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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

(2013) 4 Supreme Court Cases 270

SANDEEP KUMAR CHOURASIA

Vs

DIVISIONAL MANAGER, THE NEW INDIA INSURANCE COMPANY LTD AND ANR

Insurance – Personal accident insurance – Scope of policy – Policy covering loss of life and loss occasioned due to injuries directly caused by accidents – Loss in question if caused by accident or by medical disease – Determination of

- Appellant suffered total loss of vision in right eye allegedly due to accidental fall – Insurance company repudiated claim of appellant on ground that loss of eyesight could not be attributed to accident (covered under policy) but was due to disease phthisis bulbi (not covered under policy) – Medical Board constituted by State Consumer Commission inter alia opined that loss of vision could have been caused by fall while playing – Held, State Commission and National Commission wrongly ignored full import of report of Medical Board which had opined that phthisis bulbi can be caused due to injury caused due to fall – Furthermore, sufficient evidence was produced by appellant to prove that he had an accidental fall on 22-10-1999 and as a result of that, right side of his head and right eye were injured – Hence, both State and National Commission committed a serious error in dismissing appellant’s claim – In the circumstances, held, case of appellant is covered by policy – Evidence Act, 1872 – S. 45 – Consumer Protection Act, 1986. Ss. 13(4)(iv) and 18

(2013) 4 Supreme Court Cases 333

ASPI JAL AND ANR

Vs

KHUSHROO RUSTOM DADYBURJOR

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

SUPREME COURT CITATIONS CRIMINAL CASES

2013 -2-L.W. (Crl.) 51

Madhao & Anr
Vs
State of Maharashtra and Anr

Criminal Procedure Code, Sections 156(3), 190/Section 482, quashing of proceedings,

I.P.C., Sections 420, 419, 468, 34,

Direction issued by the Magistrate for investigation u/S.156(3), whether properly given, Powers of Magistrate.

Magistrate before taking cognizance of the offence can order investigation under Section 156(3) – Power exercised by the Magistrate is acceptable – High Court rightly refused to exercise its power under Section 482.

Where a Magistrate chooses to take cognizance alternatives he can adopt – Stated.

(2013) 4 Supreme Court Cases 69

RAKESH AND ANR
Vs
STATE OF HARYANA

- D. Penal Code, 1860 – Ss. 302 and 498-A r/w S. 34 – Murder of wife by husband and mother-in-law 8yrs after marriage for not bringing adequate dowry, after accused witnessed wedding of sister of deceased – Dying declaration fully corroborated by the evidence – Conviction and sentence of life imprisonment of husband and mother-in-law for murder and cruelty, confirmed – Evidence Act, 1872, S. 32(1)
- E. Evidence Act, 1872 – S. 32(1) – Dying declaration – Credibility of – On receipt of intimation from police, Judicial Magistrate reached hospital and after satisfying herself through statement of duty doctor that deceased was conscious and fit to make a statement, recorded statement of deceased in question and answer form – Considering materials placed by prosecution on record about recording of dying declaration, procedure followed, about deceased’s fitness to make a statement, evidence of doctor and evidence of Magistrate who recorded her statement, veracity of dying declaration, held, is amply proved
- F. Evidence Act, 1872 – S. 32(1) – Dying declaration – Reliability – Mere presence of some close relatives of deceased would not affect credibility of declaration – Claim that there was wrong description of names in dying declaration, held, not material contradiction which would affect prosecution case
- G. Evidence Act, 1872 – Ss. 32(1) and 6 – Dying declaration – Reliability – While recording history of patient, doctor noted that it was accidental fire while cooking food which had caused the burn injuries – Held, in view of categorical statement by deceased in her dying declaration to the contrary, reference made by doctor, PW 11 while recording history of patient would not affect prosecution case
- H. Penal Code, 1860 – S. 302 or S. 304 Pt. I – Murder or culpable homicide not amounting to murder - Conviction for murder of wife by burning her to death, confirmed - Appellants (husband and mother-in-law) prayed for altering conviction from S. 302 to S. 304 Pt. I in view of conduct of A-1 taking

deceased to hospital and that he had also sustained injuries on his hand – Injuries on the hand of appellant are doubtful – Occurrence took place in the house of accused where deceased was residing and unfortunately, even after having four children, she died at matrimonial home due to burn injuries at the instance of accused – No valid ground to alter conviction

(2013) 4 Supreme Court Cases 131

BAKSHISH RAM AND ANR

Vs

STATE OF PUNJAB

- A. Penal Code, 1860 – Ss. 304-B and 498-A – Dowry death by burning alleged – Cruelty or harassment in relation to dowry demand soon before death not proved – Only evidence was hearsay evidence of mother of deceased – Conduct of accused husband did not suggest homicidal burning – Accidental death could not be ruled out – Conviction reversed
- Marriage between deceased and A -1 was solemnised one-and-a-half years prior to date of occurrence – About four months before incident, deceased was sent to her parents’ house to bring money for purchasing a cooler – Day before incident father of deceased went to meet his daughter at her matrimonial home where she informed him about harassment and maltreatment meted out to her by her husband and in-laws – She also informed her father that her in-law were pressurising her to bring more money from her parents as they wanted to purchase a cooler – Father of deceased died before he could be examined – These facts were stated by mother of deceased – Trial court convicted appellants – High Court dismissed the appeal of appellants – Held, there must be material to show that soon before her death victim was subjected to cruelty or harassment in relation to dowry demand – Evidence of mother of deceased is hearsay, and a very general and vague statement which is not sufficient to attract provisions of S. 113-B, Evidence Act and S. 304-B IPC – Accidental death cannot be ruled out – During one-and-a-half years of marriage no incident of cruelty, maltreatment or harassment relating to dowry was alleged except abovesaid incident of just one day prior to date of occurrence – A-1, husband of deceased took deceased to hospital – He informed police as well as parents of deceased – He did not make any attempt to run away from place of occurrence – Held, prosecution failed to establish guilt of appellants beyond reasonable doubt – Courts below committed error in convicting appellants – Evidence Act, 1872 – Ss. 113-B, 60 and 6 – Presumption under S. 113-B, if can be invoked based on hearsay evidence
- B. Penal Code, 1860 – Ss. 304-B and 498-A – Dowry death – Conditions precedent for establishing offence of dowry death, reiterated, are: (i) that a married woman had died otherwise than under normal circumstances, (ii) such death was within seven years of her marriage, and (iii) prosecution has established that there was cruelty and harassment in connection with demand for dowry soon before her death – Prosecution has to rule out possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances” – Prosecution is obliged to show that soon before occurrence, there was cruelty or harassment in relation to dowry demand and only in that case would presumption under S. 113-B, Evidence Act, 1872 operate – Evidence Act, 1872, S. 113-B
- C. Criminal Procedure Code, 1973 – Ss. 374 and 386 – Appeal against conviction – Independent appreciation of evidence by appellate court – High Court, as a first court of appeal, on facts must apply its independent mind and record its own findings on basis of its own assessment of evidence – Mere reproduction of assessment of trial court may not be sufficient, and in absence of independent assessment by High Court, its ultimate decision may not be sustainable

2013 -2-L.W. (Crl.) 245

M/s. GHCL Employees Stock Option Trust

Vs

M/s India Infoline Ltd

Criminal Procedure Code, Section 482/Issuance of summons, quashing of, Magistrate's role, Sections 156(3), 200,

I.P.C., Sections 406, 409, 420, 477A, 34, 120-B.

Complainant alleged that respondents have committed criminal breach of trust and cheating, as they have sold shares of the complainant and misappropriated the entire sale proceeds.

Magistrate directed issuance of summons against the respondents.

Case of breach of trust or cheating are both a civil wrong and a criminal offence – Where the act is predominantly a civil wrong, such an act does not constitute a criminal offence.

Order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case.

Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint.

Magistrate has not recorded his satisfaction about the prima facie case against respondent Nos.2 to 7 – And role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them

2013 -2-L.W. (Crl.) 261

Arun Bhandari

Vs

State of U.P. and Ors

Criminal Procedure Code, Section 190/taking cognizance, issuance of summons by Magistrate, whether proper, Section 482, quashing of summons, by High Court, inherent power, exercise of, whether proper,

I.P.C., Sections 406, 420/Agreement to sell, Privity of contract, Civil/Commercial transaction, criminal offence, ingredients, quashing of, Scope of,

Constitution of India, Article 226/quashing of summons, inherent power, exercise of, whether proper.

Agreement was entered to sell, between appellant and R2(wife), R3(husband) – Money was paid to R2 and R3 – R2 transferred property by power of attorney given to her by original allottee to 'MG' – Appellant demanded refund of money and lodged a FIR – Magistrate took cognizance of criminal liability and issued summons – But High Court quashed the order taking cognizance and summoning of wife/R – On appeal Supreme Court, held: allegations against respondent NO. 2 not only pertain to her presence but also her connivance with her husband and transfer of property using Power of Attorney in favour of MG – Allegation of collusion by husband and wife stated.

A case may look to be of civil nature or involve a commercial transaction but such civil disputes may contain ingredients of criminal offences.

Prima facie there is allegation that there was a guilty intention to induce the complainant to part with money.

Neither the FIR nor the protest petition was male fide, frivolous or vexatious – Prima facie makes out a case against the husband and the wife regarding collusion and the intention to cheat from the beginning, inducing to hand over a huge sum of money to both of them – conduct of respondent Nos. 2 and 3 would show that they had

the intention to cheat from the stage of negotiation – Order passed by the High Court set aside – Order of cognizance is prima facie valid.

(2013) 4 Supreme Court Cases 275

**DHRUP SINGH AND ORS
Vs
STATE OF BIHAR**

Criminal Procedure Code, 1973 – Ss. 190(1)(b), 173(2) and 319 – Power of Magistrate to disagree with police report – Power of Magistrate to issue summons to persons named in FIR, but not in charge-sheet, upon independent application of mind by Magistrate to materials on record (including police report) – Such power, reiterated, is not only available under S. 319 but also under S. 190(1)(b) – Magistrate after perusing FIR, case diary and inquest report coming to a prima facie conclusion of involvement of all persons named in FIR, and finding enough materials to initiate prosecution against petitioners apart from charge-sheeted accused persons – Held, following Uma Shankar Singh, (2010) 9 SCC 479, Magistrate can take cognizance against accused named in FIR but not in charge-sheet, by independently applying his mind, under S. 190(1)(b) and need not wait till S. 319 stage – Hence, initiation of proceedings against all persons named in FIR confirmed – Request for reference to larger Bench not entertained as law is clear on issue involved – Constitution of India – Art. 141 – Penal Code, 1890 – Ss. 302/34 – Arms and Explosives – Arms Act, 1959, S. 27

2013 -1-L.W. (Cr.) 709

**Sunder @ Sundararajan
Vs
State by Inspector of Police**

I.P.C., Sections 364-A, 302/Kidnapping for ransom, murder of a 7 years old boy, Awarding of death sentence, when, factors,

Evidence Act, Section 106/Kidnapping for ransom, murder of a 7 year old boy, Burden of proof/Circumstantial evidence, standard of, Scope of proof,

Criminal Trial/Murder of 7 year old boy, circumstantial evidence, standard of proof, Awarding of death sentence,

Accused-appellant kidnapped S for ransom, and committed his murder – Guilt of the gravest nature – Kidnapping of a child was committed with the motive of carrying home a ransom – On account of the non-payment of ransom, a minor child of 7 years murder was committed – Child was strangled to death, dead body of the child was then tied in a gunny bag, and finally the gunny bag was thrown into a water tank – Approach of accused reveals brutal mindset of the highest order – Murder was committed of a child with whom the accused was acquainted.

Kidnapping only male child was to induce maximum fear in the mind of his parents – Killing sole male child, has grave repercussions for the parents of the deceased.

HIGH COURT CITATIONS CIVIL CASES

2013 (3) TLNJ 17 (Civil)

K. Murugesan
Vs
G. Govindan

Limitation Act, 1963, Article 64 and 65 – Merely by pointing out that a particular individual is in possession of certain property for a long time, he cannot plead that he acquired prescriptive title over it and in the case of co-sharers, it is all the more important that mere possession by one co-sharer of a joint immovable property would not lead to the inference that the right of co-ownership of the co-owner is ousted – both the courts below held that defendant did not prove adverse possession – Second Appeal dismissed.

2013 (3) TLNJ 80 (Civil)

Baby Ammal and Anr
Vs
V. Srinivasan and Anr

Limitation Act, 1963, Section 61– The mortgage deed stating that it shall be redeemed within five years – the clause that in case of failure to pay the amount within the said period, the right to get back the property will be lost has to be disregarded – a clog on equity of redemption – suit filed after thirty years from the date of accrual of cause of the right of redemption barred by limitation – Second Appeal allowed.

2013 (3) TLNJ 136 (Civil)

Maduri Pillai and Anr
Vs
V. Aswathi Reddiar and Ors

Civil Procedure Code 1908 as amended, Order 8, Rule 9 – Civil Suit pending in trial court – plaintiff filed proof affidavit – 1st defendant filed application to receive additional written statement – plaintiff said no objection but sought permission to file reply statement – petition for additional written statements was allowed recording the endorsement of the plaint – plaintiff filed and application to receive reply statement – application dismissed – CRP filed in High Court, held – as per Order 8, Rule 9 – there is no bar to file application to receive reply statement after commencement of trial – trial court failed to give details as to how the reply statement is entirely different from the earlier plaint – averments – CRP (PD) allowed.

2013 (3) TLNJ 140 (Civil)

Aandiappan, S/o Vellaiya Gounder @ Rajalinga Gounder and Ors
Vs
Veerammal, W/o. Muthusamy Gounder, Kasthuri Kurumbapatti, Bala-viduthi Village,
Singampatti Post, Kuzhithalai Taluk

Civil Procedure Code 1908 as amended, Section 151 – Petition filed for joint trial – the contention that the property in S.No. 1143/1 was later sub divided as S.No. 1143/1 and 1143/7 is the matter required to be proved by adducing necessary evidence – absence of any prima facie material to substantiate, it is not conducive to order for joint trial – on consideration of submissions of both the parties, the Court feels that if simultaneous or parallel trial is ordered, the interest of both parties can be protected – CRP (PD) (MD) is partly allowed.

2013 (3) TLNJ 159 (Civil)

**Athiappan and Ors
Vs
Palaniappan and Ors**

Civil Procedure Code 1908 as amended, Order 23, Rule 1(3) – Suit filed for declaration that the sale deed dated 2.7.2007 is null and void and permanent junction - Suit post for cross examination of D.W.1 – plaintiff filed an application for permission to withdraw the suit and to file – a fresh suit on the same cause of action – application dismissed – plaintiff filed CRP in High Court – held, it is evident that the Sale Deed dated 02.07.2007 is favour of the 1st Respondent is obvious, prime cause of action which has necessitated the Plaintiffs to file the suit the relief of declaration - it is always open to the plaintiffs to take a plea that the Decree obtained by the 1st Respondent in a suit in which plaintiff is not a party is not binding on him – the non-mentioning of the Decree obtained by the 1st defendant cannot be said to be a formal defect – proof affidavit of D.W. 1 filed – stage has been set for his cross-examination – No jurisdictional error, material irregularity or even patent illegality committed by trial Court – CRP (PD) dismissed

2013 (3) TLNJ 199 (Civil)

**M. Ramalingam
Vs
K. Vijayakumar and Ors**

Special Relief Act, 1963, Section 20 – Suit filed for specific performance it is an equitable discretionary relief – a person, who approaches the Court for the equitable relief should come to Court with clean hands – when a suspicion is raised, discretion will not be exercised when it is inequitable to grant the relief of specific performance on account of conduct of the plaintiff – plaintiff would be dis-entitled to the relief of specific performance, if his conduct is tainted with falsity – First Appeal dismissed.

2013 (3) TLNJ 207 (Civil)

**B. Dhanam
Vs
P. Usha Rani and Ors**

Civil Procedure Code 1908 as amended, Order 21, Rules 97, 98 & 101 – Suit for specific performance – decreed - Sale deed executed pursuant to orders in EP – EA filed for possession – Pending EA, defendant filed petition for their title, raised a plea that the decree is not binding on them – Separate suit for partition filed after one week seeking for partition in respect of the same property – Principal district court ordered transfer of EP proceedings to be tried along with partition suit – On revision preferred High Court held that Executing Court has powers to decide all questions and the purpose and object of introduction of the rules is to decide such questions by executing court itself and not by separate suit – execution proceedings ought not to have been transferred – CRP (PD) allowed

Constitution of India, Article 227 – See Civil Procedure Code 1908 as amended, Order 21, Rule, 97 98 and 101.

2013 (3) TLNJ 304 (Civil)

**R. Rajasekar
Vs
D. Gurumurthy**

Civil Procedure Code 1908 as amended, Order 26, Rule 9 – When an earlier application for appointment of advocate commissioner was dismissed, a second application for the relief is not maintainable – when the suit it is a part heard stage and when the examination of DW 1 is yet to be completed the filing of the Second Application is nothing but an abuse of process of law – if a party/litigant in his evidence (in cross examination) accepted any fact/statement it becomes a substantive piece of material evidence the same can be taken advantage of by any of the parties to the litigation only during the court of main trial of the case – CRP allowed.

Indian Evidence Act, 1872, Section 17 & 21 and 43 – See Civil Procedure Code 1908 as amended, Order 26, Rule 9.

2013 (3) TLNJ 321 (Civil)

**R. Saravanan and Anr
Vs
S. Mallika and Ors**

Specific Relief Act, 1963, Section 22 (2) – Suit for specific performance filed in trial court – relief of specific performance dismissed – return of advance amount directed – appeal filed by plaintiff – the appellate Court held that relief of return advance was not prayed for – granting of the relief is against Section 22 (2) of Specific Relief Act – case remanded – defendants filed CMA in High Court – plaintiffs opposed the decree and judgment of trial court on other grounds also – main point for consideration before the 1st appellate court was relief of specific performance and readiness and willingness to perform his part of contract by plaintiff – these points not even framed and considered by 1st appellate court – order of remand is erroneous – case remanded to 1st appellate court for fresh disposal on all points for consideration – CMA allowed.

2013 (3) TLNJ 324 (Civil)

**A. Mohamed Sulaiman and Anr
Vs
A. Ameena Beevi (Deceased) and Ors**

Civil Procedure Code 1908 as amended, Order 8, Rule 6-A – When a defendant in a partition suit can be considered as a party suit also, such defendant can also make counter claim under order 8, Rule 6-A of CPC – when the fight is between brother and sisters too much of technicalities should not be permitted to flow in between the claim and counter claim made by them – CRP (PD) dismissed.

HIGH COURT CITATIONS CRIMINAL CASES

2013 -2-L.W. (Crl.) 103

Subramanian & Anr

Vs

State by Inspector of Police All Women Police Station Ponamalai, Trichy

Criminal Procedure Code (1973), Section 173(8), Re-open investigation, Further investigation, Prayer ordering of, Magistrate's powers, Sessions Judge, Powers, Suo motu, Scope of – Magistrate cannot suo-motu direct further investigation under Section 173(8) of Cr.P.C or direct reinvestigation on account of bar of Section 167(2)

Error by Principal Sessions Judge in directing further investigation under Section 173(8) on the ground that there are some lapses in the investigation.

2013 -2-L.W. (Crl.) 137

R. Maruthu@Maruthupandian

Vs

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

I.P.C (1973), Sections 294(b), 323, 302 and 506(iii), Section 84/Plea of insanity, unsound mind, Paranoid Schizophrenia, Murder of five persons, attacking on road, with a wooden log,

Evidence Act, Section 105/Burden on accused, suffering from Paranoid Schizophrenia, discharge of,

Mental Health Act (1987), Section 24/Reception order, accused-Paranoid Schizophrenia,

Criminal Procedure Code, Chapter 25, Section 335(2), Reception order of, Passing of by Court, duty of, accused-Paranoid Schizophrenia,

Act of accused killing five persons is not an offence, as his act falls within general exception contained in Section 84.

Accused was suffering from paranoid schizophrenia and he was incapable of understanding the nature of the act, which he did.

Accused had no motive against any of the 5 accused – Holding the wooden log in his hand, accused was attacking everyone, whom he happened to see at five different places.

Accused discharged his burden under Section 105.

As per Section 335(2)(a), it is the duty of this Court to pass an appropriate order to detain the appellant in safe custody – Court is empowered to pass a reception order under the Mental Health Act, directing the person to be kept in any one of the Licensed Psychiatric Nursing Homes run by the Government.

Reception order passed that the Superintendent of Police, Central Prison, Trichirappalli, shall set the accused at liberty and hand him over to the respondent – Inspector of Police, who shall, in turn, hand over the accused to the Kilpauk Institute of Mental Health, Chennai.

2013 -2-L.W. (Cr.) 169

R. Palanisamy

Vs

State by Inspector of Police, B-7, Ramanathapuram Police Station, Coimbatore

Criminal Procedure Code, Section 161/'Previous statement'; 164/' statement to a Magistrate'; difference of, Section 313/Accused examination, incriminating information, what is,

I.P.C., Sections 375, 376/Rape, allegation against father,

Criminal Trial/Practice, rape, Prosecution witness, hostile, demeanour of witness, effect of, Court's role, statement of witness recorded by Magistrates, summoning of, improper.

P.W.1 (Prosecutrix), accused her father of having raped her-She turned hostile.

Objective behind recording of statement of a witness under Section 164 Cr.P.C. is that it is for an assurance that the investigation is going on in right direction.

While recording the statement of a witness under Section 164 Cr.P.C., the learned Magistrates are following the procedure that they have to follow before recording a confession from the accused – It is a needless exercise.

A statement by a witness under Section 164 Cr.P.C., is like a 'previous statement' given during investigation under Section 161 – It is not 'substantive evidence', not recorded in the presence of the accused – It was recorded 'res inter alia acta'.

Statement of a witness recorded under Section 164 Cr.P.C., during investigation is also a previous statement, but has higher value than Section 161 statement.

Sessions Judges summoning Magistrates, who have recorded the statement of witnesses under Section 164 Cr.P.C. – Effect of – Entire statement under Section 164 Cr.P.C., which has not been recorded before the learned Sessions judge, but recorded before the Magistrate, at a time when the accused was not in the picture, goes into the deposition of the witness – This practice does not have the sanction of law.

Examination of accused under Section 313(1)(a),(b)/Difference of – It is a dialogue between accused and Court – No incriminating information put to accused – Prosecutrix(P.W.1) turned hostile, disowned her statement, the learned Additional Sessions Judge relied on it since it was recorded by a Judicial Officer – Trial Court went wrong.

2013 -2-L.W. (Cr.) 208

Kulandaisamy

Vs

Inspector of Police, Aravakkurichi Police Station Karur District

I.P.C., Section 304-A/Rash and Negligent driving, presumption.

Oral evidence by Prosecution does not prove the rash and negligent driving of the motorcyclist.

Not presumption that a person should have driven a motor vehicle in a rash and negligent manner, merely because there was an accident – Requirements of Section 304A of IPC that the death of any person must have been caused by doing any rash or negligent act – There must be proof that the rash or negligent act of the accused was the proximate cause of the death – There must be direct nexus between the death of a person and the rash or negligent act of the accused.

It must be the 'causa causans' –It is not enough that it may have been the 'causa sine qua non'.

No evidence to prove the rash and negligent act of the Petitioner accused – Petitioner motorcycle rider cannot be held to be negligent.

2013 -2-L.W. (Crl.) 212

Aruna & Ors
Vs

State of Tamil Nadu rep.by Deputy Superintendent of Police, Economic Offences Wing II
(Financial Institution Madurai) and Anr

Criminal Procedure Code, Section 227/Discharge,

Tamil Nadu Protection of Interest of Depositors (TNPID) Act (1997), Section 5.

Family member roped in on the mere allegation that they canvassed for deposit for the financial institution – No material to show that Petitioners were partners of A1 firm charged under Section 5 – Obligation for the accused to prove that the offence took place without their knowledge arises only when the Prosecution establishes requisite are discharged.

2013 -2-L.W. (Crl.) 230

Manjunath Eshwar
Vs

State rep by Inspector of Police AWPS Tambaram

Criminal Procedure Code, Section 239,

Dowry Prohibition Act (1961), Section 4.

Petitioner (sister's husband of A1) filed an application under Section 239 for discharge from the case filed under Section 4 of D.P. Act – It was dismissed, on revision, held: petitioner not a party to marriage – No demand by him to bride or her parents – Section 4 cannot be involved, but allegations under Section 498-A attracted.

2013 -2-L.W. (Crl.) 237

V.P. Kuppurao
Vs

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

I.P.C., Sections 221, 506(i),

Criminal Procedure Code, Sections 200, 156(3)/Complaint against police officials, maintainable, whether before Judicial Magistrates,

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (1989), Section 3(2)(iv)/Complaint against police official, maintainability

A retired Police Inspector, preferred a complaint against 'N', Sub-Inspector of Police – First respondent / Police, after investigation, filed a report referring the case a 'mistake of fact' – Accepting the report learned Judicial Magistrate No.IV, Vellore, closed the case as 'mistake of fact'

- Defacto complainant filed Objection Petition – Judicial Magistrate ordered recording of the Objections but ordered no further action.

Contention that order passed accepting the final report without considering the protest petition would be illegal, well founded.

As held in 2012-1-L.W.(Crl). 621, neither the Chief Judicial Magistrate nor the High Court can deprive the Magistrates of the power vested in them by the Criminal Procedure Code, by means of Circular or order – Learned Magistrates are competent to entertain private complaints, against the Police Officials – Order passed by Magistrate observing that it is only the Chief Judicial Magistrate who can entertain the complaint against the Police Officers, are liable to be set-aside.

2013 -1-L.W. (Crl.) 669

Mrs. Sumathi Revichandran Pettioner/Accused -1

Vs

State rep. by The Inspector of Police, CBI ACB, Chennai

Criminal Procedure Code, Section 91/Application to produce sanction file, for prosecution, Privileged document, what is,

Evidence Act, Sections 123, 124/Privileged document'; What is, File containing sanction, whether privileged document.

Petitioner filed application under section 91 Cr.P.C., praying the Court to sent for file which contains particulars regarding grant of sanction for prosecution – Court below entertained the petition directing summoning of the sanction file from the authority concerned – It added a rider that sanction file is only for the perusal of the Court for its satisfaction and not for the accused or his authorised agent.

Held: Sanction file comprise documents to be treated as confidential and it is incumbent upon the authorities concerned and the Court also to safeguard the secrecy – They are not published official records as provided in Section 123 - Documents contained in sanction file are privileged documents.
