

**Vol -X  
Part-VII**

**JULY, 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	H. Lakshmaiah Reddy vs. L. Venkatesh Reddy	(2015) 4 MLJ 99 (SC)	17.04.2015	Succession Laws – Hindu Succession – Possession of title	1
2	Vinod Kumar Subbiah vs. Saraswathi Palaniappan	(2015) 4 MLJ 374 (SC)	24.04.2015	Hindu Law – Divorce – Cruelty	1
3	Maya Devi vs. Lalita Prasad	(2015) 5 SCC 588	19.02.2014	Property Law – Transfer of Property Act - Permissible modes of sale/conveyances/transf ers of property	2
4	Foreshore Co-operative Housing Society Ltd vs. Praveen D. Desai	(2015) 3 MLJ 717 (SC)	08.04.2015	Civil Procedure – Jurisdiction of Court – Bar of Limitation – Preliminary Issue	2
5	Durgapur Casual Workkrs Union vs. Food Corporation of India	(2015) 5 SCC 786	09.12.2014	Labour Law – Industrial Disputes Act – Unfair Trade Practice Determination of	3

## **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	Mohan Lal vs. State of Rajasthan	2015) 6 SCC 222	17.04.2015	NDPS Act - Possession of contraband	4
2	Raj Singh vs. State of Haryana	(2015) 6 SCC 268	23.04.2015	Right of private defence – When available	5
3	Ashwani Kumar vs. State of Punjab	(2015) 6 SCC 308	16.04.2015	Kidnapping and Murder – Issue estoppel	5
4	Indra Dalal vs. State of Haryana	(2015) 2 MLJ (Crl) 699 (SC)	29.05.2015	Murder – Conspiracy – Confessional Statements	5
5	Purushottam Dashrath Borate vs. State of Maharashtra	(2015) 2 MLJ (Crl) 747 (SC)	08.05.2015	Rape and Murder – Death Sentence – Rarest of rare case	6

## **HIGH COURT - CIVIL 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	Umamaheswari vs. Saroja (died)	2015 (4) CTC 88	09.06.2015	Partition Suit – Order 20 Rule 18 C.P.C.	7
2	Purasawakum Permanent Fund Ltd vs. R. Kalaiselvi	(2015) 5 MLJ 257	09.06.2015	Succession Laws – Partition – Coparcenary Rights	7
3	M. Bama vs. Dr. R. Nirupama	(2015) 5 MLJ 313	27.04.2015	Property Laws – Sale Agreement – Power of Attorney	8
4	R. Venkatachalam vs. S.R. Lakshmanan	(2015) 5 MLJ 324	09.06.2015	Tenancy Laws – Cultivating Tenant – Recovery of Possession – Arrears of Rent – Mesne Profits	8
5	R. Mallika vs. A.Babu	(2015) 5 MLJ 339	08.06.2015	Motor Vehicles – Death – Compensation – Quantum – Compulsory wearing of helmets	9
6	Sri Panduranganadhaswami Devasthanam vs. Shevapet Sowrashtra Vidhyalaya Sabai	2015 (4) CTC 343	03.07.2015	Public Charities – Suit against Public Trust - Concurrent jurisdiction of Subordinate and District Courts	9
7	M. Pandia Nadar and others vs. Sivakamasundari and others	2015 -3- L.W. 575	03.04.2015	Specific Performance – Lis pendens	10
8	Arulnathan vs. Semathammal	(2015) 4 MLJ 676	02.06.2015	Civil Procedure - Adverse Possession	10
9	G. Selvam and others vs. Kasthuri (deceased) and others	2015 -3- L.W. 705	10.07.2015	Civil Procedure – Abatement applicability – Impleading of parties	10
10	Janarthanan vs. Vijaya and others	2015 -3- L.W. 762	24.06.2015	Hindu Succession Act – Section 6 – Suit for partition	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	A.Rajasekaran vs. Director of Vigilance and Anti-Corruption	(2015) 3 MLJ (Cri) 1	09.06.2015	Complaint – Registration of – Investigation	12
2	M. Shanmugam vs. S. Lakshmi	(2015) 3 MLJ (Cri) 20	29.04.2015	Maintenance	12
3	Triven Garments Ltd vs. State	(2015) 3 MLJ (Cri) 129	05.06.2015	Complaint – Quashing – Locus Standi	13
4	State vs.A.Kuddus	(2015) 3 MLJ (Cri) 160	20.04.2015	Prevention of Corruption – Illegal Gratification – Presumption	13
5	Prasanna vs. State	(2015) 3 MLJ (Cri) 169	09.06.2015	Discharge	13
6	Adi vs. State through the Deputy Superintendent of Police	(2015) 3 MLJ (Cri) 191	16.04.2015	Fraudulent Marriage Ceremony – Cohabitation – Dowry	14
7	Alagu vs. State rep. by the Inspector of Police	(2015) 3 MLJ (Cri) 219	28.04.2015	Rape – Age of Consent – Kidnapping	14
8	Murugesan vs. T.K. Ramasamy	(2015) 3 MLJ (Cri) 248	07.04.2015	Complaint – Returning of Complaint – Territorial Jurisdiction – Evidence of Affidavit – Dishonour of Cheque	15
9	Senthil vs. Inspector of Police	(2015) 2 MLJ (Cri) 641	31.03.2015	Sentence – Enhancement of	15
10	C. Nagarajan vs. M. Vennila	(2015) 2 MLJ (Cri) 665	20.04.2015	Domestic Violence – Domestic Relationship – Residential order	16





## SUPREME COURT CITATIONS CIVIL CASES

(2015) 4 MLJ 99 (SC)

H. Lakshmaiah Reddy

vs.

L. Venkatesh Reddy

Date of Judgment : 17.04.2015

Succession Laws – Hindu Succession – Possession of Title – Hindu Succession Act, Section 15 – Suit property belonged to wife of 1<sup>st</sup> Defendant and mother of Plaintiff and on her death, 1<sup>st</sup> Defendant gave declaration to change Katha in Plaintiff's name and mutation effected - After second marriage, 1<sup>st</sup> Defendant and 2<sup>nd</sup> to 5<sup>th</sup> Defendants/1<sup>st</sup> Defendant's children denied ownership of Plaintiff – Plaintiff filed suit against Defendant for relief of declaration of his title and for permanent injunction restraining Defendants from interfering with his physical possession, same dismissed – On appeal, Lower Appellate Court held that Plaintiff and 1<sup>st</sup> Defendant being class-I heirs of deceased entitled to half share each in suit property – On second appeal by Plaintiff, High Court decreed suit in full as prayed for – Appeals by Defendants – Whether High Court justified in decreeing suit in full as prayed for by Plaintiff – Held, as per Section 15, 1<sup>st</sup> Defendant and Plaintiff, being class-I heirs succeeded to suit property – As per Katha of suit property changed to name of Plaintiff and endorsement by Tahsildar reveals that 1<sup>st</sup> Defendant accepted mutation of entry in name of Plaintiff, same not challenged – RTC extract shows that Plaintiff shown as owner of suit property – Facts show that 1<sup>st</sup> Defendant did not release his right in respect of half share in suit property – Assumption of High Court that as result of mutation, 1<sup>st</sup> defendant divested himself of title and possession of half share in suit property wrong – Mutation entries do not extinguish title and those entries relevant only for collection of land revenue – High Court erred in concluding that 1<sup>st</sup> Defendant by his conduct divested himself of title of his half share, same liable to be set aside and same set aside – Judgment and decree of Lower Appellate Court restored – Appeals allowed.

(2015) 4 MLJ 374 (SC)

Vinod Kumar Subbiah

vs.

Saraswathi Palaniappan

Date of Judgment : 24.04.2015

Hindu Law – Divorce – Cruelty – Hindu Marriage Act, 1955, Section 13(1)(ia) – Appellant married Respondent – Appellant claimed to be through intolerable mental agony and can no longer continue to be married to Respondent – Trial court passed an order for dissolution of marriage – high Court however held appellant's allegations in divorce petition were no more than “the ordinary wear and tear” that takes place in a marriage – Divorce petition was thus dismissed and petition for restitution of conjugal rights was allowed – Whether the Appellant had established cruelty by adducing evidence and is entitled to grant of dissolution of marriage – Held, examination of divorce petition makes it abundantly clear that various allegations of cruelty were made out – Further evidence was submitted during course of Trial to substantiate these allegations – Trial Court examined evidence at great length and came to reasoned conclusion that actions of Respondent amounted to cruelty – If spouse abuses other as being born from prostitute, this cannot be termed as “wear and tear” of family life – Summoning police on false of flimsy grounds cannot also be similarly viewed – Making it impossible for any close relatives to visit or reside matrimonial home would result in cruelty to other spouse – Appeal allowed.

**(2015) 5 Supreme Court Cases 588**

**Maya Devi**

**vs.**

**Lalta Prasad**

**Date of Judgment : 19.02.2014**

- A. Property Law – Transfer of Property Act, 1882 – Ss. 54 & 5 and Ss. 59, 107, 118, 123 & 9 – Permissible modes of sale/conveyances/transfers of property – Prospective operation of Suraj Lamp (1), (2009) 7 SCC 363/Suraj Lamp (2), (2012) 1 SCC 656 vide para 27 of Suraj Lamp (2) case – Exception carved out therein for genuine registered GPA sale/conveyance which had taken place prior to decision in Suraj Lamp (1)/Suraj Lamp (2) – Applicability of
- Attachment of property to satisfy decree: (1) against judgment-debtor who had no title therein, or, (2) against judgment-debtor transferor after property stood transferred by such genuine registered GPA sale/conveyance to transferee – Whether can be done – Held, such property cannot be attached, as it was not/is no longer property of transferor judgment-debtor
- B. Civil Procedure Code, 1908 – Or. 21 R. 58 & Rr.97 to 104 and S. 60 – Execution proceedings – Objection petition against attachment order by person claiming that property concerned did not belong to judgment-debtor at all, but was property of objector – Duty of court to decide objections on merits – Held, executing court is required to decide objections filed against enforcement of decree with complete care and circumspection to avoid any injustice, especially if an objection is raised to attachment of property concerned on grounds that property concerned does not belong to judgment-debtor, and belongs to objector
- C. Civil Procedure Code, 1908 – Or. 9 R.6 and Or. 8 R.10 – Ex parte proceedings – Duty of court – Absence of defendant does not absolve trial court from fully satisfying itself of the factual and legal veracity of plaintiff's claim
- D. Registration Act, Ss. 50, 48, 17 and 18 – Probative/Evidentiary value of documents – Preference to registered document over unregistered document – Held, registered documents (though not mandatorily registrable) would score over others – Documents purportedly executed in favour of respondent decree-holder are unregistered and payment made by him to vendor is not substantiated, while sale/conveyance of property to appellant was made by way of registered power of attorney [saved by exception carved out in Suraj Lamp (2), (2012) 1 SCC 656] – Hence, held, alleged transaction between vendor and respondent decree-holder was not genuinely prior in time to execution of registered power of attorney – evidence Act, 1872 – Ss. 60 to 64 – Transfer of Property Act, 1882, Ss. 54, 59, 107, 118 & 123 and 9
- E. Contract Act, 1872 – Ss. 73 and 74 – Remedies/Relief for breach of contract – Penalty for breach of contract – Legality – Law summarized – Recovery of double the amount of sale consideration as penalty for breach of contract – Impermissibility of – Held, imposition and recovery of penalty for breach of contract is legally impermissible under Contract Act
- F. Specific Relief Act, 1963 – Ss. 10 and 19(b) – Specific performance of contract for sale of property, held, cannot be decreed against defendant devoid of title – Transfer of Property Act, 1882 – Ss. 7 and 8 – Nemo dat quod non habet

**(2015) 3 MLJ 717 (SC)**

**Foreshore Co-operative Housing Society Ltd**

**vs.**

**Praveen D. Desai**

**Date of Judgment : 08.04.2015**

Civil Procedure – Jurisdiction of Court – Bar of Limitation – Preliminary Issue – Code of Civil Procedure, 1908 (Code 1908), Section 9 and Order XIV Rule 2 – Code of Civil Procedure (Maharashtra Amendment) Act, 1977 (Act 1977), Section 9A – Limitation Act, 1963 (Act 1963), Section 3 – Appellant/Society filed suit to declare that 1<sup>st</sup> to 6<sup>th</sup> and 8<sup>th</sup> Respondents have no rights over suit property and not entitled to carry out construction and to restrain them from doing so – Also, prayed to declare revalidation of intimation of disapproval and commencement certificate by 7<sup>th</sup> Respondent illegal – But, plaint returned for presentation before proper Court – Appellant filed suit for same cause of action before Single Judge – Single Judge held that Appellant not entitled to benefit under Section 14 of Act 1963, as it failed to prove that earlier suit pursued with due diligence and good faith and dismissed suit as barred by limitation, same confirmed on appeal – Appeals – Whether Courts guided by provisions of Order XIV Rule 2 of Code 1908 or Section 9A of Act 1977 to decide objection with regard to jurisdiction of Court that concerns bar of limitation as preliminary issue – Held, non-obstante Clause inserted by Act 1977, intention of law is to decide issue relating to jurisdiction of Court as preliminary issue notwithstanding provision contained in Order XIV Rule 2 of Code 1908 – In other cases where suits governed by provisions of Order XIV Rule 2 of Code 1908, it is discretion of Court to decide issue based on law as preliminary issue – Section 9A as introduced by Act 1977 is mandatory in nature, same is complete departure from provisions of Order XIV, Rule 2 of Code 1908 – Reasons in impugned orders justified, same affirmed – Appeals dismissed.

**(2015) 5 Supreme Court Cases 786**

**Durgapur Casual Workers Union**

**vs.**

**Food Corporation of India**

**Date of Judgment : 09.12.2014**

- A. Labour Law – Industrial Disputes Act, 1947 – Ss. 2(ra), (j), (k) and (ka) – Unfair trade practice – Determination of - Labour Court/Tribunal to decide question of unfair labour practice committed in Government or private undertaking pursuant to reference made by appropriate Government – In matter of appointment in services of “State” including public establishment or undertaking, Arts. 14 and 16 of the Constitution attracted – An undertaking of Government cannot justify illegal action including unfair labour practice nor can ask for different treatment on ground that public undertaking is guided by Arts. 14 and 16 – Constitution of India, Arts. 16 and 14
- B. Labour Law – Industrial Disputes Act, 1947 – Ss. 25-F, 25-H, 2(j), (k), (ka) & (ra) – Issue relating to validity of appointment, whether can be raised in absence of any specific pleading or reference – Appellant workmen, who were working as contract labours under contractor, employed by respondent Corporation on termination of contract system in terms of S. 25- H – Admittedly, no plea taken by Corporation either before State Government or Tribunal that initial appointments of workmen were illegal or they were back door entries – Held, in such circumstances, it was not open to High Court to come to finding that initial appointments of workmen were in violation of Arts. 14 and 16 of the Constitution – Constitution of India – Arts. 14 and 16 – Civil Procedure Code, 1908, Or. 6 Rr. 2 and 4
- C. Labour Law – Industrial Disputes Act. 1947 – Ss. 25-F & 25-H r/w Item 10 Sch. V – Unfair trade practice – Powers of Industrial and Labour Courts to pass appropriate orders, once unfair trade practice established – Services of appellant workmen who were employed by respondent Corporation as casual employees on daily-wage basis not regularised - Tribunal specifically finding unfair labour practice on part of Corporation – Having accepted that there was unfair trade practice, held, it was not open to High Court to interfere with award of Tribunal directing absorption of appellant workmen
- D. Constitution of India – Arts. 12, 14 and 16 and Pt. III – Reiterated, Arts. 14 and 16 are not attracted in the matter of appointment in a private establishment or undertaking

\*\*\*\*\*



## SUPREME COURT CITATIONS CRIMINAL CASES

(2015) 6 Supreme Court Cases 222

Mohan Lal

vs.

State of Rajasthan

Date of Judgment : 17.04.2015

- A. Narcotic Drugs and Psychotropic Substances Act, 1985 – Ss. 13 to 22, 25 and 35 – Possession of contraband – Contraband hidden away in secret place by accused – Absence of physical control over the contraband, but accused exercising requisite control over contraband to give rise to culpable mental state – “Possession”, held, is a flexible concept, and its meaning depends upon the contextual purpose and objective of statute concerned and an appropriate meaning has to be assigned to the word to effectuate the statutory object – Ordinarily, elements of possession are physical control and animus to control the thing concerned/contraband - However, even in absence of physical control of the contraband, culpable mental state of accused can arise if the accused still has the requisite degree of control over the contraband – Accused’s conscious possession, in view of his special knowledge of location or site of contraband article, with animus and intention to retain exclusive control or dominion over it, would constitute offence punishable under S. 18 – Fact that accused after stealing opium from Magistrate Court’s malkhana concealed it in a secret place and later led police party to discover the same, shows his conscious possession – Words and Phrases – “Possession”, “conscious possession” – “Possession” when possible without actual physical control
- B. Narcotic Drugs and Psychotropic Substance Act, 1985 – Ss. 18 and 35 – Possession of contraband opium on date of coming into force of NDPS Act constitutes offence punishable under S. 18 – Continuity of offence – Even if offence of possession of contraband opium was committed prior to commencement of NDPS Act when S. 9 of Opium Act was in operation, if opium remained in possession of accused on date of coming into force of NDPS Act, without anything to show that he was divested of it meanwhile, possession being in continuum, S. 18 of NDPS Act, instead of S. 9 of Opium Act would be applicable – In such situation, no question of retrospective imposition of higher punishment under S. 18 instead of lower punishment under S. 9 of Opium Act, in violation of Art. 20(1) of the Constitution arises – Constitution of India – Art. 20(1) – Opium Act, 1878, S.9
- C. Constitution of India – Art. 20(1) – Prohibits conviction and sentence under ex post facto law but not trial of offence
- D. Narcotic Drugs and Psychotropic Substances Act, 1985 – Ss. 42, 43 and 57 – Substantial compliance with provisions made – No prejudice caused – Information of commission of offence by accused under S. 18 given to SI-cum-SHO (authorized officer), who made recovery of contraband substance concealed at a public place at the instance of accused – Moreover, search and seizure of contraband substance, having been made at a public place by empowered officer, S. 43 is attracted and therefore, compliance with S. 42 not required – Further, substantial compliance with S. 57 having been made question of prejudice does not arise
- E. Evidence Act, 1872 – S. 27 – Evidence regarding recovery of contraband article pursuant to information given by accused while in police custody in connection with another FIR, reliable – Accused not required to be arrested in respect of the same offence – Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 18 and 35

- F. Narcotic Drugs and Psychotropic Substances Act, 1985 – Ss. 42 and 44 – Delay in sending samples of seized contraband article to FSL – Effect – Till date of receipt of sealed packets of samples by chemical examiner, seal found to be intact - Held, delay inconsequential
- G. Property Law - Possession – Whether a relative and functional concept – Purposive construction to be given “possession” keeping in mind statutory objective – Discretion available to Judges in applying abstract rule to a concrete set of facts – Held, over the years, it has been seen that courts have refrained from adopting a doctrinaire approach towards defining possession – A functional and flexible approach in defining and understanding possession as a concept is acceptable and thereby emphasis has been laid on different possessory rights according to the commands and justice of the social policy – Thus, the word “possession” in the context of any enactment would depend upon the object and purpose of the enactment and an appropriate meaning has to be assigned to the word to effectuate the said object – Words and Phrases – “Possession”

(2015) 6 Supreme Court Cases 268

Raj Singh  
vs.  
State of Haryana

Date of Judgment : 23.04.2015

- A. Penal Code, 1860 – Ss. 96 to 106 and S. 300 Exception 2 – Relative scope – Right of private defence – When available – Need for exercise of the right in good faith – When available as a complete defence under Ss. 96 to 106 and as a partial defence under S. 300 Exception 2 – Principles summarized – Not available to aggressor – Nor in case of unduly disproportionate response without any reasonable apprehension of death or grievous injury
- B. Constitution of India – Art. 136 – Appeal against acquittal – Interference when warranted – Reasons recorded by courts below for acquitting co-accused, justified – Interference not warranted – Murder trial – Fatal shot on deceased and infliction of lathi-blows on others, by appellant-accused and co-accused

(2015) 6 Supreme Court Cases 308

Ashwani Kumar  
vs.  
State of Punjab

Date of Judgment : 16.04.2015

- A. Criminal Procedure Code, 1973 – S. 300 – Issue estoppels – Rule regarding – What is - Principles reiterated – Case of kidnapping and murder – Held, issue estoppels relates to admissibility of evidence in subsequent proceedings, which are designed to upset a finding of fact recorded on previous occasion, and mandates that finding of fact so rendered on earlier occasion must operate as issue estoppels in subsequent proceedings – It makes it impermissible to lead any such evidence at a subsequent stage or occasion – But the converse is not true i.e. a subsequent judgment cannot be relied on to upset finding recorded on a previous occasion
- B. Criminal Trial – Witnesses – Generally – Trustworthy and reliable witness – Non-conduct of test identification parade of accused, but accused identified in court – Effect, if any, on reliability of such witness, because of – Case of kidnapping and murder
- C. Penal Code, 1860 – Ss. 364, 302 and 307 r/w S. 120-B – Kidnapping and murder of NRI daughter marrying a resident Indian against her NRI parents’ wishes – Honour killing – Appreciation of evidence – Offence being act of conspiracy, established.

(2015) 2 MLJ (Cri) 699 (SC)

**Indra Dalal  
vs.  
State of Haryana**

**Date of Judgment : 29.05.2015**

**Murder – Conspiracy – Confessional Statements – Indian Penal Code, 1860 (Code 1860), Sections 120B and 302 – Indian Evidence Act, 1872 (Act 1872), Sections 25, 26 and 27 – Appellants/accused convicted under Section 120B read with Section 302 of Code 1860, same affirmed on appeals – Appeals – Whether prosecution was able to prove involvement of Appellants in crime with aid of Section 120B of Code 1860 – Held, PW7/witness of conspiracy did not support prosecution version and declared hostile during trial – Conviction recorded by Trial Court and upheld by High Court against Appellants primarily on basis of their confessional statements and recovery of vehicle from house of accused – But, Appellants alleged that confessional statements recorded after their arrest and when they were in police custody, same inadmissible in view of Sections 25 and 26 of Act 1872 – Recovery of vehicle not related to confessional statements made by Appellants – Situation contemplated under Section 27 of Act 1872 also not attracted - Even if vehicle recovered pursuant to disclosure statement, it would have made fact of recovery of vehicle only as admissible under Section 27 of Act 1872 and it would not make so-called confessional statements of Appellants admissible – Facts on record cast doubt on alleged recovery of scooter from house of accused – No sufficient evidence to prove ownership of vehicle – Entire evidence either inadmissible putting roadblock creating by Act 1872 or unbelievable/untrustworthy – Prosecution failed to prove, beyond reasonable doubt, charge of conspiracy against Appellants with aid of Section 120B of Code 1860 – Impugned judgment set aside – Appeals allowed.**

**(2015) 2 MLJ (Cri) 747 (SC)**

**Purushottam Dashrath Borate  
vs.  
State of Maharashtra**

**Date of Judgment : 08.05.2015**

**Rape – Rape and Murder – Death Sentence – Rarest of rare case – Indian Penal Code, 1860, Section 302, 376(2)(g), 364 and 404 read with Section 120-B – Code of Criminal Procedure, 1973, Sections 313 and 366 – 1<sup>st</sup> and 2<sup>nd</sup> Accused/Appellants arrested on charges of rape and murder of deceased – Session Court found chain of circumstances evidence beyond reasonable doubt that Appellants have committed heinous offence of rape and murder of deceased and awarded death sentence – On appeal, High Court confirmed judgment of conviction and death sentence awarded by Sentence – Allegation that based upon age of Appellants, their family background and lack of criminal antecedents lighter punishment of life imprisonment should be awarded – Also alleged that Appellants are capable of reformation – Appeal against confirmation of death sentence by Lower Courts – Whether offence committed by Appellants does not fall under rarest of rare cases as the mitigating circumstances outweighed aggravating circumstances – Held, age, family background and criminal antecedents alone cannot be a paramount consideration as a mitigating circumstance – Appellants proved to be a menace to society which strongly negates probability that they can be reformed or rehabilitated – Extreme depravity with which deceased was done to death coupled with position of trust held by 1<sup>st</sup> Accused, would tilt balance between aggravating and mitigating circumstances against Appellants – Act of rape followed by cold-blooded and brutal murder of victim coupled with calculated and remorseless conduct of accused persons after commission of offence, Court cannot resist from awarding lesser sentence that death penalty – Case falls within the category of “rarest of rare”, which merits death penalty – Reasons recorded by Lower courts in awarding and confirming death sentence of Appellants upheld – Appeal rejected and sentence of death awarded to Appellants confirmed – Appeal disposed of.**

\*\*\*\*\*

## HIGH COURT CITATIONS CIVIL CASES

2015 (4) CTC 88

Umamaheswari  
vs.  
Saroja (died)

Date of Judgment : 09.06.2015

Code of Civil Procedure, 1908 (5 of 1908), Order 20, Rule 18 – Partition Suit in respect of two items of properties – Preliminary Decree passed for 1/3<sup>rd</sup> share – However, Trial Court incorporating direction in Preliminary Decree that at time of passing of Final Decree, entire First Item of Suit properties be allotted towards 2/3<sup>rd</sup> share of Defendants 1 & 2 in equity and that Plaintiff will be entitled to allotment of more extent in Second Item, so as to compensate loss of 1/3<sup>rd</sup> share in respect of First Item – Aggrieved by said direction incorporated in Preliminary Decree for allotment of First Item of Suit property in entirety to 3<sup>rd</sup> Defendant, representing the 2/3<sup>rd</sup> share of Defendants 1 & 2, Plaintiff filed Appeal – Whether Trial Court was correct in incorporating said direction in Preliminary Decree for allotment of First Item of Suit properties in entirety to 3<sup>rd</sup> Defendant – Even though Trial Court came to correct conclusion that Plaintiff was entitled to undivided 1/3<sup>rd</sup> share in both items of Suit properties and declared her to be entitled to such 1/3<sup>rd</sup> undivided share, it proceeded further to direct that since entire First Item came to be sold to 3<sup>rd</sup> Defendant, he was entitled to allotment of entire First Item – Trial Court seems to have taken suo motu decision that in equity, 3<sup>rd</sup> Defendant would be entitled to allotment of Suit First Item in its entirety and that difference could be adjusted while making allotment of shares in respect of Second Item – Finding of Trial Court that Plaintiff is entitled to 1/3<sup>rd</sup> share in both items and that she is entitled to Decree for Partition, has not been challenged by Defendants either by preferring an Appeal or Cross-Objection – Hence, said part of Decree has become final – Direction for allotment of First Item in entirety to 3<sup>rd</sup> Defendant in Preliminary Decree, without framing an issue and without providing opportunity to parties to adduce evidence regarding how equities are to be worked out, is improper and unwarranted – Trial Court ought not to have incorporated such direction, which pertains to realm of consideration in Final Decree proceedings – Hence, said direction in Preliminary Decree is set aside – Appeal allowed in part.

(2015) 5 MLJ 257

Purasawakum Permanent Fund Ltd  
vs.  
R. Kalaiselvi

Date of Judgment : 09.06.2015

Succession Laws – Partition – Coparcenary Rights – Hindu Succession Act, 1956 (Act 1956), Section 29-A – Appeal has been filed against decree of the trial court granting relief of partition and permanent injunction in favour of plaintiffs/respondents 1 and 2 – 4<sup>th</sup> defendant in suit is appellant in appeal – Whether suit property in hands of 3<sup>rd</sup> respondent/first defendant is coparcenary property in which his son and daughters have acquired right to share by birth and if respondents 1 and 2/plaintiff are entitled to 2/5<sup>th</sup> share in suit property and entitled to relief of partition and/or injunction – Held, admitted fact that property purchased was self-acquisition and absolute property of plaintiff's grandfather – Plaintiff's grandfather should have died only after advent of Act, 1956 – First defendant having out suit property as legal heir under rule of succession provided in Act, 1956 and not as coparcener, same shall be his separate property in which, his son would not have got right to share by birth under provisions of Act, 1956 – Daughters of first defendant who remained unmarried on also would not have become coparcener having right to share by birth in said property by virtue of amendment introducing Section 29-A to Act, 1956 – Respondents 1 and 2/plaintiffs are not entitled to 2/5<sup>th</sup> share in suit property and not entitled to any share in suit property – Plaintiffs have come forward with false claim that they are entitled to share in suit property – Said claim is made obviously



with collusion of defendants 1 to 3 – Plaintiffs have come to courts with unclean hands and with malafide intention to prevent 4<sup>th</sup> defendant from exercising its lawful right of bringing suit property for sale for recovery of amount due under mortgage deed – Hence plaintiffs shall not be entitled to relief of partition – Moreover they shall not be entitled to relief of injunction against 4<sup>th</sup> defendant as prayed for – Contrary finding rendered by trial court is discrepant and erroneous and same is liable to be interfered with and set aside – Appeal allowed.

(2015) 5 MLJ 313

M. Bama

vs.

Dr. R. Nirupama

Date of Judgment : 27.04.2015

Property Laws – Sale Agreement – Power of Attorney – Appellant entered into sale agreement with second respondent/power attorney for suit property – Pursuant to negotiations, first respondent executed sale deeds and alienated suit property to disadvantage of appellant – Appellant filed suit which was dismissed by trial Court – Whether sale agreement executed by second respondent, who is power agent of first respondent, in favour of appellant is valid or sale deed executed by first respondent in favour of third respondent, when power of attorney of second respondent and sale agreement executed by him in favour of appellant are in force – Held, unless and until, cancelling power of attorney of second respondent or issuing notice cancelling power of attorney to second respondent, first respondent has no right to alienate suit property – Further unless and until giving quietus, one way or other, to sale agreement entered into by second respondent with appellant, though it is right or wrong, principal has no right to proceed with suit property for making any kind of transaction – Otherwise, it is nothing but fraud on bona fide purchasers or innocent purchasers by principal as well as by power agent – Sale deed executed by first respondent with third respondent is held invalid and sale deeds executed by third respondent with other respondents are also held to be invalid – Appeal allowed.

(2015) 5 MLJ 324

R. Venkatachalam

vs.

S.R. Lakshmanan

Date of Judgment : 09.06.2015

- A. Tenancy Laws – Cultivating Tenant – Recovery of Possession – Tamil Nadu Cultivating Tenant Protection Act, 1955 (Act 1955), Section 6 – Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969 (Act 1969), Sections 4 and 16-A – Defendants in original suit are appellants in second appeal – First respondent was sole plaintiff in original suit filed by him on against appellants for recovery of possession, mesne profits/damages (past and future) – Trial court held all issues in favour of first respondent/ plaintiff – Whether appellant is cultivating tenant in respect of suit properties entitled to protection of Act, 1955 and civil Court has jurisdiction to entertain suit for recovery of possession – Held, suit itself has been filed for recovery of possession – A prayer for eviction has been camouflaged into a prayer for recovery of possession – Question whether first appellant or all three appellants are in possession as cultivating tenants is matter on which Record Officer has got power to decide under Section 4 of Act, 1969 – Hence bar provided under Section 16-A of Act, 1969 stands attracted - Main relief sought for by first respondent/plaintiff is one for eviction regarding which power is conferred on Revenue Divisional Officer under Section 3(4)(b) of Act, 1955 – Section 6 of Act 1955 bars jurisdiction of Civil Court in respect of matter which revenue Divisional Officer is empowered to decide under Act – Therefore, suit for recovery of possession filed by first respondent/plaintiff is not maintainable as suit is barred by Section 16-A of Act, 1969 and Section 6 of Act, 1955 – Appeal partly allowed.
- B. Tenancy Laws – Arrears of Rent – Mesne Profits – Code of Civil Procedure, 1908 (Code 1908), Order XX Rule 12 – Whether courts below have committed an error in upholding claim of past mesne profits/arrears of rent and if future mesne profits could be decided in a separate proceedings under Order XX Rule 12 Code 1908 – Held, civil Court shall have power to decide question as to quantum of arrears of rent –

So far, no order of remission has been passed – Hence, respondents are entitled to decree for recovery of arrears of rent which is not barred by limitation – Claim made in respect of rental arrears, even though inappropriately called as mesne profits, is well within time and it is not barred by limitation - Though total arrears of rent upto date of filing of suit comes to greater amount, plaintiff fairly restricted amount – Hence, that part of decree of trial Court, which was confirmed by appellate Court directing appellants herein/defendants to pay arrears of rent within two months, has got to be confirmed – Trial Judge as well as lower appellate Judge chose to proceed on assumption that first respondent/plaintiff was entitled to mesne profits and not rent – The same was reason why decision regarding same was relegated to a separate proceedings to be initiated under Order XX Rule 12 Code 1908 – Cause of action for recovery of rent for period subsequent to specified period had not arisen as on date of filing of suit and hence, no relief can be granted in respect of same.

**(2015) 5 MLJ 339**

**R. Mallika**

**vs.**

**A.Babu**

**Date of Judgment : 08.06.2015**

- A. **Motor Vehicles – Death – Compensation – Quantum – Victim was struck by van insured with 2<sup>nd</sup> respondent and driven by 1<sup>st</sup> respondent – After victim’s death, claim petition was filed by appellants – 2<sup>nd</sup> respondent raised issue of helmet less riding but did not raise it on counter statement – Claims Tribunal awarded compensation – Appellants aggrieved by quantum of compensation filed present appeal – Whether quantum of compensation awarded by Tribunal ought to be enhanced – Held, claimants filed documents to show that deceased possessed diploma in Commercial Practice and Typewriting higher Grade to prove his employment as building demolition contractor – However, no proof is available with regard to his income – Accordingly, monthly income of deceased is re-determined – Sum awarded by Tribunal towards “Funeral Expenses” is too low and same is enhanced – No amount was awarded towards “Transportation Expenses” and therefore, sum is awarded under said head – Entire family of deceased would have undergone :Pain and Suffering” and mental agony on seeing plight of deceased – Therefore, sum is awarded towards “Pain and Suffering” and further, sum awarded towards “Loss of Estate” – Rate of interest awarded by Tribunal at 7.5% per annum remains unaltered – Appeal partly allowed.**
- B. **Motor Vehicles – Compulsory Helmet – Motor Vehicles Act, 1988 (Act 1988), Section 129 – Whether court ought to order compulsory wearing of helmets – held, when statute speaks about mandatory wearing of helmet and Apex Court and almost all High Courts directed law enforcing authorities to enforce statute, there is no escape for authorities statute, there is no escape for authorities except to see that two wheeler travelers are wearing helmet – To save life from accident, Court incidentally directs third and fourth respondents to see that all two wheeler riders-wear helmet compulsorily – Section 129 is made redundant, in spite of inclusion in statute and Court’s direction to authorities to enforce it – State is duty bound to safeguard rights of citizens by compelling them to wear helmets – Mere imposition of fine for violation proved to be of no use – Therefore, vehicle documents needs to be impounded; licence of rider to be suspended and cancelled after enquiry and then only effective implementation possible.**

**2015 (4) CTC 343**

**Sri Panduranganadhaswami Devastanam**

**vs.**

**Shevapet Sowrashtra Vidhyalaya Sabai**

**Date of Judgment : 03.07.2015**

**Code of Civil Procedure, 1908 (5 of 1908), Section 92 – Public Charities or Trust – Suit filed against Public Trust – Jurisdiction of Sub-Courts and District Court to entertain Suits – Concurrent jurisdiction of Subordinate and District Courts – Sub-Courts and District Courts have concurrent jurisdiction to entertain Suits without reference to pecuniary limits – Suit filed before Sub-Court – Remedy of First Appeal against Judgment and Decree passed by**

Sub-Court – Whether First Appeal would lie before District Court or High Court – Conferment of jurisdiction of Sub-Court and District Court under Section 92 does not depend upon value of subject matter of Suit – First Appeal against judgment of Sub-Court would lie only before High Court – Appeal filed before District Court is not maintainable – Law laid down in Sri Jeyaram Educational Trust v. A.G. Syed Mohideen, 2010 (1) CTC 602 (SC) followed and applied.

2015 -3- L.W. 575

M. Pandia Nadar and others  
vs.  
Sivakamasundari and others  
Date of Judgment : 03.04.2015

Specific relief act (1963), specific performance, grant of, lis pendens,

Transfer of property act, Section 52/lis pendens.

Unregistered sale agreement – Execution – Forged – Burden, proof of.

Sale agreement and sale deeds executed before filing of suit, but registered after filing of the suit, held: not hit by lis pendens.

(2015) 4 MLJ 676

Arulnathan  
vs.  
Semathammal

Date of Judgment : 02.06.2015

Civil Procedure – Second Appeal – Adverse Possession – Code of Civil Procedure, 1908 (Code 1908), Section 100 – Trial Judge held plaintiffs failed to prove possession over disputed property – On other hand, Lower Appellate Court held Appellant/defendant has not established any title and also not denied right to which Plaintiffs are entitled – Lower Appellate Court while taking note of fact that possession of defendant was admitted by Plaintiff, held that contention of defendant claiming ownership by way of adverse possession, was not maintainable as Appellant/defendant being neither owner nor in possession of property for statutory period, has no locus standi to challenge right to which Plaintiffs entitled – Lower Appellate Court held that plea of adverse possession has not been established by Defendant and Plaintiffs have proved title – Whether Appellant has established to satisfaction of this Court that he has been in enjoyment of suit property and Court ought to interfere in order passed by lower appellate court vide second appeal – Held, as per Section 100 of Code 1908, High Court's scope for interference with finding of Court below is very limited – Appeal under Section 100 of Code 1908 can be entertained by High Court only on Substantial Question of Law – In Second Appeal, finding of fact should not be disturbed – Appellant/defendant has not established to satisfaction of Court that he has been in enjoyment of suit property and also, it is admitted that plaintiffs/respondents have purchased suit property – Lower Appellate Court rightly rendered a pure finding of fact – Since judgment and decree of Lower Appellate Court are based on pure finding of fact, they do not require any interference in hands of this court because of fact they do not suffer from any material irregularity or patent illegality – Appeal dismissed.

2015 -3- L.W. 705

G. Selvam and others  
vs.  
Kasthuri (deceased) and others  
Date of Judgment : 10.07.2015

C.P.C., Order 20, Rule 5, order 22/abatement applicability, Order 1, Rule 10, proper and necessary party, impleading of parties, purchaser, scope of.

Constitution of India, Article 227/ preliminary decree, challenge to, Revision, whether maintainable.

Challenge to preliminary decree – Suit for partition and for separate possession against 24 defendants – Defendants set exparte.

held: trial court did not frame any issue – It examined P.W. 1 and found that the claim made by him is proved – judgment contrary to Order.20 Rule 4, 5.

Revision whether maintainable under Article 227, challenging preliminary decree – held: yes.

17<sup>th</sup> defendant was not alive on the date of passing of the preliminary decree – trial court should have dismissed the suit, as abated – many of the parties had died and their legal representatives were not brought on record in the suit – matter remanded.

2015 -3- L.W. 762

Janarthanan

vs.

Vijaya and others

Date of Judgment : 24.06.2015

C.P.C., Order 7, Rule 16, Order 27-A, validity of act, challenged before District Court, whether maintainable,

Hindu Succession act amendment act (2005), section 6, challenge to validity, before District Court, whether maintainable,

Tamil Nadu Amendment Act 1 of 1990, section 29A, challenge to, validity, before District Court, whether maintainable.

Suit for partition – challenge to vires of section 6 and section 29 before civil court, whether maintainable – Principal District Court whether has jurisdiction to declare acts unconstitutional – plaint whether to be struck off.

held: plaintiff suppressed registered partition deed and attacked vires of amendment Act 39 of 2005 and Tamil Nadu Amendment Act 1 of 1990 – Section 6(5) is clear that nothing contained in the Section shall apply to partition, which had been effected before 20.12.2004 – ‘Statutory instrument’ in explanation to order 27A, meaning of.

Act and Amendment Act not included in the ‘explanation to’ Order 27A – Principal District Court, Villupuram has no jurisdiction to declare Section 29A of Tamil Nadu Amendment Act 1 of 1990 and Section 6 as unconstitutional.

\*\*\*\*\*

## HIGH COURT CITATIONS CRIMINAL CASES

(2015) 3 MLJ (CrI) 1

**A.Rajasekaran**

vs.

**Director of Vigilance and Anti-Corruption**

Date of Judgment : 09.06.2015

Complaint – Registration of – Investigation – Code of Criminal Procedure, 1973 (Code 1973), Sections 482 and 195 – Indian Penal Code, 1860 (Code 1860), Section 211 – Matrimonial fight between Petitioner’s son and daughter in law took turns and twists – Based on complaint of Petitioner’s daughter in law, case registered – After investigation, Inspector filed final report – Magistrate took cognizance and issued summons to accused/Petitioner’s son, Petitioner and Petitioner’s wife – Accused prayed for quashing criminal proceedings – Pending proceedings, stay of further proceedings in said calendar case granted – In this scenario, alleged complaint and petition filed under Section 482 of Code 1973 to direct 2<sup>nd</sup> Respondent to register Petitioner’s complaint and investigate same – Whether 2<sup>nd</sup> Respondent could be directed to register Petitioner’s complaint and investigate same – Held, grievance of Petitioner is that Inspector concerned wants to injure his family by recording incorrect information and by filing it in Court of Magistrate, same is before said Court – As regard allegations with reference to offence under Section 211 of Code 1860 to prosecute person mandatory procedure prescribed in Section 195 of Code 1973 – Complainant in writing should be by specified authority – Under Section 482 of Code 1973, Court’s inherent jurisdiction preserved in Code 1973 and it is independent of, not controlled by other provisions in Code 1973 – In exercising its inherent jurisdiction, Court cannot overstep express provisions contained in Code 1973 or in other Statute – As there is particular procedure to be undergone under Section 195 of Code 1973 to prosecute person under Section 211 of Code 1860, under Section 482 of Code 1973, Court cannot overstep it – Directions sought for cannot be issued – Petition dismissed.

(2015) 3 MLJ (CrI) 20

**M. Shanmugam**

vs.

**S. Lakshmi**

Date of Judgment : 29.04.2015

Maintenance – Maintainability of Revision – Code of Criminal Procedure, 1973, Sections 125, 397(3) and 482 – Respondent/wife filed petition for maintenance under Section 125 against Petitioner/husband – Magistrate directed Petitioner to pay maintenance to Respondent, same challenged – Additional District Judge confirmed Magistrate order – Petition – Whether second revision filed by Petitioner maintainable – Whether Lower Courts justified in directing Petitioner to pay maintenance to Respondent – Held, Section 397(3) provides that if application under this Section made by person either to High Court or to Sessions Court, no further application by same person shall be entertained by other of them – Respondent has no independent source of income to maintain herself – Further, no material produced by Petitioner showing that Respondent had independent source of income – Magistrate rightly directed Petitioner to pay specific sum to his wife as maintenance – Petitioner preferred first revision and after order passed in said revision by Additional District Judge, Petitioner preferred second revision under Section 482 – Petition filed by Petitioner under Section 482 not maintainable – Magistrate rightly passed order directing Petitioner to pay specific sum as maintenance to his wife and since said amount is reasonable, order passed by Magistrate rightly confirmed by Additional District Judge – No illegality or infirmity in order passed by Lower Courts and same do not warrant interference – Petition dismissed.

(2015) 3 MLJ (Crl) 129

**Triven Garments Ltd**

vs.

**State**

Date of Judgment : 05.06.2015

**Complaint – Quashing – Locus Standi – Petitioners involved in transactions with relation to property which was alleged to be government owned by second respondent – Second respondent claiming to have locus standi in relation to property as concerned citizen filed complaints against petitioner – Petitioners have filed current petition to quash complaints – Whether complaint/FIR filed against petitioners ought to be quashed and it second respondent has locus standi – Held, on basis of picture shown by second respondent by suppressing material facts and by projecting false and irrelevant allegations, Court directed police to conduct enquiry – Police without conducting any enquiry blindly registered case – Second respondent has no locus standi and as a matter of fact, his attempt to purchase property ended in failure and to take vengeance, he gave complaint and suppressed earlier proceedings – Though criminal law can be set in motion by any person, however, in respect of property belonging to private person, only person aggrieved has got right to initiate action – Any other party like second respondent cannot poke his nose in respect of property belonging to private individual – Entire complaint proceeded on basis that property became property of Government by reason of escheat and therefore, second respondent has got locus standi – When property did not come to Government by reason of escheat, then second respondent has no locus standi – Where criminal proceeding is manifestly attended with mala fide and/or where proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on accused and with a view to spite him due to private and personal grudge, FIR can be quashed – Petition allowed.**

(2015) 3 MLJ (Crl) 160

**State**

vs.

**A.Kuddus**

Date of Judgment : 20.04.2015

**Prevention of Corruption – Illegal Gratification – Presumption – Prevention of Corruption Act, 1988 (Act 1988), Sections 7, 13(2), 13(1)(d) and 20(i) – Respondent/accused was charged with demanding illegal gratification – After framing of charge and investigation, trial Court found respondent not guilty – Whether amount received by accused was demanded and received as illegal gratification, so as to make out offence under Sections 7, 13(2) r/w 13(1)(d) of Act 1988 – Held, Special Tahsildar admitted that he had authorized accused to collect donations for Flag Day – Receipts issued to them by accused also been marked in evidence – Defence taken by accused cannot be simply brushed aside as an afterthought – Defence Witness 2 stated that he was present at time when Prosecution Witness 2 came and paid tainted money – At time of trap, when P.W.2 gave money, P.W.2 told accused that it was only for Flag day collection – All facts and circumstances rebut presumption under Section 20(i) of Act 1988 – Assuming that view that accused received said amount only towards illegal gratification is also equally possible, Court cannot substitute said view in place of well-considered view taken by lower Court – Prosecution failed to prove charges beyond all reasonable doubts – Appeal dismissed.**

(2015) 3 MLJ (Crl) 169

**Prasanna**

vs.

**State**

Date of Judgment : 09.06.2015

**Discharge – Indian Penal Code, 1860, Sections 294(b), 353 and 332 – On basis of special report, case registered against Petitioner under Sections 294(b), 353 and 332 – After enquiry, final report filed by Investigation**

Officer – Pending calendar case, Petitioner filed petition for discharge – Magistrate dismissed petition for discharge by holding that Petitioner to face trial to examine whether offences alleged against him made out – Petitioner filed criminal revision case questioning correctness of order passed by Magistrate dismissing his petition for discharge from criminal prosecution – Whether Petitioner entitled for discharge from criminal prosecution – Held, evidence available on record shows that there are lot of inconsistencies and contradictions in case projected by prosecution – For making prima facie case under Section 294(b), prosecution not even indicated alleged words uttered by Petitioner – Further, fact that SGPC obtained certificate from medical officer, even though he did not suffer injury, to effect that such certificate issued only for judicial purpose, only give rise to suspicion in case projected by prosecution – Petitioner need not be subjected to ordeal of trail especially when prosecution did not make available prima facie material evidence to prove his guilt – Petitioner entitled for discharge – Order by Trial Court to be set aside, same set aside – Petition allowed.

(2015) 3 MLJ (Crl) 191

Adi

vs.

State through the Deputy Superintendent of Police

Date of Judgment : 16.04.2015

Fraudulent Marriage Ceremony – Cohabitation – Dowry – Indian Penal Code, 1860 (Code 1860), Sections 493 and 496 – Dowry Prohibition Act (Act), Section 4 – 1<sup>st</sup> Petitioner/accused No.1 convicted under Sections 493 and 496 of Code 1860 – 2<sup>nd</sup> Petitioner/accused No.2 convicted under Section 4 of Act – Conviction of Petitioners confirmed on appeal – Revision – Whether Trial Court justified in convicting 1<sup>st</sup> Petitioner under Sections 493 and 496 of Code 1860 and 2<sup>nd</sup> Petitioner under Section 4 of Act – Held, evidence on record established that accused No.1 committed offence under Section 496 of Code 1860, same proved beyond reasonable doubt – As per witnesses, in Panchayat, it was agreed to celebrate valid marriage between PW-1 and accused No.1 – If marriage allegedly celebrated was valid, no need to propose for fresh marriage, same would show that so called marriage was only bogus – If accused No.1 stopped with formal marriage, making out offence under Section 496 of Code 1860, without proceeding further to have sexual intercourse with her, offence under Section 493 of Code 1860 would not have been made out – Coupled with evidence of PW-1, if fact that PW-1 agreed for sexual intercourse as she was kept under belief that he became her husband is taken into account, offence under Section 493 of Code 1860 committed by accused No.1, same proved beyond reasonable doubt – Accused No.1 confessed before Panchayatdars by way of extra-judicial confession that he was father of child – Accused No.1 never objected about discrepancy in charges – Nothing on record even to remotely infer that there was miscarriage of justice – Due to discrepancies in charges, no prejudice caused to accused No.1 – Sentence imposed by Trial Court not on higher side, same confirmed – No convincing evidence against accused No.2 – From facts narrated, difficult to believe case of prosecution in relation to 2<sup>nd</sup> Petitioner – Conviction imposed on 1<sup>st</sup> Petitioner by Trial Court and confirmed by First Appellate Court confirmed – Conviction imposed on 2<sup>nd</sup> Petitioner set aside – 2<sup>nd</sup> Petitioner acquitted from charges – Petition partly allowed.

(2015) 3 MLJ (Crl) 219

Alagu

vs.

State rep. by the Inspector of Police

Date of Judgment : 28.04.2015

Rape – Age of Consent – Kidnapping – Indian Penal Code, 1860 (Code 1860), Sections 363, 366, 375 and 376 – Accused had been charged with offence of kidnapping and raping P.W 3 – Trial Court had framed charges and found accused appellant guilty – Appellant challenges conviction in appeal on ground that PW 3 was consenting party – Whether P.W. 3 was competent to give consent for sexual intercourse and on date of occurrence, whether PW 3 was less than 16 years of age or not – Whether conviction of appellant under provisions of Code 1860 is sustainable – Held, Headmaster of school/PW 10, where PW3 had studied, had given evidence with regard to school records to the effect that her age was 15 years and 7 months old – When PW 10 was examined, her date of birth and age were not at all disputed – Even in chief examination, PW 1 and PW 2 have spoken about age of

PW 3, but same also was not disputed – Thus, evidence let in by prosecution in respect of date of birth of PW 3 and her age remains unassailed and undisputed by accused – Assuming that PW 3 was consenting party for sexual intercourse, since she was hardly 15 years of age, said consent is no consent, as stated under Section 375 of Code 1860 and thus, said act of accused in having sexual intercourse with PW 3 amounts to rape punishable under Section 376 Code 1860 – Non production of birth certificate is immaterial, because date of birth of PW 3 has not been disputed – Accused had kidnapped PW 3 and then had sexual intercourse with her which amounts to rape – Lower Court was right in convicting accused under Sections 366 and 376 Code 1860 – Since accused has been convicted under Section 366 Code 1860, conviction under Section 363 Code 1860 is not sustainable – Therefore, conviction of accused under Section 363 Code 1860 alone is liable to be set aside – Appeal partly allowed.

(2015) 3 MLJ (Crl) 248

**Murugesan**

vs.

**T.K. Ramasamy**

Date of Judgment : 07.04.2015

Complaint – Returning of Complaint – Territorial Jurisdiction – Evidence on Affidavit – Dishonour of Cheque – Negotiable Instruments Act (Act), Sections 138 and 145(2) – Code of Criminal Procedure, 1973 (code 1973), Section 313 – Respondent/complainant filed case alleging that Petitioner/accused committed offence under Section 138 of Act – Pending case, Petitioner filed petition before Trial Court at Thuraiyur contending that it had no jurisdiction to try said case and requesting it to return complaint to complainant to be presented before Judicial Magistrate at Namakkal, same dismissed – Revision – Whether complaint under Section 138 of Act could be returned to complainant to be presented before Judicial Magistrate at Namakkal, since trial Court at Thuraiyur did not have jurisdiction to try alleged case – Held, perusal of direction of Supreme Court in Dashrath Rupsingh Rathod vs. State of Maharashtra would show that in cases, where proceedings gone to stage of Section 145(2) of Act or beyond, case shall be deemed to have been transferred from Court having ordinary jurisdiction to Court where it is pending – Lower Court exercised its power under Section 145(2) of Act and PW-1 summoned –But, for his own reasons, accused did not chose to cross examine PW-1 – Also, case already reached stage of Section 313 of Code 1973 and in view of same, plea of Petitioner that case did not reach stage of Section 145(2) of Act deserves only to be rejected – Since stage of Section 145(2) of Act reached, as per direction of Supreme Court, case deemed to have been transferred to Judicial Magistrate at Thuraiyur – Question of returning complaint does not arise – Lower Court right in dismissing petition – Petition dismissed.

(2015) 2 MLJ (Crl) 641

**Senthil**

vs.

**Inspector of Police**

Date of Judgment : 31.03.2015

Sentence – Enhancement of – Indian Penal Code, 1860, Sections 120B, 148, 149, 302, 506(ii) and 34 – Charges framed against accused under Sections 120B, 148, Section 302 read with Section 149 and 506(ii) – Trial Court found accused Nos.1 and 2 guilty under Sections 148, 302 and 506(ii) read with Section 34 and sentenced them to undergo imprisonment as stated in Judgment – Also, found accused Nos.3 and 4 guilty under Sections 148 and 302 read with Section 34 and imposed ten years rigorous imprisonment under Section 302 – Appellant/de facto complainant filed present appeal in order to enhance proper punishment as mentioned in Section 302 – Whether Trial Court after concluding that accused Nos.3 and 4 committed offence under Section 302, awarded statutory punishment as contemplated – Held, judgment passed by Trial Court shows that accused Nos.3 and 4 also found guilty under Section 302 – As per Section 302, only two kinds of punishments can be awarded – One is death sentence and another is imprisonment for life – If accused found guilty under Section 302, no lesser punishment can be awarded other than life sentence – Trial Court awarded ten years rigorous imprisonment under Section 302 to accused Nos.3 and 4 and same not contemplated under law – Accused Nos.3 and 4 liable to be given life sentence – Sentence imposed against accused Nos.3 and 4 under Section 302 modified – Appeal allowed.



(2015) 2 MLJ (Cri) 665

**C. Nagarajan**

vs.

**M. Vennila**

**Date of Judgment : 20.04.2015**

**Domestic Violence – Domestic Relationship – Residential order – Shared Household – Protection of Women from Domestic Violence Act, 2005, Sections 12, 17, 18, 19, 19(c) 20, 22, 23 and 26 – Respondent/wife filed complaint as against Petitioner/Husband under provisions of 2005 Act not to evict her from shared house hold and grant compensation – Trial Court granted relief, same confirmed by 1<sup>st</sup> Appellate Court – Petitioner alleged address mentioned in petition preferred by Respondent were different, however complaint in domestic violence filed later year, at that time she was not residing in that door number – Revision against concurrent judgments passed by Courts below in awarding right to reside in property owned by Petitioner/husband or in alternative to pay rent, which is now in occupation of Respondent/wife – Whether relief of residential order granted to Respondent is not in accordance with provisions under Section 19(c) Act 2005 – Held, Petitioner himself stated in petition that Respondent is residing in that address and for service of summons in that case, he has given address as Door number – Clear admission made by Petitioner himself that she was living in shared household at least till that point of time in petition – No doubt, admitted by both parties, thereafter, Respondent has been driven out of house and is presently living in rented house – Lower Courts rightly held, if Petitioner is not willing to accommodate her in shared house hold along with him, he is liable to pay rent – Revision dismissed.**

\*\*\*\*\*