



# TAMIL NADU STATE JUDICIAL ACADEMY

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## 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](http://www.tnsja.tn.nic.in)

**E-Mail:** [tnsja.tn@nic.in](mailto:tnsja.tn@nic.in)/[tnsja.tn@gmail.com](mailto:tnsja.tn@gmail.com)

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1	M/s. Purohit and company vs. Khatoonbee and another.	CDJ 2017 SC 247	09.02.2017	Claim for compensation before MACT must be raised within a reasonable time, It is not as if, it can be open to approach a MACT at any point of time.	01
2	Munsilal vs. Smt. Santosh and Others	CDJ 2017 SC 235	01.02.2017	Occupancy of rented premises by tenant's son-in-law amounts to subletting. The relationship is not like that of a spouse being allowed to carry out a business in the same house.	01
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4	Prabhakara Adiga vs. Gowri and Others	CDJ 2017 SC 175	20.02.2017	Execution petition against legal heirs of JD on a permanent injunction decree – maintainable	02
5	Bhupinder Singh Bawa vs. Asha Devi	(2016) 8 MLJ 194 (SC)	08.11.2016	Tenancy Laws – Eviction Order – Bona fide requirement	02

# SUPREME COURT - CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	State of Karnataka and another vs. Selvi J. Jayalalitha and others	CDJ 2017 SC 143	14.02.2017	The corruption is a vice of insatiable avarice for self-aggrandizement by the unscrupulous, taking unfair advantage of their power and authority and those in public office also, in breach of the institutional norms, mostly backed by minatory loyalists. Both the corrupt and the corrupter are indictable and answerable to the society and the country as a whole.	03
2	Suresh Singhal vs. State (Delhi Administration)	CDJ 2017 SC 105	02.02.2017	Deceased and his brothers strangulating appellant – Appellant had the right to self defence – Appellant exercising right of self defence in good faith in his own defence and without premeditation. When there is a reasonable apprehension of receiving injury U/S 97 IPC – Right of Pvt. defence available.	04
3	Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai Patel and others	CDJ 2017 SC 108	02.02.2017	After taking cognizance of accused letting in of evidence and recording Statement u/s 313. Magistrate would be bereft of any competence to direct. Further investigation either suo motu or on request of the complainant.	05
4	State of Rajasthan vs. Fatehkaran Mehdu	CDJ 2017 SC 1131	03.02.2017	Section 397 – Revision – Stage of framing of charge – Court not concerned with proof of allegation – To contend that at the stage of framing the charge itself the court should form an opinion that the accused is certainly guilty of committing an offence, not permissible. Discharge- Framing of charge is not a stage at which the final test of possibility of being guilt is to be applied.	05
5	Amarsang Nathaji vs. Hardie Harshadbhai Patel	2016 4 Crimes(SC) 190	23.11.2016	Code of Criminal Procedure, 1973 – Section 340(1) r/w sections 199 and 200, Indian Penal Code, 1860 – Initiating an inquiry into any offence punishable u/s 199 and 200 – Mere making a contradictory statement in a judicial proceeding by itself not always sufficient to justify a prosecution u/s 199 and 200 Section 340 Cr.P.C. Proceedings- Making contradictory statements at trial is not offence by itself. It must be shown that false statement was intentionally given for the purpose of using the same at any stage. Code of Criminal Procedure, 1973 – Section 340(1) – Complaint filed u/s 340 has to be dealt with as if on a police report – Procedure for trial of warrant case to be followed – Sections 195(1)(b)(i) and 238 to 243 – Code therefore providing meticulous procedures u/s 340 – High Court not following all requirements u/s 340 – Parties deciding to settle the matter amicably – Invoking section 340 not sustainable.	05

## HIGH COURT - CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	M/s.Ganapathy Sugar Industries Ltd., vs. M/s.Kwi Konveyors	2017 (1) TLNJ 357 (Civil)	17.11.2016	Petition to set aside the ex-parte decree- affidavit filed by the advocate – held advocate is not a litigant and therefore not competent to file a affidavit.	07
2	The Executive Engineer and Admin. Officer, Erode Housing unit vs. K.P.Natarajan	2016 (3) MWN(Civil) 389	20.10.2016	When compensation is not paid within one year of date of possession, interest at rate of 15% is to be paid from the date of expiry of the said period of one year on amount of compensation or part, which has not been paid or deposited before date of such expiry and no interest would be payable on solatium during preceding period.	07
3	Selvam.P. vs. Dinakaran. K.	2017 (1) TLNJ 236 (Civil)	22.12.2016	Suit for recovery of money – execution of promissory note not proved – presumption u/s.118 of the Negotiable instrument Act is not applicable.	08
4	Ram Balaji. A.V. and another vs. Hotel Silver Stars Pvt. Ltd., Chennai-7.	2017 (1) TLNJ 193 (Civil)	10.01.2017	Suit for specific performance on agreement of sale based on oral agreement – filed within limitation-no consensus-ad-idem established- – relief cannot be granted.	08
5	Sarjan Realities Private Limited and Others vs. Aathilinga perumal	CDJ 2017 MHC 1029	16.02.2017	Confronting of a signature alone to a witness without disclosing the document, the admission as to the signature cannot be taken as an admission of execution of the document. When the defendant admits his signature in the document but claims the document to be a forged one- it is for him to prove the same.	08
6	Singapore Reality Pvt. Limited. Rep. by its Director Yeo Boon Kwang vs. Inspector of Police, Kanchipuram and Others	CDJ 2017 MHC 1030	10.02.2017	As per the Guideline 11 issued by the committee constituted by the Government in G.O.(3D) No.42, Home dated 30.6.2008, when police protection is sought for the implementation of a civil court order, it should be given readily.	09
7	K.N. Palaniappan, Sole Proprietor of M/s. Alenke PL Industries vs. V. Saraswathi @ Sunitha	CDJ 2017 MHC 1031	01.02.2017	Eviction on the ground of own use and occupation of the land lady for Textile business – during the course of the cross-examination, the tenant himself had extracted statement from the landlady that she was carrying on cloth business in her house – Hence, the contention of the tenant that without pleading, no evidence can be looked into is rejected, as the said evidence has been elicited only during the cross-examination.	09
8	K.M.Balasubramanian vs. C. Loganathan and Another	CDJ 2017 MHC 1033	10.02.2017	Application u/s 47 CPC - once JD Sells Property he cannot file Sec 47 application - material irregularity and fraud only vitiate sale	09
9	A. Kuberan vs. The Commissioner, Villupuram Municipality, Villupuram	CDJ 2017 MHC 495	10.02.2017	Property Tax arrears – cannot be recovered when it has become time barred by operation of law.	10
10	Shamshed Begum vs. Sadiq Basha and others	CDJ 2017 MHC 018	22.12.2016	Mohammedan law - when mother is the only person who could look after the interest of minor, then gift can be accepted by the child's mother, for the minor child under Mohammedan law.	10

# HIGH COURT - CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Sampath Kumar and other vs. State by Periyanaicken palayam P.S.	CDJ 2017 MHC 154	19.01.2017	Electronic evidence which is not in conformity with Sec 65(B) of Indian Evidence Act - cannot be accepted – F.I.R. should be strictly the replica of complaint and there should not be any variance - Unexplained interpolations and corrections in F.I.R. would lead to inference that it has been done as an afterthought - Inordinate delay and unexplained delay in F.I.R. reaching the Magistrate is fatal – Charge framed under Section 148 I.P.C. against A.1 and A.2. Hence, A.1 and A.2 can be convicted under Section 149 of I.P.C, even when no charge has been framed under Section 149 of I.P.C. – Importance of Section 226 of Cr.P.C. – Emphasized – Recording of evidence- Judge should not be a silent spectator.	11
2	Raj vs. Leoni	2017 (1) TLNJ 187 (CrI)	24.01.2017	The respondent after adducing evidence in support of his case later cannot plead that he had no knowledge about the ex-parte order. His conduct of remaining silent without enquiring about the status of the case is not acceptable	11
3	Adbur Rahman vs. Secretary to Govt. Home Dept. Govt. of T.N. and 4 others.	2017 (1) TLNJ 113 (CrI)	19.01.2017	Petition to stop functioning of a Masjid Shariat Council – The Court refused to agree with the submission of fourth respondent as if it is an innocuous exercise of mere conciliation which is taking place and prevented the functioning of the Masjid Shariat Council.	11
4	Arunbabu.K vs. Senthilkumar & 3 Ors.	2017 (1) TLNJ 154 (CrI)	05.01.2017	While civil suit pending before Civil Court, petitioner could only approach the same and he cannot try to convert the same into a criminal case – Also held that petitioner only a third party, who has entered into an agreement, in regard to the property	12
5	Madhu @ Madhaiyan vs. State by Inspector of Police, Chithodu, Erode District	2017 (1) TLNJ 160 (CrI)	04.01.2017	The statement under 164 Cr.P.C cannot be a substantive evidence, as the same, being a former statement, could be used either for corroboration or to contradict the maker of the respective statement – conviction solely based on the same is not proper.	12
6	Purushothaman S/o.Arumugam vs. State by Inspector of Police, All women Station, Guindy, Chennai.	2017 (1) TLNJ 138 (CrI)	04.01.2017	Petition seeking medical examination of victim girl to determine her age dismissed by trial Court – Challenge – held – Ossification test cannot be taken to be determinative on the age of the person examined – It boils down to being a mere statement of the opinion of the doctor who conducts the examination – when once the purpose for which the petition stands filed will not be definitely served by passing favourable order therein – no reason to interfere with the order under challenge	12

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7	Thilagavathy.P. vs. Somasundaram.B	2017 (1) TLNJ 12 (Ctrl)	30.11.2016	Complainant when she happens to be a house wife had not established that she had the requisite wherewithal or means to advance such a heavy sum of Rs.5,00,000/- to the accused – Also not shown the said loan amount in her Income Tax returns and therefore, the Hon'ble High Court acquitted the accused.	13
8	Venkatesan and Others vs. State represented by Inspector of Police, Crime Branch, Cuddalore	CDJ 2017 MHC 969	03.02.2017	The Court should begin with the presumption that the approver is unworthy of credit and if the Court decides to act upon the said evidence of the approver, it should look for corroboration, in material particulars. In other words, independent of the accomplice evidence, there should be some evidence against the accused to connect them with the crime. If the presumption is otherwise rebutted by evidence, either direct or circumstantial, then, the said presumption vanishes away and therefore, in such an event, even in the absence of any corroboration from any material particulars, the evidence of accomplice, can by itself be the foundation for conviction.	13
9	M. Kannan vs. State rep by The Inspector of Police, All Women Police Station, Bhavani, Erode District	CDJ 2017 MHC 898	17.02.2017	The court shall carefully strike a balance between the fair trial to the accused as well as the victim. The right of the accused to cross-examine the victim and the right of the victim to privacy should be measured meticulously and without causing any harm to any of these rights, the court should draw the line.	13
10	Chinnathambi @ Subramani vs. State by Inspector of Police, Vellakovil Police Station	CDJ 2017 MHC 1028	23.02.2017	The courts of law cannot allow themselves to be swayed by totally irrelevant substances which are brought to the notice of the court not by way of evidence, but by way of wholly unrelated materials. The courts of law cannot assume the role of a monarch or dictator so as to impose any punishment on anyone at their whims and fancies even in the absence of any legal evidence.	14

**SUPREME COURT CITATIONS  
CIVIL CASES**

**CDJ 2017 SC 247**

**M/s. Purohit and company vs. Khatoonbee and another**

**Date of Judgment: 09.02.2017**

Motor Vehicles Act, 1988, section 166(3) – Limitation Act, 1963 Section 5 Limitation to raise claim under Motor Vehicles -Motor accident – No limitation prescribed for raising claim but claim could be raised within reasonable time – claim could not be filed after 28 years of incident – it is dead claim cannot be considered as a prima facie reasonable period and delay cannot be justified on the ground that claimants are poor person and they have no knowledge about the law.

**CDJ 2017 SC 235**

**Munsilal vs. Smt. Santosh and Others**

**Date of Judgment: 01.02.2017**

Rent control proceedings- eviction on the ground of sub letting- claim that business is run by son-in-law who is also a partner- held:-

The parties had not acted on the partnership which was shown, and that there was a parting of possession of the premises in which the son-in-law was allowed to occupy the premises and carry out business exclusively. There is no evidence on record that the account books were maintained and the profits were shared between the parties as partners. The son-in-law had accepted that he was carrying out a business of sale of merchandise from the shop.

**CDJ 2017 SC 135**

**Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust Virudhunagar**

vs.

**Chandran and others**

**Date of Judgment: 10.02.2017**

Specific Reliefs Act, 1963 – Sections 34 and 42 – Suit for declaration and mandatory injunction – Plaintiff, who was not in possession, had claimed only declaratory relief along with mandatory injunction – Plaintiff being out of possession, relief of recovery of possession was a further relief which ought to have been claimed by plaintiff – Suit filed by plaintiff for a mere declaration without relief of recovery of possession was clearly not maintainable being hit by Section 42 and trial court rightly dismissed suit – High Court in exercise of its jurisdiction under Section 100 C.P.C. could not have reversed decree of courts below without holding that reasoning given by courts below was legally unsustainable – High Court committed error in decreeing suit – Decree of the High Court is also contradictory – High Court has affirmed



findings that Defendant No. 1 is owner of property whereas, by decreeing suit for declaration and mandatory injunction name of Defendant No. 1 is to be removed and replaced by plaintiff which is clearly erroneous and unsustainable – Judgment of High Court set aside and those of trial court and First Appellate Court restored.

**CDJ 2017 SC 175**

**Prabhakara Adiga vs. Gowri and others**

**Date of Judgment: 20.02.2017**

(A) Civil Procedure Code, 1908 – Sections 47 and 50 read with Order 21 Rules 16 and 32 – Execution of decree – Section 50 is not confined to a particular kind of decree – Decree for permanent injunction can be executed against judgment debtor or his legal representatives – It would be open to decree holder to execute decree against successor of interest of judgment-debtor also – Death of person liable to render account for property received by him does not affect liability of his estate – Right which had been adjudicated in suit in present matter and findings which have been recorded as basis for grant of injunction as to disputed property which is heritable and partible would enure not only to benefit of legal heir of decree-holders but also would bind legal representatives of judgment-debtor.

(B) Maxim – actio personalis moritur cum persona – Execution of decree – Maxim is limited to certain class of cases – When right litigated upon is heritable, decree would not normally abate and can be enforced by LRs. of decree-holder and against judgment-debtor or his legal representatives – It would be against public policy to ask decree-holder to litigate once over again against legal representatives of judgment-debtor when cause and injunction survives.

**(2016) 8 MLJ 194 (SC)**

**Bhupinder Singh Bawa vs. Asha Devi**

**Date of Judgment: 08.11.2016**

Tenancy laws – Eviction Order – Bonafide Requirement – Delhi Rent Control Act, 1958 (Act, 1958), Section 14(1)(e) – Eviction order passed by Additional Rent Controller on ground of bona fide requirement of tenanted premises for business requirement of son of landlady/Respondent herein – Appellant-tenant was directed to vacate suit scheduled premises in accordance with law – Revision petition filed by Appellant before High Court against eviction order was dismissed – Appeal against order of High Court – Whether there existed bona fide requirement of Respondent for her son’s business and alternate suitable accommodation available – *Held*, courts recorded concurrent finding of fact that ground floor of property does not belong to husband of Respondent and question of its suitability as alternate accommodation does not arise – Additional Rent Controller and High Court rightly concluded that no alternative premise was lying vacant for running business of Respondent’s son – It was perfectly open to landlord to choose more suitable premises for carrying on business by her son – Respondent cannot be dictated by Appellant as to from which shop her son should start business – Concurrent findings recorded by courts below based on evidence and materials on record – No infirmity found warranting interference with impugned judgment – Appeal dismissed.

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## SUPREME COURT CITATIONS CRIMINAL CASES

**CDJ 2017 SC 143**

**State of Karnataka and another vs. Selvi J. Jayalalitha and others**

**Date of Judgment: 14.02.2017**

Constitution of India - Article 32 - Indian Penal Code - Section 21, Section 109, Section 120B, Sections 161 to 165A, Section 409, Section 420, Section 467, Section 471 - Income tax Act, 1922 - Section 10, Section 10(1), Section 13 - Income Tax Act, 1961 - Section 68, Section 69, Section 69A, Section 269-SS, Section 271(1)(c) - Direct Tax Laws (Amendment) Act of 1987 - Section 269DD, Section 276DD - Prevention of Corruption Act, 1947 - Section 5, Section 5(1), Sections 5(1)(a), Section 5(1)(d), Section 5(1)(e), Section 5(2), Section 5(3) - Transfer of Property Act - Section 107 - Evidence Act 1892 - Section 3, Section 43, Section 45 - Prevention of Corruption Act 1988 - Section 11, Section 13(1)(c), Section 13(1)(e), Section 13(2), Section 17 - Companies Act - Section 209, Section 210, Section 211, Section 213, Section 215, Section 220, Section 234 - Code of Criminal Procedure, 1973 - Section 4(2), Section 173(8), Section 202, Section 313, Section 378, Section 452 - Government of India Act, 1935 - Section 72 - DSPE Act, 1946 - Section 6A - CBC Act - Section 26(c) - Anti Corruption Laws (Amendment) Act, 1964 - Forward Contracts Regulation Act, 1852 - Foreign Exchange Bonds (Immunities and Exemptions) Act, 1991 - Narcotic Drugs and Psychotropic Substances 1985 - The Terrorists and Disruptive Activities, (Prevention) Act, 1987 - Sales Tax Act, 1988 - Criminal Law Amendment Ordinance, 1944 - Code of Civil Procedure, 1908 - Criminal Amendment Ordinance, 1944 - Conviction - Evidence - Arithmetical calculations - Incorrect - Appellants challenged judgment and order rendered by High Court in appeals preferred by respondents, thereby acquitting them of charge under Sections 120B and 109 of IPC read with Sections 13(1)(e) and 13(2) of 1988 Act as framed against them and also resultantly setting-aside order of Trial Court for confiscation of properties, both movable and immovable, of concerned firms, as mentioned therein - Trial Court thus held that Respondents had failed to prove their defence, when tested on evidence adduced even by standard of preponderance of probability and convicted first Accused for offences under Section 13(1)(e) r/w Section 13(2) of PC Act and Further first to fourth Accused were convicted under Section 120-B IPC r/w Section 13(1)(e) r/w Section 13(2) of PC Act as well Second to fourth Accused were additionally convicted under Sections 109 IPC r/w 13(1)(e) r/w 13(2) of PC Act and sentenced them accordingly as here to before mentioned - hence this appeal - Court held - percentage of disproportionate assets as 8.12% as computed by High Court was based on completely wrong reading of evidence on record compounded by incorrect arithmetical calculations - In view of regnant evidence on record, unassailably proving disproportionateness of assets, as contemplated in Section 13(1)(e) of 1988 Act, it is inessential as well to resort to any arithmetic to compute percentage thereof - Both Courts have construed all assets, income and expenditure of all accused collectively - Court see no convincing reason to adopt different course which even otherwise, having regard to charge, was not warranted - Noticeably, respondents accused accepted all findings of High Court - Court have analyzed evidence adduced by parties and Court come to conclusion that first to fourth Accused have entered into conspiracy and in furtherance of same, first Accused who was a public servant at relevant time had come into

possession of assets disproportionate to known sources of her income during check period and had got same dispersed in names of Second to fourth Accused and firms & companies involved to hold these on her behalf with a masked front - Furthermore, charge of abetment laid against Second to fourth Accused in commission of offence by first Accused also stands proved - As sole public servant has died being first Accused in this matter, in Court opinion, though appeals against her have abated, even then Second to fourth Accused are liable to be convicted and sentenced in manner as has been held by Trial Judge - Trial Court correctly held in this matter that private individuals can be prosecuted by Court on ground that they have abetted act of criminal misconduct falling under Section 13(1)(e) of 1988 Act committed by public servant - Trial Court correctly came to conclusion on such reasoning and Court hereby uphold same - Court set aside judgment and order of High Court and affirm and restore judgment of Trial Court in to against Second to fourth Accused - However, though in process of scrutiny of facts and law involved and inextricable nexus of first Accused with Second to fourth Accused, reference to her role as well as evidence pertaining to her had been made, she having expired meanwhile, appeals, so far as those relate to her stand abated -Nevertheless, to reiterate, having regard to fact that charge framed against Second to fourth Accused was proved, conviction and sentence recorded against them by Trial Court was restored in full including consequential directions - Second to fourth Accused/Respondents, in view of this determination and restoration of their conviction and sentence, would surrender before Trial Court forthwith - Trial Court was hereby also ordered to take immediate steps to ensure that second to fourth Respondents serve out remainder of sentence awarded them and take further steps in compliance of this judgment, in accordance with law – appeals are allowed.

**CDJ 2017 SC 105**

**Suresh Singhal vs. State (Delhi Administration)**

**Date of Judgment: 02.02.2017**

(a) Criminal trial – Appreciation of evidence – Appellant alleged to have fired from his licensed revolver – Bullets recovered from the bodies not matching with revolver of appellant – Ballistic report not determinative as to which weapon the appellant used – Benefit of doubt – Must go appellant – Conviction modified from that u/s 302 to one u/s 304.

(b) Indian Penal Code, 1860 – Section 97 – Deceased and his brothers strangulating appellant – Appellant had the right to self defence – Appellant exercising right of self defence in good faith in his own defence and without premeditation – However, he exceeded the right. (Para 23, 25) (2010) 2 SCC 333 – Relied upon

(c) Indian Penal Code, 1860 – Section 304 – Appellant firing at deceased with the intention of causing death or of causing such bodily injury as is likely to cause death – Held, guilty of offence u/s 304 – Sentenced to the period undergone.

**CDJ 2017 SC 108**

**Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai Patel and others**

**Date of Judgment: 02.02.2017**

Code of Criminal Procedure, 1973 – Section 173(8) – Investigating agency invested with power to seek and obtain approval of the court and thereafter conduct further investigation at any stage – Magistrate cannot order further investigation suo motu or on an application by informant after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto – Sections 156, 190, 200, 202 and 204 distinguished.

**CDJ 2017 SC 113**

**State of Rajasthan vs. Fatehkaran Mehdu**

**Date of Judgment: 03.02.2017**

(a) Prevention of Corruption Act, 1988 – Section 13(1) (d) & 13(2) – Shri Mehdu although granted quarry licence only for three bigha gap land in Plot No. 1345/1185/124, but technical map issued by Shri Mehdu was to an area of 80,000 Sq. ft, which was a source for Kishan Singh Rawat to carry on unauthorised mining over the larger area than that of actually allotted to him – Offence under Section 13(1)(d) and 13(2) and Section 120B IPC made out – Interference by High Court not sustainable.

(b) Code of Criminal Procedure, 1973 – Section 397 – Revision – Stage of framing of charge – Court not concerned with proof of allegation – To contend that at the stage of framing the charge itself the court should form an opinion that the accused is certainly guilty of committing an offence, not permissible.

(c) Code of Criminal Procedure, 1973 – Section 397 – Revision – Scope – Provision aiming to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding – Quashing of charge

**2016 4 Crimes (SC) 190**

**Amarsang Nathaji vs. Hardie Harshadbhai Patel**

**Date of Judgment: 23.11.2016**

(a) Code of Criminal Procedure, 1973 – Section 340(1) r/w sections 199 and 200, Indian Penal Code, 1860 – Initiating an inquiry into any offence punishable u/s 199 and 200 – Mere making a contradictory statement in a judicial proceeding by itself not always sufficient to justify a prosecution u/s 199 and 200 – Intentionally giving a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings attracts section 199 and 200 – Even then, the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry – Court having a prima facie satisfaction of the offence which appears to have been committed should suffice – Even after

forming the opinion court has to decide if compliant is required to be filed – Then only the court may file a complaint.

(b) Code of Criminal Procedure, 1973 – Section 340(1) – Complaint filed u/s 340 has to be dealt with as if on a police report – Procedure for trial of warrant case to be followed – Sections 195(1)(b)(i) and 238 to 243 – Code therefore providing meticulous procedures u/s 340 – High Court not following all requirements u/s 340 – Parties deciding to settle the matter amicably – Invoking section 340 not sustainable.

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**HIGH COURT CITATIONS  
CIVIL CASES**

**2017 (1) TLNJ 357 (Civil)**

**M/s.Ganapathy Sugar Industries Ltd., vs. M/s. Kwi Konveyors**

**Date of Judgment: 17.11.2016**

Civil Procedure Code 1908 as amended, Order 9 Rule 13 – Petition to set aside the ex-parte decree – affidavit filed by Advocate stating she was held up in another court and the Defendant was set ex-parte before she could reach the concerned court – Held, Advocate is not a litigant and therefore not competent to file affidavit – Advocate can file only an affidavit supporting the affidavit of the litigant explaining the reasons – However, since the courts have not directed the party to file separate affidavit, as an exceptional case, the affidavit of Advocate was accepted.

Civil Procedure Code 1908 as amended, Order 9 Rule 13 – Suit for recovery of money – application dismissed by Trial Court – CMA filed by the Defendant allowed by the First Appellate Court with condition to deposit the entire suit claim – Revision Petition filed by Defendant – Held, condition to deposit the entire claim amount is onerous and the same was modified to Rs.5,000/- as costs – Civil Revision Petition allowed in part.

**2016 (3) MWN (Civil) 389**

**The Executive Engineer and Admin. Officer, Erode Housing unit**

vs.

**K.P. Natarajan**

**Date of Judgment: 20.10.2016**

LAND ACQUISITION ACT, 1894 (1 OF 1894), Section 34, Compensation – Interest thereupon – Payment of – When Compensation is not paid within one year of date of possession, Interest at a rate of 15% is to be paid from date of expiry of said period of one year on amount of compensation or part, which has not been paid or deposited before date of such expiry and no Interest would be payable on Solatium during preceding period – Intention of legislature to ensure that aggregate amounts reaches person as soon as he is deprived of possession of his land – As delay in payment of Compensation would be detrimental to owner of land, Interest is awarded for period of delay – No Interest is payable, if compensation has been duly paid – Decision of Apex Court in amounts reaches person as soon as he is deprived of possession of his land – As delay in payment of Compensation would be detrimental to owner of land, Interest is awarded for period of delay – No Interest is payable, if compensation has been duly paid – Decision of Apex Court in *Sunder Vs. Union of India*, 2001(4) CTC 434 (SC), that Interest on Solatium can be claimed only in pending executions and not in closed executions – In cases, where issue of Interest has not been determined by Reference/Appellate Court, payment of Interest to be as per ratio laid down in *Sunder case* – Matters, where reference court has awarded Interest on compensation amount, decision of Reference Court would be binding and not ratio in decision of *Sunder case* – Consequently, decision of Execution Court that amount deposited by

the Judgment- debtor to be first apportioned towards interest and thereafter towards compensation, not inferred with.

**2017 (1) TLNJ 236 (Civil)**

**Selvam. P. vs. Dinakaran. K.**

**Date of Judgment: 22.12.2016**

Section 118 – Suit for recovery of money on the basis of promissory note – suit and first appeal dismissed – Second Appeal by plaintiff – Held, defendant denying execution of suit promissory note – there is no contract or agreement between the parties – basis of suit promissory note not established by the Plaintiff – since the execution of promissory note is not proved, presumption under Section 118 of Negotiable Instruments Act was held to be not applicable – Second Appeal dismissed.

**2017 (1) TLNJ 193 (Civil)**

**Ram Balaji. A.V. Proprietor Akshitha Property Developers and another**

**vs.**

**Hotel Silver Stars Pvt. Ltd., Chennai-7**

**Date of Judgment: 10.01.2017**

Specific Relief Act 1963 - Suit for specific performance on Agreement on Sale based on Oral Agreement – No consensus ad idem – Oral Agreement to be proved in accordance with law – The Agreement was revoked without challenging the cancellation of Agreement by way of declaration – Suit on Specific performance of Agreement cannot lie – relied on T.S.Sikandar (D) by LRs. Vs. K., Subramani & others) 2014 (1) LW 47 – relied on V. Sataswathi Vs. Daweed Beevi, 2015 (4) TNLJ 221 (Civil) – Though suit was filed within limitation, the equitable remedy of Specific Performance need not be granted on account of delay – There was no Consensus ad idem and inaction of the Plaintiff and no proof of readiness and willingness – suit dismissed.

**CDJ 2017 MHC 1029**

**Sarjan Realities Private Limited and Others vs. Aathilinga perumal**

**Date of Judgment: 16.02.2017**

Suit for specific performance of contract and permanent injunction - The defendants evaded to perform their part of contract of sale and subsequently contended that sale agreement produced by the plaintiff is a forged and fabricated document and the third defendant has not signed in any agreement with the plaintiff – The third defendant examined as D.W.3 and the Director of the company examined as D.W.2 have categorically deposed that third defendant was the power of attorney and authorised signatory to the first defendant company and the power of attorney deed has not been revoked - Bearing in mind, the personal characteristics of the writings, similarities, dissimilarities, the Hon'ble Court compared the signatures found in the said documents and is satisfied that the signatures found in the agreement and Receipt (Exs.A2 and A3) are that of the third defendant - The evidence of third defendant as D.W.1 also lends support to the above opinion of this Court and corroborates

Court Held: Having admitted the signature in the sale agreement even during cross-examination, the defendants have not taken steps to send the document to the handwriting expert for examination – Appeal Suit is dismissed against the decree of the trial Court as prayed for.

**CDJ 2017 MHC 1030**

**Singapore Reality Pvt. Limited. Rep. by its Director Yeo Boon Kwang**

**vs.**

**Inspector of Police, Kanchipuram and Others**

**Date of Judgment: 10.02.2017**

The petitioner filed a suit in O.S.No.93 of 2016 on the file of the Principal District Court, Chengalpet and obtained an order of interim injunction on 01.06.2016 - Even thereafter, the third respondent tried to dispossess the petitioner, which compelled the petitioner to approach this Court by filing CrI.OP No.18814 of 2016 seeking a direction to the respondents to provide police protection to the petitioner's property .

Court Held - as per the Guideline 11 issued by the committee constituted by the Government in G.O.(3D) No.42, Home dated 30.6.2008, when police protection is sought for, for the implementation of a civil court order, it should be given readily.

**CDJ 2017 MHC 1031**

**K.N. Palaniappan, sole proprietor of M/s. Alenke PL Industries**

**vs.**

**V. Saraswathi @ Sunitha**

**Date of Judgment: 01.02.2017**

Landlady seeks for eviction of the tenant on the ground of personal occupation - Both the Courts below had held that the personal requirement of the demised premises is bona fide and hence, ordered for eviction of the tenant - the contention was raised by the learned counsel for the petitioner before the Hon'ble High Court that without pleading, no evidence can be looked into.

Held: In the instant case, the evidence has been elicited only during the cross-examination of P.W.1. In such circumstances, the evidence can be looked into and thus, the evidence of P.W.1 has clearly proved that on the said date, she is doing business.

**CDJ 2017 MHC 1033**

**K.M. Balasubramanian vs. C. Loganathan and another**

**Date of Judgment: 10.02.2017**

Suit for recovery of money due on a promissory note – Whether the application preferred under Section 47 C.P.C. is maintainable - Held: If the sale is sought to be set aside on the ground of material irregularity in publishing and conducting the sale within the meaning of Order 21 Rule 90, then Section 47 cannot come into play at all, and the sale could be set aside only by invoking Order 21 Rule 90. So, the revision petitioner/judgment debtor ought to have filed an



application within a period of 60 days from the date of sale, as per Article 127. But the sale was conducted on 27.09.2007 and the present application came to be filed only on 18.04.2009. Only in order to circumvent the period of limitation, the revision petitioner/judgment debtor has filed the application under Section 47 CPC. Therefore, the petition filed under Section 47 C.P.C. is not maintainable.

**CDJ 2017 MHC 495**

**A. Kuberan Vs. The Commissioner, Villupuram Municipality, Villupuram**

**Date of Judgment: 10.02.2017**

Constitution of India - Article 226 - Tamil Nadu District Municipalities Act - Section 345 - Madurai City Municipal Corporation Act - Section 483 - Tamil Nadu Municipal Laws (Third Amendment) Act 2008 - Property tax - Petitioner sought to forbear Respondent from demanding, collecting or seeking to enforce demand for property tax which has become time-barred by operation of law - held - Government had made recommendation to Legislature to extend period in Section 345 from 3 years to 6 years - But, same was not accepted by Legislature then, as could be seen from 2008 Act, which came into effect from government order - Third Amendment Act did not amend Section 345 - Only subsequently, in year 2008, Section 345 was amended and period of 3 years was extended to 12 years - claim of Respondent municipality of property tax prior to 2000-2001 was hereby set aside - writ petition allowed.

**CDJ 2017 MHC 018**

**Shamshed Begum vs. Sadiq Basha**

**Date of Judgment: 22.12.2016**

Code of Civil Procedure, 1908 – Section 96 – Dismissal of partition suit – Validity of – Trial Court dismissed suit filed by Plaintiff for partition and separate possession and also for permanent injunction against first to fourth Defendant restraining them from in any way alienating suit properties – Court Held – It is father, who had gifted suit properties to his two sons, while elder son is major, younger son is minor and in gift deed his mother is represented by younger son, who is minor at time of execution of gift – On conjoint reading of oral evidence of witnesses, who are attestors of document and son-in-law of donor, will show intention of donor is clear and bona fide and other criteria of valid gift as defined under Section 149 of Principles of Mahomedan Law are being duly complied with – Findings of Trial Court that there is no other property available for partition left behind by deceased father and Plaintiff is not entitled to relief of partition is liable to be confirmed – Appeal dismissed.

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**HIGH COURT CITATIONS  
CRIMINAL CASES**

**CDJ 2017 MHC 154**

**Sampath Kumar and other vs. State by Periyanaicken palayam P.S.**

**Date of Judgment: 19.01.2017**

Court held – As per Section 114 of the Evidence Act, the evidence of an accomplice is unworthy of credit and unless there is corroboration in general particulars from independent sources, it cannot be the foundation for conviction. Electronic Evidence – to be accepted should satisfy the legal requirements of Section 65-B of The Indian Evidence Act – Charge framed under Section 148 I.P.C. against accused A.1 and A.2. Hence, A.1 and A.2 can be convicted under Section 149 of I.P.C, even when no charge has been framed under Section 149 of I.P.C. – Importance of Section 226 of Cr.P.C. emphasized – Judge should not be a silent spectator while recording evidence. A perusal of cross examination of witness would go to show that it is nothing but a harassment

**2017 (1) TLNJ 187 (Criminal)**

**Raj vs. Leoni**

**Date of Judgment: 24.01.2017**

Section 482 - Petition seeking maintenance filed by wife- ex parte orders passed- husband filed petition to set aside the same- dismissed- Criminal original petition filed by husband before high court against the order of dismissal- held– summons were served on the petitioner/husband, in the maintenance case and he entered his appearance, entered into the witness box as respondent witness and after examination in chief, he remained ex-parte – After entering into the box as respondent witness, the contention that he had no knowledge about the ex-parte order and remained silent without enquiring about the status of the case is not acceptable – Criminal original petition dismissed.

**2017 (1) TLNJ 113 (Criminal)**

**Adbur Rahman vs. Secretary to Govt. Home Dept. Govt. of T.N. and 4 others.**

**Date of Judgment: 19.01.2017**

Article 226 – Petition to stop functioning of a Masjid Shariat Council creating an impression that it is carrying on judicial function and proclaiming it as an alternative to the judicial system – exact copies of the summons, alleged orders and proceedings carried inside the mosque, clearly showed that fourth respondent is a Court – word ‘Court’ is used twice in clause 4 and clause 6 – thus impression which is conveyed to the public at large is of a Court functioning – persons visiting the mosque may be from different social status and in so far as the less educated persons may be concerned or women who are vulnerable, certainly the board would give an impression as if some forum in the nature of a judicial forum is working – It unequivocally convey that Council has some judicial sanctity, except that on the left side there is

a reference to the persons who are forming part of respondent no.4 Council – unable to agree with the submission of fourth respondent as if it is an innocuous exercise of mere conciliation which is taking place – From affidavit of the police authorities, the functioning of the fourth respondent already stopped – Writ petition allowed.

**2017 (1) TLNJ 154 (Criminal)**

**Arunbabu. K vs. Senthilkumar and 3 ors.**

**Date of Judgment: 05.01.2017**

Section 397 r/w 401 – Suit for specific performance against R.I. pending – further complaint by petitioner against R.1 & R.2 for creating fraudulent sale deed in favour of R.2 with a view to cause wrongful loss to the petitioner – filed CrI.M.P- dismissed by trial Court – Revision – Rightly held by trial court that already civil suit pending before Civil Court, petitioner could only approach the same and he cannot try to convert the same into a criminal case – Also held that petitioner only a third party, who has entered into an agreement, in regard to the aforementioned property – Revision dismissed.

**2017 (1) TLNJ 160 (Criminal)**

**Madhu @ Madhaiyan vs. State by Inspector of Police, Chithodu, Erode District**

**Date of Judgment: 04.01.2017**

Section 302 and Criminal Procedure Code, 1973, Section 164- Trial court unfortunately relied on the statements of witnesses recorded under S. 164 Cr.P.C. and concluded that the accused is guilty – undoubtedly illegal – trial court overlooked the legal principle that the said statement under 164 Cr.p.C cannot be a substantive evidence, as the same, being a former statement, could be used either for corroboration or to contradict the marker of the respective statement – But trial court used it as substantive evidence – trial court has also observed that the burden is on the part of the accused to explain as to how the deceased sustained injury – since all the relevant witnesses have turned hostile, alternative theory pleaded by the accused that the deceased had fallen down and sustained injury, has also not been ruled out – accused took the deceased to the hospital with a view to save her, would also be consistent with the innocence pleaded by him – Appeal allowed.

**2017 (1) TLNJ 138 (Criminal)**

**Purushothaman S/o. Arumugam**

**vs.**

**State by Inspector of Police, All women Station, Guindy, Chennai.**

**Date of Judgment: 04.01.2017**

Protection of Children from Sexual Offences Act

Section.6 and Indian Penal Code, 1869 S. 506(ii) – offence under – Petition seeking medical examination of victim girl to determine her age dismissed by trial Court – Revision – Result of an ossification test cannot be taken to be determinative on the age of the person examined – It boils down to being a mere statement of the opinion of the Doctor who conducts the examination – when once the purpose for which a stands filed will not be definitely served by

passing favourable order therein – no reason to interfere with the order under challenge – Revision dismissed.

**2017 (1) TLNJ 12 (Criminal)**

**Thilagavathy.P. vs. Somasundaram.B**

**Date of Judgment: 30.11.2016**

Negotiable instrument Act, 1881, Section 138 – Complainant not produced proof of rental income – Trial Court held that it was unbelievable that a sum of Rs.5,00,000/- was given by her as loan to accused – Accused acquitted – Appeal – Complainant admitted in her evidence that Accused had agreed to repay the amount within two months – But in her Lawyer's notice she had only mentioned that within one month Accused had agreed to return the same – Even though Accused in his Reply Notice not mentioned about the fact of stealing of the cheque by the / complainant's husband High Court opined that Complainant when she happens to be a house wife had not established that she had the requisite wherewithal or means to advance such a heavy sum of Rs.5,00,000/- to the Accused – Also not shown the said loan amount of in her Income Tax returns – appeal dismissed.

**CDJ 2017 MHC 969**

**Venkatesan and Others**

vs.

**State represented by Inspector of Police, Crime Branch, Cuddalore**

**Date of Judgment: 03.02.2017**

Held: The Court should begin with the presumption that the approver is unworthy of credit and if the Court decides to act upon the said evidence of the Approver, it should look for corroboration, in material particulars. In other words, independently of the accomplice evidence, there should be some evidence against the accused to connect them with the crime. If the presumption is otherwise rebutted by evidence, either direct or circumstantial, then, the said presumption vanishes away and therefore, and in such an event, even in the absence of any corroboration from any material particulars, the evidence of accomplice, can by itself be the foundation for conviction.

**CDJ 2017 MHC 898**

**M. Kannan**

vs.

**State rep by The Inspector of Police, All Women Police Station, Bhavani, Erode District**

**Date of Judgment: 17.02.2017**

Held: there was gross dereliction of professional duty by the counsel, "Mr.S". He has not shown any interest in providing legal assistance to the accused which is his legal obligation under law, though, admittedly, he was paid his legal fees. Undoubtedly, the accused, though had engaged a counsel, was deprived of proper legal assistance because of the failure of the counsel engaged by him to appear before the Court to conduct the case. In these circumstances, now the

question is whether on that score, can we hold that there was denial of fair trial to the accused.

The court shall carefully strike a balance between the fair trial to the accused as well as the victim. In other words, the right of the accused to cross examine the victim and the right of the victim to privacy should be measured meticulously and without causing any harm to any of these rights, the court should draw the line. When we do the said exercise, we are convinced that the right of the accused for fair trial which, in the instant case, has been denied on account of the gross dereliction of professional duty by the learned counsel needs to be provided once again, however with sufficient safeguard to the victim's privacy. Thus, we are inclined to remand the case back to the trial Court to allow the accused to cross examine the witnesses on the same day and to examine witnesses in defence and with a further direction to the trial Court to dispose of the case within three months. While the victim / child is under examination, the trial Court shall scrupulously follow the provisions of the POCSO Act.

**CDJ 2017 MHC 1028**

**Chinnathambi @ Subramani vs. State by IOs, Vellakovil Police Station**

**Date of Judgment: 23.02.2017**

Curiously, in this case, the learned Public Prosecutor who conducted trial before the Court of Sessions had submitted to the court that the appellant was involved in five previous cases of house-breaking and theft including murder; A2 was involved in 18 previous cases; and A3 was involved in 27 previous cases. Unfortunately, the trial court has referred to these previous cases against the accused and has held that from out of these cases, it could be inferred that the appellant had the modus operandi of making house trespass into the temples and houses and killing the inmates to commit robbery. This conclusion of the trial court is totally erroneous and illegal as pendency of other criminal cases against the accused cannot be a ground even to remotely assume that the appellant/A1 was the perpetrator of the crime in the instant case. The further observation of the trial court that the investigating officer would not have arrested him in this case, but for his involvement in this crime, only bears testimony to the imagination of the Judge and for such imagination, there is no legal sanction. The courts of law cannot allow themselves to be swayed by these kind of totally irrelevant substances which are brought to the notice of the court not by way of evidence, but by way of wholly unrelated materials. The courts of law cannot assume the role of a monarch or dictator so as to impose any punishment on anyone at their whims and fancies even in the absence of any legal evidence.

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