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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 F**ax**: (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,
Alagar Koil Road, Madurai – 625 002,
Telephone No: 0452 – 2560807 / 811
E-Mail:tnsja.rc.mdu@gmail.com

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SUPREME COURT CIVIL CASES

2020(6) Supreme Court Cases 557

Nusli Neville Wadia v. Ivory Properties and others

Date of Judgment : 04.10.2019

Civil Procedure Code, 1908 – Or.7 R.11 – Rejection of Plaint - Whether the averments made by the defendant in the written statement or otherwise can be considered for rejection of Plaint?

The provision under which a plaint can be rejected is provided in Order 7 Rule 11(d). The language used in Order 7 Rule 11 is where averments made in plaint does not disclose a cause of action; relief claimed is undervalued, and the plaint is not corrected in spite of the direction of the Court; plaint is insufficiently stamped, and in spite of Court's order the plaintiff has failed to supply the requisite stamp duty; where the suit appears from the statement in the plaint to be barred by any law; where it is not filed in duplicate; and where plaintiff fails to comply with the provisions of Rule 9. What is of significance under Order 7 Rule 11 is that from the averments of plaint itself the suit is barred by any law and it would include limitation also including bar created by any other law for the time being in force. For the rejection of plaint, averments made by the defendant in the written statement or otherwise cannot be seen, only the averments of the plaint are material and can be taken into consideration and no other evidence.

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2020(4)Supreme Court Cases 413

Kajal v. Jagdish Chand and Others

Date of Judgment :05.02.2020

Motor Vehicles Act, 1988 – Ss.166, 168 and 173- Permanent total disability – Compensation – Pecuniary damages – Computation of notional income in case of school going child – Each case need to be decided on its own evidence.

Both the courts below have held that since the girl was a young child of 12 years only notional income of Rs.15,000 p.a. can be taken into consideration. We do not think this is a proper way of assessing the future loss of income. This young girl after studying could have worked and would have earned much more than Rs.15,000 p.a. Each case has to be decided on its own evidence but taking notional income to be Rs.15,000 p.a. annum is not at all justified. The appellant has placed before us material to show that the minimum wages payable to a skilled workman is Rs.4846 p.a. As per the opinion of the Hon'ble Supreme Court, this would be the minimum amount which she would have earned on becoming a major. Adding 40% for the future prospects, it works to be Rs.6784.40 p.a. i.e., 81,412.80 p.a. Applying the multiplier of 18, it works out to Rs.14,65,430.40, which is rounded off to Rs.14,66,000.

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2020(6) Supreme Court Cases 288

Siri Chand (Dead) through Legal Representatives v. Surinder Singh

Date of Judgment : 17.06.2020

Property Law – Transfer of Property Act, 1882 – Ss.106 and 107 - Where the lease/rent deed does not mention the period of tenancy –conditions to find out the true nature of the deed.

The present is a case where rent deed does not prescribe any period for which it is executed. When the lease deed does not mention the period of tenancy, other conditions of the lease/rent deed and intention of the parties has to be gathered to find out the true nature of the lease deed/rent deed. The two conditions written in the rent note are also relevant to notice. First, if payment of rent in any month is not made up to 5th of month, owner shall have right to get the shop evicted and second if the owner is in need of shop, he by serving notice of one month can get the shop vacated. We may notice that in the above case although the annual rent was mentioned but, however, payment of monthly rent was mentioned in the lease deed. The rent note, which we are considering contains only monthly rent and payment month by month. As per law laid down by this Court in "*Ram Kumar Das"* there shall be a presumption that the tenancy in the present case is monthly tenancy. When the clauses of rent note are cumulatively read, the intention of the tenant is more than clear that tenancy was only monthly tenancy, which could have been terminated on default of payment of rent by 5th day of any month or by notice of one month. The rent deed did not confer any right to tenant to continue in the tenancy for a period of more than one year nor it can be said that tenancy was created for a period of more than one year. Clause (9), which noticed the promise of the tenant of payment of rent by increasing 10% each year was a promise contingent on tenancy being continued beyond one year but cannot make the tenancy year to year or tenancy for a period of more than one year. Present was a case of tenancy for which no period was specified and looking to all the clauses cumulatively, the note cannot had farad we find that the rent note was not such kind of rent note, which requires compulsory registration under Section 17(1)(d).

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2020(5) CTC 302

Vineeta Sharma v. Rakesh Sharma & others

Date of Judgment: 11.08.2020

Hindu Succession Act, 1956 (30 of 1956), Section 6 [*as amended by Hindu Succession (Amendment) Act, 2005 (39 of 2005)]– Interpretation of statutes - The conferral of right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth – whether the provisions are of retroactive application?

The amended provisions of Section 6(1) provide that on and from the commencement of the Amendment Act, the daughter is conferred the right. Section 6(1)(a) makes daughter by birth a coparcener "in her own right" and "in the same manner as the son." Section 6(1)(a) contains the concept of the unobstructed heritage of Mitakshara coparcenary, which is by virtue of birth. Section 6(1)(b) confers the same rights in the coparcenary property "as she would have had if she had been a son". The conferral of right is by birth, and the rights are given in the same manner with incidents of

coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth. Though the rights can be claimed, w.e.f. 9.9.2005, the provisions are of retroactive application; they confer benefits based on the antecedent event, and the Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener. At the same time, the legislature has provided savings by adding a Proviso that any disposition or alienation, if there be any testamentary disposition of the property or Partition which has taken place before 20.12.2004, the date on which the Bill was presented in the RajyaSabha, shall not be invalidated.

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2020(5) CTC 926

PappuDeoYadav v. Naresh Kumar & others

Date of Judgment: 17.09.2020

Motor Vehicles Act, 1988 (59 of 1988), Sections 140 & 166 – Evidence Act, 1872 (1 of 1872) - Permanent Disablement – Assessment for Compensation – Assessment of extent of Disability and Compensation under various heads must be realistic.

Courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and Compensation under various heads. In the present case, the loss of an arm, in the opinion of the Court, resulted in severe income earning impairment upon the Appellant. As a Typist/Data Entry Operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disablement was assessed at 89%; however, the High Court halved it to 45% on an entirely wrong application of some 'proportionate' principle, which was illogical and is unsupportable in law. What is to be seen, as emphasized by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application. On an overview of the principles outlined in the previous decisions, it is apparent that the income generating capacity of the Appellant was undoubtedly severely affected. Maybe, it is not to the extent of 89%, given that he still has the use of one arm, is young and as yet, hopefully training (and rehabilitating) himself adequately for some other calling. Nevertheless, the assessment of Disability cannot be 45%; it is assessed at 65% in the circumstances of this case.

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SUPREME COURT CRIMINAL CASES

2020 (2) Supreme Court Cases (Cri) 382 :2019(16) Supreme Court Cases 584

Mohd. Mannan Alias Abdul Mannan v. State of Bihar

Date of Judgment :14.02.2019

Indian Penal Code, 1860 – Ss.302, 376, 366-A and 201 –Criminal Procedure Code, 1973 – S.235(2) -Hearing on question of death penalty – Obligation on court of – Manner for effective hearing under Section 235(2) of the Code of Criminal Procedure.

The accused had the right to be provided with the legal aid at all stages including the stage of consideration of the question of sentence. After the conviction of the petitioner, he should have been given the benefit of being accompanied by a social worker to guide and counsel him and also to help him to get an effective hearing on the question of sentence. For effective hearing under Section 235(2) of the Code of Criminal Procedure, the suggestion that the court intends to impose death penalty should specifically be made to the accused, to enable the accused to make an effective representation against death sentence, by placing mitigating circumstances before the Court. This has not been done. The trial court made no attempt to elicit relevant facts. Nor did the trial court given any opportunity to the petitioner the opportunity to file an affidavit placing on record mitigating factors. As such the petitioner has been denied an effective hearing.

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2020(2) Supreme Court Cases (Cri) 7 :2020(4) Supreme Court Cases 33

Parvat Singh and Others v. State of Madhya Pradesh

Date of Judgment : 02.03.2020

Indian Penal Code, 1860 – Ss,302/149 - Murder in furtherance of common object – whether the benefit of material contradictions, omissions and improvements of sole eye witness must go in favour of the accused?

In the facts and circumstances of the case, there are material contradictions, omissions and/or improvements so far as the appellants herein – original Accused 2 to 5 are concerned and therefore the Hon'ble Supreme Court of India opined that it is not safe to convict the appellants on the evidence of the sole witness of PW8. The benefit of material contradictions, omissions and improvements must go in favour of the appellants herein. Therefore, as such the appellants are entitled to be given benefit of doubt. The Hon'ble Supreme Court of India opinioned that in view of the material contradictions, omissions and improvements in the statement of PW8 recorded under Section 161 Cr.P.C. as well as deposition before the Court qua the appellants – Accused 2 to 5 and that there was a prior enmity and no other independent witness has supported the case of the prosecution. The Hon'ble Supreme Court of India opinioned that the appellants herein – original Accused 2 to 5 are entitled to be given the benefit of doubt.

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2020(2) Supreme Court Cases (Cri) 686 : 2020(4) Supreme Court Cases 695

Makwana MangaldasTulsidas v. State of Gujarat and Another

Date of Judgment : 05.03.2020

Debt. Financial and Monetary Laws – Negotiable Instruments Act, 1881 – Ss. 138, 143-A and 144-

Expeditious disposal of cheque dishonor cases – Need for comprehensive mechanism, emphasized.

One of the major factors, for high pendency is delay in ensuring the presence of the accused before the Court for trial. As per recent study, more than half of the pending cases, i.e. more than 18 lakh cases, are pending due to absence of accused. Taking effect fromSection 144 of the Act, Sections 62, 66 and 67 of Cr.P.C. and directions of this Court, the Magistrate may opt for one or many of the methods of service of summons, including service through speed post or the courier services, Police Officer or any other person, e-mail or through a Court having territorial jurisdiction. Despite service of summons issued through aforesaid mediums, the problem of non-execution of further process persists. While summon may be issued through aforementioned modes, bailable warrants and non-bailable warrants are to be executed through police as per Section 72CrPC. Many a time, police as serving agency, does not give heed to the process issued in private complaints. Courts also remain ambivalent of this fact, requiring the complainant to pay unjustified process fee, repeatedly and avoid to take action against negligent police officers. The coercive methods to secure the presence of accused viz. attachment indicated in Section 82 and 83 CrPC, are seldom resorted. Having regard to the prevailing state of affairs, we find that there is a need to evolve a system of service/execution of process issued by the court and ensuring the presence of the accused, with the concerted efforts of all the stakeholders like Complainant, Police and Banks. Banks, being important stakeholders in cases of this nature, it is their responsibility to provide requisite details and facilitate an expeditious trial mandated by law. An information sharing mechanism may be developed where the banks share all the requisite details available of the accused, who is the account holder, with the complainant and the police for the purpose of execution of process. This may include a requirement to print relevant information, viz. the email id, registered mobile number and permanent address of the account holder, on the cheque or dishonour memo informing the holder about the dishonour. Reserve Bank of India, being the regulatory body may also evolve guidelines for banks to facilitate requisite information for the trial of these cases and such other matters as may be required. A separate software-based mechanism may be developed to track and ensure the service of process on the accused in cases relating to an offence under Section 138 of the N.I. Act.

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2020(5) CTC 200

Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and others

Date of Judgment :14.07.2020

Evidence Act, 1872 (1 of 1872), Section 65-B(4) - Requisite Certificate under Section 65B(4) of the Evidence Act - Despite all efforts made by the party, to get from the Authorities concerned, and he willfully refused, on some pretext or the other, to give such Certificate – procedure for obtaining such certificate.

The facts of the present case show that despite all efforts made by the Respondents, both through the High Court and otherwise, to get the requisite Certificate under Section 65B(4) of the Evidence Act from the Authorities concerned, yet the Authorities concerned wilfully refused, on some pretext or the other, to give such Certificate. In a fact-circumstance where the requisite Certificate has been applied for from the person or the Authority concerned, and the person or authority either refuses to give such Certificate, or does not reply to such demand, the party asking for such Certificate can apply to the Court for its production under the provisions aforementioned of the Evidence Act, CPC or Cr.P.C. Once such Application is made to the Court, and the Court then orders or directs that the requisite Certificate be produced by a person to whom it sends a Summons to produce such Certificate, the party asking for the Certificate has done all that he can possibly do to obtain the requisite Certificate. Two Latin maxims become important at this stage. The first is lex non cogitadimpossibilia i.e. the law does not demand the impossible, and impotentiaexcusatlegem i.e. when there is a disability that makes it impossible to obey the law, the alleged disobedience of the law is excused.

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2020(3) MLJ (Crl) 674 (SC)

Mukesh Singh v. State (Narcotic Branch of Delhi)

Date of Judgment : 31.08.2020

Narcotic Drugs and Psychotropic Substances Act, 1985 - Investigation – Police Officer as Complainant- Whether in case investigation is conducted by informant/police officer who himself is Complainant, trial is vitiated and in such a situation, accused entitled to acquittal? – matter has to be decided on the case to case basis.

No reason to doubt the credibility of the informant and doubt the entire case of the prosecution solely on the ground that the informant has investigated the case. Solely on the basis of some apprehension or the doubts, entire prosecution version cannot be discarded and accused is not to be straightway acquitted unless and until accused is able to establish and prove the bias and the prejudice. Considering NDPS Act being a special Act with special procedure to be followed under Chapter V, and as observed hereinabove, there is no specific bar against conducting the investigation by informant himself and in view of safeguard provided under Act itself, namely, Section 58,there cannot be any general proposition of law to be laid down that in every case where informant is investigator, trial is vitiated and accused is entitled to acquittalmerely because informant is investigator, by that itself the investigation would not suffer vice of unfairness or bias and therefore on sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis.

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HIGH COURT CIVIL CASES

2020(5) CTC 161

Dr. N. Mohamed Farook. 2.AyeeshaFarook v. R.MurugaBoobathy

Date of Judgment :12.10.2018

Specific Relief Act, 1963 (47 of 1963), Section 34 – Transfer of Property Act, 1882 (4 of 1882) – The Plaintiff has title from the year 1931 – whether non-production of patta by the Plaintiffs is material for seeking Declaration of Title ?

Suit was filed for Declaration of Title and consequential Injunction. Plaintiffs traced their title through registered Title documents from 1931 onwards. Defendants claimed that the lands in question were originally Poramboke lands belonging to the Government which was subsequently occupied by Defendant's predecessor and then himself, and that the Government had recognized his possession by granting 'B' Memo. The Trial Judge found that the Plaintiffs or their predecessors-in-title have not filed any documents to show that the Plaintiffs were in actual possession of the property, did not have Patta for the property and had not established that they acquired title through the Sale Deeds marked by them. Considering the documents of the Defendants such as 'B' Memo and Tax Receipts, Trial Court concluded that the Defendant was in possession of the Suit property and the Suit was dismissed. The First Appellate Court confirmed the findings of the Trial Court and dismissed the Appeal. Hence, the present Second Appeal. The key issue in this matter is regarding the non-production of Patta and its impact on the reliefs sought by the Plaintiffs and whether Patta can be insisted, when Title Deeds have been produced. Ex.A14 is the parent Title Deed for the Plaintiff's property. These documents are registered documents. It is clear that the reliance placed by the Trial Court and the Lower Appellate Court on the basis of 'B' Memo filed by the Defendant are incorrect in law. The 'B' Memo relied upon the Trial Court as well as the First Appellate Court cannot confer any title on the Defendant. Title of the Plaintiffs has been traced from 1931 onwards. Consequently the Judgment and Decree of both the Courts below are reversed. The Substantial Questions of Law are answered that the dismissal of the Suit on the ground that the Plaintiffs has not Patta, when he has title from the year 1931 is erroneous and it is held that non-production of patta by the Plaintiffs is immaterial for seeking Declaration of Title.

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2020(5) CTC 448

Chenrayan and others v. Kaveri (died) and others

Date of Judgment : 01.11.2019

Limitation Act, 1963 (36 of 1963), Section 27, Article 65-Adverse Possession – whether mere long and continuous possession of immovable, property for over twelve years does convert possession into Prescriptive Title?

The law on prescription of title by Adverse Possession is too old, and too well firmed up in our jurisprudence, that it does not require an elaborate statement. 'Adverse Possession', as the very expression explains, is holding possession adverse to the interest of the one in whom the ownership to

the property is vested. What is significant here is not the possession, but the animus or intent, hostile to the interest of the title holder of the property (with which possession is held). It is not the duration of the possession, or its continuity that matters to law to divest title of the true Owner, but the animus or the hostile intent of the one, who enters upon the property of another. This possession must be open enough to caution the true Owner of the hostile intent of the non-owner to possess an immovable property. Hence, mere long and continuous possession of an immovable property for over twelve years does not convert possession into prescriptive title, unless a hostile animus to hold possession in open defiance of the title of the true Owner characterises the same.

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2020(5) CTC 695

John Pushparaj v. KasiNadar and others

Date of Judgment: 30.01.2020

Specific Relief Act, 1963 (47 of 1963), Sections 34 & 39 – Whether the person seeking injunction must establish his possession on date of filing Suit?

A person, who was seeking injunction on the basis of the alleged possession, must establish his possession on the date of Suit at least. The pleadings and the admission of the plaintiffs clearly show that despite the first plaintiff found to be in possession in the year 1962, he did not continue his possession and his possession has been interrupted and infact, forcible possession was already taken by the dependence as per the own pleading of the second plaintiff in her own suit.

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2020(3)MWN (Civil) 206

J.B.Franklin v. Vishwakesen Industries Pvt. Ltd. and others

Date of Judgment : 12.05.2020

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 – Stamp act, 1899 (2 of 1899), Section 2(10) – Registration Act, 1908 (16 of 1908), Section 17(1-a) – Transfer of Property Act, 1882 (4 of 1882), Section 53-A – Suit for specific performance – Unregistered sale agreement – Rejection of Plaint - Whether non registration of sale agreement is a ground for Rejection of Plaint?

It is settled law that the Sale Agreement itself does not create any right or title and it is not covered under Section 2(10) of the Stamp Act. Hence, it does not require any registration under Registration Act, as no right has been created in respect of immovable property. Even under Section 17(1-A) of the Registration Act, the sale agreement is to be registered if the possession has been handed over as per the Section 53-A of the Transfer of the Properties Act, after the amendment to the Registration Act in the year 2001 under the Tamil Nadu Act 48 of 2001. That apart, whether the document is compulsorily registrable or not is an issue to be decided at the time of trial and at this stage, this issue cannot be decided, and on that basis the plaint cannot be rejected.

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2020(5) CTC 549

Vimala v. Gnanaeswaran and others

Date of Judgment :19.05.2020

Code of Civil Procedure, 1908 (5 of 1908), Order 41, Rule 31 and Section 96 – Whether the Judgment passed by Lower Appellate Court without assigning reasons for conclusion arrived at is sustainable?

It is clear that the Court of First Appeal must record its finding only after dealing with all the issues of law as well as the facts and with the evidence, oral as well as documentary, led by parties. It is also clear that First Appellate Court must give reasons in respect of its findings, but in this case, as stated above, the First Appellate Court failed to consider the evidence on record and therefore, the Judgment and Decree of the First Appellate Court are set aside and the matter is remitted back to the First Appellate Court for fresh consideration, on the line of the aforesaid decisions of the Hon'ble Supreme Court. Accordingly, these substantial questions of law are answered.

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2020(5) CTC 175

Pedhu Konar and another v. Jagadeesan and 21 others

Date of Judgment : 05.06.2020

Specific Relief Act, 1963 (47 of 1963), Section 34 & 37 - Suit for Declaration and Injunction – Legal Representatives of deceased Defendants not brought on record – Maintainability.

There are two major reliefs, of which one is for Declaration to declare that earmarking the Suit properties as a Public utility area such as park, etc. in the approved Layout is void. The other relief is for permanent injunction against the various residents of the Plots. Indisputably, the defendants who are dead are residents, and the relief of injunction is directed against them. Inasmuch as Injunction relief is a remedy *inpersonem,* it dies with the person who posed a threat to Plaintiffs' right, unless the threat perception continued with the Legal Representatives of such deceased Defendants. And, the fact that a Defendant against whom a relief of Injunction is sought has died, will not take away the relevance of the Declaratory relief sought, as the two reliefs are primarily independent. Therefore, the Appeal passes the test and can be heard.

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2020(5) CTC 533

Marimuthu and others v. Natarajan and others

Date of Judgment :05.06.2020

Code of Civil Procedure, 1908 (5 of 1908), Order 6 - Pleadings – Legal Representatives of Defendant pleading something which Defendant himself had not pleaded – Whether such improvement in pleadings is permissible?

In the instant case the Appellants are caught in an awkward position for more than one reason: First, they, as the Legal Representatives of the First Defendant, have pleaded something which the First Defendant himself had not pleaded. This improvement in pleading is impermissible. Second, in attempting to prove it, a certain degree of emphasis laid on Ext.B4, Order of the Land Tribunal and it

was sought to be strengthened by falling back on Section 13 of the Indian Evidence Act. It has to be clarified that Section 13 of the Indian Evidence Act only speaks of relevancy of a fact, and does not deal with *res judicata* as in Section 11, C.P.C.. Nor, Ext.B4-Order falls under the category of conclusive Judgements as in Section 41 of the Indian Evidence Act.

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2020(5) CTC 629

Krishnammal (deceased) and others v. V.Gurunathan and others

Date of Judgment: 05.06.2020

Judicial Precedents – Circumstances for a decision to apply as a precedent - emphasized.

If the authorities cited by the learned Senior counsel for the Appellants are considered, this Court finds that their relevancy cannot be fitted in the context. The only similarity they share with the present case is that they relate to certain aspects of Mortgage, and the similarity stops there. It needs to be emphasised that a decision is a precedent only for what it actually decides, and for a decision to apply as a precedent, the issues involved in the case decided, and the one to be decided ought to be substantially similar. The question involved in the present case is to ascertain the nature of right which a Purchaser from a Hindu widow, who herself had only a right of redemption in the Suit property, after the same was conferred in her Reversioner under a Decree of a Competent Court. The question of limitation has to be tested only to the nature of the right which a purchaser had obtained. This issue was not the central theme in any of the authorities cited by the learned Senior Counsel for the appellant.

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2020(5) CTC 188

Ramasubbu and others v. Krishnammal and others

Date of Judgment : 30.06.2020

Indian Succession Act, 1925 (39 of 1925), Section 61 – Evidence Act, 1872 (1 of 1872), Sections 68 & 101 - Genuineness of Will –Alleging fraud upon document – whether initial burden is upon the person claiming right based on Will?

It is true that the burden of proof is on the person who alleges fraud upon a document. But, at the same time, it cannot be denied that the person, who claims right based on a document, has to initially show the genuineness of the document relied upon in the manner known to law. Moreover, merely because the Thumb Impression on the Will is a genuine one, it cannot be concluded that the execution of the Will is proved, when the execution of it is shrouded by suspicious and unnatural circumstances. Further, if it is a Will registered by the Testator, that is a strong circumstance to support its genuineness, but not so when it is registered after his death or without his knowledge.

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2020(5) CTC 689

Kaliyannan v. Sangeetha and others

Date of Judgment: 18.08.2020

Code of Civil Procedure, 1908, Section 54 - Interpretation of Statutes - Applicability of Section 54 to division of Ryotwari estates by the District Collector.

Suit for Partition was decreed and the Respondents filed an application for passing a Final Decree by appointing an Advocate Commissioner. That Trial Court concluded that as per Section 54 of CPC, since the land is assessed to payment of revenue to the Government, the Partition of the estate and separation of shares will have to be made by the Collector or a Gazetted Subordinate of the Collector deputed by the Collector, in this regard under Section 54 of CPC. Aggrieved by the same, the 1st Respondent filed the present Civil Revision Petition. Court holds that Section 54 is not applicable to Ryotwari estates and directs appointment of Advocate Commissioner to divide the Suit properties as per the Preliminary Decree. Due should not also lose sight of the fact that after the introduction of the various Estate Abolition Laws, the Concept of Permanent Estate itself was abolished and Ryotwari tenures have been introduced in this part of the Country. The judgment of the Hon'ble Supreme Court relied upon by the learned Subordinate Judge is not from this region as it arises out of an Order from the High Court of Patna and the Hon'ble Supreme Court did not lay down as of law that in all cases were a land paying Revenue to the Government is to be partitioned, the Partition is to be effected by the District Collector or any Gazetted Officer authorized by the District Collector. In view of the law declared, it can be stated without fear of contradiction that this Court has been consistent in excluding the applicability Section 54 to division of Ryotwari estates.

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HIGH COURT CRIMINAL CASES

(2020(4) MLJ (Crl) 53

Durairaj and others v. State represented by the Inspector of Police, Kanavilakku Police Station, Andipatti, Theni District.

Date of Judgment :10.09.2019

Indian Penal Code, 1860, Sections 34, 342 and 420 - Criminal Laws – Cheating – Delay in filing complaint - Whether the delay in lodging the complaint, which having not been properly explained coupled with the non-conduct of test identification parade to identify the accused and contradiction in the evidence of the witnesses galores are grounds for acquittal?

The delay in lodging the complaint, which having not been properly examined coupled with the non-conduct of test identification parade to identify the accused and the further fact that contradiction in the evidence of the witnesses galores, this Court is left with no other alternative but to come to the only conclusion that the prosecution have not proved their case in the manner known to law. Therefore, the benefit flowing from the investigative lacunae deserves to be given to the accused.

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2020(5) CTC 734

K.Divya @ Divyabharathi v. Inspector of Police and others

Date of Judgment : 20.11.2019

Information Technology Act, 2000 (21 of 2000), Section 66-F – Requisites to constitute the offence of Cyber Terrorism.

Section 66-F of the Information Technology Act of 2000 deals with a punishment for Cyber Terrorism. In order to commit Cyber Terrorism, it must be shown that the act must be done to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of people. The Complaint given by the Second Respondent does not in any way attract the provisions of Section 66-F of the Information Technology Act, 2000. The documentary that has been produced by the Petitioner cannot be termed as an offence of Cyber Terrorism.

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2020(3) MLJ (Crl) 337

P.Chellapandi v. State represented by the Sub Inspector of Police, Usilampatti Taluk Police Station, Madurai District

Date of Judgment : 10.02.2020

Indian Penal Code, 1860, Section 304(A) - Rash and negligent driving – Appreciation of evidence– Whether Non-Inspection of offending vehicle by the Motor Vehicle Inspector on the date of alleged occurrence, is a ground for acquittal?

In this case, the Motor Vehicle Inspector was examined as PW7. PW7 stated that the accident had not occurred due to mechanical defect. It is to be noted that PW7 has not inspected the offending vehicle on the date of alleged occurrence, but he inspected the vehicle only on the next day. Hence, it is not possible for him to come to the conclusion that by whose negligence, the accident took place. On coming to the instant case on hand, the prosecution witnesses have not stated that the accident occurred due to the rash and negligent driving of the accused. For all the reasons stated above, this court is of the considered view that the prosecution has failed to prove the case beyond reasonable doubt.

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2020(3)MLJ(Crl) 668

Saravanan @ Saravanakumar v. Deputy Superintendent of Police, Thiruverumbur Sub Division, Trichy District.

Date of Judgment : 14.02.2020

Indian Penal Code 1860, Section 304(B) and 498(A) – Code of Criminal Procedure 1973, Section 174 - Cruelty and Dowry Death – Appeal against Conviction - Prosecution deliberately suppressed injury sustained by accused. No steps taken by investigating agency to record dying declaration - whether conviction and sentence imposed on Appellant by Trial Court liable to be set aside?

Though the accused had sustained 30% of burn injuries and was also admitted in the hospital along with deceased and had also taken treatment, the prosecution has deliberately suppressed the injury sustained by the accused in this case. None of the prosecution witnesses has spoken about the injury sustained by the accused during the course of incident. The investigating agency has failed to collect the treatment details provided to the accused and failed to produce the same before the Court and this raises serious doubt about the manner in which the investigation has been conducted in this case. The deceased was conscious at the time of admission in the hospital. She died only after five days. Even on those five days, no steps have been taken by the investigating agency to record the dying declaration. Appellant acquitted of charges leveled from against him Appeal allowed.

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2020(3)MLJ(Crl) 570

Settu v. State Rep. By the Inspector of Police, Vallam Police Station, Thanjavur District

Date of Judgment : 08.05.2020

Code of Criminal Procedure, 1973, Section 167 – Constitution of India, 1950, Article 21 - Bail – Non-filing of final report – The implication of Section 167 (2) is that if the final report is not filed within the time limit prescribed therein – Whether the magistrate will be divested of the jurisdiction to authorise the detention of the accused person beyond the said period? Section 167 (2) of Cr.Pc does not bar the filing of final report even after the period specified therein. The implication of Section 167 (2) is that if the final report is not filed within the time limit prescribed therein, the magistrate will be divested of the jurisdiction to authorise the detention of the accused person beyond the said period, if the accused is prepared to and does furnish bail. The expiry of the period results in accrual of right in favor of the accused. Even though this time limit is referred to as period of limitation, technically it is not. It is only Chapter XXXVI of Cr.P.C. that deals with limitation for taking cognizance of certain

offences. Even Section 167 (5) of Cr.Pc has been interpreted to mean that the magistrate shall only make a direction for stopping further investigation in a summons case if it is not concluded within the period of six months and the said period has not been extended and it does not bar the magistrate from taking cognizance based on the final report filed thereafter. Hence, Section 167 of Cr.PC cannot be construed as containing the period of limitation for filing of final reports.

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(2020(3)MLJ(Crl) 289

N.Ram, Editor-in-Chief, Printer & Publisher "The Hindu" Kasturi& Sons Limited, Plot B-6 & B-7, CMDA industrial Complex, Maraimalal Nagar, Chengleput Taluk, Kancheepuram District v. Union of India, Represented by its Secretary to Government, Ministry of Law and Company Affairs, ShastriBhawan, New Delhi and Others

Date of Judgment : 21.05.2020

Indian Penal Code, 1860 (IPC), Section 499 – Criminal Procedure Code, 1973 (Cr.P.C), Sections 199 and 200 - Defamation – Newspaper - Conditions to be followed by the Competent Authority of the State to accord sanction for prosecution.

The competent authority of the State shall have to apply its mind to the materials and should be satisfied with the same and only thereafter should sanction prosecution. As observed earlier, in all the cases which are the subject matter of consideration by this court, the State has sanctioned prosecution in a mechanical fashion by total non application of mind as the fundamental requirement for prosecution under section 199(2) Cr.P.C. namely "Defamation of the State" does not find a place in all the sanction orders. The public prosecutor as well as the Sessions Judge in cases where cognizance has already been taken by the Sessions Court have also not applied their mind independently as the core essence of prosecution under section 199 (2) Cr.P.C. namely "Defamation of the state" has not been satisfied as seen from the sanction orders. On this score alone, all the Government Orders and the consequential complaints for criminal defamation under section 199(2) Cr.P.C. will have to fail. The pleadings in the respective complaints also does not spell out any defamation of the State. The Public Prosecutor or any other witness has also not been examined as a witness and given their sworn statement before the Sessions Court which is mandatory under Section 200 Cr.P.C. The Sessions Court has also in a mechanical fashion by total non application of its judicial mind and without detailing the materials it had scrutinized has taken cognizance and issued process to the accused. All these factors will conclusively infer abuse of process of law against the respective accused.

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2020(3) MLJ (Crl) 616

Anshul Mishra and Another v. District Collector, Madurai District, Madurai and Others

Date of Judgment : 12.08.2020

Mines & Minerals (Development and Regulation) Act – Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011 - Complaint was filed for taking cognizance under provisions of Act, but without referring provisions on which complaints were filed, Magistrate acquitting the accused by referring Rules – Maintainability.

The Criminal Appeals in Crl.A(MD)Nos.373 & 374 of 2017 are filed by the State, under Section 378 Cr.P.C., as against the order passed by the learned Judicial Magistrate, Melur, under Section 256 Cr.P.C., in C.C.Nos.82 & 83 of 2013, dated 29.03.2016. By the said orders dated 29.03.2016, the learned Magistrate, dismissed the complaints filed by the District Collector, Madurai, for his non-appearance under Section 256 Cr.P.C. and acquitted the respondents/accused from the charges under Sections 4(1-A) r/w 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957. Apart from the aforesaid offence, the complaints were also filed to confiscate the multi-colour granite blocks seized from the respondent's/accused's land in Keelayur Village, MelurTaluk; and to dispose of the granite blocks as provided under Section 21(4-A) of the Mines and Minerals (Development and Regulation) Act, 1957. Aggrieved over the same, the State has preferred the criminal appeals. While dismissing the complaints for the non appearance of the complainant, as per Section 256 Cr.P.C., the learned Judicial Magistrate also decided the issue on merits by referring the provisions of the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011. The complaint is filed for taking cognizance under the provisions of Mines and Minerals (Development and Regulations) Act, but without referring the provisions on which the complaints were filed, the learned Judicial Magistrate committed an error by referring the Rules for acquitting the accused, without following the basic principle of law that a Rule cannot override the provisions of an Act.

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2020(4) MLJ (Crl) 64

S.Sivaraman v. State represented by the Inspector of Police, District Crime Branch, Salem City.

Date of Judgment :04.09.2020

Code of Criminal Procedure, 1973, Sections 212, 219, 220 and 482 - Framing of single charge – Clubbing of case - Case registered against Petitioner that while he was working in Bank, he forged signature of some account holders, withdrawn money from their accounts and misappropriated them – After completion of investigation, twenty two final reports filed against Petitioner, hence, this petition seeking direction to Court concerned to frame single charge by clubbing twenty two cases – Whether Section 212(2) Cr.P.C apply to this case?

Section 212 will apply only when it may not be possible to specify exactly particular items with respect to which criminal breach of trust took place or the exact date on which the individual items were misappropriated or in some similar contingency. In this case, the aforesaid tabular column in paragraph no.10 clearly shows the exact amounts and the dates on which they were withdrawn from the accounts of each victim and as such, there is no confusion at all. Hence, there is no scope for lumping up the various items into a single charge. A bank clerk watching the account of a victim, profiling him

and illegally withdrawing monies from his account on various dates, is tantamount to same transaction within the meaning of Section 220 Cr.P.C. since there exist unity of purpose and design, and proximity of place and time. Therefore, the misappropriations on various dates from the account of a victim are not stand alone offences to be brought within the net of Section 219 Cr.P.C., but are offences committed in the course of the same transaction, though they are same kind of offences and numbering more than three within a span of 12 months. Instead of trying the petitioner in 22 cases, it will be perfectly legitimate to try him in ten cases.

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2020(4) MLJ (Crl) 78

Kaliyappan S/o.Muniyappan, AanurpattyNangavalli Taluk, Salem District, Rep. by his father Muniyappan v. State Rep. by the Inspector of Police, Deevattipatti Police Station, Salem District.

Date of Judgment : 04.09.2020

Code of Criminal Procedure, 1973, Sections 328, 329, 330 – Indian Penal Code, 1860, Section 84 - Postponement of trial – Mental condition of accused - When the accused is not capable of entering defence or mentally not sound to face the trial - Procedures -Certain directions issued.

The following directions were issued When the accused is not capable of entering defence or mentally not sound to face the trial;

i. The trial Court shall conduct enquiry under the first part of Section 329(2) Cr.P.C., to find out if the accused in this case is capable of entering into his defence in present;

ii. If the trial Court finds that the accused in this case is mentally fit to face the trial, the trial shall be commenced and completed within 3 months from the date of such determination;

iii. In the event of the trial Court holding that the accused is not mentally fit to face the trial, the trial Court shall conduct an enquiry under the second part of Section 329(2) Code 1973 and afford an opportunity to the family of the accused to engage a lawyer and if the family is not in a position to engage a lawyer, the trial Court shall appoint a senior lawyer of the local bar with not less than 20 years of standing and with rich experience in criminal law, to take up the case of the accused in the enquiry, for whom, remuneration shall be paid by the local Legal Services Authority;

iv. In the enquiry, it is open to the trial Court to examine any witness, including the doctors who had treated the accused prior to the incident; the native doctor to whom the accused was taken on the fateful day, can also be examined;

v. The trial Court may also enquire the doctors who treated the accused after his arrest while he was in judicial custody;

vi. The counsel for the accused may also be permitted to place materials before the Court in support of the case of the accused;

vii. At the conclusion of the enquiry, if the trial Court is of the opinion that the criminal act fell within the contours of Section 84 IPC, it will then be open to the trial Court to discharge the accused and follow the procedure set out in the *proviso* (a) to Section 330(3) Code 1973;

viii. In the event of the trial Court not discharging the accused, it shall proceed under the *proviso* (b) to Section 330(3) Cr.P.C. In that case, the finding arrived at by the trial Court against the accused shall, in no manner, be binding on the accused in the trial against him after he is certified as mentally fit to face the trial in the future.

2020(2)L.W.(Crl.)471

Eric MulineNthuli v. State by the Inspector of Police, All Women Police Station, Ammapet, Salem.

Date of Judgment : 21.08.2020

Tamil Nadu Prohibition of Harassment of Woman Act (1998), Section 4 – Failure of the Prosecutrixto repeat the contents of the complaint during her deposition before the trial Court – Whether the accused is entitled for acquittal?

The prosecutrix cannot be expected to make a parrot-like repetition of the contents of the complaint during her deposition before the trial Court. The complaint was written soon after the prosecutrix was subjected to a sexual assault and therefore, there is every possibility that out of trauma and mental disturbance, she could not narrate every minuscule particulars in the complaint. However, during her deposition as PW1, she had clearly narrated the events and provided each and every minute particulars to strengthen her case. While so, it cannot be said that the prosecutrix had made a departure from the contents contained in the complaint and to exaggerate during her deposition before the trial Court. The fact remains that when a comparision is made to the contents of the complaint and the testimony of the prosecutrix before the trial Court as PW1, by and large, the important sequence of events which unfolded during the time of occurrence, have been precisely narrated by the prosecutrix. This inspires the confidence of this Court to hold that the testimony of the prosecutrix is natural, probable and it is free from any exaggeration. As we have held that the testimony of the prosecutrix is reliable, there is no other evidence required to corroborate such evidence of the prosecutrix. With the testimony of the appellant/accused, the trial Court is right in passing a judgment of conviction against the appellant/accused.

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