longer period – Petitioner could produce vehicle before Court or concerned authorities, when bona fide need arise – No harm or prejudice would be caused to Police, if Court directs custody of vehicle to petitioner, after imposing conditions – Proper panchanama be made before handing possession of Article prepared, which could be employed in evidence instead of production during trial, to avoid tampering – Criminal revision allowed.

(2013) 1 MLJ(Cr) 131

Imayaraj  
Vs

State rep. by Inspector of Police, M.Kallupatthy Police Station

Attempt to murder – Indian penal Code (45 of 1860), Sections 341, 307, 506 (ii) & 235 (2) – Conviction and sentence – Criminal revision – Held, motive for occurrence and prior enmity between revision petitioner and P.W.1/injured established – No vital contradictions in evidence of P.W.1 and P.W.2/Close relative – No suspicious circumstance in identifying person, who caused grievous injuries – Injured person in occurrence himself is best eye witness – Cogent evidence about occurrence – Medical evidence by Doctors and wound certificate sufficient to establish occurrence – Documents and material objects marked establish prosecution case against revision petitioner/accused beyond all reasonable doubts – Grievous nature of injury sustained by P.W.1 establish attraction of Section 307 IPC – judgment rendered by Court below warrants no interference – Criminal revision petition dismissed.

(2013) 1 MLJ(Cr) 172

M. Mani  
Vs

Deputy Superintendent of Police, District Crime Branch, Villupuram District, Villupuram

Code of Criminal Procedure, 1973 (2 of 1974), Section 173(8) – Re-investigation – Criminal complaint – Petition sought to transfer case to an independent investigation agency for investigation – Petition for re-

investigation dismissed – Revision – Question as to whether petitioner/de facto complainant can seek for further investigation under Section 173(8) Cr.P.C. – Held, Magistrate took cognizance of offence and investigation officer also filed charge sheet - De facto complainant cannot seek for further investigation – No infirmity found in impugned order – Petition dismissed.

(2013) 1 MLJ(CrI) 241

Arul Prasad, Erode District

Vs

State, rep by Depty Superintendent of Police, Pasupathipalayam Police Station, Karur District

Indian Penal Code (45 of 1860), Section 302-murder-coviction and sentence-criminal appeal -held, accident register pertaining to deceased not marked-doctor who certified fitness and witnessed dying declaration not examined-case sheet of deceased not marked in evidence –prosecution witness failed to depose alteration of first information report-prosecution failed to prove case beyond reasonable doubts – conviction unsustainable-conviction and sentence imposed by lower court set aside - Appeal allowed.

(2013) 1 MLJ (CrI) 248

Sheik Mohammed

Vs

State by Inspector of Police, D Nagar Police Station, Puducherry

Indian Penal Code (45 of 1860) section 302-murder-conviction & sentence-criminal appeal –Dying declaration -Held, dying declaration recorded by magistrate certificate of fitness to make declaration issued by Doctor-it is of high probative value-No explanation offered by accused regarding incident -judicial dying declaration authentic, voluntary and duly corroborated by other prosecution evidence-No merits in appeal – criminal appeal dismissed

(2013) 1 MLJ (CrI) 443

S. Ganesan

Vs

State rep. by its Inspector of Police, District Crime Branch, Namakkal and Ors

Indian Penal Code (45 of 1860), Section 420, 468 and 471 – Reduction of sentence – Petitioner, accused sold lorry to de facto complainant by forging registration certificate and by tampering chasis and engine number – Courts below found petitioner guilty of charges, convicted and sentenced him – Whether period of sentence already undergone by Petitioner is sufficient punishment – Held, petitioner has paid fine amount awarded by Court below and has also suffered incarceration for period of 10 days – Dispute has been compromised among petitioner and Second Respondent on payment of money – Conviction imposed confirmed, sentence reduced to period already undergone by Petitioner – Criminal revision case partly allowed.

(2013) 1 MLJ (CrI) 446

S.Soundaram

Vs

Deputy Commissioner of Police, Central Crime Branch, Egmore, Chennai and Ors

Code of Criminal Procedure, 1973 (1 of 1974), Section 482 – Inherent powers of High Court – Dispensation of witnesses – 3<sup>rd</sup> and 4<sup>th</sup> Respondents, Accused persons, run financial corporation and failed to repay deposits collected from public – Petitioner is one of aggrieved persons, who was not repaid – In trial, 5<sup>th</sup> Respondent, public Prosecutor dispensed with 83 witnesses without any authority and accused were acquitted – Legality of Held, after examination of 4 witnesses, Trial Court hurriedly closed case and pronounced judgment – Assistant Public Prosecutor endorsed dispensation of other witnesses as ‘the remaining witnesses need not be examined’ – Amount

has not been paid to other depositors also – There is miscarriage of justice, Court can exercise exclusive power under Section 482 – Matter remanded for de novo trial, non-bailable warrant to be issued to secure accused and appropriate proceedings to be initiated against 5<sup>th</sup> Respondent – Criminal Original Petition disposed of.

(2013) 1 MLJ (CrI) 450

Vadivel Sizing and Weaving Mills (P) Limited rep. by its M.D., S.P. Saminathan Arulpuram, Tirupur and Anr  
Vs  
Fenner (India) Limited Textile Division, Junction Main Road, Ideal Garden Complex, Salem rep. by its power of attorney holder C. Ravichandran

Negotiable Instruments Act (26 of 1881), Section 138, - Dishonor of cheque – Respondent/Company through its authorized employee filed complaint against petitioner – Person who authorized employee filed complaint against petitioner – Person who authorised employee alleged to authorize – Order of conviction passed against petitioner by Trial Court subsequently confirmed on appeal – Criminal revision – Question as to whether initiation of criminal proceedings by respondent company proper and in accordance with law – Held, on Board resolution filed showing authorization to prosecute complaints before Trial Court – Power of attorney filed not attested before Notary Public or registered – Respondent has not authorised its employees to file complaints or prosecute complaints – Complaints filed before trial Court not maintainable – Criminal Revision allowed.

(2013) 1 MLJ (CrI) 455

G. Raja  
Vs  
Forest Range Office, Pernambut Division, Gudiyatham Range and Anr

Code of Criminal Procedure, 1973 (1 of 1974), Section 451 – Seizure – Application for return of property – Case registered against petitioner for transporting prohibited animals – Compounding of offence allowed by competent authority – Application filed for return of vehicle used in commission of said offence – Same dismissed on ground that vehicle was confiscated by initiating confiscation proceedings – Criminal revision – Held, when once offence allowed to be compounded and compounded fee also paid by petitioner, forfeiture of confiscating vehicle – They have to only surrender vehicle before Magistrate concerned – Confiscation proceedings initiated without issuing notice to petitioner – Respondents directed to produce vehicle before Magistrate concerned who shall deal with it in accordance with law – Impugned order set aside – Criminal revision allowed.

(2013) 1 MLJ(CrI) 497

Kanagaraj, S/o.Ponnupillai, Nelveli Village and Post, Vilavancode Taluk, Kanyakumari District  
Vs  
State rep. by Inspector of Police, Kaliyakkavilai Police Station, Kanyakumari District

Circumstantial evidence – Indian Penal Code (45 of 1860), Sections 364, 302, 394 read with 397 and 201 – Murder – Trial Court found Accused guilty and sentenced him to imprisonment and to pay fine – Appeal against conviction – Held, recovery of jewellery of deceased from possession of Accused, cannot be considered as incriminating evidence at all against Accused – Conduct of Accused in returning to village in search of his wife and absence of motive is a strong circumstance, which is consistent only with innocence of Accused – Prosecution has not proved circumstances projected by its beyond reasonable doubts, no complete chain pointing to guilt of Accused – Conviction and sentence imposed on Accused cannot be sustained – Criminal Appeal allowed.

(2013) 1 MLJ(Cr) 523

M. Selvakumar

Vs

Inspector of Police, All women Police Station, Thirumangalam, Madurai District

Cheating – Indian Penal Code(45 of 1860), Sections 415 and 417 – appellant, accused raped Complainant on promise that he would marry her – Subsequently, appellant refused to marry Complainant stating that he was already married to another girl – Trial Court acquitted appellant for charges of rape, but convicted him for cheating – Appeal against conviction – Held, as per Section 415, to hold a person guilty of cheating, it is to be established that his intention was dishonest at time of making promise – Mere breach of contract cannot give room for criminal prosecution regarding cheating, unless fraudulent or dishonest intention is shown when offence was committed, intention is essence of offence – Evidence of Complainant points out dishonest intention and inducement of appellant, offence of cheating has been made out – Conviction and sentence affirmed – Criminal appeal is dismissed.

(2013) 1 MLJ(Cr) 541

Vasanthi

Vs

State, rep by Inspector of Police, Chinnamannor Police Station, Theni District

Indian penal Code (45 of 1860), Sections 302 and 201 – Murder – Conviction and sentence – Criminal appeal – Circumstantial evidence – Held, no complete chain of evidence pointing guilt of accused – Prosecution failed to prove its case beyond reasonable doubt – Possibility of other alternative hypothesis – Possibility not ruled out by prosecution – Prosecution failed to establish its case by circumstantial evidence – Conviction and sentence set aside – Appeal allowed.

2013 (2) CTC 593

S. Shajin

Vs

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

Indian Evidence Act, 1872 (1 of 1872), Section 25 – Confession made to Police Officer - Whether can be used by Accused in his favour – Accused can rely upon confession during trial by proving same in evidence - Court cannot rely on that portion of confession wherein Accused admitted his guilt – only option available for Court is to use confession in favour of Accused, if reliable – same cannot be used against Accused either completely or in part – Court is bound to eschew entire confession if same is not to be used in favour of Accused.

Indian Penal Code, 1860 (45 of 1860), Section 300, First Limb, Section 302 – Sustained provocation – What is - Accused during wee hours of the day entered house of deceased with formidable weapon – Held, said factum proves premeditation on part of accused – Act of accused, held, cannot be said to on account of loss of self-control – Moreover, number of injuries inflicted on neck, nature of injuries and time of day chosen by Accused prove intention of Accused to cause death of deceased – Act of Accused, held, would not fall within First Exception to Section 300 – Fact that Accused cut deceased with Aruval and caused her death proved beyond reasonable doubt from evidences on record – Accused, held, guilty of culpable homicide – conviction and sentence of Accused under Section 302 upheld.

Indian Penal Code, 1860 (45 of 1860), Section 449 – House trespass with intention to cause death – Quantum of Sentence – Accused entered house of deceased with Aruval – Intention of Accused guilty of offence under provision – Punishment of Life Imprisonment imposed by Trial Court for offence under Section 449 on



circumstances, held, disproportionate – Punishment reduced to Rigorous Imprisonment of 10 Years and fine of ₹. 10,000.

Evidence Act, 1872 (1 of 1872), Section 3 – Criminal Trial – Natural Witness – Appreciation of evidence – Mother of deceased, held, bound to be at home at 5.30 a.m. at time of incidence – No reasons to reject evidence of mother that she saw Accused entering house and cutting her daughter repeatedly – Mother, held, natural witness whose evidence deserves acceptance.

Evidence Act, 1872 (1 of 1872), Section 3 – Criminal Trial – chance Witness – Appreciation of evidence – only when presence of chance witness has been proved by means of proper explanation, doubt cast on his presence would be removed – In instant case, when presence of chance witnesses was sufficiently explained, evidence adduced by them cannot be disregarded.

Criminal Jurisprudence – Date of arrest – Proof of – Merely because accused was not arrested while he was undergoing treatment in hospital, date of arrest as cited by prosecution, held, cannot be disbelieved.

(2013) 1 MLJ(Cr) 598

Sri Maruthi Processors, a registered firm by Partner R. Palanisamy, Komarapalayam, Namakkal District and Ors  
Vs  
R. Subramaniam and Ors

Indian Evidence Act (1 of 1872), Sections 45, 73 – Constitution of India (1950), Article 20(3) – Expert opinion – Petition seeking expert opinion to compare admitted signature of accused with that of disputed signature, allowed – Criminal Revision – Held, Court can, allow application seeking to compare signatures, in order to meet ends of justice – Court below empowered to call upon accused to give thumb impression – It is not in violation of Article 20(3) of Constitution – Order passed by Court below, in consonance with decision of Apex Court – Criminal Revision dismissed.

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