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IMPORTANT CASE LAWS

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HIGH COURT CITATION OF CRIMINAL CASES

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SUPREME COURT CITATIONS CIVIL CASES

2013- 3-L.W. 1

Reshma Kumari and Ors
Vs
Madan Mohan and Anr

Motor Vehicles Act (1988), Sections 163A, 163B, 165, 166, 168/Applicability of multiplier in second schedule in Section 166 applications, whether necessary, question answered on reference, Multiplier method, must be followed by Tribunals and Courts, Future prospects, Calculation of, Loss of dependency, factors to be taken note of by Tribunals.

On reference : Held: while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals for placing reliance on the Second Schedule in the Act.

Claims Tribunal shall select multiplier as indicated in Column (4) of the table prepared in Sarla Verma 2000-5-L.W. 561 read with Para 42 of the judgment – Where the age of the deceased is upto 15 years, multiplier of 15 and assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma 2000-5-L.W.561 should be followed.

Determination of compensation based on multiplier method is the best available means and must be followed by the tribunals and courts.

Multiplicand is based on the net annual value of the dependency on the date of the deceased's death.

To arrive at loss of dependency, factors Tribunal must consider, stated.

Table in Sarla Verma 2000-5-L.W. 561 for the selection of multiplier in claim applications made under Section 166 in the cases of death approved.

Addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years approved – Addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of deceased is more than 50 years.

2013- 3-L.W. 262

S. Malla Reddy
Vs
M/s. Future Builders Co-operative Housing Society & Ors
and
Jai Lakshmi
Vs
M/s. Future Builders Co-operative Housing Society & Ors
With
Raghava Reddy & Anr
Vs
M/s. Future Builders Co-operative Housing Society & Ors

C.P.C., Order 6, Rule 17, application after 13 years, Order 6, Rule 16/Striking out pleading, Order 8, Rule 9, Filing of fresh written statement, after admission made, earlier, amendment filed and dismissed, another application whether can be allowed/Abuse of process,

Constitution of India, Article 227/ Revision against applications filed to amend written statement.

Order VI Rule 16 CPC deals with the amendment or striking out of the pleadings, which a party desires to be made in his opponent's pleadings.

Order 6 Rule 17 CPC empowers the court to allow either party to alter or amend his own pleading.

Defendant-appellants filed the petition for striking out their own pleading i.e. written statement, labeling as under Order 6 Rule 16 CPC, but in substance the application was dealt with as if under Order 6 Rule 17 CPC.

It was held that the defendant –appellants cannot be allowed to substitute their earlier written statement filed in the suit where there was an admission of the claim of the plaintiff-Society – High Court came to the conclusion that defendant-appellants cannot be allowed to resile from the admission made in the written statement by taking recourse to Order 8 Rule 9 or Order Rule 16 CPC by seeking to file a fresh written statement.

Held: Filing of a fresh petition by the defendants under Order 6 Rule 17 CPC after about 13 years when the hearing of the suit had already commenced and some of the witnesses were examined, is misconceived – High Court held that filing of subsequent application for the same relief is an abuse of the process of the Court – No error in impugned order.

2013- 3-L.W. 280

Ram Prakash Agrwal and Anr
Vs
Gopi Krishnan (Dead through LRs.) & Ors

C.P.C., Section 151/Inherent powers, when can be exercised, whether to set aside ex parte decree, Fraud, Effect of, only when no remedy is available,

Order 9, Rule 13/Ex parte decree, setting aside of, by a person who was not a party to proceedings, whether permissible, land acquisition, reference, compensation, challenge to, Scope of,

Land Acquisition Act (1894), Sections 18, 30/Reference, Apportionment of compensation, challenge to, impleadment, application for, by party, locus to file,

Fraud/Challenge to decree, Inherent power of Court to set aside orders, Scope of.

Matter relates to the apportionment of the amount of compensation.

Predecessor in interest of the appellants, filed a reference under Section 18 – Respondent no. 1 was not impleaded as party – Respondent No.1 filed an application under Order 9 Rule 13 read with Section 151 CPC, for purpose of setting aside the said award – Tribunal rejected the said application.

Section 151 enables a party to have the proceedings of a pending suit conducted in a manner that is consistent with justice and equity – Inherent powers cannot be used to re-open settled matters.

Court may exercise its inherent power, apart from Order 9 CPC to set aside an ex parte decree.

Permitting an application under Order 9 R.13 CPC by a non-party, would amount to adding a party to the case.

Matter relates to the apportionment of the amount of compensation received for the land acquired.

An application under Order 9 Rule 13 CPC cannot be filed by a person who was not initially a party to the proceedings – A person aggrieved may maintain an application before the Land Acquisition Collector for reference under Section 18 or 30 – But cannot make an application for impleadment or apportionment before the Reference Court.

2013-3-L.W.305

Ramji Gupta & Anr
Vs
Gopi Krishan Agrawal (D) & Ors

Provincial Small Causes Court Act (1887), Clause (35), Schedule II, Section 23/Issue of title, Adjudication, Res judicata, Plea of, in small cause suit, Effect of,

C.P.C., Section 11/Res judicata, Small Cause Suit, Effect.

Held: Small Causes Court cannot adjudicate upon the issue of title.

When a finding as regards title to immovable property is rendered by a Small Causes Court, res judicata cannot be pleaded as a bar in the subsequent regular suit, for the determination or enforcement of any right or interest in the immovable property.

A matter collaterally in issue for deciding a matter directly in issue in the case, cannot be made the basis for a plea of resjudicata – A question regarding title in a small cause suit, may be regarded as incidental only.

2013- 3-L.W. 751

Sushil K. Chakravarty (D) Thr. LRs.
Vs
M/s. Tej Properties Pvt. Ltd

C.P.C., Order 22, Rule 4/Proceeding exparte without impleading legal representative, scope of/Suit for Specific Performance, Agreement to sell.

Specific Performance/Agreement to sell, sole defendant, dead, legal representatives, impleading of, not brought on record, proceedings ex parte, whether valid, when, Effect and Scope of.

A trial court can proceed with a suit under Order 22, R.4 without impleading the legal representatives of a defendant, who having filed a written statement has failed to appear and contest the suit, if the court considers it fit to do so.

Defendant S entered appearance, filed his written statement – Thereafter, the defendant stopped appearing in the said civil suit and was not even represented through counsel –The order to proceed against S ex-parte was passed – No efforts were made by S to participate in the proceedings till his death – Trial court allowed the suit to proceed further without insisting on the impleadment of the legal representatives of S.

A conscious decision was taken by the learned Single Judge, to proceed with the matter ex-parte – It was clearly permissible under Order 22 Rule 4(4) of the Code of Civil Procedure.

No error in proceeding with the matter ex-parte, as against the sole defendant S, without impleading his legal representatives in his place.

SUPREME COURT CITATIONS CRIMINAL CASES

(2013) 5 Supreme Court Cases 148

SURENDER KAUSHIK AND Ors

Vs

STATE OF UTTAR PRADESH AND Ors

Criminal Procedure Code, 1973 – Ss. 154, 156(3), 162 and 482 - Second FIR – When may be lodged – Sameness test/principle – Explained and applied – Alleging the same/improved version in respect of same incident/offence in a second FIR, reiterated, not permissible – However, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible – Thus, counter-FIR in respect of same or connected incident is permissible – Merely because appellant lodged FIR against certain persons alleging fabrication of documents and forgery, that would not debar other aggrieved persons from subsequently seeking Magistrate’s direction under S. 156(3) for registration of FIR against some others including appellant relating to counter-allegations – Subsequent counter-FIR registered pursuant to Magistrate’s direction under S. 156(3), hence, not liable to be quashed – Constitution of India –Art.226 – Quashing of FIR – Penal Code, 1860, Ss. 420, 467, 468, 471, 504, 506 and 406

(2013) 3 MLJ(Crl.) 181 (SC)

Bhadragiri Venakat Ravi

Vs

High Court of A.P., Hyderabad

Criminal Law – Dying declarations – Reliability of – Indian penal Code (45 of 1860), Section 302 read with Section 201 – Appellant and deceased divorced many years before death of deceased – Three dying declarations recorded – Trial Court acquitted appellant as there was no evidence showing his involvement – High Court on appeal convicted appellant – Appeal against conviction – Whether judgment of High Court is liable to be set aside – Held, if there are apparent discrepancies in multiple dying declarations, it would be unsafe to convict the accused – Appellate Court should bear in mind presumption of innocence of accused – Interference in routine manner should be avoided unless there are good reasons for the same – High Court did not consider matter in correct perspective, did not observe parameters before interfering with order of acquittal – Judgment and order of High Court set aside – Appeal allowed.

(2013) 3 MLJ (Crl.) 305 (SC)

Majendran Langeswaran

Vs

State (NCT of Delhi) and Anr

Criminal Law – Murder – Circumstantial evidence – Indian Penal Code (45 of 1860), Section 302 – Murder occurred in ship – Trial Court convicted – High Court affirmed – Criminal appeal – Sentence and conviction based on circumstantial evidence challenged – Whether conviction based on circumstantial evidence can be sustained in law – Held, two blood-stained knives were found by prosecution – Prosecution failed to explain as to who assaulted deceased by using another knife – No explanation for not seizing clothes of appellant – Guilt of appellant not fully established beyond all shadow of doubt as circumstances are not conclusive in nature – Neither chain of events

nor circumstances conclude that appellant committed offence – Impugned order of High Court and trial Court set aside – Appeal allowed.

(2013) 3 MLJ (CrI.) 318 (SC)

**State of Himachal Pradesh
Vs
Jai Chand**

Criminal Law – Murder – Appeal against acquittal – Indian Penal Code (45 of 1860), Sections 302 and 498-A – Indian Evidence Act (1 of 1872), Section 27 – Accused No. 1/Respondent sentenced to imprisonment for life by Sessions Judge for offence punishable under Sections 302 and 498-A of IPC – On appeal, evidence of prosecution witnesses rejected by Division Bench, respondent acquitted – Appeal – Whether medical evidence which clearly establishes case of prosecution, was ignored by High Court – Held, post mortem report shows ligature mark on neck of deceased – Opinion of doctor clear and definite that ligature mark in horizontal position cannot be caused by hanging but could have been caused by strangulation – Medical evidence completely falsifies case of respondent – Bucket used by respondent for drowning and strangulation recovered – Conduct of respondent also not natural – Not a case of suicidal death but a case of homicidal death – High Court erred in formulating its own opinion based on conjectural premises discarding opinion of medical experts regarding nature of injury and cause of death – Findings by Division Bench rejecting doctor’s evidence and other material witnesses unsustainable – Findings given by Trial Court accepting evidence of witnesses weighty and sound – Impugned order of acquittal passed by Division Bench of High Court set aside – Respondent convicted under Section 302 for murder of his wife, sentenced to imprisonment for life – Appeal allowed.

(2013) 3 MLJ (CrI.) 458 (SC)

**Karthi @ Karthick
Vs
State, rep. by Inspector of Police, Tamil Nadu**

Criminal Law – Rape – Indian Penal Code (45 of 1860), Sections 376 and 417 – Trial Court convicted appellant-accused on charges of rape – Appellate Court and Revisional Court confirmed – Conviction and sentence challenged – Criminal Appeal – Whether sentence and conviction of appellant-accused, legally tenable – Held, appellant-accused committed deceit on prosecutrix by promising to marry her – Obtaining consent by exercising deceit cannot be legitimate defence to exculpate accused – After appellant refused to marry prosecutrix, criminal complaint lodged against appellant – No delay in lodging FIR – Merely on account of delay in registration of FIR, version of prosecution cannot be doubted – No merit in appeal – Appeal dismissed.

HIGH COURT CITATIONS CIVIL CASES

2013- 3-L.W. 99

D. Balachandran

Vs

T.C. Shanmugam

Registration Act (1908), Sections 17, 49/ Unregistered lease deed, for five years, admissibility, reliance of, Objection, raising of, at any time, Scope of,

Stamp Act (1899), Sections 33, 35, 36/Unstamped lease deed for five years, admissibility, Objection, Scope of.

Lease deed for a period of five years not registered – Document is compulsorily registrable – Document cannot be looked into to prove the contents of the lease – Total prohibition to receive in evidence the unstamped document.

Objection regarding the admissibility can be raised at any time – Right to charge the admissibility of the document – Scope of.

Relying upon a document, which is not duly stamped, though admitted in evidence is prohibited under S.35.

Reasoning of the Court below that the document need not be rejected on the ground that the period of lease expired much before the filing of the suit cannot be accepted – An unregistered document cannot be looked into except for collateral purpose – A document, which is not duly stamped cannot be acted upon and the admissibility can also be challenged at any point of time.

2013-3-L.W.179

K. Baladhandayudam

Vs

P.S.R. Sathiyamurthy

C.P.C., Order 2, Rule 2/same cause of action, bar of suit, when arises,

Words and Phrases/” cause of action”

C.P.C., Order 7, Rule 11/Rejection of plaint, cause of action, same, bar of suit, when arises.

Cause of action in earlier suit was the interference caused by the defendants to the plaintiffs possession – It was filed for injunction – In later suit (O.S.No.52 of 2012), it was stated that the power agent sold the property to the revision petitioner, after the cancellation of the power – Under said sale deed executed by the power agent, he claimed title and attempted to interfere with the possession and enjoyment – Suit for declaration of title and injunction was filed – plaint in both the cases, were filed on different causes of action – More than one relief, seeking of, omitting to sue, leave to Court, Effect of.

Unless relief prayed in subsequent suit was available in the earlier suit and without praying for the same and without obtaining the leave of the court, the earlier suit was filed for a lesser relief, then only bar under Order 2 Rule 2 CPC comes into operation.

It is not advisable to reject suit on the ground of Order 2 Rule 2 CPC.

2013-3-L.W.187

Packiyathai @ Packyalakshmi
Vs
A. Ramachandrapandian & Ors

C.P.C., Order 23, Rule 3A/Challenge to Compromise, entered in Mega Lok Adalat, setting aside of, Fraud, Effect of, Pleading of,

Legal Service Authorities Act (1987), Section 19/Mega Lok Adalat, Compromise, setting aside of, Fraud,

Fraud/ Compromise in Mega Lok Adalat, Pleading of fraud, setting aside, Scope of.

Petitioner filed a suit to set aside the compromise decree on the ground that she did not sign in the plaint and in the compromise agreement.

Suit was not numbered by the District Munsif Court, Sivagiri and the plaint was returned stating that the suit was hit by Order 23 Rule 3-A CPC – CRP was filed to set aside the docket order and for a direction to take the suit on file.

Compromise questioned on the ground of fraud, undue influence or coercion – Same cannot be hit by O.23 R.3-A, if the compromise entered is a fraudulent one - It can be questioned by way of instituting a suit.

Docket order passed in unnumbered suit is set aside – District Munsif Court, Sivagiri is directed to take suit on file.

2013-3-L.W.189

S. Krishnamurthy
Vs
Poubalane & Ors

C.P.C., Order 14, Rule 5/Framing of issue, Civil Court's jurisdiction, need for,

Family Courts Act (1984), Sections 7,8/Suit for Partition, legitimacy, framing of issue, Civil Court's jurisdiction,

Constitution of India, Article 227/Framing of issues, Partition, legitimacy, Civil Court's Jurisdiction, challenge to.

Respondent filed a suit for partition and declaration – Revision petitioner filed an application under Order 14 Rule 5 CPC to frame additional issues.

Issue sought to be framed was whether the Court lacks jurisdiction to adjudicate and decide upon the issue of legitimacy of the plaintiff.

Suit is not between the husband and wife, suit is filed for division of properties – Husband or wife are not the parties to that proceedings – No declaration regarding legitimacy or illegitimacy is sought for against the father or mother – Family Court cannot have exclusive jurisdiction and the Civil Court has got jurisdiction – Court below has rightly recast the issue, whether plaintiff is the legitimate son of 'KG' – There is no need to frame an issue relating to jurisdiction of the Civil Court.

2013- 3-L.W. 222

Gowriammal & Ors
Vs
T. Meenakshi and Ors

C.P.C., Order 8, Rule 9, Order 6, Rule 6,

C.P.C., Order 14, Rule 5/Additional issues, framing of.

Defence of Joint possession raised in the original written statement and the plea of separate possession pleaded in the additional written statement – Proposed written statement contain allegations of fact, inconsistent with the previous pleadings – Additional pleadings can be raised only by way of amendment.

2013- 3-L.W. 226

Thoppe. Balusamy Iyer, Dharamachaturam through its Beneficiaries & Ors
Vs
Thoppe B. Rajaram (died) & Ors

C.P.C., Section 92/Application filed to withdraw endorsement made as not pressing IA, by misconception of law, whether can be cancelled,

Practice/Endorsement 'as not pressing' withdrawing of, by Advocate, Application by party, allowing of, Scope,

Suit for declaration was filed along with application under Section 92.

Advocate who appeared before the Lower Court made an endorsement as though he was not pressing the I.A. as well as the suit – Court made an endorsement as though he was not pressing the I.A. as well as the suit – Court dismissed the I.A., but it did not pass any order in the suit – Party filed two applications for withdrawing the endorsement “not pressed” made in the I.A. as well as in the O.S. – Judge (Successor in Office) dismissed those applications on the ground that he being a successor cannot set aside the order of his predecessor.

Held: Owing to misconception of law, such endorsements emerged – No legal embargo that the endorsements made unwittingly should not be allowed or cancelled.

2013- 3-L.W. 229

Sundaram
Vs
Parvathy

C.P.C., Order 21, Rules 35, 36/Taking delivery of property, Objection to,

Tamil Nadu Buildings (Lease and Rent Control) Act (1960), Section 10(1)

Suit was filed for evicting the respondent and High Court ordered eviction.

Revision petitioner took a stand that the respondent/defendant cannot claim statutory tenancy, because his vendor lost her status as tenant.

Lower Court assumed there was statutory tenancy which ensured in favour of the respondent as per Section 10(1) and refused to execute the same.

Held: No evidence to show statutory tenancy emerged between the revision petitioner and respondent.

In the previous litigation rights of the parties got finally settled – Plea in the subsequent suit would not in any way attract Section 10(1)

2013- 3-L.W. 235

Ansari
Vs
M. Thavamani and Ors

C.P.C., Order 38, Rule 5/Attachment before Judgment, Show cause, Need of.

Respondent -Advocate filed the suit for recovery of a sum towards his fees and for attaching the land acquisition compensation amount lying with the Court.

Once an application under O.38 Rule 5 is filed by the plaintiff, then the defendant should have been called upon to show cause why he should not furnish security - A counter affidavit and a separate I.A., was also filed for praying time to furnish security – **Held:** No reason in the order – Defendant at liberty to furnish his explanation why he is not liable to furnish any such security – Thereafter order has to be passed by the Court.

2013-3-L.W. 330

Dr. G. Sankara Vadivoo
Vs
S. Palavannam

Constitution of India, Article 227/Abuse of process of Court, to quash entire proceedings in 3rd HMOP, Compliance of Order 23 whether necessary, to strike off divorce petition.

C.P.C., Order 23, Rule 1/Withdrawal of earlier 2 HMOPs, whether necessary, Effect of, on 3rd HMOP, whether a bar

Hindu Marriage Act (1985), Section 13(1) (1-A)/HMOP filed earlier withdrawn, whether 3rd HMOP Maintainable.

Dismissal of HMOPs on the earlier occasions by the Family Court, Chennai, not a bar for filing a fresh case by the respondent on the same set of allegations – Both the petitions were dismissed as not pressed, because of the joint endorsement made by both parties, informing the Court that they had re-united.

Earlier two HMOPs were not withdrawn in terms of Order 23 – It is not a bar to maintain the present HMOP for divorce on the very same grounds.

2013- 3-L.W. 412

G. Nityanandam
Vs
Tmt. D. Saritha & Ors

Guardians and Wards Act (1890), Sections 3, 7 to 10, 29, Application to appoint brother, as guardian of “mentally retarded person”, whether maintainable, proper course pointed by Court,

National Trust for Welfare of Persons with Autism, Cerebral, Palsy, Mental Retardation and Multiple Disabilities Act (1999), Section 2(g)/‘Mental Retardation’, Application to appoint as guardian,

National Trust of Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Rules (2000), Rule 16, Application to appoint as guardian,

Board to Trust Regulations (2002) as amended in 2006, Regulations 11, 12 and 13.

Held : GW Act will apply only in respect of minor children, and not in a case of mentally retarded person.

Petition by brother to appoint himself as guardian for mentally retarded person, sister under G&W Act, not maintainable.

An application needs to be filed before the Local Level Committee under Section 14 of 1999 Act in Form "A" in terms of Rule 16(1).

Provision of Nation Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (Act 44 of 1999), the Rules, 2000 and the Regulations, 2001 clearly provide a well method to claim of a person seeking to appoint himself as guardian of an alleged mentally retarded person.

HIGH COURT CITATIONS CRIMINAL CASES

(2013) 3 MLJ (Crl.) 62

Ramasamy
Vs

State, rep. By the Inspector of Police Manamadurai Police Station, Manamadurai, Sivagangai District

Criminal Law – Acquittal – Honorable Acquittal – Code of Criminal Procedure, 1973 (2 of 1974), Section 255(1) – Certain charges leveled against petitioner under Indian penal Code – Subsequently acquitted by trial Court on ground that prosecution failed to prove charges leveled against petitioner beyond reasonable doubt – Whether petitioner entitled to relief of honorary acquittal – Held, Code of Criminal Procedure, speaks only of ‘Acquittal’ and not as ‘Honorary Acquittal’ or Acquittal on ‘Benefit of Doubt’ – Concepts evolved by ‘Courts of Law’ – Evidence of prosecution does not relate to any criminal act for which he was charged for – P.W.1 has not stated anything about accused A1 to A3, as to whether they intimidated him or threatened him – Acquittal of petitioner/A1 based on ‘benefit of doubt’ to be construed as one of Honorary Acquittal – Accused/petitioner acquitted ‘honorably’ – Criminal revision petition allowed.

(2013) 3 MLJ (Crl.) 154

Manjunath Eshwar
Vs

State, rep. by the Inspector of Police AWPS, Tambaram

Criminal Law – Discharge from charges – Dowry Prohibition Act (28 of 1961), Section 4 – Indian Penal Code (45 of 1860), Section 498 – De facto complainant alleged dowry harassment/demand by husband’s family members – Petition for discharge from charges, dismissed by Judicial Magistrate – Whether sufficient prima facie materials available to frame charges against petitioner/accused 5 – Held, petitioner was not a party to marriage between de facto complainant and her husband – There could be no demand by petitioner either to bride or her parents – Section 4 of Dowry Prohibition Act could not be invoked – Petitioner to be discharged from charges under Section 4 – Allegations in complaint attract Section 498-A of Code since they are in nature of perpetrating cruelty upon de facto complainant – Petitioner entitled to be discharged from charge under Section 4 of Dowry Prohibition Act alone and not from charge under Section 498-A of Code – Petition partly allowed.

(2013) 3 MLJ (Crl.) 229

V. Arulkumar
Vs

State, rep. by Inspector of Police, SPE/CBI/ACB, Chennai

Criminal Law – Tender of Pardon – Jurisdiction – Prevention of Corruption Act (49 of 1988), Section 5(2) Code of Criminal Procedure, 1973 (2 of 1974), Section 306 – Metropolitan Magistrate granted pardon to accused – Pardon proceedings challenged since same was vitiated by irregularities – Additional Special Judge dismissed application under observation that no impediment for Magistrate to grant tender of pardon – Competency of Metropolitan Magistrate to tender pardon, challenged – Whether Metropolitan Magistrate competent to tender pardon under Section 306 of Code and Section 5(2) of Act – Held, Special Judge has been conferred power to tender pardon to accused as per Section 5(2) of Prevention of Corruption Act – No contrary provision appears in Act – Tender of pardon by Metropolitan Magistrate to accused, not sustainable – Respondent should have moved before Special Judge for tender of pardon – Tender of pardon by Metropolitan Magistrate not lawful, same vitiated all other subsequent proceedings – Criminal Revision Case allowed.

(2013) 3 MLJ (Crl.) 236

Subramani

Vs

**State, rep. by Deputy Superintendent of Police, Station, Jeeyapuram Sub Division, Ramji Nagar Police Station,
Trichirappalli District**

Criminal Law – Murder – Dowry death – Indian Penal Code (45 of 1860), Sections 302, 304-B and 498(A) – Dowry Prohibition Act (28 of 1961), Sections 3 and 4 – Conviction and Sentence – Appeal – Whether there can be conviction under Section 304-B IPC, in absence of any specific charge under Section 304-B IPC – Held, in absence of charge under Section 304-B IPC, accused cannot be later convicted under Section 304-B IPC, instead of Section 302 IPC – Evidence required to be appreciated as to whether offence under Section 304-B IPC and 498(A) IPC has been made out – Case remitted to trial Court with direction to proceed against appellant from stage of defence evidence – Conviction and sentence imposed by trial court set aside – Criminal appeal allowed.

(2013) 3 MLJ (Crl.) 302

V.P. Kuppurao

Vs

State, Represented by Inspector of Police, Virinchipuram Police Station, Vellore District

Criminal Law – Power of Magistrate – Complaint against Police Officers – Code of Criminal Procedure, 1973 (2 of 1974), Section 173 – Case registered – Final report filed by Police accepted by Judicial Magistrate – Magistrate held that only Chief Judicial Magistrate had jurisdiction to enquire into offences against Police Officers – Criminal revision – Whether order of Magistrate observing that Chief Judicial Magistrate alone has jurisdiction to enquire complaint against Police Officers is illegal – Held, as per Cr.P.C, Magistrates are competent to entertain private complaints, against Police Officials - Order passed by Magistrate, observing that only Chief Judicial Magistrate can entertain complaint against Police Officers, illegal – Impugned order accepting final report without considering protest petition illegal – Impugned order set aside – Magistrate directed to consider objection petition – Criminal revision allowed.

(2013) 3 MLJ (Crl.) 371

Thangarasu

Vs

State represented by Inspector of Police, Melavalavu Police Station

Criminal Law – Murder – Indian Penal Code, 1860, Section 302 – Conviction and sentence – Appeal – Whether accused/appellant could be convicted, based on evidence of prosecution witness – Held, occurrence happened late at night and in lonely place – Difficult to believe that prosecution witness would have witnessed occurrence by torch light – Complaint not preferred immediately after occurrence, though police station is near place of occurrence – Admitted during cross-examination that before going to police station, relatives of deceased had small meeting, to decide as to how to give complaint – By deliberation and because of previous enmity between accused and deceased, complaint was preferred, implicating accused as perpetrator of crime – Explanation offered by P.W.1 for delay in filing complaint cannot be accepted – No other evidence available on record to hold accused guilty – Prosecution failed to prove case beyond all reasonable doubts – Conviction and sentence set aside – Appeal allowed.

(2013) 3 MLJ (Crl.) 382

Arun Prasanna

Vs

State rep. by Sub-Inspector of Police, Chenglepet Taluk Police Station and Ors

Criminal Law – Illegal transportation of cattle – Custody of animal – Prevention of Cruelty to Animals Act (59 of 1960), Section 29 (1) and (3) – Transport of Animal Rules, Rule 56 – On complaint from petitioner, member of Society for Prevention of Cruelty to Animals, cattle being transported illegally by 2nd respondent/accused/owner, seized – Interim custody granted to accused/owner by Trial Court by imposing conditions – Criminal Revision – Grant of custody to accused/owner challenged – petitioner sought interim custody – Whether accused/owner not

entitled to custody of animals – Held, under Section 29 (1) and (3) of Act, Court empowered of deprive convicted person, ownership of the animal – Petitioner's Society reconstituted by appointment of Members – Name of petitioner figures first in list of interested non – official individuals – Petitioner competent to take care of welfare of cattle – Conditions imposed – Custody of cattle given to petitioner till disposal of case – Impugned order set aside – Criminal revision allowed.

(2013) 3 MLJ (Crl.) 385

N. Anthony Iruthayaraj, now confined at Central Prison, Cuddalore
Vs

State rep. by Inspector of Police, Cuddalore OT Police Station, Cuddalore

Criminal Law – Rape and Murder – Evidence – Indian Penal Code (45 of 1860), Sections 302 and 376 – Appellant/accused charged for rape and murder of deceased – Trial Court convicted appellant under IPC – Conviction and sentence challenged – Criminal Appeal – Whether conviction of appellant liable to be set aside on ground of discrepancy in evidence of prosecution witness – Held, inordinate delay in sending FIR to Magistrate Court gave suspicion on veracity and testimony of prosecution case – Reasons adduced by P.W.1 in filing FIR belatedly cannot be believed, when murder took place in crucial manner – No corroboration of P.W.3 version with that of P.W.1 with regard to time of occurrence – Non-examination of important witness, for proving person who committed offence and caused death, was fatal to prosecution case – Evidence of prosecution witnesses not cogent, convincing and has no proper link to prove guilt of accused - Conflicting and contradictory evidence gave suspicion to case of prosecution – Prosecution not proved guilt of accused beyond reasonable doubt – 'Benefit of doubt' to be given in favour of accused – Conviction and sentence imposed by Trial Court set aside – Appeal allowed.

(2013) 3 MLJ (Crl.) 417

S. Pradap Chandran and Anr
Vs

State represented by Inspector of Police, K.9, Thiru-vi-ka Nagar Police Station, Chennai

Criminal Law – Dowry harassment – Indian Penal Code (45 of 1860), Sections 498 – A and 304 – B read with Dowry Prohibition Act (28 of 1961), Sections 3 and 4 – Death of Accused's wife caused due to burn injuries – Accused – appellants convicted for offence punishable under Sections 498 – A and 304 – B.I.P.C., read with Sections 3 and 4 of Dowry Prohibition Act – Conviction and sentence – Appeal – Whether conviction of appellants under Section 304 – B of IPC read with Dowry Prohibition Act was proved – Held, evidence of prosecution witness established that Accused pledged jewels of deceased – Deceased was harassed by Accused – Cannot conclude that Accused abetted deceased to commit suicide, even though there was unlawful demand of money and pledging of jewels – Conviction and sentence imposed for offence under Sections 304 – B read with Sections 3 and 4 of Dowry Prohibition Act, set aside – Conviction and fine imposed for offence under Section 498 – A of Code confirmed – Appeal partly allowed.

(2013) 3 MLJ (Crl.) 481

Balasekar and Anr
Vs

State by Inspector of Police, Melur Police Station, Madurai District.

Criminal Law – Murder – Indian Penal Code, 1860, Section 302 and 34 – Conviction and Sentence – Appeal against conviction – Whether non – explanation of injuries on Accused 1 will affect case of prosecution – Held, eye – witnesses are either family members or close relatives or friends of deceased, no independent witnesses examined – Grievous injuries on Accused 1 – Bounden duty of prosecution to explain injuries caused on Accused 1 – No evidence to hold that accused party were aggressors – Prosecution not come forward with true version of occurrence – Non – explanation of injuries on Accused 1 affects case of prosecution – Conviction and sentence cannot be sustained – Impugned order set aside – Appeal allowed.
