TAMIL NADU STATE JUDICIAL ACADEMY

Vol: XI Part: 3 March, 2016

IMPORTANT CASE LAW

OFFICE: No.30/95, P.S.K.R. Salai, R.A. Puram, Chennai – 600 028
Phone Nos. 044– 24958595 / 96 / 97 / 98
Telefax: (044) 24958595

Website: www.tnsja.tn.nic.in
E-Mail: tnsja.tn@nic.in/tnsja.tn@gmail.com

INDEX

S.No.	IMPORTANT CASE LAW	PAGE No.
1	Supreme Court - Civil Cases	01
2	Supreme Court - Criminal Cases	04
3	High Court - Civil Cases	08
4	High Court - Criminal Cases	13

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

S.No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE No.
1	Shreya Vidyarthi vs. Ashok Vidyarthi and others	2016-1-L.W.909	16.12.2015	Hindu law – Whether widow/mother can act as Karta	01
2	Kasthuri Radhakrishnan vs. M.Chinniyan	2016 (2) CTC 292	28.01.2016	Eviction Proceedings – Denial of Title – Jural Relationship	01
3	Nashik Municipal Corporation vs. R.M.Bhandari	2016 (2) CTC 338	26.02.2016	Enlargement of time – Discretion of Court – Section 148 C.P.C	02
4	Nagabhushanammal (D) by L.Rs. vs. C.Chandikeswaralingam	2016 (2) CTC 345	26.02.2016	Doctrine of res judicata – Applicability	02
5	Uttam vs. Saubhag singh	2016 (2) CTC 306	02.03.2016	Coparcenary Property – Joint Family Property	03

SUPREME COURT - CRIMINAL CASES

S.No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE No.
1	Maya Devi vs. State of Haryana	(2016) 1 MLJ (Crl) 114 (SC)	07.12.2015	Dowry death - Presumption	04
2	Bimla Devi vs. Rajesh Singh	(2016) 1 MLJ (Crl) 189 (SC)	16.12.2015	Murder	04
3	Usmangani Adambhai Vahora vs. State of Gujarat	2016 (1) CTC 572	08.01.2016	Transfer of Sessions Case – Jurisdiction of Principle Sessions Judge	05
4	State of Assam vs. Ramen Dowarah	(2016) 1 MLJ (Crl) 373 (SC)	11.01.2016	Rape and Murder	06
5	Union of India vs. Mohanlal	(2016) 1 MLJ (Crl) 486 (SC)	28.01.2016	Narcotics – Narcotics seizure – Guidelines for disposal	06

HIGH COURT - CIVIL CASES

S.No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE No.
1	Dhakshana Kammavar Mahajana Sangam and another vs. V.P.S.Subbiah	2016-1-L.W.91	20.08.2015	Interim Injunction – Order 39 C.P.C.	08
2	Kadirvel vs. Chellammal and others	2015-5-L.W.54	31.08.2015	Suit for injunction – Title dispute	08
3	Manickam vs. Vadivambal and others	2016-1-L.W.570	25.09.2015	Amendment of plaint – Order 6 Rule 17 C.P.C.	08
4	National Textile Corporation Limited vs. Ettappan and Sons	2016 (1) CTC 627	29.10.2015	Eviction Petition – Non-residential Building – Owner's occupation – Pre-requisites	09
5	M. Varadharajan vs. V.Balasubramanian	2016-1-L.W.499	26.11.2015	Promissory Note - Proof – Presumption	09
6	T.G. Navaneetha Krishnan vs. T.G.R.Vasanthakumar	2016 (2) CTC 661	07.12.2015	Suit for Specific Performance – Order 9 Rule 9 C.P.C.	09
7	N. Vanjimuthu vs. The Competent Authority and Commissioner of Land Administration, DRO, Dindigul District and others	2016 (1) TLNJ 236 (Civil)	15.12.2015	Tamil Nadu Protection of Interest of Depositors Act - Interim Attachment	10
8	G.B. Chakravarthi vs. C.Kishanlal	2016 (2) CTC 353	25.01.2016	Suit for Specific Performance – Contract of Sale	10
9	The Managing Director, TNSTC (Kumbakonam) Ltd vs. Amudha	2016 (1) TN MAC 410 (DB)	01.02.2016	Motor Accident Claim – Compensation – Quantum – Determination	12
10	Rajammal vs. Sumathi	2016 (2) CTC 434	29.02.2016	Introduction by Plaintiff of – Copy of document in possession of the defendant	12

HIGH COURT - CRIMINAL CASES

S.No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE No.
1	R.Velladurai vs. State through Inspector of Police, V.K.Pudur	(2016) 1 MLJ (Crl) 129	28.10.2015	Murder – Suppression of Fact	13
2	V.Vinod Kumar vs. V.Arunadevi	(2016) 1 MLJ (Crl) 1	30.11.2015	Domestic Violence – Custody – DV Act	13
3	Paramasivam vs. State by Inspector of Police	(2016) 1 MLJ (Crl) 452	10.12.2015	Dowry death	14
4	S. Karuppaiah vs. State rep by its Inspector of Police	(2016) 1 MLJ (Crl) 483	15.12.2015	Rape	14
5	Hemendhra Reddy vs. State	(2016) 1 MLJ (Crl) 340	15.12.2015	Re-investigation – Power of Magistrate	15
6	Murugasamy Gounder vs. State by Inspector of Police	(2016) 1 MLJ (Crl) 316	18.12.2015	Prevention of Atrocities – Scheduled Caste – Intentional insult	15
7	State by Inspector of Police vs. D. Sathyamurthy	(2016) 1 MLJ (Crl) 424	18.12.2015	Prevention of Corruption – Illegal gratification - Demand and acceptance	16
8	Sudarsan vs. Mohanlal	(2016) 1 MLJ (Crl) 510	22.12.2015	Narcotics - Possession	16
9	S.Selvam vs. State by Inspector of Police	(2016) 1 MLJ (Crl) 402	12.01.2016	Discharge	17
10	Suganiya vs. Superintendent of Central Prison Puzhal-1	(2016) 1 MLJ (Crl) 257	27.01.2016	Criminal Procedure – Language of Judgment – Validity of	17

SUPREME COURT CITATIONS
CIVIL CASES

2016-1-L.W.909

Shreya Vidyarthi vs. Ashok Vidyarthi and others

Date of Judgment : 16.12.2015

Hindu law/widow, mother, whether can act as karta

Held: a hindu widow is not a coparcener in HUF of her husband, cannot act as Karta of HUF after death of her husband – where sole male coparcener is a minor, mother can act as legal guardian of minor and also look after his role as Karta in her capacity as his (minor's) legal guardian – A Hindu widow as manager of HUF in her capacity as guardian of sole surviving minor male coparcener, to be distinguished from a Karta

Natural mother, step mother, role of, what is, scope of.

2016 (2) CTC 292

Kasthuri Radhakrishnan vs. M.Chinniyan

Date of Judgment : 28.01.2016

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (TN Act 18 of 1960), Section 25 – Revision – Jurisdiction of High Court – Concurrent findings of Facts – Scope of Interference – Rent Control matters – Re-appreciation of Evidence – Finding of Fact recorded by Authorities cannot be interfered unless perverse or has been arrived without consideration of material evidence – High Court is entitled to satisfy itself as to correctness or legality or propriety of impugned Decision or Order – High Court shall not exercise its power as Appellate power to re-appreciate or reassess evidence for coming to different finding on facts – Revisional power is not and cannot be equated with power of reconsideration of all questions of fact as Court of First Appeal.

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (TN Act 18 of 1960) – Denial of Title – Jural Relationship – Title of Landlord – Adjudication – Scope of Inquiry – Jurisdiction of Rent Controller to inquire title of Landlord in Eviction proceedings – Concept of Ownership in Landlord-Tenant litigation governed by Rent Control Laws has to be distinguished from one in Title Suit – Landlord can be said to be owner, if he is entitled in his own legal right, as distinguished from for and on behalf of someone else to evict Tenant and then to retain control, hold and use premises for himself.

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (TN Act 18 of 1960) – Eviction – Eviction Petition filed against one of Co-owners – Non-joinder of all Co-owners – Failure to implead all Co-owners as parties to Eviction Petition – Maintainability of Eviction Petition – Non-impleadment of all Co-owners in Eviction Petition is not fatal to Eviction proceedings – Law laid down in *Dhannalal* (SC) followed and applied.

Powers-of-Attorney Act, 1882 (7 of 1882) – Law of Agency – Act performed by Agent on behalf of Principal – Binding nature – Any document executed or thing done by Agent on strength of

Power of Attorney is as effective as if executed or done in name of Principal – Agent always acts on behalf of Principal and exercises only those powers, which are given to him in Power of Attorney by Principal – Any Act performed by Agent on strength of Power of Attorney cannot be construed or treated to have been done by Agent in his personal capacity so as to create right in his favour.

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (TN Act 18 of 1960) – Powers-of-Attorney Act, 1882 (7 of 1882) – Eviction – Landlord appointed Power Agent to maintain Suit property – Power Agent executed Lease Deed in favour of Tenant on behalf of Principal – Tenant contended that tenancy was created by Agent in his personal capacity – Finding of High Court that tenancy in relation to Suit premises with Power Agent is erroneous – Power Agent did not get any right, title and interest of any nature either in Suit premises or in tenancy in himself.

2016 (2) CTC 338

Nashik Municipal Corporation vs. R.M.Bhandari

Date of Judgment : 26.02.2016

Code of Civil Procedure, 1908 (5 of 1908), Section 148 – Enlargement of time – Discretion of Court – Upper time limit of thirty days introduced by Amendment Act 1999 – Nature and Scope – Execution Petition filed by Appellant was dismissed for default and consequential Restoration Application was also dismissed – Writ Petition filed by Appellant challenging Order rejecting Restoration Application was allowed on payment of Cost within stipulated time – Appellant filed SLP before Supreme Court challenging Order of High Court imposing Cost – SLP was dismissed as withdrawn – Application filed by Appellant for enlargement of time to deposit Cost was dismissed – Period of time is granted by Court for doing any act can be extended from time to time even if time originally fixed or granted by Court has expired – Even if act could not be performed within thirty days for reasons beyond control of parties, time beyond maximum thirty days can be extended under Section 151 of CPC – Order of High Court refusing to enlarge time, liable to be set aside.

2016 (2) CTC 345

Nagabhushanammal (D) by L.Rs. vs. C.Chandikeswaralingam

Date of Judgment : 26.02.2016

Code of Civil Procedure, 1908 (5 of 1908), Section 11 – Doctrine of *Res judicata* – Applicability – Suit property is self-acquired property of “V” – “V” died intestate leaving her son “C” and daughter “N” & “P” as her Legal Heirs – One of daughter “P” predeceased her mother “V” – Suit property inherited by “C” and “N” – “N” filed Suit for recovery of possession in year 1962 on basis that her deceased mother “V” settled property in favour of her son-in-law and he in turn executed Settlement Deed in favour of “N” – Suit filed by “N” praying for possession on basis of Settlement Deed made by “V” and later by her husband was dismissed – Trial Court refused to believe genuineness of Settlement made by “V” in favour of her son-in-law – “N” filed Suit for Partition in year 1988 and Trial Court dismissed Suit by holding that Suit is barred by *res judicata* and Doctrine of Ouster – First Appellate Court reversed Decree of Trial Court and decreed Suit for Partition – High Court in Second Appeal set aside judgment of First Appellate Court holding that Suit is barred by *res judicata* and Doctrine of Ouster – *Held*, Suit filed by Plaintiff “N” in 1962 based on Settlement Deed executed by her husband and sufferance of dismissal of Suit, will not be bar to make claim for her share in Suit property – Cause of action for Suit filed by Plaintiff in year 1962 for entire property for possession and Suit filed for Partition in year 1988 is entirely different – Suit filed by Plaintiff for Partition is not barred by *res judicata*.

Doctrine of *Res judicata* – Nature and Scope – Meaning – "Thing adjudicated" or "an issue that has been definitely settled by judicial decision" – Principle operates as bar to try same issue once over – Principle aims to prevent multiplicity of proceedings and accords finality to issue, which directly and substantially had arisen in former Suit between same parties or their privies.

Doctrine of Ouster – Pleadings – Suit for Partition – Defendant raised plea of ouster and prescription of title by adverse possession – Proof – Ouster is weak defense in Suit for Partition of family property and it is strong if Defendant is able to establish consideration and open assertion of denial of title, long and uninterrupted possession to knowledge of other co-owner – Possession of one co-owner is presumed to be on behalf of all co-owners unless it is established that possession of co-owner is in denial of title of co-owners and possession is in hostility to co-owners by exclusion of them.

2016 (2) CTC 306

Uttam vs. Saubhag Singh

Date of Judgment : 02.03.2016

Hindu Succession Act, 1956 (30 of 1956), Sections 4, 8 & 6 – Coparcenary Property – Joint Family Property – Mitakshara School – Male dies after commencement of Hindu Succession Act – Position of Law prior to Amendment of 2005 – Interest in property will devolve by survivorship upon surviving members of Coparcenary – Exceptions – (a) Interest of Male Hindu in Mitashara Coparcenary property is property that can be disposed of by him by Will or other Testamentary disposition – (b) If Male Hindu had died leaving behind Female relative specified in Class I of Schedule or Male relative specified in that Class who claims through such Female relative surviving him, then interest of deceased in Coparcenary property would devolve by Testamentary or Intestate Succession, and not by survivorship.

Hindu Succession Act, 1956 (30 of 1956), Section 4, 8 & 6 – Coparcenary Property – Joint Family Property – Mitakshara School – Male dies after commencement of Hindu Succession Act – Position of Law prior to Amendment of 2005 – Determination of Share – In order to determine share of Hindu Male Coparcener who is governed by Section 6 Proviso, Partition is effected by operation of law immediately before his death – All Coparceners and Male Hindu's widow get share in Joint Family property – Death of Male Hindu leaving self-acquired property would devolve only by intestacy and not survivorship – Joint Family property has been distributed in accordance with Section 8 on Principles of Intestacy – Joint Family property ceases to be Joint Family property in hands of various person, who have succeeded to it as they hold property as Tenants-in-common and not as Joint Tenants.

Hindu Succession Act, 1956 (30 of 1956), Sections 6 & 8 – Ancestral property – Grandfather dying intestate – Unborn grandson, whether having right in property – Suit for Partition of Ancestral property – Grandfather of Plaintiff dying intestate in 1973 – As per Explanation 1 to Section 6, Partition said to have been effected by law as immediately before his death – Plaintiff, *held*, would have been entitled to a share in 1973, however, Plaintiff was only born in 1977 and thus, no share allotted to Plaintiff in 1973 – Moreover, as per application of Section 8, on death of grandfather in 1973, Joint Family property which was Ancestral property devolved by succession, ceased to be Joint Family property and other Coparceners and his widow held property as Tenants-in-common and not as Joint Tenants – Consequently, on date of birth of Plaintiff, as Ancestral property was not Joint Family property, Suit for Partition filed by Plaintiff, not maintainable – Appeal dismissed.

****

SUPREME COURT CITATIONS
CRIMINAL CASES

(2016) 1 MLJ (Crl) 114 (SC)

Maya Devi vs. State of Haryana

Date of Judgment : 07.12.2015

Dowry Death – Presumption – Indian Penal Code 1860 (Code 1860), Sections 304B and 498A – Evidence Act 1872 (Act 1872), Section 113B – Complaint was lodged by PW3-alleging torture and harassment meted out to deceased on account of demand of dowry – On basis of said complaint, FIR was registered under Sections 498A, 304B, 306/34 of Code, 1860 – After investigation, charges under Sections 498A and 304B read with Section 34 of Code 1860 were framed against accused persons – Mother-in-law of deceased (appellant No.1 herein), husband of deceased (appellant No.2 herein) were arrayed as accused – Trial Court convicted and sentenced them for causing dowry death of deceased – High Court confirmed conviction – Aggrieved by order, appellant is now in appeal before Court – Whether deceased's death would come within ambit of dowry death – *Held*, testimony of DW-2 shows that accused had created such charged environment in her matrimonial – home that she developed suicidal tendencies – It is very much clear that accused persons maltreated, harassed and subjected deceased to cruelty, after solemnization of her marriage with appellant No.2 herein, during her life time and soon before her death, for and in connection with demands for dowry, who died ather matrimonial home within seven years of her marriage otherwise than in normal circumstances – Two-stage process is required to be followed in respect of offence punishable under Section 304-B Code 1860 – If ingredients are made out, then accused is deemed to have caused death of woman but is entitled to rebut statutory presumption of having caused a dowry death – From evidence on record, in present case deceased died unnatural death by committing suicide as she was subjected to cruelty/harassment by her husband and in-laws in connection with demand for dowry which started from time of her marriage and continued till she committed suicide – Thus, provisions of Sections 304B and 498A of Code 1860 will be fully attracted – Deceased suffered death at her matrimonial home, otherwise than under normal circumstances, within seven years of her marriage, and case squarely falls within ambit of dowry death – In present case, from evidence of Doctor (DW-2), PW-3 and PW-4, Court finds that harassment of deceased was with view to coerce her to convince her parents to meet demands for dowry – All factors clearly established legal requirements for offence falling under Sections 304B and 498A Code 1860 with aid of Section 113B of Act, 1872 against appellants and conviction and sentence imposed, therefore, do not call for interference – Appeal dismissed.

(2016) 1 MLJ (Crl) 189 (SC)

Bimla Devi vs. Rajesh Singh

Date of Judgment : 16.12.2015

Murder – Appeal against Acquittal – Indian Penal Code 1860 (Code 1860), Sections 302, 34, 201, 148 and 452 – Accused were charged and convicted under provisions of Code 1860 – On appeal against conviction by Trial Court, High Court acquitted one accused and upheld other convictions – Informant and State have filed appeal against acquittal of one accused respondent - Informant has also filed appeal for enhancement of punishment of other accused – Other convicted accused have filed

appeal against their sentence and conviction – Whether High Court was right in acquitting one accused respondent and convicting rest of accused and whether sentence imposed is adequate – *Held*, in each of witnesses' statements, name of acquitted respondent does not appear until testimony before Court – Four related witnesses in their cross-examination stated that they had named acquitted respondent as one of accused in FIR and police statement – However, no explanation can be gathered as to how one name could be missed when all other accused were named categorically – Moreover, if testimony of other three unrelated witnesses is perused, none of witnesses named acquitted respondent directly and they did not even identify acquitted accused respondent in Court at time of trial while they specifically recognized other accused present in Court – Thus, there is no infirmity in High Court's order that respondent/accused is entitled to benefit of doubt as prosecution has not been able to bring home charge against him – Accepted fact that there was delay of one day in sending FIR – However, no motive in manipulating with FIR was proved – Prosecution case is strongly backed by testimonies of six eyewitnesses who have testified incident in almost similar terms – Procedural lapse in not sending FIR promptly did not prejudice present case – Mere overwriting in name of informant would not affect proceedings – Fact of homicidal death was not in dispute and manner in which death was occurred is also not disputed – Then merely name being over-written will not help defence when contents of inquest report was supported by eyewitnesses and also medical evidences – Conduct of each of witnesses preceding incident, was also natural and their occurred no time gap in reporting crime to police so as to exclude any possibility of tutoring or manipulation – Settled law that death penalty can only be awarded in rarest of rare cases – No doubt each case of murder is gruesome and barbaric, however, right of life of even accused has to be respected – In present case, admitted fact that their existed previous enmity between families of deceased and accused – Accused were also proved to be from same village who are neither having any criminal antecedents nor they are history-sheeters – Case is example of family feud gone horribly wrong – Accused are not posing any danger to society at large – Present case is not within category of rarest of rare cases – Sentence awarded by Courts below is adequate for accused – All Appeals dismissed.

2016 (1) CTC 572

Usmangani Adambhai Vahora vs. State of Gujarat and others

Date of Judgment : 08.01.2016

Code of Criminal Procedure, 1973 (2 of 1974), Section 408 – Transfer of Sessions Case – Jurisdiction of Principle Sessions Judge to order transfer of Sessions case from one Additional Sessions Judge to another Additional Sessions Judge -Maintainability of Transfer Petition before Principle Sessions Court – Principle Sessions Judge is competent to order transfer of case in his Sessions Division.

Code of Criminal Procedure, 1973 (2 of 1974), Section 408 – Transfer of Sessions Case – Accused sought for transfer of case for apprehension – When transfer can be ordered – Reasonable apprehension – Nature and Scope – Order of Transfer is not to be passed as matter of routine or merely because interested party expressed some apprehension about proper conduct of trial – Accused sought for transfer on basis that he heard conversation between informant and another Accused that Accused persons shall be convicted – Apprehension stated by Accused cannot remotely be stated to be reasonable – Transfer of Case ordered by High Court liable to be set aside.

(2016) 1 MLJ (Crl) 373 (SC)

State of Assam vs. Ramen Dowarah

Date of Judgment : 11.01.2016

Murder- Appeal against acquittal – Indian Penal Code 1860, Sections 300, 454, 376, 302 and 304 – Accused was tried and convicted for rape and murder of deceased victim by Trial Court – On appeal, High Court partly allowed appeal of accused by turning conviction under Section 302 into Section 304 Part II and setting aside conviction under Section 376 of Code 1860 – Appeal by State against High Court order – Whether Accused guilty of rape and murder of deceased victim - *Held*, nothing to doubt veracity of statement recorded in medical report based on statement made by victim and has been proved by PW-9 – Not case of consensual sexual intercourse, as victim had made hue and cry on commission of rape on her – On being threatened that she would narrate incident to her mother, accused had set her ablaze after pouring kerosene over her body – Circumstances, oral evidence and dying declarations of deceased unerringly pointed out that it was not case of consensual sexual intercourse – Dying declarations have to be read together immediate conduct of victim takes it out to be case of consensual sexual intercourse – Court has no hesitation in setting aside finding of High Court to effect that it was case of consensual sexual intercourse – No circumstance been brought on record to indicate that it was case of any exception, to take it out from realm of section 300 Code 1860 – High Court erred in holding that accused did not intend to cause death – Facts and circumstances proved indicate that accused wanted to get rid of victim by causing her death – Doctor also opined that injuries were dangerous to life and victim was taken in precarious condition – Overall circumstances established to hilt that accused intended to cause death by setting her ablaze after committing forcible sexual intercourse – Conduct does not exculpate but indicates intendment of accused to cause death and makes him liable for punishment under section 302 Code 1860 – Act done with intention of causing death – Judgment and order partly allowing appeal by High Court set aside – Judgment and order of conviction and sentence passed by Trial court restored – Appeal allowed.

(2016) 1 MLJ (Crl) 486 (SC)

Union of India vs. Mohanlal and Another

Date of Judgment : 28.01.2016

Narcotics – Narcotics seizure – Guidelines for disposal – Narcotic Drugs and Psychotropic Substances Act 1985, Sections 52, 52A, 52A(ii) and 53 – In proceedings before Court following three issues rise for consideration; Seizure and sampling of Narcotic drugs and Psychotropic substances, their storage and destruction – After considering reports submitted from State authorities no uniformity or standard procedure found – Following directions issued to ensure uniformity or standard procedure – No sooner seizure of any Narcotic Drugs and Psychotropic and controlled Substances and conveyances is effected, same to be forwarded to officer in-charge of nearest police station or to officer empowered under Section 53 of Act 1985 – Officer concerned to approach Magistrate with application under Section 52A(ii) of Act 1985, which shall be allowed by Magistrate as soon as may be required under Sub-Section 3 of Section 52A – Sampling to be done under supervision of Magistrate – Central Government and agencies and State Governments to take appropriate steps to set up storage facilities for exclusive storage of seized Narcotic Drugs and Psychotropic and controlled Substances and Conveyances – Storage facilities to be equipped with vaults and double locking system to prevent theft, pilferage or replacement of seized drugs – Central and State Governments to designate officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order to ensure proper security against theft, pilferage or replacement of seized drugs – Central and State Governments free to set up storage facility for each district in States and depending upon extent

of seizure and store required, one storage facility for more than one districts – Disposal of seized drugs currently lying in police maalkhans and other places used for storage shall be carried out by concerned in terms of directions issued – Chief Justices of High Courts concerned to appoint Committee of Judges on administrative side to supervise and monitor progress made by respective States in regard to compliance with directions – Wherever necessary, to issue appropriate directions for speedy action on administrative and judicial side in public interest.

****

HIGH COURT CITATIONS
CIVIL CASES

2016-1-L.W.91

Dhakshana Kammavar Mahajana Sangam and another vs. V.P.S. Subbiah

Date of Judgment : 20.08.2015

Constitution of India, Article 227, Injunction, judgment

C.P.C., Order 39, Injunction, judgment

Interim injunction, grant of, order, nature of.

Learned District Munsif, Kovilpatti extracted petition prayer – order appears like the face of an Egyptian phoenix – It is an instance of exercising judicial discretion by non-application of mind – Simply vomiting petition prayer and not saying anything is not proper.

2015-5-L.W.54

Kadirvel vs. Chellammal and others

Date of Judgment : 31.08.2015

Injunction/Title dispute.

Suit for injunction – Title dispute – unregistered sale deeds, reliance of, scope – Preponderance of probabilities – Properties purchased form a single block – Both parties not in a position to produce title deeds – To consider rival claims based on oral evidence.

2016-1-L.W.570

Manickam vs. Vadivambal and others

Date of Judgment : 25.09.2015

C.P.C., Order 6, Rule 17, amendment, proviso, applicability, scope, res judicata, incorporation of

C.P.C., (amendment act) (2002), Order 6, Rule 17, amendment, res judicata, incorporation, scope

Amendment of plaint to incorporate plea of res judicata – suit filed prior to amendment, can be allowed

2016 (1) CTC 627

National Textile Corporation Limited vs. Ettappan and Sons

Date of Judgment : 29.10.2015

Tamil Nadu Buildings (Lease and Rent Control) Act, 1980 (T.N.Act 18 of 1860), Section 10(3)(a)(iii) – Non-residential Building – Owner's Occupation – Pre-requisites – Landlord carrying Jewellery business in leased building – Tenant is carrying a Textile business in premises – Shops of Landlord and Tenant situated in same building – Shop let out to Tenant in conspicuous position and it has several business advantages – *Bona fide* requirement – Landlord demolished his Shop pending eviction and he is carrying on business – Rent Controller dismissed Eviction Petition – suitability of place of business is choice of Landlords depending upon several aspects – Tenant cannot direct Landlord to choose particular place to run their business – Eviction can be ordered even though Landlord owns other non-residential premises – Landlord has not occupied other shops to carry on his business – Eviction Order passed by Appellate Authority affirmed.

2016-1-L.W.499

M. Varadharajan vs. V. Balasubramanian

Date of Judgment : 26.11.2015

Negotiable Instruments act (1881), Section 118, promissory note, proof, presumption, rebuttable, when

Evidence act, Sections 67, 73, 45/Expert evidence, whether conclusive

Promissory Note – proof – Presumption – scope of – Burden of proof on plaintiff – unless execution of document is proved, there is no question of raising any presumption – Rebutting presumption can be raised only when presumption raised by court

Expert opinion, evidence – Reliance of – Handwriting expert examination of, Scope – Expert not examined, opinion need not be relied by court, not conclusive proof – Comparison of disputed document by court, power, scope of

2016 (2) CTC 661

T.G. Navaneetha Krishnan vs. T.G.R. Vasanthakumar

Date of Judgment : 07.12.2015

Code of Civil Procedure, 1908 (5 of 1908), Section 151 & Order 9, Rule 9 – Suit for Specific Performance – Ex parte Decree – Execution filed – Defendant filed Application to set aside ex parte Decree and to order for recession of Contract – Defendant's Counsel withdrew Application for Application to set aside *ex parte* Decree as not pressed – Plaintiff filed Application for extension of time to deposit balance Sale consideration – Extension Application allowed and Recession Application filed by Defendant dismissed – Defendant filed Application under Order 9, Rule 9 to restore Application to set aside ex parte Decree - Court returned Application without numbering on ground of maintainability – Mere wrong quoting of provision on Application will not render Application liable for rejection – Court can exercise its inherent powers to do substantial justice – Parties cannot be

penalized for wrong committed by their Counsel – Direction issued to Court below to number Application and decide on merits.

2016 (1) TLNJ 236 (Civil)

N. Vanjimuthu vs. The Competent Authority and Commissioner of Land Administration, DRO, Dindigul District and others

Date of Judgment : 15.12.2015

Limitation Act, 1963, Section 5 – See Section 4(3) and 4(4) of TN Protection of Interest of Depositors (In Financial Establishment) Act, 1997

Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Section 4(3) and 4(4) – Appeal challenging the order of TNPID Court making order of interim attachment passed by the Government under Section 3 of the Act absolute – Government has to file petition before TNPID court within 30 days from the date of passing interim attachment to make the attachment absolute – Financial Establishment contended that order of TNPID court in condoning the delay in filing by the Government is erroneous in the absence of specific provision in TNPID Act to condone the delay – Held, provisions of the Limitation Act are applicable in the absence of any specific provision excluding its applicability - Since there is no specific provision in TNPID Act, Section 5 of Limitation Act is applicable to proceedings under TNPID Act – Appeal Dismissed.

Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Section 4(3) and 4(4) – Purchaser from financial establishment contending that it is a bonafide purchaser from valuable consideration since the order of interim Attachment passed by the Government was not reflected in the Encumbrance Certificate – Held, from the counter filed by the purchaser it was found by the High Court that purchaser was aware about the interim order of attachment even prior to its purchase – Therefore the purchaser is not a bonafide purchaser.

2016 (2) CTC 353

G.B. Chakravarthi vs. C. Kishanlal

Date of Judgment : 25.01.2016

Specific Relief Act, 1963 (47 of 1963) – Contract Act, 1872 (9 of 1872) – Contract of Sale – Concluded Contract – Nature – Suit for Specific Performance – Vendor executed Sale Agreement in favour of Vendee – Repudiation of Contract – Vendor pleaded that there was Oral Agreement conferring right on vendor to revoke Contract unilaterally at any point of time, if he was not willing to sell land – Vendor did not deny execution of Contract of Sale – Vendor had not adduced any tangible and reliable evidence to prove Collateral Agreement alleged by him – Vendor admitted receipt of advance and others terms of Contract of Sale – Sale Agreement is concluded and that there was no Collateral Oral Agreement conferring right to cancel Agreement unilaterally.

Evidence Act, 1872 (1 of 1872), Sections 101 to 103 – Person pleading that besides Written Agreement there was contemporaneous Oral Agreement – Should prove same by adducing appropriate evidence.

Limitation Act, 1963 (36 of 1963), Section 14, Article 54 – Suit for Specific Performance – Limitation – Computation – Sale Agreement executed on 17.11.1988 – Vendor refused to perform his obligations under Contract on 27.05.1989 – Vendee filed intended Civil Suit before Original Side of Madras High Court in year 1989 along with Application seeking leave to sue – Application seeking

leave to sue was dismissed on 27.09.1989 – Original Side Appeal filed by vendee was allowed on 19.06.1991 remanding matter for fresh consideration – Application for leave to sue dismissed for non-prosecution on 08.08.1995 – Plaintiff filed Suit for Specific Performance on 14.03.2002 – Period spent on earlier litigation in prosecuting unnumbered Civil Suit and Application seeking leave of Court can be excluded from period of limitation – Plaintiff had knowledge of refusal before 08.04.1989 – Application seeking leave to sue filed in intended Civil Suit was dismissed on 08.08.1995 – Limitation stated running from 08.04.1989 and time spent on prosecuting previous proceedings is excluded, then Suit should have been filed on or before 19.06.1991 – Even if date of dismissal of leave to sue Application i.e., 08.08.1995 is taken as starting point of limitation, Suit should have been filed on or before 08.08.1998 – Suit is hopelessly barred by limitation.

Specific Relief Act, 1963 (47 of 1963), Section 16(1)(c) – Specific Performance – Readiness and Willingness – Plaintiff shall aver and prove either that he has already performed his part of obligations under Agreement or that he has been and continues to be ready and willing to perform his part of obligations – Mere averment in Plaint without proof, shall not be enough to prove Plaintiff's entitlement to get relief of Specific Performance – Willingness and readiness throughout means readiness and willingness to perform his part of obligations under Agreement from date of Agreement till date of Suit and even during pendency of Suit – Plaintiff failed to perform his obligations under Contract of Sale and evidence adduced by Defendant would disclose that there is no readiness and willingness on part of Plaintiff thorough out litigation.

Limitation Act, 1963 (36 of 1963), Section 18 – Acknowledgment of Liability – Whether Section 18 of Limitation Act would apply to acknowledgment of debt alone and not to other liabilities – Acknowledgment of liability shall extend beyond acknowledgment of debt and it covers acknowledgment of liability in respect of property or right under another Agreement.

Limitation Act, 1963 (36 of 1963), Section 18 – Acknowledgment of Liability – How acknowledgment of liability to be made – Whether acknowledgment of liability should made before expiry of limitation – To start fresh period limitation, acknowledgment should have been made before expiration of prescribed limitation period for filing Suit in respect of any property or any right – Acknowledgment of liability in respect of property or right should be made in writing and signed by party against whom such property or right is claimed or by any person through whom he derives his title.

Limitation Act, 1963 (36 of 1963), Section 18 – Acknowledgment of Liability – Sale Agreement executed on 17.11.1988 – Vendee filed intended Civil Suit before Original Side of Madras High Court in year 1989 with Application of leave to sue – Leave to sue Application was dismissed and OSA Appeal was allowed in year 1991 – Application for leave to sue dismissed on 08.08.1995 – Contention of Plaintiff that Defendant had endorsement in Sale Agreement on 20.03.1999 acknowledging his liability under Contract – Plaintiff filed Suit on 14.03.2002 by computing limitation from date of endorsement made by Defendant on 20.03.1999 - Defendant contended that alleged endorsement is forged one – Defendant took steps to send admitted and disputed signatures for comparison of Handwriting Expert – Expert opined that signature found in alleged endorsement does not tally with admitted signature – Plaintiff had not adduced any Independent Witness to prove alleged endorsement made in Sale Agreement – Plaintiff had failed to discharge his burden of proof in proving alleged endorsement made by Defendant acknowledging of liability.

2016 (1) TN MAC 410 (DB)

The Managing Director, TNSTC (Kumbakonam) Ltd vs. Amudha

Date of Judgment : 01.02.2016

MOTOR VEHICLES ACT, 1988 (59 OF 1988), Sections 168 & 173 – Compensation – Quantum – Determination – Challenge to – Deceased aged 32 yrs. employed as Technical Assistant in Mechanical Engineering Department of University, drawing Salary of Rs.26,637 p.m. – Tribunal fixing Monthly Income at Rs.26,637 p.m. without deducting Income-tax, arrived at Loss of Dependency at Rs.44,32,385 and awarded Total Compensation at Rs.45,57,384 – If, proper – No Cross-Appeal or Cross-Objection filed by Claimants – Claimants contending that deceased though less than 40 yrs., 30% added towards Future Prospects as against 50% as per ratio in Santosh Devi & Rajesh – Further number of dependants being 4, Tribunal ought to have deducted 1/4th towards Personal Expenses as against 1/3rd as per ratio in Sarla Verma – Held, though monthly Income ought to have been fixed after deducting Income-tax, in view of serious infirmities in addition of Future Prospects at 30% instead of 50% and deduction of Personal Expenses at 1/3rd instead of 1/4th, no interference called for, particularly when no Appeal filed by Claimants.

2016 (2) CTC 434

Rajammal vs. Sumathi

Date of Judgment : 29.02.2016

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 14(2), (3), (4) & Order 8, Rule 1-A – Evidence Act, 1872 (1 of 1872), Section 65 – Xerox copy of Document in possession of Defendant – Whether can be introduced by Plaintiff – Plaintiff after completion of his evidence seeking to introduce Xerox copy of Document in possession of Defendant – *Held*, by mandate of Order 7, Rule 14(3), Plaintiff to present a List of Documents on which he sues and to state in whose possession they are – Plaintiff without including document in List of Documents and without obtaining leave of Court, cannot introduce a document especially when same is denied by Defendant – Production of Xerox copy of Document could involve manipulations in document – *Held*, when original of document is produced by Defendant and Plaintiff contends that there are alterations in original, Plaintiff ought to have called author of document to verify genuineness of same – Alteration in document, *held*, cannot be proved by production of Xerox copy of same – Attempt of Plaintiff, *held*, rightly negatived by Trial Court – Revision dismissed.

****

HIGH COURT CITATIONS
CRIMINAL CASES

<u>(2016) 1 MLJ (Crl) 129</u>

R. Velladurai vs. State through Inspector of Police, V.K.Pudur

Date of Judgment : 28.10.2015

Murder – Suppression of Fact – Indian Penal Code 1860 (Code 1860), Sections 302, 304 and 307 – D1 and D2 died as result of homicidal violence – Accused A1 to A4 along with other accused A5 and A6 were tried for offence under Code 1860 – Trial Court acquitted others while convicting A1 to A4 – Trial Court convicted and sentenced A1 and A2 under Section 302, A3 under Section 307 and A4 under Section 304 of Code 1860 – Against sentence and conviction A1 to A4 are in appeal before Court – Whether A1 to A4 are in appeal before Court – Whether A1 to A4 are guilty of offences under Code 1860 and whether prosecution has proved case beyond reasonable doubt – *Held*, prosecution has suppressed important part of occurrence and thus, it has not come forward with true version of occurrence – Prosecution has not at all examined Doctor who treated A2 and he failed to produce other materials collected during course of investigation before trial court – It is also well-settled that materials collected in counter case are also to be placed so as to enable court to appreciate all evidences collected and to come to right conclusion so as to do justice – But here, trial court has been deprived of materials collected in counter case to appreciate same – Prosecution has projected by means of evidence only one part of case and has thus suppressed case of accused – Though it is very sensational case involving death of two persons, Court finds it difficult to sustain conviction as it is crystal clear that prosecution has not come forward with clean hands – All eye-witness have spoken about role played by A5 and A6 – But, trial court has rejected evidence of these eye-witnesses so far as they relate to A5 and a6 – This would only go to show that these eye-witnesses are not fully believable – When eye-witnesses are not fully believable, court needs to expect corroboration from any independent source – Since same has not been done and there is no corroboration and prosecution has not come forward with true version of occurrence, Court holds that prosecution has failed to prove case beyond reasonable doubts – Accused are entitled for acquittal – Appeals allowed.

<u>(2016) 1 MLJ (Crl) 1</u>

V.Vinod Kumar vs. V.Arunadevi

Date of Judgment : 30.11.2015

Domestic Violence – Custody – Protection of Women from Domestic Violence Act, 2005 (Act 2005), Sections 15 and 21 – Parties were engaged in proceedings arising out of marital discord – Wife/mother had prayed for interim custody of minor child which was granted – Husband/father had prayed for medical evaluation of soundness of wife/mother which was granted – Aggrieved by both orders, husband/father has preferred criminal revision petitions – Whether custody of minor child should be granted to wife/mother – Whether wife/mother is of sound mental capacity and ought to be evaluated by medical and welfare experts – *Held*, contention that Magistrate is not medical expert and therefore, he cannot evaluate soundness of mind, cannot be accepted – Magistrate has posed several questions in presence of parties and their counsel – Answers given by wife/mother are quite clear and cogent – Judicial Magistrate has discretion to seek for any services, if he thinks fit – When witness answers questions in clear cogent manner, it cannot be contended that she is mentally ill and that she has to be evaluated by medical expert – On facts and circumstances of case, such contention cannot be

accepted – Merely because, Judicial Magistrate has discretion to secure services of any persons, including for promoting family welfare, medical expert cannot be claimed as matter of right – Under Section 21 of Act, 2005, Judicial Magistrate is empowered to decide question of interim custody – Court dealing with interim custody has to consider paramount welfare of minor child and in light of statutory provisions, there is nothing wrong in considering statutory provisions applicable to custody of child – If contentions of husband/father are accepted, then provision under Section 21 of Act 2005, would be nugatory – If Judicial Magistrate has to relegate parties to District Court or Family Court then very purpose of incorporating such provision would be defeated – Merely because father is natural guardian, he is not entitled to have priority over mother of child in matter of custody – Paramount welfare of child alone is consideration and Court has to consider all factors, such as, economic status, character of person, claiming custody and guardianship, love and affection shown by parties in betterment of child, age of child, etc. – Considering paramount welfare of child below age of five years, custody should be with wife/mother – Petitions dismissed.

(2016) 1 MLJ (Crl) 452

Paramasivam vs. State by Inspector of Police

Date of Judgment : 10.12.2015

Dowry Death – Conviction – Indian Penal Code 1860, Section 498-A – Dowry Prohibition Act, Section 4 – Case of Prosecution is that all three Accused tortured and caused death of both deceased who were wife of Accused No.1 and Accused No.2 for dowry – Trial Court on examination of evidence and witnesses convicted and sentenced Accused No.1 and 2 under Section 498-A of Code 1860 and Section 4 of Act – Appeal against conviction of trial court – Whether Appellants guilty of offences under Section 498-A of Code 1860 and Section 4 of Act – Held, even though P.Ws 1 to 4 have given evidence in their chief examination that all Accused have demanded dowry but, during cross examination, their admission is that for first time they deposed such kind of evidence before court – Since P.Ws 1 to 4 have given such kind of evidence only before Court, their evidence cannot be sole basis for coming to conclusion that Accused 1 and 2 have committed offences punishable under Section 4 of Act and 498-A of Code 1860 – Specific case of prosecution is that both Accused have voluntarily given extra judicial confession statements before P.W.9 – Specific evidence is that all statements have been recorded only as per direction given by Sub-Inspector of police – Since P.W.9 has given such kind of specific evidence, Court cannot give much credence to extra judicial confessions – No evidence on side of prosecution for purpose of invoking Section 4 of Act and also Section 498-A of Code 1860 – Trial Court, without considering lack of evidence and also without scrutinizing available evidence on side of prosecution properly, has erroneously found Accused No.1 and 2 guilty – Appeal allowed.

(2016) 1 MLJ (Crl) 483

S. Karuppaiah vs. State rep by its Inspector of Police

Date of Judgment : 15.12.2015

Rape – Conviction – Indian Penal Code 1860, Section 376 – Case of prosecution is that Accused dragged and committed offence of rape on Prosecutrix – Trial Court convicted and sentenced Accused under Section 376 of Code 1860 – Appeal against conviction and sentence – Whether prosecution has established guilt of Accused punishable under Section 376 of Code 1860 – Held, Rough Sketch states that entire occurrence has taken place on rough surface and that too, in midst of garden-land – Specific evidence given by P.W.6, Doctor is that she has not found any injury on person

of Prosecutrix – Further, P.W.6 has clearly opined that Prosecutrix has been subjected to regular sexual intercourse – Jacket of prosecutrix has been marked as M.O.2 and M.O.2 is in torn condition – Even assuming without conceding that M.O.2 belongs to Prosecutrix, on basis of its condition, Court can infer that prosecutrix would have sustained some injuries on her body – Considering fact that no injuries are found on person of Prosecutrix and Prosecutrix has been subjected to regular sexual intercourse, Court is of view that prosecution has not established guilt of Appellant/Accused punishable under Section 376 Code 1860 – Appeal allowed.

(2016) 1 MLJ (Crl) 340

Hemendhra Reddy vs. State

Date of Judgment : 15.12.2015

Re-investigation – Power of Magistrate – Code of Criminal Procedure, 1973, Section 173 – Prevention of Corruption Act, 1988, Sections 13(1)(e) and 113(2) – Indian Penal Code 1860, Section 109 – Case was registered against Petitioners under Code 1860 and Act 1988 – Closure report was filed by investigating agency and accepted by Magistrate – Respondent/Police, after getting subsequent information and obtaining necessary permission from Principal Special Court for CBI Cases has again investigated matter and filed final report against Accused – Criminal original petitions have been filed to quash final report – Whether concerned Magistrate is having power of granting fresh investigation, especially after getting closure report and consequently accepting same – *Held*, investigating agency has no power either to conduct 'fresh' or '*de novo*' or 're-investigation', after filing closure report – For granting permission to conduct further investigation, something must be pending before concerned Magistrate – No matter was pending at time of granting permission to conduct re-investigation or further investigation – Clear the Principal Special Judge for CBI cases has no power to grant such kind of permission – Order passed by Principal Special Judge for CBI cases, is not only illegal, but also non-est in law – Since permission granted to Respondent for conducting re-investigation or further investigation is totally illegal, subsequent proceedings are also entirely bad in law – Final report filed thereon is also both factually and legally not sustainable – Petition allowed.

(2016) 1 MLJ (Crl) 316

Murugasamy Gounder vs. State by Inspector of Police

Date of Judgment : 18.12.2015

Prevention of Atrocities – Schedule Caste – Intentional Insult – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 1989), Section 3(1)(x) – Indian Penal Code 1860 – Sections 294-B, 323 and 354 – *Defacto* complainant and her daughter belong to Scheduled Caste, whereas, Accused belongs to some other caste – While *defacto* complainant and her daughter grazed their cattle, accused has called them by using their caste intentionally and also hurled invectives against *defacto* complainant by using filthy words and also attacked her with intention to outrage her modesty – Accused denied all charges and was put to trial – Trial Court convicted accused under Act 1989 and Code 1860 – Appeal – Whether accused has acted intentionally so as to attract provisions of Act 1989 and whether such act was in public view - *Held*, for invoking Clause (x) of Sub Section (1) of Section 3 of Act, 1989, two ingredients are very much essential – First, "intentional insult" or "intimidation" with "intend" to humiliate SC/ST member by a non SC/ST member – Second, Occurrence has to take place within "public view" – Plethora of evidence available with regard to occurrence, details of words uttered by accused against P.Ws.1 and 2 and also physical attack made by him on person of *defacto* complainant – Evidence adduced by defacto complainant and other

connected witnesses not been challenged by Appellant – Said place having "public view" – Evidence available to effect that accused has acted intentionally with view to create "intimidation" in minds of P.Ws 1 and 2 – Appellant/accused also caused simple injury on her person – Court can unflinchingly come to conclusion that ingredients of Clause (x) of Sub Section (1) of Section 3 of Act, 1989 are very much present – Appeal dismissed.

(2016) 1 MLJ (Crl) 424

State by Inspector of Police vs. D. Sathyamurthy

Date of Judgment : 18.12.2015

Prevention of Corruption – Illegal Gratification – Demand and Acceptance – Indian Penal Code 1860, Section 120-B – Prevention of Corruption Act, 1947, Sections 4, 5(1)(a), 5(1)(d) and 5(d) – Accused/Respondent was alleged to have demanded illegal gratification – On statement of complainant, Accused was alleged to have committed offences punishable under Section 120-B of Code 1860 and Sections 5(1)(a) and 5(1)(d) r/w 5(2) of act 1947 – Trial Court acquitted Accused of all charges – Against order of acquittal, State is in appeal – Whether Accused is guilty of offences punishable under Section 120-B of Code 1860 and Sections 5(1)(a) and 5(1)(d) r/w 5(2) of Act 1947 – Held, as per Section 4 of Act 1947, presumption can be drawn with regard to demand and acceptance – Simply on basis of allegation of demand and acceptance of illegal gratification, presumption available under said section cannot be invoked – Some piece of evidence should be available on part of prosecution with regard to demand as well as acceptance – In instant case, even for initial stage of alleged demand of illegal gratification, no evidence is available as against Accused – On side of prosecution, no evidence is available with regard to demand of illegal gratification and also acceptance of amount alleged to have been sent by P.Ws. 17 and 19 – Since essential ingredients of demand and acceptance not been proved on side of prosecution, Court cannot come to conclusion that Accused has committed offences mentioned in charge – Trial court, after considering available evidence on record, has rightly found Accused not guilty under sections mentioned in charge – No error or infirmities in order of acquittal passed by Trial court – Appeal dismissed.

(2016) 1 MLJ (Crl) 510

Sudarsan vs. Mohanlal

Date of Judgment : 22.12.2015

Narcotics – Possession – Narcotic Drugs and Psychotropic Substances Act 1985, Sections 8(c) and 20(b)(ii)(B) – Appellant/Second Accused alleged to be in possession of contraband/narcotics – Trial court found second accused guilty under Section 8(c) r/w 20(b)(ii)(B) of Act 1985 – Appeal against conviction preferred by Second accused – Whether prosecution has proved Appellant was in possession of contraband/narcotics – Held, it is true that P.W.3 has given evidence to effect that contraband is nothing but Ganja but there is no concrete evidence with regard to Observation Mahazar as well as Seizure Mahazar – No independent witness has been examined on side of prosecution – Settled principle of law that evidence of police officials can also be relied upon, provided their evidence is trustworthy – Contradictory evidence is available with regard to Mahazar as well as Seizure Mahazar – Considering nature of contradictions available on side of prosecution, court cannot come to conclusion that alleged contraband has been seized from Appellant/second accused in place of occurrence – Since said aspect has not at all been clearly established on side of prosecution, concluded that prosecution has failed to prove case – Trial court, without considering vital infirmities found on side of prosecution, has erroneously invited conviction and sentence against Appellant/second accused – Appeal allowed.

(2016) 1 MLJ (Crl) 402

S. Selvam vs. State by Inspector of Police

Date of Judgment : 12.01.2016

Discharge – Denial of – Code of Criminal Procedure, 1973, Sections 207 and 238 to 243 – Indian Penal Code, 1860, Sections 406, 420, 506(i) and 34 – Case registered against Accused under Sections 406, 420 and 506(i) of Code 1860, on complaint of 2nd Respondent/de facto complainant – After completion of investigation and filing of charge sheet under Sections 406, 420 and 506(i) read with Section 34 of Code 1860, case taken before Judicial Magistrate – Petitioner/accused No.2 filed petition for discharge, same dismissed – Revision – Whether Petitioner could be discharged from alleged offences – Held, charge sheet informs transactions between Accused No.1/Petitioner's son-in-law and 2nd Respondent – Separate charge for offences under Sections 406 and 420 of Code 1860 levelled against Accused No.1 – After having done so, alleged occurrence spoken of therein and there regards Petitioner and accused No.1 informed to have committed offences under Section 506(i) read with Section 34 of Code 1860 – Allegations levelled in charge sheet distinct and dealt with distinctly – While so, petition for discharge moved by Petitioner seeking discharge also for offences of which she is not accused – Upon dismissal, same error carried over in preferring present revision – Magistrate erred in informing that petition for discharge premature – Offences alleged are under Sections 406, 420 and 506(i) read with Section 34 of Code 1860 triable by Magistrate and pursuant to police report, case to be tried in keeping Sections 238 to 243 of Code 1973 – Section 239 of Code 1973 informs when accused shall be discharged and it is only after crossing stage of Section 239 of Code 1973 that question of framing charges under Section 240 of Code 1973 would arise – Petition for discharge rightly preferred – Order of Judicial Magistrate set aside – Petitioner discharged in present case – Revision allowed.

(2016) 1 MLJ (Crl) 257

Suganiya vs. Superintendent of Central Prison Puzhal-1

Date of Judgment : 27.01.2016

Criminal Procedure – Language of Judgment – Validity of – Code of Criminal Procedure, 1973, Sections 353 and 354 – Tamil Nadu Official Languages Act, 1956, Section 4B(1) – Petitioners, relatives of accused, filed *Habeas corpus* petitions to set accused at liberty – Accused faced trial before Additional District and Sessions Judge for various offences, were convicted and sentenced – Trial Court wrote judgments in English language, same challenged – Petitioners alleged that when judgments delivered in English language which is not known to accused, same are *ab initio void* and further detention of prisoners pursuant to such judgment illegal on account of which present *Habeas Corpus* Petitions maintainable – Whether judgments passed by Additional District and Sessions Judge convicting and sentencing Petitioners void on ground that judgments written in English language – *Held*, only photocopy of impugned judgment produced, same cannot be reason to conclude that Trial Court violated provisions of Section 353 of Code 1973 – Second *proviso* to Section 4B(1) of Act 1956 states that High Court may permit Presiding Officers of subordinate Courts and Tribunals to write judgments in English for specified period – Act 1956 does not say that judgments written in contravention of provisions are non-est – Code 1973 enumerates irregularities that vitiate and not vitiate proceedings and Section 354 of Code 1973 nowhere finds place – Just because Judicial Officer translated her thought process into English and written judgment, her judgment cannot be held as void and detention of prisoners to be illegal – Full-fledged trial in Tamil language conducted by competent Judicial Officer and accused informed that they were convicted and questioned on sentence and

thereafter, judgment passed – Narration of events in judicial order that took place in Court is conclusive proof of facts stated – When Judge announced pronouncement of judgment, counsel intervened and they requested Judge to postpone judgment – Circumstances on record show that Accused were aware of such events – *Habeas Corpus* Petitions dismissed.

****