



TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW



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SUPREME COURT CITATIONS CIVIL CASES

2015 (13) SCALE 20

Rajni Sanghi vs. Western Indian State Motors Ltd.

Date of Judgment : 01.12.2015

HINDU LAW – FAMILY SETTLEMENTS – COMPANIES ACT, 1956 – SECTION 391(1) – Family arrangements made before the Court need to be protected and given pre-eminence over the arbitration award – If parties settle their disputes amicably by an agreement, even post award, such settlement/agreement will prevail in view of requirement of the Arbitration Act – Junior members of the family are bound by decisions of a Karta in matters of family business and property unless head of the family has acted fraudulently or for immoral purposes – Disputes between members of a larger family belonging to the branches of four sons – Four sons effected a de facto partition of the then existing three family business – Family business held by brothers like a partnership firm in which all the brothers had cross holdings – Brothers entered into an arbitration agreement for resolving disputes of family business consisting of four partnership firms and four companies – A family friend was appointed as sole arbitrator for effecting a partition of the family business – During pendency of reference, M.K., one of the brothers, filed a company petition before the High Court – Arbitration award was filed with the High Court – Appellants filed suit u/s 17 of the Arbitration Act, in the High Court to make the award a rule of the Court – High Court took notice of subsequent developments in the company case and set aside the award – In company petition, parties entered into an agreement and a scheme of reconstruction was formulated – This scheme was approved by the High Court – It involved passing of immovable property from one group to another as well as payment of substantial amounts of money for completing the adjustment required by way of reconstruction-cum-family settlement – All family members were present before the High Court when the Company Petition was disposed of in terms of the scheme of reconstruction-cum-family settlement – High Court set aside the arbitration award – On appeal, Division Bench remitted the matter again to the Company Judge finding it a case of non-compliance of sub-clause (1) of Section 391 of the Companies Act – Whether order of remand by Division Bench of the High Court was legally sustainable – Held, No – Whether the arbitration award which was yet to be made a rule of the court deserved implementation – Held, No – Whether preference needs to be given to the settlements finalized by the High Court – Held, Yes – Disposing the appeals, Held.

2016 (1) TN MAC 201 (SC)

Gian Chand vs. Gurlabh Singh

Date of Judgment : 15.12.2015

MOTOR VEHICLES ACT, 1988 (59 OF 1988), Section 166 – Claim Petition under – Negligence – Proof – Case of Claimants that Bus, in which deceased travelled, driven at high speed, dashed first against a stationary Tractor and thereafter against an eucalyptus tree and turned turtle – Defence taken by Bus Driver that accident took place due to sudden breaking of belt of spring and not due to rash and negligent driving – Stand taken by Transport Undertaking that accident taken place when Scooter coming from opposite side dashed against Driver's side of Bus and not due to fault of Bus Driver – Tribunal holding that accident took place due to mechanical failure and not due to negligence of Bus Driver, dismissed Claim Petition – Dismissal of Claim Petition affirmed by High Court in Appeal – Appeal before Apex Court – Inconsistent plea taken by Lorry driver and Transport Undertaking

as to manner of accident – Driver not taken stand that any Scooter was involved in accident as contended by Transport Undertaking – Plea of Claimants that accident took place due rash and negligence driving of Bus substantiated by FIR and supported by evidence of PW3 – Version of Driver not reliable – Sudden breaking of belt of spring due to sudden application of brakes – In such circumstances, held, accident took place due to rash and negligent driving of Bus by its Driver – Mere mechanical failure not sufficient to exonerate Transport Undertaking.

MOTOR ACCIDENT CLAIM – Compensation – Award of – Deceased aged 25 years, a Head Master earning Rs.4,552 p.m. as also Rs.1,000 p.m. from Agriculture – deceased sole bread winner of family died in accident while travelling in Bus – Tribunal, holding that accident not taken place due to negligence of Bus driver, dismissed Claim Petition and awarded Rs.25,000 under No Fault Liability – Award of Tribunal affirmed by High Court in Appeal – Apex Court in Appeal found Bus Driver rash and negligent in driving and causing accident – Claim by parents and brothers of deceased – Parents alone entitled to Compensation as brothers cannot be said to be dependants – Deceased being a Teacher in School, Apex Court awarded lump sum Compensation of Rs.7,50,000 to parents – Interest awarded at 6% p.a. from date of Claim Petition.

(2015) 10 SCC 203

Ram Niranjana Kajaria vs. Sheo Prakash Kajaria

Date of Judgment : 18.09.2015

Civil Procedure Code, 1908 – Or. 6 R.17 and Or.12 – Amendment of pleadings – Admission made in pleadings cannot be permitted to be withdrawn by amendment, but application may be made for explaining/clarifying the admissions

(2015) 10 SCC 213

Union of India vs. Reliance Industries Ltd

Date of Judgment : 22.09.2015

✎ Arbitration and Conciliation Act, 1996 – Pt.I or Pt.II – Foreign seated arbitration – Pre-Balco agreement – Application of Pt.I of 1996 Act to foreign seated arbitration – Applicability of *Bhatia International*, (2002) 4 SCC 105 – Arbitration clause expressly stipulating juridical seat of arbitration as London and governing law of arbitration agreement as laws of England, while making laws of India as governing law of contract – Effect

✎ Arbitration and Conciliation Act, 1996 – Pt.I or Pt.II – Foreign seated arbitration – Pre-Balco agreement – Application of Pt.I of 1996 Act to foreign seated arbitration – Applicability of *Bhatia International*, (2002) 4 SCC 105 – As per *Bhatia* case Pt.I of the Arbitration Act, 1996 will not apply if it has been excluded either expressly or by necessary implication – Such exclusion by necessary implication – When obtains

- Held, exclusion of Pt.I is possible by necessary implication if it is found that on the facts of a case: (1) either the juridical seat of the arbitration is outside India, or (2) the law governing the arbitration agreement is a law other than Indian law; or if both conditions obtain – Thus, even though law governing arbitration agreement was not specified, yet Supreme Court in *Harmony Innovation Shipping Ltd.*, (2015) 9 SCC 172 held, having regard to various circumstances, that the seat of arbitration would be London and therefore, by necessary implication, the ratio of *Bhatia International*, (2002) 4 SCC 105 would not apply

- ☞☞☞ Arbitration and Conciliation Act, 1996 – Pt.I or Pt.II – Foreign seated arbitration – *Pre-Balco* agreement – Application of Pt.I of 1996 Act to foreign seated arbitration – *Bhatia International*, (2002) 4 SCC 105 – When applicable – Principles distilled – Held, even in the cases governed by the *Bhatia* case principle, it is only those cases in which (1) agreements stipulate that the seat of the arbitration is in India, or, (2) on whose facts a judgment cannot be reached on the seat of the arbitration as being outside India, that would continue to be governed by the *Bhatia* case principle – Also, (3) it is only those agreements which stipulate or can be read to stipulate that the law governing the arbitration agreement is Indian law which would continue to be governed by the *Bhatia* case rule
- ☞☞☞ Arbitration – Generally – Law of arbitration agreement/law that governs the arbitration, and, substantive law of the contract – Difference between and conflation of – Doctrine of concurrent jurisdiction based on conflation of the two – Law traced
- ☞☞☞ Arbitration and Conciliation Act, 1996 – Pt.I or Pt.II and Ss.2(1)(e), 42 & 47 – Juridical seat of arbitration/law governing arbitration/arbitration agreement – Court that has jurisdiction – Determination of – Nature of questions – Res judicata – Applicability
- ☞☞☞ Practice and Procedure – Abuse of Process of Court/Law/Fraud on Court – Seeking to disown jurisdiction of court/tribunal after obtaining adverse judgment/award – Held, abuse of process – State as a litigant/party – Arbitration and Conciliation Act, 1996, S.14

2015-5-L.W. 859

M/s. GMG Engineering Industries and Others

vs.

M/s. Issa Green Power Solution and Others

Date of Judgment : 15.05.2015

C.P.C., Order 9 Rule 13.

Delay condoned by trial court but should not have imposed onerous condition of depositing entire suit claim when issues to be decided on merits.

**SUPREME COURT CITATIONS
CRIMINAL CASES**

(2015) 10 SCC 390

Bhanuben vs. State of Gujarat

Date of Judgment : 14.09.2015

- A. Penal Code, 1860 – S.306 r/w S.114 and S.498-A – Cruelty – Abetment to commit suicide – Cruelty, torture and harassment for dowry proved, but cause of death being accidental consumption of poisonous tablets, appellants mother-in-law and sister-in-law of deceased acquitted under S.306 but conviction under S.498-A, confirmed
- B. Penal Code, 1860 – S.498-A – Sentence – Mitigating factors – A-1, mother-in-law of deceased is said to be around 60 yrs of age and A-2, sister-in-law of deceased is more than 35 yrs of age and having a child to take care of – Sentence reduced to period of imprisonment already undergone by them

2015 (12) SCALE 495

Ratnesh Kumar Pandey vs. State of Uttar Pradesh

Date of Judgment : 15.01.2015

CRIMINAL LAW – IPC – SECTION 302 – Murder of wife – Circumstantial evidence – Appellant was living alone with his wife, deceased – Deceased was found dead in her room with 20 injuries all over her body – Burden was heavily upon the appellant-husband to show that he had nothing to do with the killing of the deceased – Plea of alibi taken by appellant was rejected – Appellant and deceased had got married on 17.09.1999 – Occurrence took place on the intervening night of 30.01.2001 and 31.01.2001 at around 4.00 a.m. – It was alleged in the FIR that deceased was murdered by appellant with the help of his friend – Trial Court found that the appellant was the sole accused who was responsible for the killing of his wife and he alone was convicted u/s 302, IPC and sentenced to life imprisonment – As per medical evidence, there were as many as 20 injuries on body of deceased and almost all of them were incised wounds – Whether chain of circumstances found proved against appellant leads to the only hypothesis in respect of the guilt alleged against appellant – Held, Yes – Whether offence of appellant can be modified into one u/s 304-B, IPC and a lesser punishment can be awarded – Held, No – Dismissing the appeal, Held

(2015) 10 SCC 557

Sakharam vs. State of Madhya Pradesh and another

Date of Judgment : 19.08.2015

Penal Code, 1860 – S.307 or S.325 r/w S.320 Seventhly – Injury in question if “grievous hurt” – Reduction of sentence – Occurrence was a sudden fight and in a fit of passion – PW 2 sustained fracture or dislocation of

frontal bone of skull caused by appellant which clearly falls in the category of “grievous hurt” as expressly mentioned in clause Seventhly of S.320 – Even though doctor was not questioned about nature of injuries, fracture of the frontal bone would bring the offence within the definition of “grievous hurt” – High Court rightly convicted the appellant under S.325 instead of under S.307 – However, as the occurrence was a sudden fight and in a fit of passion, appellant inflicted injuries on PW 2, sentence of imprisonment of 7 yrs is excessive and is reduced to 3 yrs – Words and Phrases – “Grievous hurt”

(2015) 10 SCC 562

Essar Teleholdings Ltd vs. CBI

Date of Judgment : 29.09.2015

- A. Criminal Procedure Code, 1973 – Ss.220 and 223 – Enabling in nature – Joint trial – Holding of – Discretion vested with court – Exercise of – Matters to be considered by court for example, when (a) joint trial would prolong trial; (b) cause unnecessary wastage of judicial time; (c) confuse or cause prejudice to accused, who had taken part only in some minor offence, (d) neither facts and allegations are common, nor is evidence common nor were accused acting with a commonality of purpose – Holding of joint trial, held, not obligatory – Cases of different accused at different stages – Trial Judge not considering it optimal based on the above factors to club trials as it would lead to miscarriage of justice – Held, proper – 2G Scam case
- B. Prevention of Corruption Act, 1988 – Ss.3 and 4 – Appointment of Special Judge under, to try all cases related to 2G Scam irrespective of whether or not they related solely to IPC offence(s) i.e. such offence(s) which are not to be tried with Prevention of Corruption Act offence(s), affirmed in *Essar Teleholdings Ltd.*, (2013) 8 SCC 1 – Reaffirmed herein – Thus, held, Special Judge has been vested with jurisdiction to undertake trial of all cases in relation to all matters pertaining to 2G Scam exclusively, which would include IPC offences by themselves, so long as they pertain to 2G Scam

2016 (1) CTC 563

Prem Sagar Manocha vs. State (NCT of Delhi)

Date of Judgment : 06.01.2016

Code of Criminal Procedure, 1973 (2 of 1974), Sections 193, 195 & 340 – Perjury – False Evidence – Experts Opinion – Procedure to initiate proceedings for perjury – Nature of enquiry – Duty to form opinion – Court *suo motu* initiated Perjury proceedings against Appellant for adducing false evidence – High Court recorded finding that Forensic Expert had tendered false evidence before Trial Court contrary to Expert Opinion – Perjury proceedings can be initiated without conducting Preliminary Enquiry – Recording of finding for initiation of proceedings is not mandatory – Purpose of enquiry is to decide as to interest of justice to enquire into offence, which appears to have been committed.

Code of Criminal Procedure, 1973 (2 of 1974), Section 340 – Perjury – False Evidence – Expert Opinion – Invocation thereof – Expert deposed evidence before Trial Court contrary to Expert Opinion – Expert Evidence needs to be given closer scrutiny and requires different approach while initiating proceedings for Perjury – Duty of Court to see as to whether basis of opinion is correct and then form its own conclusion – Mere rejection of Expert Evidence by itself may not warrant initiation of Perjury proceedings – Opinion of Expert is not conclusive and definite in nature.

HIGH COURT CITATIONS CIVIL CASES

2016 (2) CTC 9

L.Vijay Anand vs. N.Sujatha

Date of Judgment : 23.09.2015

Code of Civil Procedure, 1908 (5 of 1908), Order 23, Rule 1 – Suit – Withdrawal of, at Appellate stage – Suit for declaration and recovery of possession – Concurrent findings against Plaintiffs – Both parties claim on basis of different Wills – Non-Testamentary Legal Heirs not made parties to Suit – Suit is bad for non-joinder of necessary parties – It is only technical flaw – Suit permitted to be withdrawn with liberty to file fresh Suit on same subject matter – Second Appeal disposed off.

2016 (2) CTC 70

Meenakshi Sundaram vs. H.Radha

Date of Judgment : 10.02.2016

Family Courts Act, 1984 (66 of 1984), Sections 5, 10, 14 & 15 – Hindu Marriage Act, 1955 (25 of 1955), Section 21-B – Marital Disputes – Speedy settlement of – Establishment of Family Courts to ensure speedy settlement of disputes related to family/marriage – *Held*, duty of Family Courts to primarily take efforts for settlement of dispute – Counsellors, Social Agencies duly identified to assist Family Court in settlement of disputes – Moreover, to ensure prompt disposal of Petitions, provisions of Evidence Act are not strictly applicable to proceedings before Family Court – Nonetheless, Petition for Divorce alleging non-consummation of marriage, pending for 13 years - *Held*, long pendency of Family dispute shatters mental peace, hinders future planning, affects ability to procreate children, may lead to illegal marriage and illegitimate children and such similar serious consequences – Change in law/procedure/attitude of parties, need of the hour – Family Court directed to give priority to Petition and dispose off same within period of eight weeks from date of receipt of Order – Revision allowed – *Constitution of India, Article 21*.

2016 (2) CTC 77

N.Valliammal (dead) vs. M. Kanniah

Date of Judgment : 09.12.2015

Property Law – Boundaries & Extent – Suit for Declaration and Injunction – Property described by Survey Number and four boundaries – If there is discrepancy in extent, four boundaries will prevail over extent – Extent of land mentioned in Sale Deeds is Acre 1.36 – Power of Attorney mentions extent of land as Acre 1.21 by giving four boundaries – Lands covered by Sale Deeds is same as mentioned in Power of Attorney – No land was retained by vendors – Though there is some discrepancy in respect of extent, it will not prevail, as four boundaries alone will prevail – Second Appeal dismissed.

2016 (2) CTC 167

P.Ramasami vs. Nagai Sivasakthi Benefit Fund Limited

Date of Judgment : 04.02.2016

Code of Civil Procedure, 1908 (5 of 1908), Order 8, Rules 6-A & 9; Order 6, Rule 17 – Additional Written Statement – Filing of – Suit for recovery of money dismissed – On Appeal, matter remitted for purpose of appointment of qualified Auditor and filing of Report by him – Parties permitted to file Objections against same and let in evidence in respect of Report to be filed – But Defendants seeking to file Additional Written Statement raising Counter-claim – Plaintiff contending that as scope of Review is limited, Additional Written Statement cannot be permitted and that Counter-claim is time-barred – Application dismissed – Revision against that Order – Court has power to permit filing of Additional Written Statement – No prejudice would be caused to Plaintiff, if Additional Written Statement is filed – If Counter-claim is raised, Additional Court-fee has to be paid – All objections can be raised before Trial Court – Impugned Order set aside – Civil Revision Petition allowed.

2016 (1) CTC 231

S.Rajasekar vs. Sartaj Begum

Date of Judgment : 05.01.2016

Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (T.N.Act 18 of 1960), Section 10(3)(a)(iii) – Eviction of Tenant on grounds of Own Use and Occupation – Rent Controller dismissed Eviction Petition and Appellate Authority ordered eviction – Revision by Tenants – There is no dispute with regard to jural relationship between parties – Case of Landlords that husband of 1st of them had started leather business in 1977 at Bangalore and that said business was closed down by State of Karnataka – In order to start their own business in Petition premises, Landlords filed Eviction Petition – Landlords have registered with Government of Tamil Nadu for setting up Manufacturing Unit – P.W.1 also deposed that they are having all machineries for running said business – However, Tenants contended that Landlords do not require premises for their own use and occupation, for reason that they are not running business in some other rented premises – Though Landlord or person for whom eviction sought for, is not already carrying on business, requirement on ground of own use and occupation can be ordered, if steps have been taken by Landlord for commencement of business – It is not necessary for Landlord to carry on business for seeking eviction under Section 10(3)(a)(iii) – It is sufficient if he has *bona fide* intention to start business – Tenant cannot dictate terms to Landlord as to which portion or premises Landlord should choose – In case on hand, Landlords have already registered with Government of Tamil Nadu for setting up Manufacturing Unit – Government of Tamil Nadu has issued acknowledgment for registering Memorandum expressing its intent to set up Unit – It is evident that Landlords have established their intention to start business in Petition premises – Order of Eviction on ground of own use & occupation is just and proper.

Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (T.N.Act 18 of 1960), Section 10(2)(iii) – Act of Waste – So far as eviction on ground of putting premises for committing act of waste is concerned, Landlords have not established those contentions by oral and documentary evidence – Unless there is clinching evidence to satisfy conscience of Court that acts complained to have caused damage to building or its utility, it would be in region of wild speculation to conclude that necessary ingredients or *sine quo non* of Section have been satisfied – In case on hand, mere installation of boiler in premises cannot be construed as an act of waste – Eviction on the ground of act of waste set aside.

Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (T.N.Act 18 of 1960), Sections 10(2)(ii)(b) – Different User – As far as eviction on ground of putting premises for different use is concerned, Tenants are

carrying on only Dry Leather Processing work – Landlords have not established that Tenants are carrying on any other business other than Leather Processing work – In absence of any evidence to that effect, Rent Control Appellate Authority should not have ordered eviction on ground of different use – Order of Eviction on grounds of different use set aside – Civil Revision Petition partly allowed.

2016-1-L.W. 332

V.P.Murugesan vs. P.Shiek Mideen

Date of Judgment : 05.11.2015

Specific performance/Agreement to sell, loan agreement, refund, scope

Evidence act, Section 92, agreement to sell, document, contrary evidence, leading of.

Specific performance – Agreement, whether to sell or loan transaction – Consensus ad idem, whether – Power of court to order refund suo moto – scope – Evidence contrary to terms of document whether permissible.

Plaintiff was a money lender and his practice to get a sale agreement executed as and when money was lent – Ex.A.1 was not executed with intention to treat same as a sale agreement – Payment was paid only as a loan, defendant had a legal right to lead evidence.

Suo motu power to order for repayment of advance money – possible only in a case where the court finds that there was a validly executed sale agreement – No such sale agreement intended to be performed.

(2015) 8 MLJ 405

A.Kailasam vs. P.Muthuraman

Date of Judgment : 27.10.2015

Contract – Specific Performance – Readiness and willingness – Specific Relief Act, Section 16 – Suit property belonged to 2nd Respondent/2nd Defendant, who executed Ex.A-2/Power of Attorney in favour of 1st Respondent/1st Defendant – 1st Defendant agreed to sell suit property to Appellant/Plaintiff receiving advance amount with further condition that he had to pay balance amount within stipulated period – Later, 2nd Defendant cancelled power after execution of sale agreement between Plaintiff and 1st Defendant – Plaintiff filed suit for specific performance, same decreed – On appeal, Lower Appellate Court reversed order passed by Trial Court – Instant appeal – Whether Lower Appellate Court right in holding that Plaintiff did not prove his readiness and willingness to perform his part of contract from date of sale agreement till date of filing suit – *Held*, Plaintiff has to establish his readiness and willingness throughout from date of agreement till date of filing of suit – Facts show that sale agreement executed and part payment made and period during which sale to be completed on payment of balance amount to be one year – Before close of agreement period, Plaintiff issued legal notice/Ex.A-3 pursuant to which, 1st Defendant convened panchayat wherein he stated that he was ready and willing to perform his part of agreement – Based on such assurance, Plaintiff, after prior intimation to 1st Defendant, waited at Sub-Registrar Office with balance amount – Even for notice, 1st Defendant did not reply and only after issuance of notice, power of attorney cancelled – Facts and evidences show that Plaintiff was ready and willing to perform his part of agreement, but breach was by 1st Defendant – Lower Appellate Court did not consider such aspect, but dismissed suit without considering reasons given by Trial Court – Dismissal of suit by Lower Appellate Court to be held as not based on correct reasoning – Judgment and decree of Lower Appellate Court set aside – Judgment and decree of Trial Court restored – Appeal allowed.

(2015) 8 MLJ 450

Hawva Nachiyar vs. Balkish Beevi Ammal

Date of Judgment : 29.10.2015

Muslim Law – Succession – Will – Appellants, who have filed this second appeal are legal representatives of First defendant – Suit properties belonged to father of First Defendant – Marriage of First defendant and First Respondent was conducted – Father of first defendant is brother of first respondent's mother – Father of first defendant promised to give all his properties to the first respondent after their marriage and stated that his letter has to be treated as his Will – Will came into force and first respondent became owner of suit properties – First defendant started acting against interest of first respondent – Later, first defendant filed petition for succession certificate stating that they are only legal heirs – First respondent filed her objections on ground that she is owner of properties, as per Will – First Appellate Court held that first respondent has proved contents of Ex.A.1/Will – Whether first respondent has proved execution and validity of Ex.A.1 – Whether marriage between first defendant and first respondent was positively proved – Held, Defendant admitted signature in Ex.A.1 as that of his father and gave his consent for marking same – Once consent is given, document need not be proved – Ex.A.1 is more than 30 years old when it was marked in suit for partition – Lower Appellate court had rightly held that Ex.A.1 is more than 30 years old, produced from custody of first respondent and therefore presumed as proved – Lower Appellate court has given valid reasons for holding that first respondent has proved Ex.A.1 – First respondent proved her marriage with first defendant by direct evidence – Reasons given by First respondent for delay in filing suit for partition is acceptable in the social circumstances from which first respondent hails – First respondent proved her marriage with first defendant – No infirmity in findings of lower Appellate court – Appeal dismissed.

2016-1-L.W. 454

Correspondent-cum-Secretary, Scott Christian College, Nagercoil

vs.

Dr.M.Mohankani & another

Date of Judgment : 18.11.2015

Constitution of India, Article 227, challenge to interim injunction, one line order, challenge to

C.P.C., Order 1, Rule 8, Suit, representative capacity, challenge to, Order 39, Rule 3A, interim injunction, application, disposal, how to be done

Practice/Interim injunction, challenge to.

Dispute regarding filling up of post in History department in minority institution – Suit for declaration, injunction to restrain, filing of, in representative capacity – Interim injunction granted, application closed as trial began, whether proper.

held: order is non-speaking, gross misuse of discretionary powers vested with trial Court – A duty is cast upon court, which has granted injunction, either to dispose application on merit within 30 days or if not possible to dispose petition within prescribed period, the court shall adjourn petition on next hearing date after recording reasons for not disposing it within 30 days – Order 1 Rule 8(2), compliance, whether – Scope

2016-1-L.W. 608

E.Damodharan vs. Triplicane Annadhana Samajam

Date of Judgment : 17.12.2015

Tamil Nadu Buildings (Lease and Rent Control) Act – Public Charitable Trust

Tamil Nadu Buildings (Lease and Rent Control) Act (1960), Section 6(17) 'public charitable trust', Section 29, Exemption, to '*public charitable trust*', G.O.Ms.No.2000, Home Department, dated 16.08.1976, scope

Suit by trustee of a public charitable trust to evict, for arrears of rent, maintainability, Scope of – Exemption from Rent act, scope – Rent Act not applicable to suit property, valid termination of lease – suit rightly decreed.

HIGH COURT CITATIONS CRIMINAL CASES

2016 (2) CTC 63

Ajith Kumar vs. State

Date of Judgment : 16.02.2016

Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Sections 1(4) & 12 – Code of Criminal Procedure, 1973 (2 of 1974), Sections 5 & 482 – Bail – Right to Juvenile – Power of High Court – Section 12 of 2016 Act extensively dealing with grant of bail to juvenile – Proviso to Section 12(1) contemplating that bail may be refused when release would bring juvenile into association with a Criminal or he would be exposed to ‘moral, physical or psychological danger’ – Whether a Juvenile would be exposed to ‘moral, physical or psychological danger’ can only be gauged by duly trained members of the Juvenile Justice Board – High Court, under Section 482 cannot give blanket direction to release Juveniles on Bail – Said Order would be contrary to Statutory mandate of Section 12 – Moreover, non-obstante clause contained in Section 1(4) and Section 12(1) of 2016 Act indicate that source of power to grant bail under Juvenile Act is independent from Code – Section 5 of Code also protecting procedures of Special Statutes in absence of a specific contrary provision in Code – Special Law would also prevail over General Law, *Generalia specialibus non derogant* – In such circumstances, Court under Section 482 not having power to give blanket direction to release Juveniles on Bail – Instant Petition seeking such direction, dismissed.

2016 (2) CTC 135

K.Ramajayam @ Appu vs. The Inspector of Police

Date of Judgment : 27.01.2016

Indian Evidence Act, 1872 (1 of 1872), Section 3 – Electronic Evidence – “Documents” – Definition – CCTV Footages – Admissibility of Evidence – Procedure to be followed by Trial Court after receiving Electronic Evidence – Digital Video Recorder marked as Material Object in trial – Power of Trial Judge to view CCTV Footages – Memory Card, Hard Disk, CD, Pen Drive containing relevant data in Electronic form are “Documents” as defined under Evidence Act – Judicial Magistrate, who receives Electronic record may himself view it and take backup, without disturbing integrity of source, in CD or Pen Drive or any other gadget – Backup can be kept in safe custody by wrapping it in anti-static cover and should be sent to Sessions Court at time of committal – Court has power to view CCTV Footage in presence of Accused for satisfying itself as to whether individual seen in footage is Accused in dock – Trial Court should specifically put questions to Accused, when he is examined under Section 313 of Cr.P.C. about his overt acts appearing in footage and record his answers.

Police Standing Orders, PSO 646 – Indian Evidence Act, 1872 (1 of 1872), Section 45 – Information Technology Act, 2000 (21 of 2000) – CCTV Recordings – Taking of Photographs of Accused in custody – Violation of procedure contemplated under Police Standing Orders – Admissibility of Expert Evidence – Forensic Expert scientifically compared images of assailant in CCTV recordings – Evidence collected illegally or in violation

of Procedural law will not become inadmissible – Photographs taken in custody can be used by Experts for their analysis and opinion – Method adopted by Police in sending Digital Video recording to Tamil Nadu Forensic Science Laboratory for Computer Experts to view recordings, is valid.

Indian Evidence Act, 1872 (1 of 1872), Section 3 – Electronic Evidence – Scientific and legal aspects of CCTV recordings – Criminal Justice Delivery System is built upon episodic memory of Witnesses and their capacity to translate data stored in their memory into human language – Courts have recognized fact that there bound to be exaggerations and embellishments in oral accounts – CCTV Footage does not suffer from such ills and human frailties and they are indubitably superior to human testimony of facts – Police cannot afford to lose Electronic Evidences collected by individuals and instead, rely upon archaic method of collecting evidence.

Information Technology Act, 2000 (21 of 2000), Sections 2 (i), 2 (o), 2(r) & 2 (t) – Indian Evidence Act, 1872 (1 of 1872), Section 3 – CCTV Recordings – Electronic Record – Significance thereof – Digital Video Recorder (DVR) is Electronic record as it stores data in Electronic form and is also capable of output – Reliance upon CCTV recordings by prosecution – Legality – Digital Video Recorder seized by Police under cover of Mahazar with aid of technician – Procedure adopted by Police to rely upon Electronic data cannot be faulted.

Indian Evidence Act, 1872 (1 of 1872), Sections 65-A & 65-B – Electronic Evidence – Admissibility of Electronic Evidence – Necessity to obtain certification – When Electronic record as such is used as Primary Evidence, is admissible in evidence without compliance with conditions in Section 65-B – Digital Video Recorder marked as Material Object before Trial Court – Certification of Secondary Evidence can be obtained at time of Trial – Police can secure services of Computer Experts from Forensic Science Department to retrieve data from huge server through USB Drive or CD Drive or any other gadget for purpose of investigation and production of same before Court without disturbing integrity of original source – Question of copy as it is normally understood in physical data may not be applicable for Electronic data – Certificate can be obtained from person, who is in-charge of Server after retrieval of data from Server would suffice requirement under Section 65-B – Expert can feed data into his Computer and take print outs in tangible form with his certification stating as to how he had collected from Server and fed them into his Computer and produced outputs.

2015-2-L.W (Crl) 441

Manikka Thyagarajan vs. Dr.C.S.Meenatchi and others

Date of Judgment : 04.09.2015

I.P.C., Sections 406 and 420

Criminal Procedure code, Section 439, cancellation of bail - case of breach of trust – Application for bail, entertaining of scope.

Need of surrender and custody, before granting bail – unless and until custody of the accused is ordered, bail petition could not have been entertained – Bail cancelled.

2015- 2-L.W (Crl) 447

R.Subramanian vs. The State rep. by the Inspector of Police

Date of Judgment : 18.09.2015

I.P.C., Sections 406, 420, 120-B,

Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act (1997), Section 5,

Criminal Procedure code, Section 438,

Charge of issuance of non convertible debentures and failure to pay on maturity.

Anticipatory bail, grant of – whether petitioner has resources to repay, debenture holders of the company in which petitioner is the managing director, would get their money not known – Custody needed – Petition dismissed.

(2015) 4 MLJ (CrI) 560

Amjit Khan vs. State of Tamil Nadu

Date of Judgment : 22.09.2015

Kidnapping – Quantum of Sentence – Indian Penal Code 1860 (Code 1860), Sections 361 and 363 – Appellant/accused alleged to have kidnapped minor and demanded ransom – Upon complaint, trial court framed charges and committed case to trial – Trial court convicted and sentenced accused under Section 361 read with 363 of Code 1860 – Whether court has rightly found accused guilty under Section 361 read with 363 of Code 1860 and can quantum of sentence be reduced – *Held*, court has perused entire evidence given by P.W.2 and no materials are available so as to come to conclusion that P.W.2, due to animosity has given evidence against accused – Therefore, it is clear that entire evidence given by P.W.2 can be admitted and under said circumstances, trial court has rightly found accused guilty under Section 361 read with Section 363 of Code 1860 – Considering nature of offence committed by accused and that he has already undergone sentence to an extent, some leniency can be shown in awarding sentence – Conviction passed against appellant/accused under Section 361 read with 363 of Code 1860 by trial court confirmed – Quantum of sentence imposed against him modified – Appeal partly allowed.

(2015) 4 MLJ (CrI) 596

Aruldos Ashok vs. State, rep by the Inspector of Police

Date of Judgment : 09.10.2015

Rape – Evidence of Prosecutrix – Indian Penal Code, 1860, Section 376 – Appellant/Accused convicted under Section 376, same challenged – Whether prosecution proved case of Appellant beyond reasonable doubts – Whether Prosecutrix is believable witness – *Held*, evidence shows that prosecution failed to establish substratum of its case – Since prosecution did not prove basis of its case, no incertitude in concluding that Prosecutrix is not believable witness – Medical evidence shows that Prosecutrix subjected to sexual contact, but Prosecutrix is married lady and under said circumstances, such thing might have occurred and on that basis, Court cannot conclude that Accused raped prosecutrix – No trustworthy evidence by prosecution to conclude that accused raped prosecutrix – Trial Court, without considering fact that prosecution did not establish substratum of its case, erroneously found Accused guilty under Section 376 – Conviction by Trial Court set aside – Appellant acquitted – Appeal allowed.

(2015) 4 MLJ (CrI) 599

Muthukrishnan vs. State rep. by the Inspector of Police

Date of Judgment : 30.09.2015

Murder – Common Intention – Indian Penal Code, 1860, Sections 147, 148, 302, 341 and 34 – Charges framed under Sections 147, 148, 341 and 302 read with Section 34 against five accused – Trial Court convicted Appellants/accused Nos.1 to 3 alone under Sections 341 and 302 read with Section 34 and acquitted them from other charges – Also, acquitted accused Nos.4 and 5 from all charges – Appeals – Whether prosecution proved

case of Appellants beyond reasonable doubts – *Held*, evidences of PWs.1 and 2 are highly artificial – Entire family of accused roped in, same creates doubt in case of prosecution, who did not clear off those reasonable doubts – Going by bad antecedents of deceased, also possible that enemies would have attacked him, when occurrence was not noticed by anybody – Reasons to believe that PWs.1 and 2 planted as eyewitnesses and going by improbabilities and doubts, unsafe to sustain conviction of Appellants – Trial Court itself disbelieved evidences of PWs.1 and 2 as against accused Nos.4 and 5 and stated their evidences as only partly believable – If witness is partly believable, prudence requires corroboration from independent source and in absence of such corroboration, not safe to rely on such uncorroborated testimony to convict accused – No such corroboration coming forward from independent source to corroborate evidences of PWs.1 and 2 – Prosecution failed to prove case against Appellants beyond reasonable doubts – Conviction imposed on Appellants set aside and they are acquitted – Appeals allowed.

2016 (1) CTC 726

Esakkiammal vs. State by Inspector of Police, CB CID

Date of Judgment : 26.10.2015

Code of Criminal Procedure, 1973 (2 of 1974), Section 176 – Inquiry by Magistrate into cause of death – Nature and Scope – Jurisdiction of Magistrate – Inquiry is confined only to cause of death – Executive Magistrate cannot travel beyond cause of death to give any other finding or opinion on deputed facts – Inquiry relates only to cause of death and not as to manner in which injuries were caused and persons responsible for same – Inquiry by Executive Magistrate is non-judicial in character.

Code of Criminal Procedure, 1973 (2 of 1974), Section 176(1-A) – Inquiry into cause of death or disappearance of person or rape while such person or woman was in custody of Police – Jurisdiction of Executive Magistrate – Inquiry by Executive Magistrate into cause of death as provided under Section 176(1) does not extend to death of person while in custody of Police – Power to inquire into death of person in custody of Police is conferred upon Judicial Magistrate or Metropolitan Magistrate and not to Executive Magistrate.

Code of Criminal Procedure, 1973 (2 of 1974), Section 176(1-A) – Inquiry into cause of death or disappearance of person or rape while such person or woman was in custody of Police – Jurisdiction of Judicial Magistrate – Scope of Inquiry – Inquiry by Judicial Magistrate is not confined only to cause of death – Inquiry contemplated under Code has wide scope – Scope of Inquiry and detailed procedures to be followed as enumerated in *R.Kasthuri's case*.

Code of Criminal Procedure, 1973 (2 of 1974), Section 176(1-A) – Police Encounter – Supreme Court in *PUCL case* has enumerated detailed Guidelines for investigation of Police Encounter case – Supreme Court held that aggrieved person can address his grievance by making Complaint to Sessions Judge – Whether Judicial Magistrate has jurisdiction to inquire in Police Encounter case – Applicability of dictum laid down in *PUCL case* had nothing to do with death or disappearance of any person or rape of woman in Police custody – Directions issued in *PUCL case* are only in respect of Police Encounters – Where Police Encounter takes place while person is in custody of Police, then procedure contemplated in sub-section (1-A) of Section 176 of Code should be followed as enumerated in *R.Kasthuri case*.

Code of Criminal Procedure, 1973 (2 of 1974), Section 395(2) – Reference made by Sessions Judge to High Court on questions of Law – Police Encounter – Supreme Court in *PUCL case* has enumerated procedure in Police Encounter cases – Supreme Court held that “aggrieved person” can address his grievance by making Complaint to Sessions Judge in cases where Police failed to follow Guidelines of Judgment – Aggrieved person made Complaint to Sessions Judge to transfer investigation to some other Investigation Agency and for Compensation – Sessions Judge formulated legal questions and sought for decision of High Court.

Code of Criminal Procedure, 1973 (2 of 1974), Section 395(2) – Reference made by Sessions Judge to High Court on questions of Law – Police Encounter – Whether word “address” referred to in Judgment of *PUCL* case is dealing with Judicial Power of Sessions Judge or Administrative action of Sessions Judge – *Held*, where power is conferred upon Judicial Authority empowering authority to resolve dispute between parties, it is Judicial Power – When there is application of judicial mind into materials placed in order to satisfy Judicial conscience of Court, there also power is judicial in character – Expression “address” means “to direct” – Sessions Judge shall hold Summary Enquiry to find out as to whether Police have scrupulously followed direction of Supreme Court – Sessions Judge shall take decision at quickest possible time – Power of Sessions Judge conferred in *PUCL* case is Judicial Power.

Code of Criminal Procedure, 1973 (2 of 1974), Section 395(2) – Reference made by Sessions Judge to High Court on questions of Law – Police Encounter – *PUCL* case – Enforcement mechanism for implementation of direction issued by Sessions Judge in tune with power conferred under *PUCL* case – Order passed by Sessions Judge can be enforced by resorting to provisions of Chapter XXIV of Code.

Code of Criminal Procedure, 1973 (2 of 1974), Section 395(2) – Reference made by Sessions Judge to High Court on questions of Law – Police Encounter – *PUCL* case – How Sessions Judge can act in compliance with directions of Supreme Court in *PUCL* case without deviating other pronouncement of Supreme Court in respect of non-interference in investigation – No scope for interference with investigation by Police – *PUCL* case to rectify defects or shortcoming brought to notice of Court of Sessions by Complainant in Police Encounter – Supreme Court laid down Guidelines in absence of effective mechanism under Code to monitor investigation of Police Encounter case – Power conferred upon Sessions Judge cannot be exercised in casual manner so as to interfere with investigation – Power is confined only to ensure that safeguards evolved by Supreme Court in *PUCL* case are adhered strictly and not beyond that.

Code of Criminal Procedure, 1973 (2 of 1974), Section 395(2) & 195 – Reference made by Sessions Judge to High Court on questions of Law – Police Encounter – *PUCL* case – Whether Petition purported to be filed under Section 193 of Code can be made to Sessions Judge, who has no right to take cognizance of any offence – *Held*, term “Complaint” employed in *PUCL* judgment cannot be misconstrued as thought Supreme Court meant same to be Complaint, as defined under Code – Term “Complaint” used by Supreme Court in its ordinary sense which should be understood to mean either as “a representation” or “a Petition” and not as Complaint in strict sense – Sessions Judge upon receiving Complaint cannot take cognizance of any offence and he should issue appropriate direction to redress grievances.

Code of Criminal Procedure, 1973 (2 of 1974), Section 395(2) & 195 – Reference made by Sessions Judge to High Court on questions of Law – Police Encounter – *PUCL* case – Power of Sessions Judge to order transfer of investigation – Sessions Judge can issue direction to Head of Department of Police to transfer investigation to any competent Officer irrespective of his cadre as Head of Police Department – Officer to whom investigation is transferred, shall be higher in rank than Officer, who had headed Police party involved in encounter.

2015-2-L.W. (Crl) 728

S.Premkumar

vs.

The Sub-Inspector of Police, Anjagramam, Kanyakumari District and another

Date of Judgment : 14.07.2015

Criminal Procedure Code (1973), Section 173(8)

I.P.C., Sections 294(b), 506(i)

Tamil Nadu Prohibition of Harassment of Women Act (2002), Section 4.

Power to order re-investigation by magistrate

held: illegal – Protest petition, against negative final report, filing of, scope, options to magistrate what are.

(2015) CRI.L.J. 4868

Itta Badrinath vs. State

Date of Judgment : 13.08.2015

Criminal P.C. (2 of 1974), S.188 – Offence committed outside India – Sanction for investigation – Requirement – Accused husband allegedly failed to consummate marriage and subjected her to cruelty – Both husband and wife living outside India – Wife sent a mail to her father in India, based on which FIR lodged – Sanction is essential for prosecuting accused husband.

Penal Code (45 of 1860), Ss.498A, 406.

2014(8)SCC 273, Followed.
