

**Vol -X  
Part-I**

**JANUARY, 2015**

# **IMPORTANT CASE LAWS**

*Compiled by*

**Tamil Nadu State Judicial Academy  
Chennai – 600 028**



# INDEX

S. NO.	IMPORTANT CASE LAWS	PAGE NO.
1	Supreme Court - Civil Cases	01
2	Supreme Court - Criminal Cases	04
3	High Court - Civil Cases	07
4	High Court - Criminal Cases	12

# TABLE OF CASES WITH CITATION

## SUPREME COURT - CIVIL CASES

SL. NO.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE NO.
1	Port of Kolkata vs. Kalipada Bhakat	(2014) 10 SCC 573	09.10.2014	Rent Control and Eviction – Locus standi – to file appeal	01
2	M.P. State Legal Services Authority vs. Prateek Jain	(2014) 10 SCC 690	10.09.2014	Legal Aid and ADR – Section 89 C.P.C. - Lok Adalats – Object and benefits	01
3	Tajender Singh Ghambhir vs. Gurpreet Singh	(2014) 10 SCC 702	12.09.2014	Deficiency in court fee - Consequence - powers of courts	02
4	Lalitha Theresa Sequeria vs. Dolfy a Pias	(2014) 10 SCC 731	09.10.2014	Property Law – Partition – Christian family – Mode and proof of partition	02
5	Basappa vs. T. Ramesh	(2014) 10 SCC 789	10.10.2014	Compensation – Determination - Permanent disability - Section 166 of Motor Vehicles Act	02

## **SUPREME COURT - CRIMINAL CASES**

<b>SL. NO.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>PAGE NO.</b>
1	J.V. Baharuni vs. State of Gujarat	2015 (1) CTC 284	16.10.2014	Dishonor of Cheque cases – Summary trial – speedy justice	04
2	Hari Om vs. State of Haryana	(2014) 10 SCC 577	31.10.2014	Dowry death - Mental cruelty - Sentencing	04
3	O.M. Cherian vs. State of Kerala	(2014) 4 MLJ (CrI) 622 (SC)	11.11.2014	Suicide - Abetment of – Cruelty - Quantum of punishment	05
4	Munni vs. Inspector of police	(2014) 10 SCC 623	29.10.2014	Murder of wife - Circumstantial evidence - Medical Jurisprudence/Evidence	05
5	Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori	(2014) 10 SCC 736	18.09.2014	Family and Personal Laws – Muslim Law – Crimes Against Women and Children – Grant of injunction relief	05

## HIGH COURT - CIVIL CASES

SL. NO.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE NO.
1	Man Vizhi vs. Managing Director, Metropolitan Transport Corporation	2015 (1) CTC 40	03.12.2014	Motor Accident – Claim for Compensation - Enhancement	07
2	A. Shameem Ahmed vs. A. Mohammed Hashim	2015 (1) CTC 156	12.12.2014	Fraud upon Party – Exercise of inherent power – Section 151 C.P.C.	07
3	P. Kumaran vs. V. Ramaswami	(2014) 8 MLJ 167	08.08.2014	Civil Procedure – Mis-joinder of parties – Cause of action	07
4	S. Balakrishnan Pandiyan and another vs. Superintendent of Police Kanchipuram and others	2014 – 5 – LW. 207	17.10.2014	Registration and solemnization of marriage – Tamil Nadu Registration of Marriage Act - Hindu Marriage Act	08
5	Deenamma and others vs. Lizia and others	2014 – 5 – LW. 275	09.09.2014	Succession Law – Religion – Marriage – Bigamy – Succession – Scope of	09
6	K. Vijayalakshmi and others vs. K. Sahikanth	2014 – 5 – LW. 481	17.11.2014	Partition – share – Allotment – Division – allotment of property on equity – owelty – compensation – Scope of	09
7	N. Ramalingam and another vs. Shanmugam	2014 – 5 – LW. 607	30.10.2014	Rent Control Law – Arrears of rent – Deposit of	10
8	S. Ganesan v. A. Ponsamy	2014 – 5 – LW. 702	17.11.2014	Mortgage Deed – Cancellation - Admissibility	10
9	Sumathi vs. Dr. Suganthi	(2014) 8 MLJ 728	30.10.2014	Civil Laws – Compensation – Medical Negligence	11
10	Mahenderan vs. Arulmighu Arunachaleswaran Devasthanam,	(2014) 8 MLJ 753	31.10.2014	Trust and Charities – Eviction of encroacher – Recovery of possession	11

## **HIGH COURT - CRIMINAL CASES**

<b>SL. NO.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>PAGE NO.</b>
1	Venkatrayan vs. State by the Sub Inspector of Police	(2015) 1 MLJ (CrI) 57	20.11.2014	Criminal procedure – Cognizance – committal of case – Withdrawal of Appeal	12
2	P. Shanmuganathan vs. State	(2015) 1 MLJ (CrI) 75	12.11.2014	Criminal complaint – Quashing of – Absence of sanction to prosecute	12
3	E. Kalivarathan vs. The State	2015 (1) CTC 87	23.12.2014	Criminal Procedure – Ss. 232 and 235 – Order of Acquittal and Judgment of Acquittal – Distinction	13
4	Kandha Subbian vs. Packialakshmi	(2015) 1 MLJ (CrI) 105	16.10.2015	Maintenance – Impleadment of Parties – Section 125 Cr.P.C.	14
5	N. Elangovan vs. C. Ganesan	(2014) 4 MLJ (CrI) 517	10.10.2014	Negotiable Instruments – Dishonour of cheque – Complaint against partnership firm	14
6	Javagar vs. Ramasamy	(2014) 4 MLJ (CrI) 548	17.10.2014	Tamil Nadu Protection of Interests of Depositors Act – Denial of enquiry – Validity of	15
7	Ramalingam vs. State rep. by Inspector of Police	(2014) 4 MLJ (CrI) 561	17.10.2014	Murder – Eye Witness – Delay in lodging FIR	15
8	G. Subramanian vs. State by Deputy Superintendent of Police	(2014) 4 MLJ (CrI) 573	11.08.2014	Criminal Procedure - Summons to produce document - Supply of documents/statements	16
9	Mani vs. State by Inspector of police	(2014) 4 MLJ (CrI) 583	14.10.2014	Grievous hurt – Eye witness – No explanation for delay in lodging FIR	16
10	S. Jeyakumar vs. D. Baskaran	(2014) 4 MLJ (CrI) 589	17.10.2014	Complaint – Direction under section S. 156(3) Cr.P.C. – Investigation – Duty of Magistrate	17





## SUPREME COURT CITATIONS CIVIL CASES

### (2014) 10 Supreme Court Cases 573

Port of Kolkata

vs.

Kalipada Bhakat

Date of Judgment : 09.10.2014

- A. Rent Control and Eviction – Eviction Decree/order – Locus standi/standing to file appeal against – Power-of-attorney holder of tenant, held, had no locus standi to file appeal after termination of tenancy and eviction order attaining finality – Order of eviction passed against R-2 attaining finality as no appeal filed against it by R-2 – R-2 subsequently handing over possession of premises to R-1 (her power-of-attorney holder) – R-1 then assailing the order of eviction by filing an appeal along with an application for condonation of delay before the appellate authority concerned – Held, not maintainable – Government Grants, Largesse, Public Property and Premises – Public Premises (Eviction of Unauthorised Occupants) Act, 1971 – Ss. 9 and 5 – Transfer of Property Act, 1882, Ss. 108(c), 106 and 111(h)
- B. Government Grants, Largesse, Public property and premises - Public Premises (Eviction of Unauthorised Occupants) Act, 1971 – S. 4(2) – Issuance of show-cause notice to occupants of public premises before eviction order is passed against them – Subsequent occupiers of premises who enter into possession after the eviction proceedings are initiated against their predecessor-in-possession, held, not entitled to fresh notice under S. 42(2) of the 1971 Act – Said section cannot be resorted to, to protect the interest of such unauthorised occupants

### (2014) 10 Supreme Court Cases 690

M.P. State Legal Services Authority

vs.

Prateek Jain

Date of Judgment : 10.09.2014

- A. Debt, Financial and Monetary Laws – Negotiable Instruments Act, 1881 – Ss. 147 and 138 – Dishonour of cheque – Compounding of offence of - Grant of permission as to – Imposition of costs on accused while permitting said compounding – Guidelines laid down by Supreme Court in Damodar S. Prabhu, (2010) 5 SCC 663 in relation to – Adherence to, in cases which are resolved/settled in Lok Adalats – Scope of deviation therefrom – Whether it would frustrate the object of Lok Adalats if imposition of costs as per the guidelines contained in Damodar S. Prabhu case is insisted upon
- B. Legal Aid and ADR – Lok Adalats – Tendency of referring even those matters to Lok Adalats which have already been settled, just to inflate the figures of decision/settlement therein for statistical purposes, deprecated – Legal Services Authorities Act, 1987 – Ss. 19 to 22 – Constitution of India – Art. 39-A – Civil Procedure Code, 1908, S. 89
- C. Legal Aid and ADR – Lok Adalats – Object and benefits thereof, restated

**(2014) 10 Supreme Court Cases 702**

**Tajender Singh Ghambhir**

**vs.**

**Gurpreet Singh**

**Date of Judgment : 12.09.2014**

- A. Civil procedure Code, 1908 – Ss. 149, 151, 96, 100 and Or. 7 R. 11 (c), Or. 41 & Or. 42 – Maintainability of appeal – Deficiency in court fee in respect of plaint – Can be made good during the appellate proceedings – Court Fees Act, 1870– Ss. 6(2), (3) & 12(ii) [as applicable in State of U.P.]**
- B. Court Fees Act, 1870 – Ss. 6(2) & (3) [as applicable in State of U.P.] – Deficiency in court fee in respect of plaint – Consequence (rejection/dismissal of plaint) as specified in Ss. 6(2) & (3), CF Act, 1870 that must follow in case of – Invocation of – Prerequisites for – Held, under the scheme of the above provisions, it is the duty of court to determine as to whether or not court fee paid on plaint is deficient – On finding court fee to be deficient, court must first grant time to plaintiff to pay the deficient court fee – If despite the said order of court the deficient court fee is not paid, it is only then the consequence as provided in Ss. 6(2) & (3), CF Act must follow**
- C. Civil Procedure Code, 1908 – Ss. 96, 100, 149, 9 and 151 & Or. 41 and Or. 42 – Powers of appellate court and trial court – Scope of, compared – Reiterated, power of appellate court is coextensive with that of trial court – Appellate court in the interest of justice can do all that which could be done by trial court in suit proceedings**

**(2014) 10 Supreme Court Cases 731**

**Lalitha Theresa Sequeria**

**vs.**

**Dolfy a Pias**

**Date of Judgment : 09.10.2014**

**Property Law – Partition – Christian family – Concept of joint family property or coparceners under Hindu law not applicable to Christians – Absolute owner, a Christian, entitled to divide and distribute his property as he considers fit – Mode and proof of such partition - Oral partition and unprobated will, followed by compromise decree – Compromise partition decree also acknowledged in a subsequent sale of a part of his share by one of the parties**

**(2014) 10 Supreme Court Cases 789**

**Basappa**

**vs.**

**T. Ramesh**

**Date of Judgment : 10.10.2014**

- A. Motor Vehicles Act, 1988 – S. 166 – Compensation – Permanent disability – Estimation of functional disability or loss of earning capacity – functional disability distinguished from physical disability – Manual labour cases where loss of limb is often equal to loss of livelihood – Impact on functional disability – Appellant working as goundi at building construction sites requires good health and extreme fitness as it is a strenuous task which involves lot of physical activities – Appellant's permanent disability amounting to 58% of whole body according to medical evidence – In view of suffering from general weakness and incapability of doing heavy work, inability to walk and stand for a long time, his functional disability is to be taken at 85%**

- B. **Motor Vehicles Act, 1988 – S. 166 and Sch. II – Compensation – Determination – Disability arising out of non-fatal accidents – Reiterated loss of future earning is to be calculated under formula provided in Note 5 of Sch. II – Accordingly on facts loss of future income would work out to Rs 5,35,500 [Rs 3750 x 85% (functional disability) x 12 x 14] – For pain and suffering, amount of Rs 25,000 awarded by High Court, increased to Rs. 60,000 – Total compensation payable to appellant comes to Rs 6,72,000 as against Rs 2,59,500 awarded by High Court – Appellant shall also be entitled to interest @ 9% p.a. from date of claim petition till date of payment – Debt, Financial and Monetary Laws – Interest – Compensation as interest/Interest on compensation**
- C. **Constitution of India – Art. 136 – Costs of Rs. 25,000 awarded by Supreme Court**

\*\*\*\*\*

## SUPREME COURT CITATIONS CRIMINAL CASES

2015 (1) CTC 284

J.V. Baharuni

vs.

State of Gujarat

Date of Judgment : 16.10.2014

Negotiable Instruments Act, 1881 (26 of 1881), Sections 143, 144, 145, 147 & 138 – Dishonor of Cheque cases – Summary trial – Need for speedy disposal – Speedy justice – Duty of Court to conduct Summary trial – Procedure to be followed – Act confers discretion upon Court to conduct Summary trial or Regular trial – When Magistrate is of opinion that nature of case requires sentence for term exceeding one year or for any other reason, it is undesirable to try case summarily, Court must record reasons to conduct Regular trial – Directions issued to all Subordinate Courts as to how to conduct Dishonour of Cheque cases – (i) Courts must make endeavour to expedite hearing of cases in time-bound manner (ii) Magistrate has discretion either to follow Summary trial or Summons trial and in case Magistrate wants to conduct Summons trial, he should record reasons after hearing parties (iii) Magistrates should make all possible attempts to encourage compounding of offence at early stage of litigation and Court must give priority for compensatory aspect of remedy rather punitive aspect (iv) Remitting matter for de novo trial should be exercised as last resort and should be used sparingly and Appellate Court should be very cautious and exercise discretion judiciously while remanding matter for de novo trial (v) while examining nature of trial conducted by trial (Summary or Summons trial), Appellate Court should consider substance of evidence recorded and arrive just and reasonable conclusion independently.

(2014) 10 Supreme Court Cases 577

Hari Om

vs.

State of Haryana

Date of Judgment : 31.10.2014

- A. Penal Code, 1860 – Ss. 304-B and 498-A – Dowry death – Mental cruelty – Reliable suicide note – Conviction confirmed – Persistent illegal demands of dowry by appellant-accused (husband) from deceased and her parents – Bride committing suicide by consuming poison, because of – Such unnatural death occurred within a month of marriage – Direct nexus of her death with such demand, proved by evidence and her suicide note, which mentioned reasons for the suicide – Suicide not duly proved to be in her handwriting – Ingredients of offence under Ss. 304-B and 498-A, made out – Hence, conviction of appellant under aforementioned sections, confirmed
- B. Penal Code, 1860 – Ss. 304-B and 498-A – Dowry death – Sentence – Imposition of life imprisonment only in “rare cases” – Courts below not assigning any reasons for life imprisonment – Sentence reduced from life imprisonment to 10 yrs’ RI – Interpretation of expression “may” occurring in S. 304-B(2) restated – Reiterated, extreme punishment of life term should be awarded to accused in rare cases but not in every case, once he is found guilty of offence under S. 304-B – Instant case does not fall in the category of a “rare case” as envisaged by Supreme Court, so as to award appellant-accused life imprisonment – Having regard to totality of facts and circumstances of instant case, sentence of appellant reduced from life imprisonment to 10 yrs’ RI

**(2014) 4 MLJ (Crl) 622 (SC)**

**O.M. Cherian**

**vs.**

**State of Kerala**

**Date of Judgment : 11.11.2014**

- A. Cruelty – Abetment to suicide – Quantum of punishment – Indian Penal Code, 1860 (Code 1860), Sections 498A and 306 – Allegation that Appellant/accused ill-treated, tortured and compelled deceased to commit suicide – Conviction and sentence – Trial court directed sentence to run consecutively, affirmed by High Court – Appeal – Whether conviction and sentence was justified to order consecutive running of sentence – Held, when Trial Court declines exercise of discretion in issuing direction for concurrent running of sentences, normally Appellate Court do not interfere unless refusal arbitrary or unreasonable – Appellant secured employment in Gulf countries and visited India once in two years only – In period of eight years, Appellant came on leave to India only four times – Appellant also taken efforts for mediation to settle differences – When mediation scheduled to take place, deceased committed suicide on same day – In facts and circumstances, sentences imposed on Appellant to be run concurrently – Appeal allowed in part.**
- B. Sentence – Concurrency of sentence – Conviction of several offences at one trial – Code of Criminal Procedure, 1973 (Code 1973), Section 31 – Whether sentence can be made to run concurrently instead of consecutively – Held, Section 31 of Code 1973 deals with quantum of punishment passed when there is one trial and accused convicted of two or more offences – But aggregate must not exceed 14 years and twice maximum imprisonment awardable for single offence – Full discretion with Court to order sentences for two or more offences at one trial to run concurrently or consecutively – Discretion to be exercised along judicial lines and not mechanically – Whether direction for concurrent running of sentences be issued depend on nature of offence(s) and facts and circumstances – No reason to hold that normal rule is to order sentence to be consecutive and exception to make sentences concurrent – If Court does not order sentence to be concurrent, one sentence may run after other, in such order as Court may direct – Reference answered.**

**(2014) 10 Supreme Court Cases 623**

**Munni**

**vs.**

**Inspector of police**

**Date of Judgment : 29.10.2014**

- A. Penal Code, 1860 – Ss. 302, 498-A and 201 – Murder of wife – Circumstantial evidence – Death of wife caused by strangulation – Conviction confirmed**
- B. Criminal Trial – Medical Jurisprudence/Evidence – Asphyxia/Throttling/Strangulation/Hanging – Medical evidence – No strangulation mark(s) on back of neck – Inference – Held, if appellant had used the cable from behind the deceased on her neck and thereby suffocated the deceased, there would have been no scope at all for any cable mark on backside of the neck**

**(2014) 10 Supreme Court Cases 736**

**Juveria Abdul Majid Patni**

**vs.**

**Atif Iqbal Mansoori**

- A. Family and Personal Laws – Muslim Law – Divorce – Khula – Wife's proposal for dissolution of marriage – When becomes effective – Principles laid down – Mere ex parte fatwa (advisory opinion) of khula (divorce) obtained from Mufti (juris consult) without clear proof of acceptance of proposal of dissolution of marriage by the husband, or, without issuance of qaza (judgment) of khula by Qazi (Judge), held, ineffectual in effecting divorce
- B. Crimes Against Women and Children – Protection of Women from Domestic Violence Act, 2005 – Ss. 12, 2(a), (f) & (s), 3, 18 to 23 and 26 – “Aggrieved person” – Who is – Divorced wife, held, included – Application under S. 12 seeking relief under Ss. 18 to 23 filed by appellant Muslim wife against husband after obtaining divorce – Held, maintainable – If domestic violence had taken place when wife lived together in shared household with her husband through relationship in nature of marriage, held, application would be maintainable – Act of domestic violence once committed, subsequent decree of divorce, would not absolve husband from his liability for offence (though in present case, the alleged divorce not really found to have taken place) – Criminal Procedure Code, 1973 – S. 125 – Words and Phrases – “Aggrieved person”, “domestic relationship” and “shared household”
- C. Crimes Against Women and Children – Protection of Women from Domestic Violence Act, 2005 – Ss. 26 and 18 to 22 – Proceedings in which relief under Ss. 18 to 22 of DVA Act can be claimed – Proceedings other than under DVA Act - Held, any relief available under the aforesaid provisions may also be sought for in any legal proceeding even before a civil court and Family Court, apart from the criminal court, affecting the aggrieved person whether such proceeding was initiated before or after the commencement of the DVA Act – Even before the criminal court where case under S. 498-A IPC is pending, if the allegation is found genuine, it is always open to the appellant to ask for reliefs under Ss. 18 to 22 of the DVA Act and interim relief under S. 23 of the DVA Act – Penal Code, 1860 – S. 498-A – Criminal Procedure Code, 1973, S. 125
- D. Crimes Against Women and Children – Protection of Women from Domestic Violence Act, 2005 – Ss. 20 and 12 – Nature of relief available under S. 20 – Distinguished from maintenance – Held, monetary relief as stipulated under S. 20 of the DVA Act is different from maintenance, which can be in addition to an order of maintenance under S. 125 CrPC or any other law – Such monetary relief can be granted to meet the expenses incurred and losses suffered by the aggrieved person and child of the aggrieved person as a result of the domestic violence, which is not dependent on the question whether the aggrieved person, on the date of filing of the application under S. 12 of the DVA Act is in a domestic relationship with the respondent – Criminal Procedure Code, 1973, S. 125
- E. Crimes against Women and Children – Protection of Women from Domestic Violence Act, 2005 – S. 23 – Grant of interim relief under – When warranted – Held, in view of S. 23 of the DVA Act it is well within the jurisdiction of the Magistrate to grant the interim ex parte relief as he deems just and proper, if the Magistrate is satisfied that the application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence

\*\*\*\*\*

## HIGH COURT CITATIONS CIVIL CASES

2015 (1) CTC 40

Man Vizhi

vs.

Managing Director, Metropolitan Transport Corporation

Date of Judgment : 03.12.2014

Constitution of India, Articles 21 & 47 – Motor Vehicles Act, 1988 (59 of 1988), Section 185 – Motor Accident – Claim for Compensation – Award passed by Tribunal – claimants filed Appeal seeking enhancement of Compensation – As per Post-Mortem Certificate, deceased found drunk at time of accident – Tribunal fixed 20% negligence on deceased – Since drunken driving is serious menace, Court expected to address issue to prevent such cases in future – There is close connection between drunken driving and road accidents – Increase in drunken driving proportionately increases number of accidents – Concerted effect has to be taken by all concerned to prevent drunken driving – Constitution included prohibition in one of Directive Principles of State Policy – It is bounden duty of Governments to eradicate evil of drinking by imposing total prohibition – Most accidents caused due to drunken driving not properly reported – Even juveniles are taking liquor and becoming addicts – Increase in number of accidents have connection with increase in liquor bars - Union Government of India, Government of Tamil Nadu and others impleaded – List of queries raised to them.

2015 (1) CTC 156

A. Shameem Ahmed

vs.

A. Mohammed Hashim

Date of Judgment : 12.12.2014

Code of Civil procedure, 1908 (5 of 1908), Order 23, Rule 1 & Section 115 & 151 – Fraud upon Party – Exercise of inherent power under Section 151 – Whether warranted – Suit for declaration to declare Cancellation Deed, cancelling Settlement Deed between parties, as null and void – Suit dismissed as withdrawn by Order passed in Application filed by Plaintiff/Respondent under Order 23, Rule 1 – Subsequent Application by plaintiff under Section 151 for setting aside order of withdrawal of Suit – Contention of Plaintiff that Suit was withdrawn by him on basis of false promise made by Defendants – Plaintiff alleging that Defendant had played fraud in getting Suit dismissed as withdrawn – Application of Plaintiff allowed and Suit restored to file – Held, Section 151 can be acted upon in cases of fraud upon Court – Court not empowered to exercise inherent power in cases of fraud upon party – Plaintiff, in instant case, ought to have filed a separate Suit to challenge Decree – Moreover, Order of Trial Court bereft of any reasons but merely replicating reasons stated by plaintiff in his order, erroneous – Direction of Trial Court to restore Suit without jurisdiction as instant case dealing with fraud committed by party – Order of Trial Court set aside – Revision allowed – Plaintiff/Respondent at liberty to file separate Suit – Decision of Apex Court in Ram Prakash Agarwal v. Gopi Krishan (Dead) through L.Rs., 2013 (3) CTC 356 (SC) relied upon.

(2014) 8 MLJ 167

P. Kumaran

vs.

V. Ramaswami

Date of Judgment : 08.08.2014

Civil Procedure – Misjoinder of parties – Cause of action - Code of Civil Procedure, 1908, Order I, Rule 1, 4 and 9, Order II, Rule 2, 3 and 4 – Defendants are owners of suit property – 1<sup>st</sup> Plaintiff entered into agreement of sale for purchase of suit property with Defendants and paid advance – Cancelling 1<sup>st</sup> agreement, 2<sup>nd</sup> agreement of sale entered – While cancelling 2<sup>nd</sup> agreement, 3<sup>rd</sup> agreement of sale entered between 2<sup>nd</sup> Plaintiff and Defendants and agreed to retain advance in 1<sup>st</sup> agreement – 2<sup>nd</sup> Plaintiff requested to execute sale deed – 1<sup>st</sup> Defendant cancelled agreement of sale and forfeited advance amount – Suit filed for specific performance – 1<sup>st</sup> Defendant filed Application to reject plaint for non-disclosure of cause of action, misjoinder of parties and that suit also hit by multifariousness – Whether suit is liable to be rejected for non-disclosure of cause of action and misjoinder of parties – Held, 3<sup>rd</sup> agreement for sale clearly states that Defendants agreed to execute sale deed in favour of purchaser, namely, 2<sup>nd</sup> Plaintiff or his nominee/s – Nothing wrong in joining 1<sup>st</sup> Plaintiff in suit and praying for decree and specific performance as 1<sup>st</sup> Plaintiff will also come under phrase of nominee/s – Allegation that 1<sup>st</sup> Plaintiff cannot be joined in suit for specific performance between 2<sup>nd</sup> Plaintiff and Defendants cannot be accepted – Relief in relation to damages arising out of series of acts or transactions between Plaintiffs and Defendants – All agreements for sale including relief for damaged form part of same series of transactions between Plaintiffs and Defendants and common question of law would arise – Plaintiffs got joint claim against Defendants and justified in clubbing relief for damages in same suit – Plaintiffs disclose cause of action for relief of specific performance – No misjoinder of parties – Plaintiffs cannot be rejected – Application dismissed.

2014 – 5 – LW. 207

S. Balakrishnan Pandiyan and another  
vs.

Superintendent of Police, Kanchipuram, and others

Date of Judgment : 17.10.2014

Tamil Nadu Registration of Marriage Act (2009), Section 2(e) 'priest': Sections 5, 7, 7-A, Registration and solemnisation of marriage by advocates,

Hindu Marriage Act (1955), Sections 7, 7-A, Registration and solemnization of marriages by advocates,

Words and Phrases'verify'.

Registration and solemnization of marriage by advocates, in their chambers, acting as 'priest', violation of professional conduct, marriage certificates, issuance of.

S.P., CB-CID was appointed as enquiry officer in respect of such marriages solemnized and registered by advocates and report submitted to Court.

Whether they satisfied section 7-A of Hindu Marriage Act, which permits Suyamariyathai or Seerthirutha marriage – Registration of marriages by Registrar, in absence of parties, where permissible.

Held : It is within the power of the Registrar to refuse registration, if it arouses a reasonable doubt – Solemnisation and registration of marriages by advocates is a business and it is prohibited by Rule 47.

Marriages performed in secrecy in the office of advocates and Bar Association rooms cannot amount to solemnization within Sections 7 and 7-A – certificate of solemnization issued by advocates will not be per se proof of solemnization of marriage in a matrimonial dispute – Neither the office of an advocate, nor Bar association room is a public place.

Principle of undue influence, invoking of, valid consent is an essential element in the Hindu Marriage Act.

An Advocate before registering a marriage, issues a Solemnisation Certificate in his capacity as Priest, as defined by Section 2(e) of the Act – Property of, in secrecy, whether proper, one lawyer registered 676 marriages – Neither the Act nor the Rules insist upon the presence of the Priest during Registration – A priest-cum-lawyer will



be liable for disciplinary action before Bar Council – No scope of the presence of the Lawyer-cum-Priest for effecting registration of a marriage.

On complaints by registering authorities police to give protection.

We do not approve advocates appearing before the Registrar and presenting the Memorandum of Registration – Compulsory presence of parties need for, when can be exempted – No registration of marriage can be done under the T.N. Act without physical presence of the parties to marriage before the Registrar, except under special circumstances after recording the reasons, Verification in absentia, not an empty formality.

2014 – 5 – LW. 275

Deenamma and others

vs.

Lizia and others

Date of Judgment : 09.09.2014

C.P.C., Section 100/Declaratory suit, as to religion, marriage, bigamy, succession, scope of,

Hindu Succession Act (1956), Section 8, marriage, bigamy, declaration of religion, succession, scope of,

Christian law/marriage, bigamy, declaration of religion of husband, succession, scope of.

Suit to declare late 'S' professed hindu religion and succession to his estate is governed by Hindu Succession Act, claim of, by wife, Scope.

S was professing Christianity, he had married the first defendant as well as the second plaintiff in accordance with the Christian rites and customs and the marriage were solemnised only in Church – Marriage of 'S' with 2<sup>nd</sup> plaintiff was performed while earlier marriage with 1<sup>st</sup> defendant was subsisting – Amounts to bigamy, is void.

2014 – 5 – LW. 481

K. Vijayalakshmi and others

vs.

K. Sahikanth

Date of Judgment : 17.11.2014

Partition Act,(1893), Sections 2,3/share allotment, division

Partition/Co-owners, sale of share, when to be permitted,

C.P.C., Order 26, Rules 13, 14/Advocate commissioner, partition, division, by metes and bounds, sale of share, scope.

Partition – Preliminary decree, final decree, passing of – Allotment of share – Front/rear portion of house, with pathway, division made, validity of – Challenge to division in specie – What is – Division by metes and bounds, sale of share to co-owner, when arises, enjoyment, to be decided – Court's role, discretion – Scope of – Request for reservation of house by one party, grant of – Sentimental value, location of property in urban areas – Effect – Scope – Allotment of property on equity, considerations, what are – Owelty – compensation – Scope of.

Financial position of party, seeking preferential allotment, effect of.

Whether appellants are entitled for preferential allotment – Appellants wanted the trial Courts to appoint an advocate commissioner for the purpose of valuation of entire property and allot it to them on payment of just compensation – Trial Court found on report, property is divisible – Appeal against.

Held: No special circumstances in this case to direct allotment of the entire property to the appellants and directing respondent to sell his share to the appellants in view of the nature of property and division made by Advocate commissioner.

Advocate Commissioner stated that property is partible.

In case property is susceptible of division, Court must divide it by metes and bounds – Question of other method would come only in case division is not feasible.

Property incapable of division – what to do – Allotment to one party – owelty to other party – Payment of just compensation - what is.

Right to make a claim to purchase the property at a value to be fixed by Court under Section 3 would arise only in case a situation has arisen when it is not practicable to effect actual division of property.

2014 – 5 – LW. 607

N. Ramalingam and another  
vs.  
Shanmugam

Date of Judgment : 30.10.2014

Tamil Nadu Buildings (Lease and Rent Control) Act (1960), Section 10(2)(i)/willful default, Section 10(3) (iii), Section 11/ Arrears of rent, deposit of, scope,

Constitution of India, Article 227/Deposit of rental arrears, time extension, scope.

Petition for eviction – Wilful default – Arrears of rent, deposit of, scope, Order by rent controller directing deposit of arrears of rent confirmed by appellate authority by granting one months's time to comply – Non-compliance – Memo filed before rent controller who extended time, whether proper.

Question is whether rent controller exceeded his jurisdiction by extending time for depositing arrears of rent when such time was granted by the rent control appellate authority.

Held : Question whether rent controller can extend the time for depositing the arrears of rent granted by the Appellate Authority decided in 2007-2-L.W.503 – Rent Controller wrongly exercised the jurisdiction to condone the delay in depositing the arrears of rent as per the conditional order passed – Orders set aside.

2014 – 5 – LW. 702

S. Ganesan  
vs.  
A. Ponsamy

Date of Judgment : 17.11.2014

Registration Act, Sections 17, 49/Mortgage deed cancellation admissibility

C.P.C., Order 6, Rule 2/material fact what is, Mortgage deed cancellation admissibility, discharge, whether.

Mortgage – discharge – Mortgage deed registered, but cancellation deed not – whether can be admitted, relied for collateral purpose.

Held : No – Right to claim under Ex.A.1 – registered deed could be extinguished only by way of a registered documents – Ex.B1 cancellation deed of mortgage bond is not registered – Plea of discharge for collateral purpose of payment of money, scope of, whether can be relied – Ex.B1 falls under Section 17(1)(c), it ought to have been registered, it cannot be received in evidence at all.

**(2014) 8 MLJ 728**

**Sumathi**

**vs.**

**Dr. Suganthi**

**Date of Judgment : 30.10.2014**

**Civil Laws – Compensation – Medical Negligence – Appellant/Plaintiff/poor folk lady filed suit for damages from Respondents/Defendants for negligence in performing sterilization operation done by 1<sup>st</sup> Respondent/1<sup>st</sup> Defendant/doctor, same dismissed – On appeal, Appellate Court concurred with finding of Trial Court – Second appeal – Whether shifting of burden of proof on Plaintiff that there was medical negligence on part of doctor, who performed surgery can be legally sustained and if not, does not vitiate judgments in challenge – Held, medical negligence in sterilization may not take away life, but same has its own consequences and cannot be allowed to go scot-free – Lower Courts unreasonably expected Plaintiff to prove medical negligence, when pregnancy itself took within a year after sterilization operation – 1<sup>st</sup> Defendant also admitted that she did not give warnings and precautions to Plaintiff in writing – Burden lies on medical Officer to prove that no negligence in performing surgery – Plea by 1<sup>st</sup> Defendant that Plaintiff might have joined fallopian tube to get pregnant for purpose of claiming damages shows her idea of escapism and lethargic approach – Lower Courts erred in shifting burden of proof on Plaintiff, same vitiates judgments in challenge – Judgment and decree of Lower Courts set aside – Suit decreed directing 3<sup>rd</sup> Defendant to pay specific sum with interest – Appeal allowed.**

**(2014) 8 MLJ 753**

**Mahenderan and another**

**vs.**

**Arulmighu Arunachaleswaran Devasthanam,**

**Date of Judgment : 31.10.2014**

**Trust and Charities – Eviction of encroacher – Recovery of possession – Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, Section 34 – Code of Civil Procedure, 1908, Section 47 – Suit for eviction against Petitioner, same decreed – Respondent Devasthanam/deed holder filed for execution - Executive Officer issued offer to make Petitioner as direct tenant, same accepted belatedly – Petitioner alleged that acceptance of offer crystallized into fresh contract of lease and decree of eviction become unenforceable – Executing Court held that no concluded contract to make decree of eviction unenforceable and directed delivery of vacant possession – Revision – Whether Executing Court justified in directing delivery of vacant possession – Held, conditional offer made in communication and belated acceptance was counter offer than acceptance, same not to crystallize into concluded contract of lease – Unless terms of lease settled, one cannot conclude whether same needs sanction to be obtained from Commissioner under Section 34 of Hindu Religious and Charitable Endowments Act – Contentions of Petitioners that communications between Petitioners and Respondent Devasthanam crystallized into lease making decree of eviction unexecutable cannot be countenanced – Judge of Executing Court rightly directed delivery of possession – Petition dismissed.**

\*\*\*\*\*

## HIGH COURT CITATIONS CRIMINAL CASES

(2015) 1 MLJ (Crl) 57

Venkatrayan

vs.

State by The Sub Inspector of Police

Date of Judgment : 20.11.2015

- A. Criminal procedure – Appeal – Withdrawal of – Code of Criminal Procedure, 1973 (Code 1973), Sections 372 and 405 (5) – Indian penal Code, 1860 (Code 1860), Sections 324, 341, 307 and 506(ii) – Petitioner registered case for alleged offences under Sections 341 and 324 of Code 1860 – Accused on counter registered case for alleged offences under Sections 307 r/w 34 and 506 (ii) of Code 1860 against Petitioner – Both cases tried together – Petitioner convicted on counter case whereas accused acquitted – appeal against conviction filed whereas revision filed against acquittal – Since cases are in counter, present petition to withdraw appeal case and transfer case to be tried along with revision case – Whether appeal case can be withdrawn – Held, as against order of acquittal, Petitioner ought to have filed appeal to Court of Session – But Petitioner came up with present petition for withdrawal of appeal – Remedy for Petitioner to file only criminal appeal – Appeal cannot be withdrawn but liberty under section 405(5) of Code 1973 to convert revision into appeal – Petition dismissed.
- B. Criminal Procedure – Committal of case – Code of Criminal Procedure, 1973, Sections 209, 323 and 407 – Whether it would be lawful for Magistrate to commit case which involves offences not exclusively triable by court of session – Held, Section 209 of Code 1973 does not empower Magistrate to commit case not involving offences exclusively triable by court of sessions – Under Section 323 of Code 1973, counter case which involves offences not exclusively triable by court of sessions should also be committed to court of sessions for trial while committing other case – High Court alone empowered under Section 407(1)(c)(iii) of Code 1973 to direct Magistrate to commit case to court of sessions for trial – Sessions Judge has no power to direct Magistrate to commit case to court of sessions or to transfer case from Magistrate to court of sessions or court of assistant sessions.
- C. Criminal Procedure – Cognizance – Code of Criminal Procedure, 1973, Section 193 – Whether Assistant Sessions Judge legally right in trying case without taking cognizance under Section 193 of Code 1973 – Held, section 193 of Code 1973 states that court of session may also take cognizance as Court of Original Jurisdiction if case committed to said court – Since case not committed to court of session, no cognizance taken at all by court of session and instead, Assistant Sessions Judge simply tried case on transfer – Irregularity committed by Assistant Sessions Judge who tried case by following trial for warrant cases – Assistant Sessions Judge required to follow procedure for trial under Chapter XVIII of Code 1973 and has no power to try by following procedure of warrant cases.

(2015) 1 MLJ (Crl) 75

P. Shanmuganathan

vs.

State

Date of Judgment : 12.11.2014

- A. Criminal complaint – Quashing of – Absence of sanction to prosecute – Code of Criminal procedure, 1973 (Code 1973), Sections 197 and 482 – Indian Penal Code, 1860 (Code 1860), Section 32 – Factories Act, 1948, Section 92 – Petitioner as ‘occupier’ failed to comply with provisions in Factories Act –

Since violations punishable under Section 92 of Factories Act, private complaint launched – Allegation that since Petitioner is public servant, prosecution launched without sanction is illegal – Whether order of Magistrate in taking cognizance followed by issuance of summons to Petitioner/accused is illegal – Whether offence committed by Petitioner under Factories Act committed while accused acting or purporting to act in discharge of official duty – Held, since omissions allegedly committed by Petitioner amount to offence under Section 92 of Factories Act, omissions are ‘illegal omissions’ and construed as ‘act’ defined in Section 32 of Code 1860 – Omission by public servant, if it constitutes offence, would fall under Section 197 of Code 1973 – Petitioner did not comply with provisions of Factories Act and was dereliction of duty – Offence which Petitioner allegedly committed is in discharge of official duty – For Court to take cognizance, sanction from Central Government should have been obtained – For want of such sanction, order of taking cognizance illegal – Case quashed – Petition allowed.

- B. Criminal Procedure – Sanction to prosecute – Code of Criminal Procedure, 1973 (Code 1973), Sections 4(2) and 197 – Factories Act, 1948, Section 105 – Whether for prosecuting Petitioner sanction is required in view of specific provision contained in Section 105 of Factories Act – Held, section 105 of Factories Act provides who is competent to present private complaint for offences committed by Occupier – Complaint can be made either by Inspector of Factories himself or with previous sanction by anyone else – Neither Section 105 nor any other provision in Factories Act either expressly or impliedly exclude operation of Section 197 of Code 1973 – No conflict between Section 105 of Factories Act and Section 197 of Code 1973 and two provisions do not overlap – For prosecuting person covered under Section 197 of Code 1973, if offence committed under Factories Act is in discharge of official duties, sanction mandatory – Sanction from Central Government need to be obtained.

2015 (1) CTC 87

E. Kalivarathan

vs.

The State

Date of Judgment : 23.12.2014

Code of Criminal Procedure, 1973 (2 of 1974) , Sections 232 & 235 – Acquittal – “Order of Acquittal” & “Judgment of Acquittal” – Distinction - When Order of Acquittal can be passed – Trial by Session Court – In trial before Court of Session after completion of evidence on side of prosecution, Court should find as to whether there is any evidence at all against Accused that he has committed offence for which he stands charged – When Court finds that there is no evidence at all against Accused in support of charge, it is mandatory for Court to record “Order of acquittal” – When Court finds that it is not case of no evidence against Accused and Court shall call upon Accused to enter upon his defence and adduce evidence, prosecution as well as Accused or his pleader shall make their arguments and consequently Court will pronounce “Judgment” in case – Such Judgment may be “Judgment of Acquittal” or “Judgment of Conviction”.

Criminal Jurisprudence – Judgment Writing – “Proof beyond reasonable doubt” and “Benefit of doubt” – Meaning – Nature and Scope – Significance thereof – An Accused against whom there is some evidence in support of charges, but, evidence is not either sufficient to hold him guilty or there is any reasonable doubt in evidence let in by prosecution in support of charges, then, Court may acquit Accused either by saying that charges have not been “Proved beyond reasonable doubt” or by giving “benefit of doubt” – When Accused is acquitted in such cases, inference is that there was evidence against him, but he was acquitted either because charges were not proved “beyond reasonable doubt” or that he was extended benefit of certain doubts in case of prosecution.

Criminal Jurisprudence – Usage of expressions “Proof beyond Reasonable Doubt” and “Benefit of Doubt” in Judgments – Under what circumstances Criminal Court can use expression of “Proof beyond reasonable doubt” and “Benefit of doubt” in Judgments – “Proof beyond reasonable doubt” or “giving benefit of doubt” relate to evidential burden and not a persuasive burden – When there is no evidence against Accused, there is no occasion for Court to raise any doubt at all – Though criminal Court has got freedom to use expressions “Benefit of doubt” or “not proved beyond reasonable doubt” these expressions cannot be used inappropriately by Criminal Court, when Accused is entitled for an acquittal simpliciter.

Code of Criminal Procedure, 1973 (2 of 1974), Section 397 – Revision to High Court – Challenge to adverse findings recorded in Judgment of Acquittal – Acquittal of Accused by Court finding that there is no evidence at all – Acquittal simpliciter – What is remedy of Accused when Criminal Court inappropriately employs term “Acquittal” by giving “Benefit of doubt”, or acquittal as there is “no proof beyond reasonable doubt”, even in cases where there is no evidence at all against Accused – Held, if there are findings in Order or Judgment of Acquittal, which are adverse to interest of Accused, as aggrieved person, he has remedy to set aside adverse findings – Adverse findings recorded in Judgment against Accused would result in Civil consequences – Any adverse remarks or adverse findings made against Accused person are all matters, which fall under term “findings” as employed in Section 397 of Code – Aggrieved person can invoke remedy of revision to set aside adverse findings – Law laid down in *M. Krishnan v. The State of Tamil Nadu, 2014 (3) MWN (Cr.) 203 (DB)* discussed.

Criminal Jurisprudence – Concept of “Honourable Acquittal” – Jurisdiction of Criminal Court to use expression of “Honourable Acquittal” while acquitting Accused in judgment – Expression “Honourable Acquittal” is relevant to Service Law jurisprudence or other jurisprudence and not for Criminal Law jurisprudence – Criminal Court, while acquitting Accused, cannot employ term “that accused is/are honourably acquitted” – In cases, where there is no evidence at all against Accused, Criminal Court should simply say “acquitted” and it shall not employ expressions “not proved beyond reasonable doubt” or “Accused is acquitted by giving benefit of doubt”.

Criminal Jurisprudence – Power of Court to convert “Order of Acquittal” as “Order of Honourable Acquittal” – Revision will not lie to convert Order of Acquittal as Honourable Acquittal – Proper course – Trial Court used expression of “not proved beyond reasonable doubt” and “by giving benefit of doubt” in case, where there is no evidence at all against Accused – Trial Court ought to have acquitted accused simpliciter without adding any qualification to word “Acquittal” – High Court can convert Order of Acquittal on benefit of doubt into one of Acquittal simpliciter – Law laid down in *M. Krishnan v. The State of Tamil Nadu, 2014 (3) MWN (Cr.) 203 (DB)* discussed.

Practice and Procedure – Single Judge bound by Judgments of Division Bench in line with strict adherence to Judicial Discipline – Discussion of ratio of Division Bench within parameters of Judicial Discipline.

(2015) 1 MLJ (Cr) 105

Kandha Subbian

vs.

Packialakshmi

Date of Judgment : 16.10.2014

Maintenance – Impleadment of Parties – Maintenance – Code of Criminal Procedure, 1973, Sections 319, 125(4) and 125(1) – Respondent/wife sought for maintenance under Section 125(1) – Petitioner/husband alleged that by execution of divorce deed, their marital bondage dissolved and subsequently, Respondent marriage third party individual and started living with him – Petitioner filed petition to implead his alleged ex-wife’s present husband as co-Respondent in petition under Section 125(1) – Magistrate dismissed application on ground that Section 319, which intended to implead accused persons cannot be applied for impleading adulterer in petition under Section 125(1), same challenged – Whether impleading of third party individual can be called for in petition filed under Section 125(1) – Held, marital bondage cannot be cut by act of parties – Divorce deed cannot be equated to level of decree of divorce granted by Court – Respondent sought maintenance under Section 125 – Eligibility to maintenance provided under Section 125(1) – Section 125(4) will operate as exception to Section 125(1) – Plea that Respondent lives with third party individual has to be proved by Petitioner and for proving same, impleading of third party individual cannot be asked for – Petitioner has to let in acceptable evidence that his wife is living as wife of third party individual – Avenues open to Petitioner to establish his plea that his wife’s alleged link with third party individual – Magistrate order upheld – Petition dismissed.

(2014) 4 MLJ (Cr) 517

N. Elangovan

vs.  
C. Ganesan

Date of Judgment : 10.10.2014

Negotiable Instruments – Dishonour of cheque – Partner – Acquittal – Negotiable Instruments Act 1881 (NI Act), Sections 138 and 141(1)(2) – Cheque issued but dishonoured – Trial Court acquitted Respondent/Accused since Appellant/Complainant not arrayed partnership firm as 1<sup>st</sup> Accused and filed case only against Respondent/Accused – Appeal – Whether Trial Court justified in ordering acquittal – Held, when Company is Drawer, same is principal offender under Section 138 NI Act and remaining individuals made offenders by legal fiction – Appellant/Complainant arrayed Respondent/Accused in individual name and not shown as partner of firm – Firm not arrayed as 1<sup>st</sup> Accused as Principal offender under Section 138 NI Act – Though Cheque appears in name of Respondent/Accused as partner for firm, yet principal offender firm not arrayed as principal Accused along with other Partners – Without filing complaint against partnership firm, filing complaint against Respondent/Accused in individual capacity per se not maintainable – Only when Partnership Firm shown to have committed offence under Section 138 NI Act, respondent/Accused can be roped in as accused as partner for dishonor of Cheque – Appeal dismissed.

(2014) 4 MLJ (Crl) 548

Javagar  
vs.  
Ramasamy

Date of Judgment : 17.10.2014

- A. Enquiry – Denial of – Validity of – Code of Criminal Procedure, 1973 (Code 1973), Section 340 – Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, Sections 5 and 5A – Respondent deposited sum with Appellant/accused who issued Fixed Deposits Receipts – On allegation that Petitioner not repaid amount, case filed – Based on application by Respondent to compound offence, Appellant acquitted – Appellant alleging commission of false evidence and forgery, filed application praying enquiry under Section 340 of Code 1973 and to subject Receipts to Expert's Opinion, dismissed – Appeal – Whether Trial Court was justified in declining permission for enquiry – Held, petition seeking enquiry filed after fifteen years from date of deposits per se not maintainable – Petitioner not approached Special Court about plea of forged documents of Receipts at earliest point of time – Case not fit to launch prosecution against Respondents since no expediency in interest of Justice to launch prosecution – Petitioner cannot launch prosecution to satisfy private grudge against Respondents – Impugned order affirmed – Appeal dismissed.
- B. Criminal Procedure – Acquittal – Tamil Nadu Protection of Interests of Depositors (in Financial Establishments ) Act, 1997, Sections 5 and 5A – Whether order of acquittal was valid – Held, only Competent Authority to file necessary application as per Section 5A of Act for compounding of offence – Competent Authority alone empowered to compound offence punishable under Section 5 of Act – If offence compounded by Competent Authority, then automatically proceedings under Act come to end and Accused discharged from charges – Order of acquittal can only be void one in eye of Law but valid unless set aside – Order become final, conclusive and binding since no appeal filed against order of acquittal.

(2014) 4 MLJ (Crl) 561

Ramalingam  
vs.  
State rep. by Inspector of Police

Date of Judgment : 17.10.2014

- A. Murder – Eye witness – Indian Penal Code, 1860, Section 302 – Allegation that Appellant came, taken out wooden log and assaulted deceased in presence of PWs1 and 2 – Conviction and sentence – Appeal – Whether trial Court justified in convicting Appellant relying on testimonies of eye-witnesses – Held, PWs1 and 2 were allegedly present at time of occurrence – On date of occurrence, name of PW 1 found in attendance register of 100 days National Rural Employment Guarantee Scheme where PW 1 found working – Presence of PWs 1 and 2 in place of occurrence suspicious – No scintilla of truth in testimonies of PWs 1 and 2 cannot be trusted – No evidence that Appellant present at place of occurrence – If Appellant having criminal intention to eliminate deceased, he would have reached place of occurrence with wooden log, but Appellant came empty handed – No criminal intention to commit murder – Recovery of wooden log and arrest of Appellant not proved – Evidences particularly adduced by PWs 1 and 2 not sufficient to prove Appellant’s involvement in murder beyond reasonable doubt – No credible evidence to indict Appellant under Section 302 IPC – Appellant acquitted – Appeal allowed.
- B. Murder – Delay in lodging FIR – Whether delay in lodging first information as well as delay in reaching first information report at hands of Judicial Magistrate is fatal to case of prosecution – Held, clear delay of 12.00 hours in lodging complaint and registering case – Delay in reaching FIR at hands of Judicial Magistrate not explained – In heinous crime, complaint as well as FIR shall reach at hands of Magistrate immediately without an delay – If delay found, presumption that first information as well as first information report could have been fabricated or confabulated – Delay in lodging complaint as well as in travelling magisterial court abnormal and fatal.

(2014) 4 MLJ (Crl) 573

G. Subramanian

vs.

State by Deputy Superintendent of Police

Date of Judgment : 11.08.2014

Criminal Procedure - Summons to produce document - Supply of documents/statements – Code of Criminal procedure, 1973 (Code), Section 91 – Criminal Original petition for directing Respondent/Complainant/Prosecution to produce original complaints filed by De facto Complainant for obtaining certified copies of same – Petitioners/A7 and A8 filed petition under Section 91 of Code – Trial Court dismissed petition – Trial Court imposed exemplary cost – Whether Trial Court was justified in dismissing petition to produce complaint – Held, When jurisdiction under Section 91 of Code invoked by Accused, necessity of same to be looked into in context of investigation, inquiry, trial or other proceedings – Whether certain documents ought to be summoned or not is essentially in discretion of trial Court – Public Prosecutor filed memo before trial Court that it was difficult to trace original complaints – Established fact that as on date said nine complainants not available – No useful purpose would be served in allowing petition filed by Petitioners/A7 and A8 since complaints not available – Exemplary cost imposed on petitions reclosed – Petition dismissed.

(2014) 4 MLJ (Crl) 583

Mani

vs.

State by Inspector of police

Date of Judgment : 14.10.2014

Grievous hurt – Acquittal – Eye witness – Indian Penal Code, 1860, Section 325 – Allegation that Appellant/accused abused and attacked deceased with wooden log and pushed him from bridge – Conviction and sentence – Appeal – Whether PW 2 can be believed to sustain conviction and sentence of Appellant – Held, PW 2 deposed that Appellant attacked deceased and engaged auto driver to drop deceased at residence – But PW 1 deposed that deceased dropped at residence by auto driver who found deceased lying in place of occurrence – Evidence of PW 1 contrary to PW 2 – Case that PW 2 was eye-witness who engaged auto to drop deceased at



residence wrong – No attempt to identify auto driver who dropped deceased at residence – Presence of PW 2 doubtful – PW7/Doctor deposed that deceased informed about being attacked by unknown persons – No explanation why FIR lodged after 45 days - Though in FIR name of Appellant mentioned as assailant, no importance can be given – Trial Court did not properly appreciate evidence of PW 2 whose presence not spoken by any one – Prosecution failed in establishing guilt of accused beyond reasonable doubt that Appellant attacked deceased – Appellant acquitted – Appeal allowed.

(2014) 4 MLJ (Crl) 589

S. Jeyakumar

vs.

D. Baskaran

Date of Judgment : 17.10.2014

Complaint – Disposal of – Code of Criminal procedure, 1973, Sections 154, 156(3), 173 and 190 – Petitioner presented complaint before Magistrate – After taking cognizance of offences, magistrate directed investigation under Section 156(3) and posted matter to further date – Petitioner filed petition for direction to expedite disposal of his complaint by Magistrate – Whether Magistrate could be directed to expedite disposal of complaint by Petitioner – Held, Magistrate gave choice to Police by ordering that he could register FIR or file Final Report although he had power to give mandatory direction to register case, same should not be done – Filing of Final Report under Section 173 in connection with cognizable offence possible only if FIR registered under Section 154 – Birth and death of criminal case commences under Section 154 and ends under Section 173 – Court to take cognizance under Section 190 and thereafter completing certain preliminary steps – Since choice was given to Police, matter alleged to have been dragged on and Magistrate posted petition to further date – Magistrate to direct Inspector of Police to submit copy of FIR registered in pursuance of his direction issued – If FIR already registered, Inspector to complete investigation and submit his Final Report under Section 173 – Duty of Magistrate to see that his orders and directions issued under Sections 156(3) implemented/obeyed/carried out by Police – Petition disposed of.

\*\*\*\*\*