TAMIL NADU STATE JUDICIAL ACADEMY

Vol: XV **Part: 8** **August, 2020**

IMPORTANT CASE LAW

HEADQUARTERS, CHENNAI

No.30/95, P.S.K.R. Salai, R.A. Puram, Chennai – 600 028
Phone Nos. 044– 24958595 / 96 / 97 / 98 **Fax**: (044) 24958595
Website: www.tnsja.tn.nic.in**E-Mail:**tnsja.tn@nic.in/tnsja.tn@gmail.com

REGIONAL CENTRE, COIMBATORE

No.251, Scheme Road, Race Course, Coimbatore - 641 018.
Telephone No: 0422 - 2222610/710
E-Mail:tnsja.rc.cbe@gmail.com

REGIONAL CENTRE, MADURAI

AlagarKoil Road, K.Pudur, Madurai - 625 002.
Telephone No: 0452 - 2560807/811
E-Mail:tnsja.rc.mdu@gmail.com

INDEX

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

Sl. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1.	Mangayakarasi vs. M.Yuvaraj	I (2020) DMC 687(SC)	03.03.2020	**Hindu Marriage Act, 1955 – Section 13(1)(ia) – Cruelty-** Unsubstantiated allegations by husband – Petition for dissolution of marriage instituted by husband was on allegation that behavior of wife was intemperate as she was quarrelsome with neighbours, friends and with visitors –In a matter where differences between parties are not of such magnitude and is in nature if usual wear and tear if martial life the future of child and her marital prospects are also to be kept in view - in such circumstance dissolution of marriage merely because they have been litigating and they have been residing separately for quite some time would not be justified in present facts, more particularly when restitution of conjugal rights was also considered simultaneously.	1
2.	Poonam Devi & others vs. Oriental Insurance Company Ltd.,	2020 (1) TLNJ 609 (Civil)	06.03.2020	**Workmen Compensation Act, 1923, 4A(3)(b)** – Driver of truck while on duty slipped in to the river when he tried to fetch water for the truck and tried to take bath – Accident – compensation ordered under the Act – High Court on appeal by Insurance Company held that bathing in the canal was not incidental to the employment but was at the peril of the workman. Every action of the driver of a truck to ensure the safety of the truck belonging to the employer and to ensure his own safety by a safe journey for himself has to be considered an incidental to the employment by extension of the notional employment theory – High Court Order unsustainable – set aside – order of the Workmen's Compensation Commissioner restored.	1
3.	Dahiben vs. Arvindbhai KalyanjiBhanusali (Gajra) (D) thr LRs & others	2020 (3) TLNJ 24(Civil)	09.07.2020	**Civil Procedure Code, 1973, Order 7 Rule 11(a) and (d)** - The purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court.	1

SUPREME COURT - CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1.	State of Rajasthan vs. Mehram& others	2020 (1) TLNJ 452 (Criminal)	06.05.2020	**Indian Penal Code, 1860, Section 302, 304(1) and 326** – unauthorized entry by complainant to the field of accused side – assault – injuries and death – conviction and sentence – converting the offence under Section 302 to Section 326 by High Court cannot be countenanced – case would be covered by Section 304 Part I, IPC – appeal partly allowed – grounds.	2
2.	Prem Chand Vs. State of Haryana	CDJ2020SC628	30-07-2020	**Prevention of Food Adulteration Act, 1954- Section 2 (1a) (f) , 16(1A) and Section 16(1)(a)(ii)-** selling adulterated Haldi Powder- and selling it without license- High Court set aside the judgment of the trial court acquitting the appellant- and convicted him for the said offence – not sustainable.	2
3.	Parvinder Kansal Vs. The State of Nct of Delhi & Another	CDJ 2020 SC 688	28-08-2020	**Code of Criminal Procedure Section 372** - No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force - there is no provision for appeal by the victim for questioning the order of sentence as inadequate.	3

MADRAS HIGH COURT – CIVIL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1.	K.Kasinathan & another vs. N.Umasankar	2020 (1) CTC 246	20.11.2019	**Transfer of Property Act, 1882(4 of 1882), Section 54 – Registration Act, 1908(16 of 1908), Section 17 & 49) – Interpretation of Statutes –** Sale of Immovable property of value less than Rs.100 by way of unregistered instrument – validity of sale – whether conveys title – no.	4
2.	M.S.Tamilnathan vs. G.ShymalaRanjini	2020 (2) CTC 521	27.11.2019	**Hindu Marriage Act, 1955(25 of 1955), Sections 3(b), 28 & 13(1)(i)(a)** – Additional District Judge – Whether entitled to hear appeal – Decree of Divorce granted by Subordinate Judge – C.M.A. filed before Additional District Judge(ADJ) challenged on ground that appeal against order of Sub-court only maintainable before High Court and not before District Court – Appeal before Additional District Judge is maintainable.	4
3..	Lakshmi Kumar @ Vasudevan& 2 others vs. ShriAhobila Mutt by his Holiness, ShriNarayanaYathindraMahisikan, Chennai, Rep. by his Power of Attorney Agent S.Rajagopalan, Srirangam.	2020(1) CTC 395	28.11.2019	**Code of Civil Procedure, 1908(5 of 1908), Section 92** – Jurisdiction of court which passed Scheme Decree – Priniciple of *functus officio* – Scheme Decree passed in 1969 for administration/ management of Respondent-Trust – Suit for Declaration and Mandatory Injunction filed for violation of terms and conditions imposed by Scheme Decree – application challenging maintainability of Suit allowed – whether independent Suit maintainable or application ought to be filed before Scheme Court only – Independent Suit not maintainable.	5
4.	K.Murali vs. M.MohamedShaffir	2020 (1) CTC 38	10.12.2019	**Code of Civil Procedure ,1908(5 of 1908), Order 7, Rule 11 – Limitation Act, 1963(36 of 1963), Section 3 & Article 54 –**	5

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
				Application under Order 7, Rule 11 – Scope and ambit of – Order 7, Rule 11(d) must be seen in context of Section 3 of Limitation Act.	
5.	Sivakumar and another vs. ArasuRathinam and others	2020 (1) CTC 616	16.12.2019	**Evidence Act, 1872 (1 of 1872), Section 33 -**Evidence of Witness in Judicial proceeding – Relevance in subsequent Judicial Proceedings. Burden is on party relying on statement of such Witness, to prove that Witness cannot be procured – Only when all reasonable efforts to secure attendance of Witness failed, Court can take such previous evidence as relevant.	6
6.	N. Vivekanandhan vs. Ammapillai and others	2020 (1) CTC 757	17.12.2019	**Limitation Act, 1963 (36 of 1963) Article 127 – Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rule 72 –** Sale in violation of Order 21, Rule 72(1), not void, but voidable at instance of Judgment – debtor or any other person, whose interests affected by sale – Application under Order 21, Rule 72(3) to set aside such sale, to be filed within limitation period under Article 127.	6
7.	Monikantan Nair vs. SarojiniAmma	2020 (2) CTC 681	03.01.2020	**Code of Civil Procedure, 1908(5 of 1908), Section 11**- Res judicata – suit for declaration of title – Contention that defendant in possession of greater extent of land than entitled to – defendant's earlier suit for redemption of Mortgage against Plaintiff's mother reached finality – issue regarding compound wall and extent of property in Mortgage already decided in prior suit.	7
8.	K.Ganesan & 3 others vs. Joint Family, Rep by its Manager and others	2020 (3) CTC 715	10.01.2020	**Code of Civil Procedure, 1908(5 of 1908), Order 6, Rule 17 –** Amendment to add relief of Mandatory Injunction – Whether maintainable – Suit for Declaration of Easementary right and Permanent Injunction – Stating that Defendants have put	7

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
				up a fence, Application for amendment seeking Mandatory Injunction filed by Plaintiffs – Maintainability.	
9.	Sathiyaseelan& another vs. P.S.Manimaran (Died) & 4 others	2020 (3) CTC 91	22.01.2020	**Tamil Nadu Cultivating Tenants' Protection Act 1955 (T.N.Act 25 of 1955), Section 6 & 2(aa)- Specific Relief Act, 1963(47 of 1963), Section 34 – Evidence Act, 1872 (1 of 1872), Sections 5 & 101 to 103 –** "Cultivating Tenant" – meaning – suit for declaration of title and recovery of possession – title not disputed but defendants pleaded cultivating tenancy – concurrently held that civil court jurisdiction barred, since cultivating tenancy pleaded- whether maintainable.	8
10.	Priyanka vs. Uttamidya	2020 (2) CTC 762	27.01.2020	**Hindu Marriage Act, 1955(25 of 1955), Section 13(1)(i-a) –** Cruelty – Cruelty includes both physical and mental cruelty – act silent on degree of cruelty to be established in matrimonial case – in mental cruelty, enquiry necessary as to nature of cruel treatment and it impact on mind of other spouse essential – court must infer whether it caused reasonable apprehension that it would be injurious or harmful to live with other party.	8

MADRAS HIGH COURT – CRIMINAL CASES

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1.	The State, Rep by the Inspector of Police, Central Crime Branch, Madurai, Madurai District vs. V.Prakash& 2 others	2020(1) TLNJ 490 (Criminal)	20.05.2020	**Criminal Procedure Code, 1973, Section 439(2) –** Cancellation of Bail – Petition – offence of fabricating the documents and issued fake ID proof in respect of the property – Court had granted anticipatory bail to the wife of the main accused and also the registering authority – Grant of relief to those persons could not have been cited as a reason for showing indulgence to the respondents herein.	9
2.	K.V.Balasubramanian vs. The District Collector, Madurai District, Madurai 625 020	2020(1) TLNJ 480(Criminal)	22.05.2020	**Mines and Minerals (Development and Regulation) Act, 1957, Sections 4(1A) r/w 21(1) and 21(4A) –** Granite blocks found at the land of the petitioner – offence – order taking cognizance suffers from an apparent error – Petitioner residing outside the territorial limits of the judicial magistrate - procedure set out in Section 202 of Cr.P.C., not followed.	9
3.	Pradeep Kumar Versus State by the Inspector of Police, Chennai	CDJ 2020 MHC 2357	13-07-2020	**Indian Penal Code - Section 366-A - Section 376** -In a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix,	10
4.	Mohamed Saleem Versus State represented by The Inspector of Police, All Women Police	CDJ 2020 MHC 2805	20-07-2020	**Code of Criminal Procedure 1973,Section 311**- Application for recall of investigation officer for further cross examination at the end	10

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
	Station, Srirengam, Tiruchirappalli District.			of the trial, when the case was listed for arguments- Maintainability.	
5.	K. Suganya Versus State, Represented by the Inspector of Police, Sivagangai	CDJ 2020 MHC 2801	21-07-2020	**Indian Penal Code 1860, Section 306** - wordy quarrel between the accused and the deceased - Except this wordy quarrel, which is said to have taken place between the deceased and the appellant on the previous day, there is no other overt act against this appellant - , there must be an active role of instigation or certain act, which could have facilitated the commission of offence – conviction not sustainable.	11
6.	M. Rajkumar & Another Versus State represented by the Inspector of Police, Organized Crime Unit, Crime Branch CID, Coimbatore	CDJ 2020 MHC 2433	31-07-2020	**Code of Criminal Procedure 1973,Section 313 – Power to examine the accused** - Scope and Object-Only the incriminating circumstances in the evidence of prosecution have to be put forth before the accused while questioning under Section 313 Cr.P.C. to make the accused understand the circumstances against him/her so that he/she can give proper explanation before the Court.	11
7.	Thangavel Versus The State, the Sub Inspector of Police, Dindigul District	CDJ 2020 MHC 2794	04-08-2020	**Indian penal code section 304A** - Head on collision - the accused was driving the bus on the extreme left side of the road, whereas, the deceased, who came in the opposite direction, came on the right side and hit the bus – conviction not sustainable.	12
8.	. Vairakannu& Another Versus The Inspector of Police, Uthukuli Police Station, Tiruppur& Others	CDJ 2020 MHC 2584	17-08-2020	**Offence under Section 454, 389 IPC, the danger of using the testimony of one accomplice to corroborate another** - The testimony of an accomplice can in law be used to corroborate another though it ought not to be so used save in exceptional circumstances and for reasons disclosed.	12

SUPREME COURT – CIVIL CASES

I (2020) DMC 687(SC)

Mangayakarasi vs. M.Yuvaraj

Date of Judgment:03.03.2020

Hindu Marriage Act, 1955 – Section 13(1)(ia) – Cruelty- Unsubstantiated allegations by husband – Petition for dissolution of marriage instituted by husband was on the allegation that behavior of wife was intemperate as she was quarrelsome with neighbours, friends and with visitors –In a matter where differences between parties are not of such magnitude and is in nature of usual wear and tear dissolution of marriage merely because they have been litigating and they have been residing separately for quite some time would not be justified in present facts, more particularly when restitution of conjugal rights was also considered simultaneously.

******

2020 (1) TLNJ 609 (Civil)

Poonam Devi & others vs. Oriental Insurance Company Ltd.,

Date of Judgment: 06.03.2020

Workmen Compensation Act, 1923, 4A(3)(b) – Driver of truck while on duty slipped in to the river when he tried to fetch water for the truck and tried to take bath – Accident – compensation ordered under the Act – High Court on appeal by Insurance Company held that bathing in the canal was not incidental to the employment but was at the peril of the workman. Every action of the driver of a truck to ensure the safety of the truck belong to the employer and to ensure his own safety by a safe journey for himself has to be considered an incidental to the employment by extension of the notional employment theory – High Court Order unsustainable – set aside – order of the Workmen's Compensation Commissioner restored.

****

2020 (3) TLNJ 24(Civil)

Dahiben vs. ArvindbhaiKalyanjiBhanusali(Gajra) (D) thr LRs & others

Date of Judgment:09.07.2020

Civil Procedure Code, 1973, Order 7 Rule 11(a) and (d) - The purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court.

The remedy under Order VII Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. The underlying object of Order VII Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the Court would not permit the Plaintiff to unnecessarily protract the proceedings in the suit. The whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court.

*****

SUPREME COURT – CRIMINAL CASES

2020 (1) TLNJ 452 (Criminal)

State of Rajasthan vs. Mehram & others

Date of Judgment:06.05.2020

Indian Penal Code, 1860, Section 302, 304(1) and 326 – unauthorized entry by complainant to the field of accused – assault – injuries and death – conviction and sentence – converting the offence under Section 302 to Section 326 by High Court cannot be countenanced – case would be covered by Section 304 Part I, IPC – appeal partly allowed- grounds.

It is necessary to examine as to whether the case in hand would be covered under the exceptions predicated in Section 300, IPC, so as to apply Section 304, IPC – be it Part I or Part II thereof. The facts of the present case would indicate that the accused, in particular accused No. 5, at the relevant time, was deprived of the power of self control by grave and sudden provocation due to repeated unauthorised entry on the fields belonging to accused party. Further, the solitary fatal blow on the vital part of the head by accused No. 5 caused the death of Bhura Ram (deceased). The provocation was not invited by the accused party, but was obviously at the instance of the complainant party, who entered the fields unauthorizedly despite the objection taken by the complainant party in that regard on the same day earlier. However, as the death of Bhura Ram (deceased) was caused by the act of accused No. 5 giving one fatal blow on the head, which was with the intention of causing his death or causing such bodily injury as is likely to cause death, the case would be covered by Section 304 Part I, IPC. It is certainly not a case to simply proceed under Section 326 of the IPC, as held by the High Court.

*****

CDJ 2020 SC 628

Prem Chand Versus State of Haryana

Date of Judgment:30-07-2020

Prevention of Food Adulteration Act, 1954- Section 2 (1a) (f) , 16(1A) and Section 16(1)(a)(ii)- selling adulterated Haldi Powder- and selling it without license- High Court set aside the judgment of the trial court acquitting the appellant- and convicted him for the said offence - not sustainable.

The report of the public analyst does not mention that the sample was either "insect infested" or was "unfit for human consumption", in the absence of such an opinion, the prosecution has failed to establish the requirements of Section 2 (1a)(f) of the Act- no evidence has been adduced by the prosecution to prove the offence under Section 16 (1) of the Act either before the trial court or the High Court. Therefore the order of conviction passed by the High Court is not sustainable- and upholds the order of acquittal passed by the trial court- Appeal allowed accordingly.

*****

CDJ 2020 SC 688

ParvinderKansal Vs. The State of NCT of Delhi & Another

Date of Judgment: 28-08-2020

Code of Criminal Procedure Section 372 - No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force - there is no provision for appeal by the victim for questioning the order of sentence as inadequate

A reading of the proviso makes it clear that so far as victim's right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377, Cr.P.C. gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377, Cr.P.C. but similarly no appeal can be maintained by victim under Section 372, Cr.P.C. on the ground of inadequate sentence. It is fairly well settled that the remedy of appeal is creature of the Statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable. Further we are of the view that the High Court while referring to the judgment of this Court in the case of ***National Commission for Women vs. State of Delhi &Anr. (2010) 12 SCC 599*** has rightly relied on the same and dismissed the appeal, as not maintainable.

*****

MADRAS HIGH COURT – CIVIL CASES

2020(1) CTC 246

K.Kasinathan & another vs. N.Umasankar

Date of Judgment:20.11.2019

Transfer of Property Act, 1882(4 of 1882), Section 54 – Registration Act, 1908(16 of 1908), Section 17 & 49) – Interpretation of Statutes – Sale of Immovable property of value less than Rs.100 by way of unregistered instrument – validity of sale – whether conveys title-no.

A perusal of Section 54 extracted above would show that the law contemplates only two modes of transfer of interest in immovable property. It can either be by a registered instrument in case of immovable property of value of more than Rs.100 or by way of delivery of possession in case of immovable property of value less than Rs.100. A third method namely a transfer by way of an unregistered instrument is not contemplated.

*****

2020 (2) CTC 521

M.S.Tamilnathan vs. G.Shymala Ranjini

Date of Judgment: 27.11.2019

Hindu Marriage Act, 1955(25 of 1955), Sections 3(b),28& 13(1)(i)(a) – Additional District Judge – Whether entitled to hear appeal – Decree of Divorce granted by Subordinate Judge – C.M.A. filed before Additional District Judge(ADJ) challenged on ground that appeal against order of Sub-court only maintainable before High Court and not before District Court – Appeal before Additional District Judge is maintainable.

The Definition of the expression "District Court" given in Section 3(b) of the Hindu Marriage Act says, which Courts are meant and included within that expression as used in the Act. It says that by the expression "District Court" are meant in the first place a City Civil Court in the are, in which, there is such court and in any other area the Principal Civil Court of Original Jurisdiction. The definition then proceeds to say that is addition to these Courts other Civil Courts will also be included in the expression "District Court" if such other Civil Courts are notified by the State Government in the Official Gazette as having jurisdiction in respect of matters dealt within the Act. When notified by the State Government as having jurisdiction in matters dealt with under the Hindu Marriage Act, becomes a "District Court" as meaning the Principal Civil Court of original jurisdiction for the purposes of the Hindu Marriage Act by virtue of the definition given in Section 3(b) of the Act. It is the Court to, which Petitions under the Hindu Marriage Act lie and which has jurisdiction in respect of matters dealt within the Act. Section 28 of the Hindu Marriage Act leaves the forum of the Appeal to be determined under the law for the time being in force which, in the present case, the learned I Additional District Judge, Salem is the forum of Appeal from the order to decree of the Sub-Court, Mettur. Accordingly, the appeal lies to the Court of District Judge, Salem.

*****

2020(1) CTC 395

Lakshmi Kumar @ Vasudevan& 2 others vs. ShriAhobila Mutt by his Holiness, ShriNarayanaYathindraMahisikan, Chennai, Rep. by his Power of Attorney Agent S.Rajagopalan, Srirangam.

Date of Judgment:28.11.2019

Code of Civil Procedure, 1908(5 of 1908), Section 92 – Jurisdiction of court which passed Scheme Decree – Priniciple of *functus officio* – Scheme Decree passed in 1969 for administration/management of Respondent-Trust – Suit for Declaration and Mandatory Injunction filed for violation of terms and conditions imposed by Scheme Decree – application challenging maintainability of Suit allowed – whether independent Suit maintainable or application ought to be filed before Scheme Court only – Independent Suit not Maintainable.

It is a settled law that it is only the Scheme Court, which will continue to have a control over the proceedings and the *lis* and it does not become a *functus officio* on the basis of the Scheme Decree. In the considered view of this Court, the grievance that has been raised by the petitioners can be raised by filing an application before the Scheme Court and the remedy can be worked out in accordance with law. An independent suit cannot be maintained for the purpose. Ultimately the issue that has been raised by the petitioners will have to be resolved. The correct procedure would be to make this dispute resolved by the Scheme Court which continues to exercise its jurisdiction even after the Scheme Decree is passed.

******

2020 (1) CTC 38

K.Murali vs. M.MohamedShaffir

Date of Judgment:10.12.2019

Code of Civil Procedure ,1908(5 of 1908), Order 7, Rule 11 – Limitation Act, 1963(36 of 1963), Section 3 & Article 54 – Application under Order 7, Rule 11 – Scope and ambit of – Order 7, Rule 11(d) must be seen in context of Section 3 of Limitation Act.

The facts narrated are not in dispute. Order 7, Rule 11(d), C.P.C. has to be seen in the context of Section 3 of the Limitation Act which imposes a duty upon the Court to check and verify as to whether the lis is within the period of limitation. Though the question of limitation might involve disputed question of fact and law, it cannot be stated that in a given case the party is not entitled to invoke Order 7, Rule 11(d), C.P.C. We are conscious of the fact that while exercising the power of Order 7, Rule 11(d) of the code of Civil Procedure, the Court is not expected to conduct a roving inquiry. However, when it is so obvious that the attempt is only to overcome the period of limitation, this Court has to exercise its power. Certainly limitation is the question which can be gone into by invoking Order 7, Rule 11(d) of the Code of Civil Procedure. We have perused the Plaint field. There is a marked difference between the cause of action for filing may not be the starting point of the period of limitation.

*****

2020 (1) CTC 616

Sivakumar and another vs. ArasuRathinam and others

Date of Judgment: 16.12.2019

Evidence Act, 1872 (1 of 1872), Section 33 -Evidence of Witness in Judicial proceeding – Relevance in subsequent Judicial Proceedings. Burden is on party relying on statement of such Witness, to prove that Witness cannot be procured – Only when all reasonable efforts to secure attendance of Witness failed, Court can take such previous evidence as relevant.

To contend that presence of the witness cannot be obtained without delay and expense, it has to be proved by the party, who seeks to rely upon the Statements of such Witness, to show that the Witness cannot be procured. There must be some evidence showing inability of procuring the attendance of the Witness before the Court, which considers, the delay and expense involved in securing the presence of the Witness is unreasonable. Only on such evidence, the Court can take such previous evidence as relevant. Only when all reasonable efforts to secure the attendance of a Witness have failed, it can be said that there is unreasonable delay in securing the attendance. The provisions of Section 33 are exceptions to the general rule that, in order that the evidence of a Witness may be admissible against a party, he must have an opportunity to test the truth of the Statement by cross-examination. The exception cannot be lightly availed of. Where no attempt has been made by summoning the Witness or by other means to secure his presence, the earlier Statement in the Execution proceedings cannot be taken as admissible.

*****

2020 (1) CTC 757

N. Vivekanandhan vs. Ammapillai and others

Date of Judgment:17.12.2019

Limitation Act, 1963 (36 of 1963) Article 127 – Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rule 72 – Sale in violation of Order 21, Rule 72(1), not void, but voidable at the instance of Judgment – debtor or any other person, whose interests affected by sale – Application under Order 21, Rule 72(3) to set aside such sale, to be filed within limitation period under Article 127.

A reading of sub-rule(3) of Rule 72 of Order 21 makes it clear that a sale in violation of Order 21, Rule 72(1) is voidable at the instance of the Judgment debtor or any other person, whose interests are affected by the sale. It is not void. Sub-rule (3) enables the Judgment-debtor to set aside the sale on the ground of violation of Rule 72(1) of Order 21. Undoubtedly, the said application should also be filed within the time prescribed under Article 127 of the Limitation Act. Even assuming that Article 127 of Limitation Act does not apply (in fact it is not so), then the residuary Article will be applicable. Even then an Application to set aside the sale under Order 21, Rule 72(1) has to be filed within three years of the sale under Article 137 of the Limitation Act. As already pointed out, the present Application has been filed nearly after 21 years after the sale.

******

2020 (2) CTC 681

Monikantan Nair vs. SarojiniAmma

Date of Judgment: 03.01.2020

Code of Civil Procedure, 1908(5 of 1908), Section 11- Res judicata – suit for declaration of title –Contention that defendant in possession of greater extent of land than entitled to – defendant's earlier suit for redemption of Mortgage against Plaintiff's mother reached finality – issue regarding compound wall and extent of property in Mortgage already decided in prior suit.

When the issue with regard to the compound wall and extent in the Mortgage is already decided and the Appellant/Plaintiff was also examined as DW1 in the previous suit, certainly, such a finding operates as Res Judicata as far as the extent owned by the parties is concerned, Further, the Plaintiff's mother as a Mortgagee, also acknowledged the title of Sadasivan Nair to an extent of 19½ cents and delivery was also taken under Ex.B9 of the same extent. Therefore, the Plaintiff is also estopped from claiming beyond the compound wall. The compound wall was also indicated in the commissioner's report. This fact is clearly indicated that the Plaintiff has not established the title for the extent he claimed in the suit. In a suit for declaration, the entire onus lies on the Plaintiff to prove his entitlement. Whether or not the total extent is 37 cents or 39 cents has also not been established. In such a view of the matter, the Appellant/Plaintiff is certainly not entitled to declaration and other reliefs which he sought for. The judgments cited by the learned counsel appearing for the appellant also are not applicable to the facts of the present case. Accordingly, the substantial questions of law are answered against the appellant/Plaintiff.

*****

2020 (3) CTC 715

K.Ganesan & 3 others vs. Joint Family, Rep by its Manager and others

Date of Judgment: 10.01.2020

Code of Civil Procedure, 1908(5 of 1908), Order 6, Rule 17 – Amendment to add relief of Mandatory Injunction – Whether maintainable – Suit for Declaration of Easementary right and Permanent Injunction – Stating that Defendants have put up a fence, Application for amendment seeking Mandatory Injunction filed by Plaintiffs – Maintainability.

The Suit is one for Declaration of Easementary right and for Permanent Injunction. Contending that the Defendants have put up a fence, the Plaintiffs have come up with the Application for amendment seeking Mandatory Injunction. If the amendment is not allowed, even if the Plaintiffs succeed in the Suit, the Plaintiffs would be rendered remediless. No prejudice would be caused to the Defendants, if the amendment is allowed and in as much as their claim is that there is no Pathway measuring 15 feet as claimed by the Plaintiffs. If the Defendants succeed in the Suit, on the point of non existence of the Cart-track, whether there is a amendment or not, will not matter. Therefore, I find that prejudice caused to the Plaintiffs by dismissing the Application for amendment will be much more than prejudice caused to the Defendants. In view of the above, I find that the Court below is perfectly justified in allowing the Amendment Application. The Court below has taken note of the facts and circumstances and chosen to impose the Costs. I do not think that the Order allowing the amendment can be said to be materially irregular or is a result of non exercise of jurisdiction vested in the Court.

******

2020 (3) CTC 91

Sathiyaseelan& another vs. P.S.Manimaran(Died) & 4 others

Date of Judgment:22.01.2020

Tamil Nadu Cultivating Tenants' Protection Act 1955(T.N.Act 25 of 1955), Section 6 & 2(aa)- Specific Relief Act, 1963(47 of 1963), Section 34 –Evidence Act, 1872 (1 of 1872), Sections 5 & 101 to 103 – "Cultivating Tenant" – meaning – suit for declaration of title and recovery of possession – title not disputed but defendants pleaded cultivating tenancy – concurrently held that civil court jurisdiction barred, since cultivating tenancy pleaded-whether maintainable.

It is the specific case of the Plaintiffs that the Defendants in the year 2002, created some document in order to coerce the Plaintiffs to sell the properties and claimed that they are cultivating tenants and further, the second defendant, who is said to be a sub-tenant has not appeared before the court below and entered into the witness box. The title of the plaintiffs' in respect of the suit properties is not denied by the defendants. Their only contention is that the first defendant's grandfather was the cultivating tenant of the suit properties. After his death, his father was the cultivating tenant and the first defendant is continued as a cultivating tenant, whereas no proof whatsoever is available on record to show that either his grandfather or father was the cultivating tenant of the suit properties. No entry by the record officer under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, was filed to show that they are the Cultivating Tenants.

******

2020 (2) CTC 762

Priyanka vs. Uttamidya

Date of Judgment:27.01.2020

Hindu Marriage Act, 1955(25 of 1955), Section 13(1)(i-a) –Cruelty – Cruelty includes both physical and mental cruelty – act silent on degree of cruelty to be established in matrimonial case – in mental cruelty, enquiry necessary as to nature of cruel treatment and it impact on mind of other spouse essential – court must infer whether it caused reasonable apprehension that it would be injurious or harmful to live with other party.

In regard to the expression cruelty as seen under Section 13(1)(i-a) of the Hindu Marriage Act, a Court of law should be satisfied that such differences surfacing from the conduct of either party to the marriage makes it impossible for the other spouse to continue to live with him/her. Intention to be cruel is not a requisite element of 'cruelty' as contemplated as per Section 13(1) (i-a) of the Hindu Marriage Act, 1955. It is needless for this Court to state that if bitter water i.e. flowing, it is not necessary to enquire from which source they spring. The motive behind the cruelty has paled into insignificance in the present day changing society. To put it shortly, in Matrimonial matters, the feelings and attitudes of minds are material as per the decision ***NeeluKohil vs. Naveen Kohil, AIR 2004 All.1(para 18).***

****

2020(1) TLNJ 490 (Criminal)

The State, Rep by the Inspector of Police, Central Crime Branch, Madurai, Madurai District vs. V.Prakash& 2 others

Date of Judgment:20.05.2020

Criminal Procedure Code, 1973, Section 439(2) – Cancellation of Bail – Petition – offence of fabricating the documents and issued fake ID proof in respect of the property – Court had granted anticipatory bail to the wife of the main accused and also the registering authority – Grant of relief to those persons could not have been cited as a reason for showing indulgence to the respondents herein.

Even though the allegations are very serious and the antecedents are also bad, the learned Sessions Judge had shown an indulgent approach. It is true that this Court had granted anticipatory bail to the wife of the main accused and also the registering authority. Grant of relief to those persons could not have been cited as a reason for showing indulgence to the respondents herein. The learned Sessions Judge erred in relying on the orders granted by this Court to some of the co-accused who stood on an entirely different footing altogether.

******

2020(1) TLNJ 480(Criminal)

K.V.Balasubramanian vs. The District Collector, Madurai District, Madurai 625 020

Date of Judgment:22.05.2020

Mines and Minerals (Development and Regulation) Act, 1957, Sections 4(1A) r/w 21(1) and 21(4A) – Granite blocks found at the land of the petitioner – offence – order taking cognizance suffers from an apparent error – Petitioner residing outside the territorial limits of the judicial magistrate - procedure set out in Section 202 of Cr.P.C., not followed.

The order taking cognizance suffers from an apparent error. The Petitioner is obviously residing outside the territorial limits of the judicial magistrate. Therefore, the procedure set out in Section 202 of Cr.P.C., ought to have been followed. In this case, it was not followed. On this sole ground, as rightly pointed out by the learned Senior Counsel, the order taking cognizance will have to be quashed. But then, coming to the merits of the matter, it is seen that the petitioner is not carrying any mining activity in the survey number in question. According to the petitioner, he has no claim whatsoever on the granite blocks found on his lands. The impugned complaint has been filed for confiscation and forfeiture of the granite blocks as government property. The petitioner has no objection for forfeiture of the granite blocks. It appears that some third parties have laid claims on the said granite blocks. But, as far as the petitioner is concerned, he wants to totally disassociate himself.

****

CDJ 2020 MHC 2357

Pradeep Kumar Versus State by the Inspector of Police, Chennai

Date of Judgment: 13-07-2020

Indian Penal Code - Section 366-A - Section 376 -In a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix,

It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix . The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen. when it is seen that the prosecution had failed to establish that the victim girl is a minor on the date of occurrence and on the other hand, when the victim girl is found to be aged between 16 to 18 years and when the victim girl is found to be engaged in love with the accused and on her own accord left with him and also claimed to have married him at Mahabalipuram to the medical officer, the victim girl's version that the accused had forcible sex with her is not supported by medical evidence and the surrounding circumstances also did not lend support to the victim girl's version. In such a view of the matter, when the prosecution case is beset with serious suspicions, doubts, conjectures, loopholes and defects and when with reference to the same, no plausible explanation has been offered by the prosecution to clear the same, in my considered opinion the benefit of doubt emanating from the same should be extended in favour of the accused and accordingly the same is extended in favour of the accused and consequently I hold that the prosecution has failed to establish the offences levelled against the accused under section 366(A), 376 IPC and acquit him thereof.

******

CDJ 2020 MHC 2805

Mohamed Saleem Versus State represented by The Inspector of Police, All Women Police Station, Srirengam, Tiruchirappalli District.

Date of Judgment: 20-07-2020

Code of Criminal Procedure 1973,Section 311- Application for recall of investigation officer for further cross examination at the end of the trial, when the case was listed for arguments- Maintainability

The trial Court dismissed the petitions that they have been filed at the fag end of the trial, when the case was listed for arguments. The applications were filed immediately within three months from the date of examination of the Investigation Officer PW14. Moreover, the Investigation Officer is expected to give evidence only based on the available records and therefore, recalling of the Investigation Officer in no way would cause any prejudice to the prosecution. On the other hand, if any certain vital material, which could be elicited during the evidence, denying the opportunity would affect the accused ultimately.

*****

CDJ 2020 MHC 2801

K. SuganyaVersus State, Represented by the Inspector of Police, Sivagangai

Date of Judgment :21-07-2020

Indian Penal Code 1860, Section 306 - wordy quarrel between the accused and the deceased - Except this wordy quarrel, which is said to have taken place between the deceased and the appellant on the previous day, there is no other overt act against this appellant - , there must be an active role of instigation or certain act, which could have facilitated the commission of offence – conviction not sustainable.

The other accused were acquitted by the trial Court and as against the order of the acquittal, the State has not preferred any appeal. The conviction under Section 306 IPC could not be sustained on the same allegation of wordy quarrel between the accused and the deceased. Except this wordy quarrel, which is said to have taken place between the deceased and the appellant on the previous day at about 2.00pm, there is no other overt act against this appellant. On the other hand, the defence has established the theory that the deceased was having some relationship with one Murugesan, who used to visit their house often and he married another woman and therefore, the deceased committed suicide. In this regard, PW1 as well as PWs 4 and 5 admitted in their evidence that the said Murugesan used to visit their house often and also used to stay in their house at times and he was unmarried at that time and only after the demise of the deceased, he married another woman. Be that as it may, what is required to constitute an offence under Section 306 IPC, there must be an active role of instigation or certain act, which could have facilitated the commission of offence. But in this case, except this averment of wordy quarrel took place between the deceased and the accused, where both have exchanged words and also quarrelled with each other, there is no averment as against this appellant. the conviction and the sentence imposed as against this appellant are set aside and the appellant is acquitted of the charge framed against her.

****

CDJ 2020 MHC 2433

M. Rajkumar& Another Versus State represented by the Inspector of Police, Organized Crime Unit, Crime Branch CID, Coimbatore

Date of Judgment: 31-07-2020

Code of Criminal Procedure 1973,Section 313 – Power to examine the accused - Scope and Object-Only the incriminating circumstances in the evidence of prosecution have to be put forth before the accused while questioning under Section 313 Cr.P.C. to make the accused understand the circumstances against him/her so that he/she can give proper explanation before the Court.

It is worth mentioning that, only the incriminating circumstances have to be put forth before the accused while questioning under Section 313 Cr.P.C. to make the accused understand the circumstances against him/her so that he/she can give proper explanation before the Court. However, on a reading of the questioning under Section 313 Cr.P.C., it is noticed that the manner in which the questions were framed in this case clearly indicates that the trial Judge has mechanically converted the entire evidence into questions and turned the evidence of P.W.1 as one question, P.W.2 as another question and so on. Such a practice is highly deprecated, since the object of questioning under Section 313 Cr.P.C. is to enable the

accused to explain the incriminating circumstances put against him. Transforming the evidence given by each witness during chief-examination in entirety as a single question would defeat the very object of Section 313 Cr.P.C. itself. However, in this case, the manner in which the questions under Section 313 Cr.P.C. have been framed indicates that the learned trial Judge has not applied her mind and has mechanically framed the questions. Trial Judges are directed to avoid such practice in future.

*****

CDJ 2020 MHC 2794

Thangavel Versus The State, the Sub Inspector of Police, Dindigul District

Date of Judgment: 04-08-2020

Indian penal code section 304A - Head on collision- the accused was driving the bus on the extreme left side of the road, whereas, the deceased, who came in the opposite direction, came on the right side and hit the bus – conviction not sustainable.

A Perusal of the rough sketch [ExP7] and the observation mahazar [ExP2], the evidence of the Investigation Officer [PW11] and the Motor Vehicle Inspector [PW12] reveals that the deceased came in the two wheeler in the opposite direction, hit against the accused's bus and caused damage on the right side of the accused's bus. The deceased vehicle was not fully damaged, the tyres were intact. The accused was driving the bus on the extreme left side of the road, whereas, the deceased, who came in the opposite direction, came on the right side and hit the bus. Therefore, the petitioner cannot be found fault with that the accused was driving the bus in a rash and negligent manner and caused the death of the deceased. Further, the investigation agency has also not examined any of the passengers, who travelled in the Bus.

******

CDJ 2020 MHC 2584

S. Vairakannu& Another Versus The Inspector of Police, Uthukuli Police Station, Tiruppur& Others

Date of Judgment:17-08-2020

Offence under Section 454, 389 IPC, the danger of using the testimony of one accomplice to corroborate another - The testimony of an accomplice can in law be used to corroborate another though it ought not to be so used save in exceptional circumstances and for reasons disclosed.

A co-accused who confesses is naturally an accomplice and the danger of using the testimony of one accomplice to corroborate another has repeatedly been pointed out. The danger is in no way lessened when the “evidence” is not on oath and cannot be tested by cross-examination. Prudence will dictate the same rule of caution in the case of a witness who though not an accomplice is regarded by the Judge as having no greater probative value. But all these are only rules of prudence. So far as the law is concerned, a conviction can be based on the uncorroborated testimony of an accomplice provided the Judge has the rule of caution, which experience dictates, in mind and gives reasons why he thinks it would be safe in a given case to disregard it.

******