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IMPORTANT CASE LAW



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INDEX

S. No.	IMPORTANT CASE LAW	PAGE No.
1.	Supreme Court – Civil Cases	II
2.	Supreme Court – Criminal Cases	III
3.	High Court – Civil Cases	IV
4.	High Court – Criminal Cases	VII

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Sugandhi (dead) by L.Rs. and another Vs P.Rajkumar, rep. by his Power Agent, Imam Oli	2020 (3) MWN (Civil) 561	13.10.2020	<u>Civil Procedure Code, Order 8 Rule 1-A(3):-</u> The Court should take a lenient view when an application is made by the defendant under Order 8 Rule 1 A (3) of C.P.C., for production of documents.	1
2	EXL Careers and another Vs Frankfinn Aviation Services Private Limited	(2020) 7 MLJ 680 (SC)	05.08.2020	<u>Civil Procedure Code, Order 7 Rules 10 and 10A:-</u> When the plaint is returned under Order 7 Rule 10 or 10A of CPC for presentation in the proper court, proceeding had to commence de novo.	1
3	Abhilasha Vs Parkash and others	2020 (6) CTC 198	15.09.2020	<u>Code of Criminal Procedure, 1973, Section 125 and Section 20(3) of Hindu Adoption and Maintenance Act, 1956:-</u> Magistrate cannot exercise jurisdiction under section 20(3) of Hindu Adoption and Maintenance Act, 1956, in proceedings under section 125 of Cr.P.C.	2
4	Nazir Mohamed Vs J.Kamala and others	2020 (6) CTC 320	27.08.2020	<u>Limitation Act, 1963, CPC, 1908, Section 100:-</u> Plaintiff claiming a Decree of possession has to establish his entitlement to get such possession and also establish that his claim is not barred by the Laws of Limitation.	2
5	B.Santoshamma and Another Vs D.Sarala and another	2020 (11) SCALE 222	18.09.2020	<u>Civil Procedure Code 1908, Order II, Rule 2:-</u> If the plea of bar under Order II, Rule 2 of C.P.C. is not taken, the Court should not Suo motu decide the plea.	3
6	Nand Ram (D) through Lrs and Others Vs Jagdish Prasad (d) through Lrs	2020 (6) CTC 427	19.03.2020	<u>Limitation Act, 1963, Articles 65 and 67:-</u> Suit for Possession filed after determination of Lease by efflux of time is governed by Article 67 and not Article 65 of the Limitation Act, 1963.	3

SUPREME COURT - CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Rizwan Khan Vs State of Chhattisgarh	2020 (11) SCALE 42	10.09.2020	<u>Appreciation of Evidence:-</u> Testimony of official witnesses cannot be rejected on the ground of non-corroboration by independent witness.	4
2	Gurcharan Singh Vs State of Punjab	2020 (11) SCALE 508	01.10.2020	<u>Indian Penal Code, Section 107 & 306 Abetment of Suicide:-</u> In order to prove mens rea, there has to be something on record to establish or show that the accused had a guilty mind and in furtherance of that guilty mind, abetted the suicide of deceased.	4
3	MISS 'A' Vs State of Uttar Pradesh and another	2020 (4) MLJ (Crl) 338 (SC)	08.10.2020	<u>Criminal Procedure Code, 1973, Sections 164, 207 and 208:-</u> Right of the accused to receive copy of the 164 Cr.P.C. statement will arise, only at the stage contemplated by Section 207 and 208 of the Code and not before.	5
4	Union of India Vs Ashok Kumar Sharma and others	2020 (4) MLJ (Crl) 243 (SC)	28.08.2020	<u>Drugs and Cosmetics Act, 1940, Sections 18, 27 and 32, Criminal Procedure Code, 1973, Sections 154 and 190:-</u> Police officer cannot register FIR and investigate the cognizable offences under Chapter IV of the Drugs and Cosmetics Act, 1940.	5
5	Rekha Murarka Vs State of West Bengal and another	2020 (2) LW (Crl) 831	20.11.2019	<u>Criminal Procedure Code, 1973, Sections 24(8), 225 & 301:-</u> The private counsel engaged by the victim with the permission of the court under section 301 of Cr.P.C. can only assist the public prosecutor and cannot cross examine the witnesses or submit oral arguments.	6

HIGH COURT - CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	U.Sangeetha Vs R.Ulagaperoli and others	2020 (4) TLNJ 151 (Civil)	16.10.2020	<u>Civil Procedure Code, 1908, Order II, Rule 2:-</u> When the Plaintiff has cause of action to file suit for specific performance, he is not entitled to file suit for mere ancillary relief of interim injunction, not to alienate the property till the disposal of the suit.	7
2	Oriental Insurance Co. Ltd., Vs V.Sujatha	2020 (2) TNMAC 561 (DB)	25.09.2020	<u>Motor Vehicles Act, 1988, Contributory Negligence:-</u> If the deceased failed to maintain safe distance from the offending vehicle as per Regulation 23 of Road Regulation Rules, at the time of accident, his contributory negligence for the accident is to be fixed at 20%.	7
3	United India Insurance Co. Ltd., Vs Natarajan	2020 (2) TNMAC 616	25.09.2020	<u>Motor Vehicles Act, 1988, Section 149(2):-</u> Trailer in isolation, cannot be termed as a motor vehicle. Uninsured tractor attached with insured trailer is to be considered as an uninsured motor vehicle.	8
4	K.Indumathi Vs M.Periyasamy	2020 (2) TNMAC 650	13.10.2020	<u>Motor Vehicles Act, 1988, Section 163A:-</u> If the accident had happened due to the negligence of the deceased two wheeler rider and the insurer received premium for Personal Accident Cover, the insurer is liable to pay compensation under the Personal Accident Cover.	9

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
5	G.Balaji and another Vs Saravanasamy	2020 (4) TLNJ 175 (Civil)	20.07.2020	<u>Evidence Act, 1872, Sections 33 and 114:-</u> Incomplete evidence of a witness who has failed to subject himself for cross examination shall not be retained on record and it shall be eschewed.	9
6	Raja Vs Vedi Raj(died) and others	2020 (6) CTC 192	03.01.2020	<u>Easement Act, 1882, Section 13:-</u> Easement of necessity cannot be granted, when other means of access exists, however inconvenient it may be.	10
7	Govindhji Jewat & Co. Vs Rukmani Mills Ltd.,	2020 (6) CTC 313	24.08.2020	<u>Code of Civil Procedure, 1908, Section 64 & Order 38, Rule 10:-</u> The right of mortgagee, who secured the property prior to attachment, has an indefeasible right to proceed against the property.	10
8	G.Jothimani Vs K.M.Nachimuthu	2020 (5) LW 237	28.09.2020	<u>Civil Procedure Code, Order 3, Rule 2:-</u> Non obtaining of permission to file and prosecute suit through Power Agent is only a procedural irregularity, which is not fatal to the case.	11
9	Karuppa Gounder Vs Pongiyanna Gounder and others	2020 (5) LW 250	16.10.2020	<u>Civil Procedure Code, Order 21, Rule 105(2), Section 151:-</u> If the dismissal of Execution Petition is for any other reason than the absence of petitioner/decreed holder, the petition for restoration can be filed under section 151 of C.P.C., since the provisions of Order 21 Rule 106 would not apply to such petition.	11

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
10	P.D.P.Chinnadurai Vs T.Laksmanan and others	2020 (5) LW 264	05.10.2020	<p><u>Civil Procedure Code, Order 18, Rule 3A:-</u> In a given case, if a witness is granted exemption from tendering evidence, which he is in a best position to give or speak to, then, it would amount to Court foreclosing its responsibility to ensure reception of best evidence. The court cannot forfeit it's power to draw adverse inference by its own orders.</p>	12
11	G.Sendhattikalaipandian Vs Inspector of Police	2020(6) CTC 363	02.11.2020	<p><u>Compensation in Electrocutation Accident:-</u> TANGEDCO, being engaged in inherently dangerous activity, has strict liability to compensate Electrocutation Accident Victims, irrespective of their negligence.</p>	12

HIGH COURT - CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Mani Vs State Rep by Inspector of Police, Coimbatore	CDJ 2020 MHC 3579	11.11.2020	<u>Indian Penal Code, Section 366A:-</u> For proving the offence under section 366(A) of IPC, the prosecution has to prove that the inducement was made with intent that the victim may be, or knowing that it is likely that victim might be forced or seduced to illicit sexual intercourse with another male person.	13
2	RM.Arun Swaminathan Vs The Principal Secretary to the Government and others	2020 (2) LW (CrI) 762	28.09.2020	<u>Tamil Nadu Medical Code, Article 621:-</u> Doctors shall follow Article 621 of Tamil Nadu Medical Code, by sending the Post-Mortem certificate as soon as it is over, to the Judicial Magistrate.	13
3	Anbarasan @ Chinnamani @ Mani Vs State of Tamil Nadu rep by the Inspector of Police.	2020 (3) MWN (CrI) 321 (DB)	04.06.2020	<u>Code of Criminal Procedure, 1973, Section 313:-</u> When the accused gives evasive answers in the examination under section 313 of Cr.P.C., an adverse inference can be drawn by the court.	14
4	D.Kathirvel Vs State rep. by Inspector of Police, Vigilance and Anti-corruption, Trichy.	2020 (3) MWN (CrI) 389	12.03.2020	<u>Code of Criminal Procedure, 1973, Section 313:-</u> Statement made by accused under section 313 of Cr.P.C. can certainly be taken aid of, to lend credence to evidence led by prosecution.	15
5	Santhanasamy and 2 others Vs Felix Adaikalraj and others	2020 (3) MWN (CrI.) 443	14.05.2020	<u>Code of Criminal Procedure, 1973, Section 28(3) and 194:-</u> The Assistant Sessions Judge can very well try any case assigned by the Sessions Judge and if the Assistant Sessions Judge is of the view that the sentence above 10 years imprisonment has to be imposed, he can always refer the matter back to the Sessions Judge.	15

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
6	N.Mohan Vs P.Suresh	2020 (3) MWN (CrI.) DCC 101 (Mad)	08.10.2020	<u>Negotiable Instruments Act, 1881, Section 138:-</u> Time barred debt cannot fall within the requirements of section 138 of N.I. Act, which talks about existing debt or liability only.	16
7	S.Sridhar Vs Additional Superintendent of Police, CBI, New Delhi	CDJ 2020 MHC 3442	10.11.2020	<u>Criminal Procedure Code, 1973, Section 439:-</u> The bail application in heinous crime is to be dealt with caution and there cannot be any leniency or misplaced sympathy.	17
8	Kumar Vs Maheshwari	CDJ 2020 MHC 3299	28.10.2020	<u>The Protection of Women from Domestic Violence Act, 2005, Sections 18, 20(1)(d) and Section 125 of Cr.P.C.:-</u> The acts of Domestic Violence are continuing offences for which limitation cannot be fixed.	17
9	M.Srinivasan Vs State through Inspector of Police, Tirumangalam Town Police Station and another	CDJ 2020 MHC 3644	28.10.2020	<u>Tamil Nadu Prohibition of Harassment of Women Act, 2002, Section 4:-</u> If the transgender views herself as a woman, the prosecution is entitled to register her complaint under the Tamil Nadu Prohibition of Harassment of Women Act, 2002.	18
10	Veerasangili Kanniah Thanabalan @ V.K.T Balan Vs State rep by The D.S.P Crime Branch C.I.D Metro wing, Chennai	2020 (4) MLJ (CrI) 353	05.10.2020	<u>Criminal Procedure Code, 1973, Section 482:-</u> Long delay in the progress of the case and Loss of records of the case are not good reasons to quash the prosecution of very serious offences.	18

SUPREME COURT CIVIL CASES

2020 (3) MWN (Civil) 561

Sugandhi (dead) by L.Rs. and another Vs P.Rajkumar

Date of Judgment: 13.10.2020

CODE OF CIVIL PROCEDURE, 1908 (5 OF 1908), Order 8, Rule 1-A(3) – Additional document – Production of – Leave of Court – Whether to be granted – Suit for Injunction – Application for seeking leave of Court to produce certain documents filed by Defendants, when matter posted for evidence – Application dismissed – Held, under sub-rule (3) of Rule 1-A of Order 8, if reasonable cause shown, Court can grant second opportunity to Defendant to produce documents, which he ought to have produced along with Written Statement – Courts ought to adopt lenient view while dealing with such Applications – Procedural violation not to hinder delivery of substantial justice.

(2020) 7 MLJ 680 (SC)

EXL Careers and Another Vs Frankfinn Aviation Services Pvt. Ltd.

Date of Judgment: 05.08.2020

In cases dealing with transfer of proceedings from a Court having jurisdiction to another Court, the discretion vested in the Court by Sections 24(2) and 25(3) either to retry the proceedings or proceed from the point at which such proceeding was transferred or withdrawn, is in marked contrast to the scheme under Order 7 Rule 10 read with Rule 10-A where no such discretion is given and the proceedings has to commence de novo.

2020 (6) CTC 198

Abhilasha Vs Prakash and others

Date of Judgment: 15.09.2020

Code of Criminal Procedure, 1973 (2 of 1974), Section 125 – Hindu Unmarried Daughter – Claim for Maintenance – Whether entitled to Maintenance after attaining majority – Application filed by Mother claiming Maintenance for herself, her daughter/Appellant and her sons – Maintenance ordered in favour of daughter/Appellant till she attained majority – Stand of Appellant/daughter that she is entitled to Maintenance till she is unmarried by virtue of Section 20(3) of 1956 Act – Held, Maintenance contemplated under Section 20(3) of 1956 Act, a much larger concept than one under Section 125 – Magistrate in proceedings under Section 125. Cr.P.C. cannot exercise jurisdiction under Section 20(3) of 1956 Act.

2020 (6) CTC 320

Nazir Mohamed Vs J.Kamala and others

Date of Judgment: 27.08.2020

Property Law – Limitation Act, 1963, (36 of 1963), Article 65 – Code of Civil Procedure, 1908 (5 of 1908), Order 7 – Evidence Act, 1872 (1 of 1872), Sections 101 to 103 – Recovery of Possession, when permissible – Plaintiff pleaded Defendant’s original possession was permissive – Defendant denied title and ownership of Plaintiff and pleaded complete possession and ownership – Burden lies on Plaintiff to prove tenancy of Defendant – On failure to establish such tenancy, Adverse Possession may be presumed – First Appellate Court confirmed findings of Plaintiff’s ownership and title but denied recovery of possession as barred by limitation – High Court in Second Appeal granted recovery of possession – Held, Decree of Possession does not automatically follow Decree declaring title and ownership over property – Person seeking possession must establish: (i) entitlement to such possession; (ii) claim not barred by limitation; and (iii) he had possession before alleged trespasser got possession – High Court erred in allowing possession to Plaintiff on ground that Defendant has not pleaded and proved Adverse Possession – Settled principle is that Plaintiff’s claim to reliefs must be decided on strength of Plaintiff’s case and not on weakness of Defendant’s case – Plaintiff ought to have pleaded date when defendant or his predecessor-in-interest took possession – Presumption that possession deemed to follow title applicable only when there is no definite proof of possession by anyone else.

2020 (11) SCALE 222

B. Santoshamma and another Vs D. Sarala and another

Date of Judgment: 18.09.2020

Civil Procedure – CPC – Order II Rule 2 – Clubbing of suits – Plea of bar under Order II Rule 2, CPC is a technical plea which has to be pleaded and satisfactorily established – Plea of bar under Order II Rule 2, if not taken, the Court should not suo motu decide the plea.

2020 (6) CTC 427

Nand Ram (D) through LRs. and Others Vs Jagdish Prasad through LRs

Date of Judgment: 19.03.2020

Limitation Act, 1963 (36 of 1963), Articles 65&67 – Suit for Possession of leased property – Governing Article – Lease for a period of 20 years – Suit for possession filed after determination of Lease by efflux of time – Said Suit, held, governed by Article 67 specifically dealing with right of Lessor – to claim possession after determination of tenancy – As period of Lease expired in September, 1974, Suit filed within 12 years i.e. in March 1981, held within limitation as per mandate of Article 67 – Finding of High Court that Suit was governed by Article 65, erroneous and set aside.

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SUPREME COURT CRIMINAL CASES

2020 (11) SCALE 42

Rizwan Khan Vs The State of Chhattisgarh

Date of Judgment: 10.09.2020

There is no law that the evidence of police officials, unless supported by independent evidence, is to be discarded and/or unworthy of acceptance. It is settled law that the testimony of the official witnesses cannot be rejected on the ground of non-corroboration by independent witness. As observed and held by this Court in catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case.

2020 (11) SCALE 508

Gurcharan Singh Vs The State of Punjab

Date of Judgment: 01.10.2020

Whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Section 107 of IPC, the state of mind of commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.

2020 (4) MLJ (CrI) 338 (SC)

MISS 'A' Vs State of Uttar Pradesh and Another

Date of Judgment: 08.10.2020

Filing of charge-sheet by itself, does not entitle an accused to copies of any of relevant documents including statement under Section 164 of Code – No person entitled to copy of statement recorded under Section 164 of Code till appropriate orders passed by court after charge-sheet is filed – Right to receive a copy of such statement will arise only after cognizance is taken and at stage contemplated by Sections 207 and 208 of Code and not before – Application of Respondent No.2 was, therefore, rightly rejected by Additional Sessions Judge – High Court erred in appreciating directions issued by this Court, especially in matter where offences alleged against accused are of sexual exploitation – In such matters utmost confidentiality is required to be maintained – High Court order, set aside.

2020 (4) MLJ (CrI) 243 (SC)

Union of India Vs Ashok Kumar Sharma and Others

Date of Judgment: 28.08.2020

Having regard to scheme of CrPC and mandate of Section 32 of Act and on a conspectus of powers which are available with Drugs Inspector under Act and also his duties, a Police Officer cannot register a FIR under Section 154 of CrPC, in regard to cognizable offences under Chapter IV of Act and he cannot investigate such offences under provisions of CrPC – Therefore, in regard to the power of arrest, we make it clear that our decision that Police Officers do not have power to arrest in respect of cognizable offences under Chapter IV of the Act, will operate with effect from the date of this Judgment.

2020 (2) LW (CrI) 831

Rekha Murarka Vs State of West Bengal and another

Date of Judgment: 20.11.2019

The use of the term “assist” in the proviso to Section 24(8) is crucial, and implies that the victim’s counsel is only intended to have a secondary role qua the Public Prosecutor. This is SUPPORTED by the fact that the original Amendment Bill to the CrPC had used the words “coordinate with the prosecution”. However, a change was later proposed and in the finally adopted version, the words “coordinate with” were substituted by “assist”. This change is reflective of an intention to only assign a supportive role to the victim’s counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under Section 301(2). In our considered opinion, a mandate that allows the victim’s counsel to make oral arguments and cross examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from Section 225 and Section 301(2), permitting such a free hand would go against the scheme envisaged under the CrPC.

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HIGH COURT CIVIL CASES

2020 (4) TLNJ 151 (Civil)

U.Sangeetha Vs R.Ulagaperoli and others

Date of Judgment: 16.10.2020

Civil Procedure Code, 1908, Order 2 Rule 2 – Suit for permanent injunction based on unregistered agreement of sale – against the petitioner – R.1 not filed the suit for specific performance, but has filed I.A.No. under Order II Rule 2 of C.P.C., for leave of the Court to file the suit for specific performance against the petitioner at a later stage – for the reason that as per the agreement, petitioner has not measured suit property, executed the sale deed in his favour and also petitioner trying to alienate the suit property – But R.1 not placed any material to show that he was ready and willing to pay the balance sale consideration also not placed any material to show that he called upon the petitioner to measure the suit property and receive the balance consideration – intention of incorporating Order II Rule 2 of C.P.C. is to prevent multiplicity of proceedings and making the defendants to face the vexatious suit and more than one suit – The 1st respondent cannot be allowed to circumvent the law, especially when the substantial Court fee is payable for the relief of specific performance.

2020 (2) TN MAC 561 (DB)

Oriental Insurance Co. Ltd. Vs V.Sujatha and 4 Others

Date of Judgment 25.09.2020

NEGLIGENCE – CONTRIBUTORY NEGLIGENCE – Deceased driving Two-Wheeler, dashed against ongoing Lorry from behind when Lorry suddenly applied brakes – Whether deceased contributed to accident – Contention placing reliance on Regulation 23 of Rules of Road Regulations that deceased could have exercised caution and averted accident had he been prudent – As per Regulation 23, a Driver of Motor vehicle moving behind another ongoing vehicle, must maintain sufficient distance to avert any collision in case ongoing vehicle slowing down or applying sudden brakes – Regulation, a benevolent Statutory provision, applies to all motorists to ensure their safety – “Sufficient distance”, though not expressly provided in Regulation by indicating actual distance to be maintained between two vehicles, can be interpreted and inferred as reasonable and adequate distance required to ensure absolute control to bring vehicle to a halt in case of unwarranted brake by ongoing vehicle – Driver of vehicle must not only maintain “sufficient distance” between vehicles but must also follow Rule of Prudence to ensure untoward happenings – Deceased as a motorist riding behind a heavy vehicle ought to have exercised caution – Same yardstick applies to ongoing vehicles in event of applying brakes – Deceased hit Lorry soon after sudden brakes applied as per evidence of PW2 – Would indicate that deceased was not prudent enough in maintaining “sufficient distance” to avert collision – Moreover, deceased was not wearing helmet – Therefore, entire negligence cannot be attributed on part of Lorry Driver – There is negligence to certain extent on part of deceased also –

Tribunal ought to have fixed Contributory Negligence on part of deceased – Considering facts and circumstances of case, High Court fixed 20% Negligence on part of deceased and 80% Negligence on part of offending Lorry.

2020 (2) TN MAC 616

United India Insurance Co. Ltd. Vs Natarajan and 5 others

Date of Judgment : 25.09.2020

MOTOR VEHICLES ACT, 1988 (59 OF 1988), Section 149 (2) – Travelling in Tractor alongwith Driver – If, amounts to violation of Policy Condition – Liability of Insurer – Admittedly, deceased, travelling in Tractor sitting on engine guard, fell down and run over by wheels of Trailer – Tractor, though uninsured, attached with insured Trailer – Tribunal wrongly holding that Tractor and Trailer were insured with Appellant without noticing Registration Number of Tractor involved in accident – Held, deceased travelled unauthorisedly in uninsured Tractor attached with insured Trailer – Appellant, no way responsible for accident occurred to unauthorized passenger of uninsured Tractor, liable to be exonerated from liability – Owner of Tractor alone held to be liable – Contention that deceased died, when insured Trailer ran over him, therefore Insurer of Trailer bound to compensate – Rejected – Trailer in isolation cannot be termed as Motor Vehicle – Uninsured Tractor attached to Trailer to be considered as an uninsured Motor Vehicle – Trailer gets inertia to move only from Tractor fitted with Motor Engine – Compliance of Policy to be looked from angle of Motor Vehicle i.e., Engine and not from angle of Trailer.

2020 (2) TN MAC 650

K.Indumathi and others Vs M.Periyasamy and another

Date of Judgment: 13.10.2020

MOTOR VEHICLES ACT, 1988 (59 OF 1988), Section 163-A – Claim under – Dismissal of, as not maintainable – Legality – Deceased, while driving Motorcycle owned by R1, fell from vehicle and died on spot – No other vehicle involved in accident – Accident due to negligence of deceased himself – Deceased, though possessed valid Driving License, was driving vehicle borrowed from its Owner – Deceased being a borrower of vehicle enters into shoes of Owner, therefore, not a Third party – Tribunal rightly dismissed Claim Petition as not maintainable – However, erred in dismissing claim under Personal Accident Cover – Deceased, as a Rider entered into shoes of Owner, by deeming fiction becomes Owner of vehicle – Policy being Package Policy and Insurer having received Premium towards Personal Accident Cover for Owner-Driver, liable to pay Rs.1,00,000/- within 6 calendar months under Personal Accident Cover – Personal Accident Cover provided to Owner also covers borrower, who entered into shoes of Owner.

2020 (4) TLNJ 175 (Civil)

G.Balaji and another Vs Saravanasamy

Date of Judgment: 20.07.2020

Evidence Act, 1872, Section 33 and 114 – Petition for eschewing the evidence of a witness for not submitting himself for continuation of cross-examination in a suit for permanent injunction filed Respondent – Revision – evidence of Plaintiffs very crucial to prove his case – Such evidence shall become complete only upon completion of cross examination – conduct of the respondent/plaintiff after having filed the proof affidavit and marked the documents, remaining absent for cross examination will amount to denial of opportunity to the opponent to disprove the claim – incomplete evidence of a witness who has failed to subject himself for cross examination shall not be retained on record – contention that the evidence can be used at the later stage of the proceeding as per Sec.33 of Evidence Act is not sustainable since the evidence herein is not the complete evidence.

2020 (6) CTC 192

Raja Vs Vedi Raj (Died) and 16 Others

Date of Judgment: 03.01.2020

Easements Act, 1882 (5 of 1882), Sections 13 & 15 – Suit against adjacent land owners for declaration of Easementary right of Pathway – Claim that said right was conveyed under Sale Deed – Even otherwise, right has been acquired by way of prescription and also necessity – Finding of Trial Court as to existence of alternative way to reach land – Suit dismissed and confirmed in Appeal – Second Appeal – Sale Deed on strength of which Easementary right is claimed, does not grant any such right – Report and Plan of Advocate Commissioner reveal existence of alternative Pathway – Easement of Necessity cannot be granted, when other means of access exists, however inconvenient it may be – Second Appeal dismissed.

2020 (6) CTC 313

Govindhji Jewat & Co. Vs Rukmani Mills Ltd.,

Date of Judgment: 24.08.2020

Code of Civil Procedure, 1908 (5 of 1908), Section 64 & Order 38, Rule10 – Attachment – Right of prior Mortgagee – Mortgage by deposit of Title Deeds created in 1980 – Property taken possession under SARFAESI Act – Decree holder attached several properties including Mortgaged property – Order of Attachment much after Mortgage – Held, Bank holds first charge by virtue of prior Mortgage – Attachment after Mortgage cannot affect pre-existing right of Bank – Order of Attachment not binding on Bank – Order of Attachment being otherwise valid is enforceable subject to equitable Mortgage in favour of Bank- Money decree-holder entitled to proceed against remaining asset or balance of Sale proceeds available after adjusting dues to Bank – Execution proceedings by Decree-holder stayed till Bank realizes its dues out of property mortgaged.

2020 (5) LW 237

G.Jothimani Vs K.M.Nachimuthu

Date of Judgment: 28.09.2020

The defendant very well knew that the plaintiff is represented by a power agent. In the written statement, which was filed in the year 2004, there is no whisper regarding the absence of permission under Order 3 Rule 2 of C.P.C. The application in I.A.No. 688 of 2015 has been filed only with an object to delay the suit, which has been achieved by the defendant. Non-obtaining of permission to file a suit under Order 3 Rule 2 is only a procedural irregularity, which is not fatal.

2020(5) LW 250

Karuppa Gounder Vs Pongiyanna Gounder and Others

Date of Judgment: 16.10.2020

CPC, Order 21 rule 105(2), Section 151

Limitation Act, Section 5, Article 137

Scope of Restoration of an execution petition dismissed for default.

It is not a dismissal under Rule 105(2) i.e., a dismissal for non-appearance of the petitioner on the day when the petition was called on for hearing, it was posted for filing of Commissioner's report only.

held: application under section 151 maintainable – period of limitation for such application would be 3 years.

2020 (5) LW 264

P.D.P.Chinnadurai Vs T.Lakshmanan& Others

Date of Judgment: 05.10.2020

It is imperative, subject to burden of proof, best evidence should be made available to the court. If in a given case, a witness is granted exemption from tendering evidence which he is in a best position to give or speak to, then, it would amount to court foreclosing its responsibility to ensure reception of best evidence. In a litigious battle, if a party fails to produce best evidence, when he is in a position to tender it, other side is entitled to seek the court an adverse inference. The court cannot forfeit its power to draw adverse inference by its own orders.

G. Sendhattikalaipandian Vs Inspector of Police, Alangulam Police Station, Virudhunagar

District and another

Date of Judgment: 02.11.2020

Electrocution accident determined to be Act of God – No negligence found on part of TANGEDCO – Scope of liability for compensation – Determination of Compensation –TANGEDCO being engaged in inherently dangerous activity, has strict liability to compensate Accident Victims irrespective of negligence – Compensation payable in such cases can be determined similar to Motor Accident cases – Ratio laid down in *M.P. Electricity Board v. Shail Kumari and M.C. Mehta v. Union Of India, 1987 (1) SCC 395*;followed.

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HIGH COURT CRIMINAL CASES

CDJ 2020 MHC 3579

Mani Vs State Rep. by Inspector of Police, Coimbatore

Date of Judgment: 11.11.2020

It is true, for proving the offence under Section 366(A) of IPC, the prosecution has to prove that the inducement was made with intent that the victim may be, or knowing it is likely that the victim might be forced or seduced to illicit sexual intercourse with another male person. But, here it is a case that at the request made by the victim girl, the appellant herein again brought her to Coimbatore, wherein both the accused and the victims are residing.

Therefore, the main ingredient, which is necessary for proving the offence under Section 366 (A) of IPC is not found in the evidences given by the prosecution. But the trial Court concluded the case in favour of the prosecution only by accepting the suggestion put forth by the accused, which is erroneous in law.

2020-2-L.W.(Crl.) 762

RM.Arun Swaminathan Vs The Principal Secretary to the Government, Health and Family

Welfare Dept., Govt. of TN, Chennai and 3 others.

Date of Judgment: 28.09.2020

Constitution of India, Article 226/PIL/Autopsies, conducting of, procedure, violation, Directions, implementation, scope.

Tamil Nadu Medical Code, Article 621, Autopsies, Conducting of

Held:

Doctors shall follow Article 621 of Tamil Nadu Medical Code by sending the post-mortem certificate as soon as it is over to the Judicial Magistrate and send a copy to the Head of the Department on the same day failing which departmental proceedings shall be initiated against them

Post-mortem certificates should be issued based on the NHRC model

Government Servants shall mark their attendance only through biometric system

Respondents to video graph post-mortems whenever as request is made by the relatives or friends of the deceased

There shall be Notice in the hospitals informing that there will be videographing on request

All important points in the mortuaries as well as in the dissection halls, CCTV cameras shall be placed

Web based system namely, MedLeaPR developed by NIC, Haryana, shall be followed by all the Doctors of the hospitals in Tamil Nadu, in Government Health Institutions, Private Nursing Homes and Hospitals and this direction shall be with effect from 1st January, 2021.

2020 (3) MWN (Cr.) 321 (DB)

**Anbarasan @ Chinnamani @ Mani Vs State of Tamil Nadu, rep. by the Inspector of Police, B-6,
Peelamedu Police Station, Coimbatore District**

Date of Judgment: 04.06.2020

During trial, when the Appellant was questioned under Section 313 of the Criminal Procedure Code, he feigned innocence, but has not chosen to give any explanation for his absence from the Construction site soon after the occurrence. In fact, there was no explanation offered by the Appellant as to when he left the Construction site. Therefore, an adverse inference can be drawn against the Appellant. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of Lyngdoh v. State of Meghalaya, 2016 (15) SCC 572, wherein it was held that when the Accused gives evasive answers in the examination under Section 313 of Cr.P.C. an adverse inference can be drawn. In this case, as observed above, when the Appellant was questioned under Section 313 of the Code of Criminal Procedure, he remained tight-lipped without offering any explanation for his absence from the Construction site soon after the occurrence. The appellant also did not explain as to whether any other person was present in the Construction site at the time of occurrence. When the Appellant choose to remain silent without offering any explanation for his absence from the Construction site soon after the occurrence, an adverse inference can be drawn against him. The Trial Court is wholly justified in drawing such an adverse inference against the Appellant/Accused and in concluding that the prosecution has successfully proved the guilt against the Appellant/Accused in this case. We see no reason to interfere with such a finding recorded by the Trail Court.

2020 (3) MWN (Cr.) 389

**D.Kathirvel and another Vs State rep. by, Inspector of Police, Vigilance and Anti-Corruption,
Trichy**

Date of Judgment: 12.03.2020

CODE OF CRIMINAL PROCEDURE, 1973 (2 of 1974), Section 313 – Answers tendered by Accused in questioning under – Evidentiary value of – Statement made by Accused under Section 313 can certainly be taken aid of to lend credence to evidence led by prosecution – To be considered not in isolation but in conjunction with other prosecution evidence – Equally answers given by Accused to questions under Section 313 not to be considered in isolation but only in conjunction with evidence on record – Answers cannot be taken aid of by defence to portray innocence of Accused – In instant case, answers given by Accused in no way synchronise with evidence on record so as to render a verdict in favour of Accused.

2020 (3) MWN (Cr.) 443

Santhanasamy and Others Vs Felix Adaikalaraj and others

Date of Judgment: 14.05.2020

CODE OF CRIMINAL PROCEDURE, 1973 (2 of 1974), Sections 28(3) & 194 – Cases involving offence under Section 307, IPC – If, can be tried by Assistant Sessions Judge – Whether Assistant Sessions Judge restricted from passing sentence of imprisonment for a term exceeding 10 years in terms of Section 28(3) – On a case being made over for trial by Sessions Judge under Section 194 to an Assistant Sessions Judge, latter competent to try same irrespective of fact whether Assistant Sessions Judge is competent to impose minimum sentence authorized by law or not – In event of Assistant Sessions Judge holding Accused guilty of offence which deserves sentence of imprisonment for a term exceeding 10 years, case records to be placed before Sessions Judge for passing appropriate sentence – Assistant Sessions Judge can always refer back case to Sessions Judge, if case warrants sentence of imprisonment which he is not capable of imposing – Case-law discussed – Lack of power to award sentence will not come in way of trying case itself – Contention that Assistant Sessions Judge had no jurisdiction to try case for offence under Section 307, rejected.

2020 (3) MWN (Cr.) DCC 101 (Mad.)

N.Mohan Vs P.Suresh

Date of Judgment: 08.10.2020

NEGOTIABLE INSTRUMENTS ACT, 1881 (26 of 1881), Section 138 – CODE OF CRIMINAL PROCEDURE, 1973 (2 of 1974), Section 482 – Time-barred debt – Complaint in respect of – Maintainability – Cheque presented in year 2014 in respect of debt/liability of year 2009 – No existing debt/liability on date of presentation of Cheque as alleged Loan become time-barred – Time-barred debt cannot fall within ingredients of Section 138 – Section talks about “existing debt or liability” – Complaint filed in year 2014 after coming to know about Civil Suit filed by Petitioner for Mandatory Injunction and return of Cheque – No explanation by Complainant for delay – Complaint, held, abuse of process of Court and liable to be quashed.

CDJ 2020 MHC 3442

S.Sridhar Vs Additional Superintendent of Police, CBI, SC II, New Delhi & Another

Date of Judgment: 10.11.2020

Undoubtedly, bail is a right and denial is an exception. However, right of bail is to be considered inconsonance with the principles established and considering the concrete facts and circumstances coupled with the general Principles of Law. While considering those principles established by the Courts as well as the impacts in the society coupled with the fact and circumstances, if there is any likelihood of causing prejudice in either way either to the witnesses in general or to the society at large. Such heinous crime committed are to be dealt with cautions and there cannot be any leniency or

misplaced sympathy, which would affect the sentiments of the people at large, which is otherwise not in consonance with the constitutional Philosophy and Ethos.

CDJ 2020 MHC 3299

Kumar Vs Maheshwari

Date of Judgment: 28.10.2020

At the outset, Maheshwari is not asking for a protection to reside in the house of Kumar. On the contrary, she is praying for a protection order that Kumar should not disturb her by coming to her house at Door No.31, 4th Cross, Anthoniar Koil Street, Oulagret, Puducherry. In the petition, she has clearly stated that Kumar came to her house on 23.09.2012 and 24.09.2012, abused her and caused damage to her properties. The Domestic Violence complaint has been filed by her on the next day i.e, 25.09.2015 and hence, the same is not barred by limitation. That apart, as rightly pointed out, the Supreme Court in Krishna Bhattacharjee Vs. Sarathi Choudhury & Another (2016 (2) SCC 705) has very clearly stated that, the acts of Domestic Violence are continuing offences for which limitation cannot be fixed.

CDJ 2020 MHC 3644

M.Srinivasan Vs State through, The Inspector of Police, Thirumangalam Town Police Station,

Madurai and another

Date of Judgment: 28.10.2020

The Petitioner's counsel contended that admittedly the defacto complainant is a transgender person and that therefore it is not open to the prosecution to invoke the provisions of Tamil Nadu Prohibition of Harassment of Women Act, 2002.

In response thereto, the learned Government Advocate (Crl.Side) drew the attention of the Court made in Arnkumar Srija Vs. Inspector General of Registration. This Court following the judgment of the Hon'ble Supreme Court report in (2014) 5 SCC 483 (National Legal Services Authority vs. Union of India) had held that it is entirely for the transgender person to self-identify her gender and that this self determination cannot be questioned by others.

In the case of hand, the defacto complainant/Neka views herself as a woman. Therefore, the prosecution rightly accepted the said self identification and registered the case under Tamil Nadu Prohibition of Harassment of Women Act, 2002. Therefore, I find no merit in the contention of the petitioner's counsel that invocation of Tamil Nadu Prohibition of Harassment of Women Act, 2002, is not maintainable.

**Veerasangili KanniahThanabalan @ V.K.T. Balan Vs. State Rep. by The Deputy Superintendent
of Police, Crime Branch, C.ID., Metro wing, Chennai – 28**

Date of Judgment: 05.10.2020

Quash Petition – Delay – Code of Criminal Procedure, 1973, Section 482 – Single complaint filed against Petitioner and other accused for offence of attempt to murder and offence under Official Secrets Act since it was committed in course of same transact – In transit of case from one Court to another, several documents were irretrievably lost and thirty years lapsed without any progress and Petitioner subjected to long ordeal, hence this quash petition – Whether prosecution could be quashed on ground of delay and loss of records – Held, allegations against accused were very serious that they were passing secret information on country to their handlers in neighboring country – They planned to assassinate victim to achieve which, they placed high power explosives with timer device near his house – Bomb did explode, but, fortunately no one was injured – Prosecution could not be quashed on ground of delay – Loss of records could not be good reason to quash prosecution and secondary evidence could be adduced in case, where, document had been lost – Petition dismissed with directions. The loss of records cannot also be a good reason to quash a prosecution and that secondary evidence can be adduced in a case, where, a document has been lost.

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