Kerala Judicial Service Mains 2019 · Question papers

Paper IV · compulsory paper

Duration: 3 hours · Total marks: 100

Part I

Answer all the questions. Each question carries one mark. (Answers to the questions in this part should be marked only in the OMR answer sheet. Answers marked/written elsewhere will not be valued.) 15 × 1 = 15 marks.

1. Identify the wrong statement.

(A) Subject to the provisions of CPC, civil courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is expressly or impliedly barred.

(B) Every suit shall be instituted in the court of the lowest grade competent to try it.

(C) A suit for partition of an immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate or the defendant actually and voluntarily resides.

(D) Where a suit is for compensation for wrong done to a person, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of the said courts.

2. Mark the offence which is non-bailable.

(A) Forgery for the purpose of cheating, punishable under Sec.468 of IPC

(B) Forgery for the purpose of harming the reputation of any person, punishable under Sec.469 of IPC.

(C) Using as genuine a forged document which is known to be forged, punishable under Sec.471 of IPC.

(D) Falsification of accounts, punishable under Sec.477A of IPC.

3. Which of the following may be written, typewritten or printed on both sides of the paper except the last sheet?

(A) Plaint

(B) Written-statement

(C) Memorandum of appeal

(D) Affidavit

4. How the period of 15 days mentioned in Sec.167 (2) of Cr.P.C should be computed under the provisions of the Criminal Rules of , Practice, Kerala?

(A) The day on which the remand order is made and the day on which the accused is ordered to be produced before the court shall be excluded.

(B) The day on which the remand order is made and the day on which the accused is ordered to be produced before the court shall be included.

(C) The day on which the remand order is made shall be excluded and the day on which the accused is ordered to be produced before the court shall be included.

(D) The day on which the remand order is made shall be included and the day on which the accused is ordered to be produced before the court shall be excluded.

5. Who in consultation with whom shall fix the local limits of the , jurisdiction of a munsiff's court?

(A) The district collector in consultation with the district judge

(B) The district judge in consultation with the district collector

(C) The high court in consultation with the government

(D) The government in consultation with the high court

6. Choose the correct statement.

(A) A police officer may record a confession under Sec.164 of Cr.PC if he is conferred with the powers of a magistrate under any law for the time being in force.

(B) The magistrate who records a confession under Sec.164 of CrP.C need not necessarily have jurisdiction to inquire into or try the case.

(C) If a person who appears before a magistrate to make a confession under Sec.164 of Cr.P.C tells the magistrate that he is not willing to make any confession, the magistrate shall authorise the detention of such person in police custody.

(D) The magistrate who records a confession under Sec.164 of Cr.P.C shall administer oath to the person who makes the confession.

7. Which of the following can never be attached?

(A) A promissory note

(B) A property in the custody of a superior court

(C) A book of account

(D) A decree for sale in enforcement of a charge

8. When can a person who is not a qualified legal practitioner be permitted to act as a private pleader in a criminal proceedings?

(A) To prevent a possible miscarriage of justice

(B) In the interest of justice

(C) He has the skill and vast experience

(D) The accused has no confidence in anybody else

9. A magistrate erroneously in good faith does the following things without being empowered by law to do it. Which proceedings of his shall be void?

(A) Attaches and sells a property under Sec.83 of Cr.P.C.

(B) Issues a search warrant under Sec.94 of Cr.P.C. EEE EEE NL

(C) Takes cognizance of an offence upon a police report under Sec.190 of Cr.P.C.

(D) Tenders a pardon under Sec.306 of Cr.P.C.

10. In which of the following situations a court can strike out the defence of a defendant?

(A) He violated an order of temporary injunction passed against him.

(B) He sold his property which was under attachment..

(C) He failed to comply with an order directing him to answer an interrogatory.

(D) He prevented the receiver from taking possession of a property.

11. Which among the following acts of a magistrate is correct?

(A) He under Sec.202 of Cr.P.C directed an investigation to be made by a police officer in a complaint filed against another police officer.

(B) He acting under Sec.202 of Cr.P.C forwarded a complaint against a police officer for inquiry to another magistrate of equal in rank.

(C) He examined the complainant upon oath and forwarded the complaint against a police officer to another police officer under Sec.156 (3) of Cr.P.C for investigation.

(D) He under Sec.156(3) of Cr.P.C forwarded a complaint. against a police officer to another police officer for investigation without examining the complainant upon oath despite the presence of the complainant in court.

12. To which court the court which passed the decree may send the decree for execution under Sec.39 of CPC?

(A) To the court which had jurisdiction to try the suit when it was instituted.

(B) To the court which would have jurisdiction to try the suit at the time of making the application for transfer of the decree.

(C) To the court which had jurisdiction to try the suit when the decree was passed.

(D) To the court which would have jurisdiction to try the suit at the time of passing the order for transfer of the decree.

13. The magistrate shall record the substance of the evidence in a summary trial. The magistrate shall make a memorandum of the substance of the evidence in a summons trial?

(A) The first statement alone is correct.

(B) The second statement alone is correct.

(C) Both the statements are incorrect.

(D) Both the statements are correct.

14. A court considering an application filed under rule 89 of order 21 of CPC need not consider whether-

(A) the applicant had deposited a sum equal to five percent of the purchase money.

(B) the amount specified in the proclamation of sale, less any amount received by the decree-holder since the date of proclamation, was deposited.

(C) there was a material irregularity or fraud in conducting the sale.

(D) the deposit was made within 60 days from the date of sale.

15. Select the one which is not a ground under Sec.125 (5) of Cr.P.C to cancel an order for maintenance made in favour of a wife?

(A) She has sufficient means to maintain herself.

(B) She is living in adultery.

(C) She refused to live with her husband without sufficient reason.

(D) She and her husband live separately by mutual consent.

Part II

Answer any eleven questions. Answers shall not exceed 160 words (1½ pages). If more than eleven questions are answered, the first eleven answers alone will be evaluated. Answers to the questions in this part should be written in the common answer book.

11x5=55 marks

16. A minor plaintiff attains the age of majority. What should he and the court do?

17. Discuss the provisions in order VI of CPC regarding striking out pleadings, amendment of pleadings and failure to amend pleadings after getting an order?

18. Who is an indigent person? When shall an application for permission to sue as an indigent person be rejected? When is a permission granted liable to be withdrawn?

19. (a) Who can apply for rateable distribution of assets and when can he apply for it? (1 mark) °

(b) What are the rights and restrictions of a mortgagee applying for rateable distribution? (2 marks)

(c) An immovable property was sold in execution of a decree for the discharge of an encumbrance thereon. How the proceeds of the sale shall be applied? (2 marks)

20. (a) Write a brief note on framing of issues. (3 marks)

(b) When can a suit be disposed of on a preliminary issue? (2 marks)

21. (a) State why more than one final decree can be passed in a suit for partition? (1 mark)

(b) How do you distinguish a decree from an order? (2 marks)

(c) The suit was for possession of immovable property with mesne profits. What are the options for the court while granting the relief seeking mesne profits? (2 marks)

22. (a) A defendant who suffered a decree restraining him from obstructing a right of way obstructed it. In what manner the decree may be executed? (3 marks)

(b) When can a court which is called upon to execute a decree stay execution of such decree? (2 marks)

23. A document in the custody of a court and a document in the custody of a district registrar are to be called for to let in evidence in a suit. Briefly discuss the relevant provisions?

24.(a) What shall a magistrate do before recording, while recording and after recording a confession under Sec.164 of Cr.P.C? (3 marks)

(b) State how a statement of a victim in a sexual offence case shall be recorded under Sec.164 of Cr.P.C and also state when can it , be considered a statement in lieu of an examination under Sec.137 of the Indian Evidence Act? (2 marks)

25. (a) What to do if one of the accused persons persistently disturbs the proceedings in court? (1 mark)

(b) Discuss the provisions which declare that an accused shall be a competent witness for the defence? (2 marks)

(c) When and how the provisions of Sec.319 of Cr.P.C can be invoked? (2 marks)

26. What particulars a charge shall contain and what should a magistrate do when he alters the charge?

27.(a) Who may apply for withdrawal from prosecution of a criminal case, what role the court has in the matter and what is the effect. of a withdrawal from prosecution? (2½ marks) I

(b) When can a court issue a warrant for the production of a prisoner who is a convict or in custody in another case? When can the officer-in-charge of the prison abstain from producing the prisoner? (2½ marks)

28.(a) Discuss the powers, duties and functions of magistrates in the matter of grant of bail in non-bailable offences? (4 marks)

(b) The accused was released on bail. Later, the sureties applied to the magistrate to discharge the bond. What should the magistrate do? (1 mark)

29. State briefly how a warrant trial is different from a summons trial?

30.(a) What are the special provisions relating to medical witnesses. contemplated in the Criminal Rules of Practice, Kerala? (2 marks) 7

(b) What to do to issue summons to an official witness whose correct address is not known? (1 mark)

(c) How a request for remand to police custody shall be made and how a magistrate should act when such a request is made? I (2 marks)

Part III

Answer both the questions. Answers to the questions in this part should be written in the common answer book.

(15x2=30 marks)

31. Decide the claim petition. Some of the provisions of law are deliberately omitted. Those provisions should be shown in the answer. The preface and appendix shall be avoided.

EA 200/2019 in EP 302/2018 in OS 102/2018

Petitioner - Rajendran

First respondent - Suresh

Second respondent — Krishnan

The case of the petitioner The petitioner is not a party to the suit and the decree. The first respondent obtained an ex parte decree for money against the second respondent on 16.1.2018. The first respondent alleged in the suit that from him the second respondent borrowed Rs 5,00,000/- and failed to repay it. But there was no such transaction between them. The first respondent had no financial capacity to lend Rs 5,00,000/-. The property shown in the schedule to the application is owned by the second respondent. The said property was attached before judgment , to defeat the petitioner. He had entered into an agreement with the second respondent to purchase the said property. The agreement was executed on 25.7.2017. Out of the agreed price of Rs 9,00,000/-, Rs 3,00,000/- was paid by the petitioner to the second respondent on the date of execution of the agreement. It was after the execution of the said agreement the property was attached before judgment. The petitioner has filed a suit before this court for specific performance of the agreement. The suit, OS 42/2018, is pending in this court. The first respondent filed the suit, got the property attached before judgment and obtained a decree in collusion with the second respondent in order to defeat the decree which might be passed in OS 42/2018. The ' attachment is liable to be vacated. The second respondent did not contest.

The contentions of the first respondent The application of the petitioner is not maintainable in law. The property was attached under order 38 rule 5 CPC. The procedure for adjudication of claims is provided in rule 8 of order 38 of CPC. The present application filed in the execution side is not maintainable in law. The application of the petitioner is one without any bona fides and is highly belated. The petitioner has no right or interest in the property attached. The second respondent had borrowed Rs 5,00,000/- from. the first respondent and executed a promissory note. The suit was filed ' since the former failed to repay the debt. The property was attached I when he was about to dispose it of. The agreement for sale relied on I by the petitioner is the result of the collusion between him and the second respondent to defeat the first respondent. The agreement was executed only after the execution of the promissory note. OS 42/2018 is a collusive suit between the petitioner and the second respondent. The attempt of the petitioner is only to defeat and delay the execution of the decree obtained by the first respondent. The application is liable to be dismissed.

Evidence

PW 1-petitioner

Ext A1- certified copy of the agreement for sale dated 25.7.2017

Ext A2-certified copy of the plaint in OS 42/2018

No evidence adduced by the respondents.

Evidence of PW1- Proof-affidavit filed reiterating his contentions and denying the allegations in the counter-statement.

Cross-examination I do not know whether I should have filed a claim petition under order 38 rule 8 of CPC. My advocate advised me to file the present application. I do not have any witness to prove the collusion between the respondents. Going by the dates, the promissory note was executed before Ext A1 agreement. The suit was filed and the property was attached after the execution of Ext A1. My suit was pending when OS 102/2018 was filed. My suit was decreed yesterday. I deny that the said suit was filed in collusion with the second respondent. I deny that the present application is not maintainable. I deny that my remedy is to file a petition under order 38 rule 8 of CPC.

Re-examination The second respondent filed written-statement in OS 42/2018. I was cross-examined in the said suit. The second respondent was examined in the said suit as DW1 and he was cross-examined by my counsel.

32. Write a judgment of conviction (the provisions of law and a few expressions deliberately omitted shall be stated in the judgment. Cause title and appendix shall be avoided)

In the Court of the Judicial Magistrate of the First Class, Aluva

CC 20/2019

Complainant - State of Kerala

Accused - Ramachandran

Prosecution case The incident was at 9am on 4.8.2018 at Aluva on the Aluva-Perumbavoor road. The accused was the driver of a bus (KL7/ZA 2028). The bus while overtaking another bus through wrong side hit that bus at its back. The bus driven by the accused hit a scooter which was proceeding in the same direction. The bus of the accused ran over the scooter and its rider, Reghu, who died on the spot. The bus proceeded further and hit against a compound wall and stopped. Three passengers travelling

in the bus of the accused sustained injuries. The bus was driven ..... The accused committed offences punishable under Sec....., Sec..... and Sec.

Evidence

PW1-(Rameshan) I am a photographer by profession. Reghu who died in the accident was my cousin. Getting information about the accident, I rushed to the spot. Reghu was lying on the road in a pool of blood. He was dead. I asked my brother to remain there and I went to the police station. I gave a statement to the assistant sub-inspector of police. He recorded my statement. I signed it. This is the said statement. It bears my signature(the FIS is marked as Ext P1). The incident was on

4.8.2018.

Cross-examination I did not see the incident. I did not see the accused when I saw Reghu lying on the road.

PW2 (Surendran) am an advocate clerk. I saw the incident. It was on 4.8.2018. The time was 9'O clock in the morning. I was talking to my friend Rajan. We were standing by the side of the road. I saw two buses plying in the same direction. The bus on the front was at a normal speed. The bus behind was coming at a high speed. The said bus overtook the other bus through the left hand side. While so, the bus on the back hit at the back of the bus on the front side. The bus which overtook the other bus hit the scooter driven by Reghu. He was thrown on the road and ran over by the bus driven by the accused. The bus went further and hit against a compound wall and stopped. Reghu was my friend. He died on the spot. I identified his dead body to the police. The accused is also known to me. I have travelled in his bus several times. He was driving the bus at the time of the incident. I saw him coming out of the bus when it stopped hitting against the compound wall. I have given a statement to the police.

Cross-examination Normally I should be at the office of my advocate at 9.am. But on that day I had taken leave since I had to attend a marriage. It was the marriage of a cousin of mine. I have not produced the invitation card before the police. I deny that I did not see the incident. I deny that I have grudge against the accused. I have no reason for any such grudge. I know the accused only as a bus driver. Why should I have a grudge against him. I do not know whether the accused and his wife are on unfriendly terms. I am not the cousin of the wife of the accused. do not even know her. The accused drove the bus at a very high speed. I cannot say at what speed he drove the bus. The bus came at a very high speed. I can assert it.

PW3 (Radhika) I am a school teacher. I was a passenger in the bus which caused the accident. It occurred at 9 a.m on 4.8.2018. The bus was driven at a very high speed. The driver was the accused. I know him! used to go to the school in the said bus. I know the accused as the driver of it. He tried to overtake another bus through the wrong side. The bus in which I was travelling hit the other bus which was on the front. As a result of the impact, I was thrown out of my seat. I sustained an injury on my head and another one on my right hand. I had pain at the sites of the injuries. The bus hit against a compound wall and stopped. Before that, the bus hit a scooter and the rider died. The accused was completely responsible for the accident. The accident would not have occurred if the accused had driven the bus carefully. He lost control because of the high speed. I went to the hospital to dress my wounds. I was questioned by the police.

Cross-examination have no personal acquaintance with the accused. I know him since I used to travel in his bus. I can assert that the bus was driven at a high speed. I am unable to assess the exact speed. I did not see the bus hit the scooter. But I saw the rider of the scooter lie on the road in a pool of blood. I saw it when I came out of the bus. I did not ask the accused to drive slowly. I was not sleeping in the bus at the time of the accident. I deny that I give evidence against the accused only because a person died in the accident. I am not giving evidence against anybody. I only said what I saw. I remember everything since it happened just a year ago. , PW4 (Dr Joseph) On 5.8.2018 I was working as assistant surgeon at the I Government General Hospital, Ernakulam. On that day at 10.30 a.m I conducted post-mortem examination on the dead body of one Reghu (the doctor spoke to each injury including fracture of skull). The cause of death was the injury on the head. This is the post-mortem examination certificate issued by me and it bears my signature (the report is marked as Ext P2). My statement was recorded by the police.

Cross-examination The death was instantaneous.

PW5 (Dr Ramachandran) On 4.8.2018 I was working as assistant surgeon at the taluk headquarters hospital, Aluva. On that day at 10.30 a.m I examined one Radhika who came to the hospital with the history of road traffic accident. She sustained two injuries. Both were contusions. One was on the forehead and the other was on the lower aspect of the right hand. My opinion as to the cause of injuries is this: it could be as alleged. This is the wound certificate issued by me and it bears my signature (marked as Ext P3).

Cross-examination The injuries were minor.

PW5(Rajan) I signed as a witness in the document now shown to me (scene mahazar shown- marked as Ext P4). It was prepared at 3 p.m on

4.8.2018 by the sub-inspector of Aluva town police station.

Cross-examination ‘ I do not know the contents of Ext P4. I deny that I went to the police station on the next day and signed Ext P4.

PW6 (Mohamed) I am working as the assistant motor vehicle inspector at the regional transport office. This document shown to me is the report prepared by me. It bears my signature and office seal (AMVI's report is marked as Ext P5). I thoroughly checked the vehicle KL7/ ZA 2028. No mechanical defect was noticed. The bus had damage on the right at its front. On the same day I inspected the bus KL7 XA 567 involved in the same accident. It had no mechanical defect. It had damage on the left at its rear side. This is the certificate prepared by me and it bears my signature (marked as Ext P6).

cross-examination I deny that I prepared Exts P5 and P6 to suit the prosecution case.

PW7 (Shekharan) I own the bus bearing registration no.KL7/ZA 2028. This document shown to me is the trip-sheet maintained in my bus (marked as Ext P7). The accused was employed by me as the driver of my bus. At 9. am on 4.8.2018 my bus was on trip and its driver at that time was the accused.

Cross-examination I have only one bus. I have employed two drivers. The other driver is Kesavan. He and the accused work 15 days in a month. I deny that I have labour disputes with the accused. I deny that Kesavan is more dear to me and that my attempt is to save Kesavan. I deny that the bus at the relevant time was driven by Kesavan.

Re-examination The signature in the trip-sheet is that of the accused. I am familiar with his signature.

PW8 (Sasi) At the relevant time I was working as the assistant sub-inspector of police at the Aluva town police station. At about 10.30 am on

4.8.2018 PW1 came to my police station and gave me a statement. I recorded it. This is the said statement (Ext P1 shown). On the basis of it, I registered the FIR. The document shown to me is the FIR registered by me (Ext P1(a) marked). It bears my signature.

Cross-examination I handed over the FIR to the sub-inspector. It reached the magistrate at 10.30 a.m on the next day. I do not know why it was not sent to the magistrate on 4.8.2018 itself.

PW9 (Vinod) On 4.8.2018 I was working as the sub-inspector of police at the Aluva town police station. I conducted the investigation. On the same day I went to the place of occurrence. I made arrangements to remove the dead body of Reghu to the general hospital. I conducted inquest at the general hospital at 1 p.m. The document shown to me is the inquest report prepared by me (marked as Ext P8). It bears my signature. I again went to the place of occurrence. I prepared the scene mahazar which is now shown to me. Ext P4 scene mahazar bears my signature. I questioned the witnesses and recorded their . statements. I concluded the investigation and filed the charge-sheet.

Cross-examination The FIR was handed over to me by the ASI. I made arrangements to dispatch the FIR to the court of the magistrate. The court is not far away from the police station. The initial of the magistrate and the seal of the court show that it reached the court at

10.30 a.m on the next day.

Re-examination It was a hectic day for all in our police station. There were a few more accident cases on that day.