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Special Voluntary Retirement Package – Para 5,

Clauses (3), (4) and (5) – Employees opting for the Scheme – Later withdrawing the option – Employer, accepting the offer, relieved the employees – Held: In the instant case, the Special Voluntary Retirement Package being a part of the Amendment Scheme 2003 framed by Central Government in exercise of the powers u/s. 17A of the General Insurance Business (Nationalisation) Act 1972, is a delegated legislation and statutory in character – The provisions of Scheme will prevail over the provisions of Contract Act or any other law or any principle of contract, and having regard to the binding nature of the scheme, employees, upon exercising the option, cannot withdraw from the same – Principles laid down in the decision in *Swarnakarita* – Explained – General Insurance Business (Nationalisation) Act 1972 – s. 17-A – Delegated Legislation – Contract – Service Law.

New India Assurance Co. Ltd. v. Raghuvir Singh Narang & Anr. 299

HINDU MARRIAGE ACT, 1955:
ss. 13(1)(iii) and 25 – Petition for divorce by husband – Alleging mental disorder of wife – Decree of divorce by Family Court – Affirmed by High Court – On appeal, wife not challenging decree of divorce, but the findings relating to mental disorder – Also claiming lump sum amount of Rs. 75 lakhs towards permanent alimony – Held: Findings relating to alleged mental disorder not acceptable – Claim for permanent alimony justified – Matter remitted to Family Court to ascertain the estimated income of husband and thereafter to send the same to Supreme Court for

final order.

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INCOME TAX ACT, 1961:

s.36(1)(vii), Explanation – Deduction u/s.36(1)(vii) – Held: With effect from April 1, 1989, mere provision for bad debt would not be entitled to deduction u/s.36(1)(vii) – For availing benefit of the deduction, assessee has to write-off the debt by debiting the Profit and Loss Account to the extent of provision for bad debt and simultaneously reducing corresponding amount from loans and advances/debtors from the asset side of Balance Sheet – It is not imperative for assessee to close the individual account of each of its debtors in the books.

*M/s. Vijaya Bank v. Commissioner of Income
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Contract of Insurance – Insurance policy – Interpretation of – Excess clause of the policy – Employee of insured committed series of embezzlements which were covered by contingency 4 of excess clause of the policy – Arbitrator held that the amount embezzled had to be aggregated and insurer could not apply excess

clause to each and every loss separately – Held: Arbitrator interpreted the excess clause wrongly – Insured has to bear 25% of the amount embezzled (or 11500/- whichever is higher) in regard to each and every embezzlement, and not by aggregation of the embezzlements – Deeds and Documents.

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INTEREST ON DELAYED PAYMENTS TO SMALL
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(i) s. 6(1) and (2) – Object and purpose of – Expression ‘amount due from a buyer’, followed by expression ‘together with the amount of interest’ u/s 6(1) – Interpretation of – Held: Object and the purpose of the Act is to ensure that buyer promptly pays the amount due towards the goods supplied or services rendered by the supplier – It also provides for payment of interest statutorily on the outstanding money in case of default – Said expression must be interpreted keeping in mind the purpose and the object of the Act and its provisions – Restricted meaning is not justified – s. 6(1) provides that the amount due from buyer together with amount of interest calculated as per ss. 4 and 5 shall be recoverable by supplier from buyer by way of suit or other proceeding under any law for the time being in force – Scheme of s. 6 r/w ss. 3, 4 and 5 does not envisage multiple proceedings.

(ii) s. 6(1) and (2) – Action contemplated in s. 6 by way of suit or any other legal proceeding u/s. 6(1) or by making reference to Industry Facilitation

Council u/s. 6(2) – Maintainability of, only if it is for recovery of principal sum along with interest as per ss. 4 and 5 and not for interest alone – Held: u/s. 6(2) action by way of reference to IFC could be maintained for recovery of principal amount and interest or only for interest where liability is admitted or has been disputed in respect of goods supplied or services rendered – IFC has competence to determine the amount due for goods supplied or services rendered in cases where the liability is disputed by the buyer.

M/s. Modern Industries v. M/s. Steel Authority of India Ltd. Th. M.D. & Ors. 560

INTERLOCUTORY ORDERS:

Interlocutory application filed for issuance of interim directions to South Eastern Coal Field Ltd. (SECL) to start supply of coal and issue Transit Passes/Delivery Orders through washery of petitioner on behalf of linked and other customers based on instructions/requests from them – Allowed – It is clarified that grant of this interim relief will be subject of the result of the pending title suit – Coal – Coal Washery.

M/s Maruti Clean Coal & Powers Ltd. v. Alok Nigam & Anr. 325

INTERPRETATION OF STATUTES:

(1) (i) Changes in wordings and phrasing of statutory provision – Held: Such changes may be presumed to have been deliberate and with purpose to limit, qualify or enlarge the pre-existing law, as the changes of the words employ – Any construction which makes the exception clause, with which the Section opens, unnecessary and

redundant, should be avoided.

(ii) Construction of statute – Language of a statute should be read as it is – Any construction resulting in rejection of words has to be avoided – However, such rule of construction is not without exception.

Lalu Prasad Yadav v. State of Bihar & Anr. 334

(2) Contextual interpretation.

(See under: Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007) 680

(3) (i) Socio-economic legislation – Held: To be interpreted liberally – However, express limitations placed by socio-economic statute cannot be ignored, so as to include in its application, those who are clearly excluded by such statute itself.

(ii) Marginal Notes – Held: Though the marginal note may not control the meaning of the body of the Section, it usually gives a safe indication of the purport of the Section to the extent possible.

Dalco Engineering Private Ltd. v. Shree Satish Prabhakar Padhya and Ors. 15

(4) Provision for statutory appeal – Interpretation of.

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(1) Observation made in judgment – binding effect.

(See under: Precedent) 334

(2) Reasoned order/judgment – Need for – Held: Reasoned judgment is indispensable part of basic rule of law – Recording of reasons is an essential feature of dispensation of justice – Requirement of recording reasons is applicable with greater rigor to the judicial proceedings – Reasoned orders are required both passed at admission stage or at the final hearing – On facts, impugned judgment was not reasoned, therefore, case remitted to High Court – Principles of Natural justice – Administration of Justice – Principle of legitimate expectation – Code of Civil Procedure, 1908 – O. 14 r. 2 r/w O. 20 r. 1 – Rajasthan Sales Tax Act, 1994.

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(3) Order of High Court in revision petition – Need to give reasons.

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JUDICIAL DISCIPLINE/RESTRAINT:

A judgment could be set aside preferably without offering undesirable comments, disparaging remarks or indications which would impinge upon the dignity and respect of the judicial system – Despite such restraint, if there are compelling reasons for making comments, rule of law and principles to be adhered – View point of judge concerned should also be invited – On facts, all

the remarks made by the trial judge against the prosecution and by the Division Bench against the trial judge directed to be expunged – Strictures by court – Expunging of.

Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi) 103

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Judicial propriety and discipline demand that strictures or lacerating language should not be used by higher courts in exercise of their appellate or supervisory jurisdiction – Errors of judgments to be corrected by reasons of law – Practice of passing comments against lower courts deprecated.

Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi) 103

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LAND ACQUISITION ACT, 1894:

(1) ss. 4 and 6 – Land acquisition proceedings – Challenge to rejected on the ground of delay – Held: Petition challenging notification u/s. 4 is liable to be dismissed if it is challenged at a belated stage – On facts, orders of courts below call for no interference – SLP's having been filed with an inordinate delay of 172 days, dismissed – Limitation – Delay/Laches.

Sawaran Lata etc. v. State of Haryana & Ors. 40

(2) ss. 4(1) and 5-A – Land acquisition for construction of roads – Challenged by land-owners on the ground that the land acquired comprised of water bodies – Held: Major stretch of ORR had already been completed – Only a small stretch involving plots of appellants, was yet to be completed – In such situation, public interest would out-weigh the interest of the individual plot-holders – However, authorities concerned directed to take maximum care to preserve the water bodies over which the road is to be constructed – Environmental law – Urban Development.

M/s. Jayabheri Properties Pvt. Ltd. and Ors. v. State of Andhra Pradesh and Ors. 75

(3) ss. 16(2) and 48(1) – Notification withdrawing from acquisition – Cancellation of – Held: Notification dropping acquisition proceedings in regard to some of the lands and the Notification withdrawing the earlier notification by which the land acquisition proceedings were dropped, are inextricably linked and both are invalid for the same reasons i.e., failure to provide opportunity of hearing to aggrieved party – Further, the

subsequent order was passed to set right the violation of principles of natural justice in making the earlier order – Therefore, interests of justice would be served if both the notifications are set aside – State Government is directed to consider the request of the land owners for withdrawal from acquisition afresh after giving due hearing to the land owners (and also the purchaser) and MUDA and then decide the matter in accordance with law – Karnataka Urban Development Authorities Act, 1987 – ss. 17(1) to (3) and 19(7) – Principles of natural justice – Opportunity of hearing.

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LAND GRABBING:

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House of Legislature – Inquiring into *sub-judice* matter – Held: Ordinarily, legislative proceedings should not touch on *sub-judice* matters – In the instant case, improper exemption of land had already been questioned and was pending before the High Court – Therefore, the Vidhan Sabha should have refrained from dealing with the same subject matter – Rules of Business and Conduct of the Punjab Vidhan Sabha – rr. 39(1), 50, 93(2)(iv) and 150(a) – Rules of Business and

Conduct of the Lok Sabha – rr. 173, 188 and 352.

(Also see under: Constitution of India, 1950)

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MAHARASHTRA CONTROL OF ORGANIZED CRIME ACT, 1999:

(i) s. 2(1)(e) – Part of s. 2(1)(e) relating to “promoting insurgency” – Constitutional validity of – Held: It is within the legislative competence of the State of Maharashtra to enact such a provision – Term “promoting insurgency” u/s. 2(1)(e) comes within the concept of public order – State Legislature is empowered to enact laws aimed at containing or preventing acts which tend to or actually affect public order – Said part of MCOCA cannot be held to be ultra vires in view of the doctrine of pith and substance – Constitution of India, 1950 – Article 246, Entry 1 of List I, Entries 1 and 2 of List II r/w. Entries 1, 2 and 12 of List III of the Seventh Schedule – Doctrines – Doctrine of pith and substance.

(ii) Part of s. 2(1)(e) relating to “promoting insurgency” – Challenge to, on the ground of repugnancy with Central Statute-Unlawful Activities (Prevention) Amendment Act, 2004 – Held: Both the acts operate in different fields and the ambit and scope of each is distinct from the other –

There is no clear and direct inconsistency or conflict between the said provisions of the two Acts – Offence of organised crime under MCOCA and offence of terrorist act under UAPA operate in different fields and are of different kinds and their essential contents and ingredients are altogether different – Unlawful Activities (Prevention) Amendment Act, 2004 – ss. 2(1)(k) and 15 – Unlawful Activities (Prevention) Act, 1967 – s. 2(1)(o) – Constitution of India, 1950.

Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra & Ors. 1042

MAHARASHTRA MUNICIPAL COUNCILS, NAGAR PANCHAYATS AND INDUSTRIAL TOWNSHIPS ACT, 1965:

s.41(2) – Resignation by Councillor – Procedure – Held: Resignation is to be delivered in person and signed before the Collector – Mere putting initials at certain places scored out in the resignation letter before the Collector would not amount to putting the signatures before the Collector himself – The provision is mandatory in nature and must be complied in letter and spirit.

Sau. Laxmi Verma v. State of Maharashtra and Ors. 782

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Despite significance of the print and electronic

media, it is desirable to ensure that trial by media does not hamper fair investigation – More importantly not to prejudice the right of defence of accused in any manner whatsoever – Freedom of expression to be carefully and cautiously used, to avoid interference in the administration of justice and leading to undesirable results in the matters *sub-judice* – Caution to all modes of media to extend full cooperation to ensure fair investigation, trial, defence of accused and non-interference in the administration of justice in matters *sub-judice* – However, in the instant case, the media trial did affect the accused to a very limited extent but not tantamount to prejudice which would weigh with the court in taking any different view – Constitution of India, 1950 – Article 19(1)(a).

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NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985:

(1) s. 15 – Accused found in possession of 35 bags of poppy husk – Conviction by trial court – Set aside by High Court – Held: Evidence clearly established that respondents were in conscious possession of contraband goods – Failure of

defence to prove that seizure and seal put in the samples were ever tampered with before it was examined by Chemical Examiner – Delay of seven days in sending samples to the examiner not fatal since the seal was found intact at the time of examination – Order of trial court restored.

State of Punjab v. Lakhwinder Singh & Anr. 92

(2) ss. 42 and 57 – Recovery of contraband from the premises, key of which was in possession of the accused – Conviction by courts below – Non-compliance of ss. 42 and 57 pleaded – Held: Compliance with ss. 42 and 57 is not mandatory – Non-compliance thereof will not vitiate the trial, if it does not cause prejudice to the accused.

Bahadur Singh v. State of Haryana 402

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(1) Opportunity of hearing.
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(1) ss.120-B, 420/120-B, 477A/120-B and ss.5(1)(d), 5(2) of Prevention of Corruption Act – Interpolation and forgery in permit for palmolein oil – Conviction by courts below – Held: No

evidence on record to indicate any link to prove that the interpolation and forgery was done by any of the accused persons – The prosecution miserably failed to prove its case – Orders of conviction and sentences passed against each of the accused persons set aside – Criminal appeals of the accused who died pending appeal, stand abated – Abatement of appeal – Code of Criminal Procedure, 1973 – s.394(2), proviso – Prevention of Corruption Act, 1947 – ss. 5(1)(d)/5(2) – Pondicherry Essential Commodities (Display of Stocks, Price and Maintenance of Accounts) Order, 1975 – Clause 4(9) – Essential Commodities Act, 1955 – s.7(1)(a)(ii).

Ravichandran v. State By Dy. Superin. of Police, Madras 313

(2) s.161.

(See under: Prevention of Corruption Act, 1947) 383

(3) s. 300 'Thirdly', Exception 4, and ss. 302, 307, 304(Part-1) and 308 – Conviction by trial court u/ ss. 302 and 307 – High Court held Exception 4 to s. 300 applicable, and substituted conviction to one u/ss. 304(part-I) and 308 – Held: The record established motive for the crime – There is no evidence to suggest a sudden fight or that the act was done in heat of passion – Premeditation to cause the death stands proved – Accused took undue advantage while delivering fatal blow to the deceased – Thus, ingredients of Exception 4 to s. 300 not satisfied – The case falls within four corners of clause 'Thirdly' of s. 300 – In view of

grievous injuries, offence falls u/s. 307 and not u/s. 308.

Shaukat v. State of Uttaranchal 873

(4) s. 302 – Conviction under, based on evidence of eye-witnesses – Challenged on the ground that presence of prosecution witnesses at the place of incident was doubtful and there was delay in dispatch of their evidence recorded u/s.161 CrPC – Held: The presence of eye-witnesses at the place of incident well established – Investigating officer explained the delay – Conviction was based on proper appreciation of evidence – No reason to interfere with the concurrent findings of facts in exercise of jurisdiction under Article 136 of the Constitution – Constitution of India, 1950 – Article 136 – Code of Criminal Procedure, 1973 – s. 161.

Abu Thakir and Ors. v. State rep. by Inspector of Police, Tamil Nadu 794

(5) s. 302/34 – Murder – Four persons alleged to have shot dead a local MLA – Conviction by trial court – Acquittal by High Court of three of the accused – Held: Out of four eye-witnesses only two were examined and presence of one of them appeared doubtful – Delay in lodging FIR and dispatch of special report – No reference of names of accused in FIR though one of the eye-witnesses claimed to have come to know their names during incident – The evidence as to who fired the gun, ambivalent – Gun did not belong to the appellant and was not dispatched to Forensic Science Laboratory promptly – In the light of observations of High Court itself, there seemed to be

uncertainty with regard to the prosecution case – Judgments of courts below set aside and appellant acquitted – Delay in lodging FIR, dispatch of special report and dispatch of crime weapon to Forensic Science Laboratory – Criminal Law – Non-explanation of injuries on deceased caused two hours after his death.

Jugraj v. State of Punjab 895

(6) ss. 302/34 and 307 – Gun shot by accused-appellant missed the target – The gun shot by co-accused hit the victim resulting in his death – Conviction of accused-appellant u/s. 307 and of co-accused u/s. 302/34 – Held: There is no suggestion in the prosecution evidence of pre-concert or proof of a prior meeting of minds between the appellant and his co-accused – In the light of the fact that the appellant had fired a shot which missed its target, his conviction u/s. 307 has to be maintained – Sentence reduced from ten years to five years.

Akloo Ahir v. State of Bihar 604

(7) ss.302, 307 r/w. s.149 or s.34 – Murder of one and grievous injuries to others allegedly on account of religious enmity – Acquittal by trial court disbelieving prosecution story – High Court setting aside acquittal and ordering conviction under ss.302, 307 r/w. s.149 or s.34 – Held: High Court erred in interfering with the order of acquittal recorded by trial Court – The sequence of events and the evidence were meticulously examined by trial court and its findings recorded by it were neither perverse nor unreasonable – Conviction

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M. C. Ali and Anr. v. State of Kerala 526

(8) (i) ss. 302/149, 307/149, 323/149 and 148 – Conviction under – Appellant-accused and two others caused injuries to informant – Other accused inflicted gun-shot injuries on son and nephew of informant, resulting in death of nephew and injuries to son – Conviction of appellant u/s. 302/149, 307/149, 323/149 and s. 148 by courts below – Held: Appellant-accused did not share common object with the members of the unlawful assembly to cause death – No knowledge can be attributed to him as regards the likelihood of commission of murder – Conviction u/s. 302/149 not sustainable – Conviction u/s. 307/149 and ss. 323/149 and 148 upheld since finding of courts below based on appreciation of reliable evidence.

(ii) s. 149 – Nature and scope of – Applicability of – Explained.

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(9) ss. 302, 201/120-B – Murder – Acquittal by trial court – Conviction of three of the nine accused by High Court – Held: High Court has given cogent and adequate reasons for reversing the order of acquittal – Appellate court has all the necessary powers to evaluate the evidence led before the trial court and the conclusions reached by it – Presence of accused at the scene of crime proved by ocular testimonies and corroborated by Exhibits – Conclusions arrived at by the High Court upheld

– Arms Act, 1959 – s. 27.

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(11) s.376 – Rape of two sisters – Conviction – Delay of 42 days in lodging complaint – Held: The victims explained that the delay was on account of their illiteracy and fear due to threat call by accused persons – In a case of rape, when victims are illiterate, their statements have to be accepted in toto without further corroboration – Evidence of victims found to be cogent, reliable and must be accepted – Conviction upheld – Crime against women – Delay/laches – Evidence of rape victim – Corroboration of.

Santosh Moolya and Anr. v. State of Karnataka 1092

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impliedly excludes all other types of companies registered under the Companies Act, 1956 – s. 47 applies only to establishments specifically defined as ‘establishment’ under s. 2(k) and not of private employers, individuals, partnerships, proprietary concerns or companies – Constitution of India, 1950 – Article 12 – Companies Act, 1956 – s.617.

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Hon'ble Mr. Justice Dalveer Bhandari, Judge, Supreme Court of India was on leave for one day on 19.04.2010 on full allowances.

Hon'ble Mr. Justice H.S. Bedi, Judge, Supreme Court of India was on leave for three days on 12.04.2010, 13.04.2010 and 26.04.2010 on full allowances.

Hon'ble Mr. Justice P. Sathasivam, Judge, Supreme Court of India was on leave for one day on 09.04.2010 on full allowances.

Hon'ble Mr. Justice Cyriac Joseph, Judge, Supreme Court of India was on leave for two days on 08.04.2010 and 09.04.2010 on full allowances.

Hon'ble Mr. Justice C.K. Prasad, Judge, Supreme Court of India was on leave for sixteen days from 07.04.2010 to 22.04.2010 on full allowances.

ERRATA

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(2010) 2	5	8 from bottom	where the <u>peculiar</u>	where the <u>prosecution</u>
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(2010) 2	281	4 from bottom	<u>respondent</u> to consider the representation	<u>appellant</u> to consider the representation
(2009)16 (Addl.)	659	5 from top	only be repugnant to the context,	only be <u>not</u> repugnant to the context,
(2009)16 (Addl.)	666	5 from top	brought into and,	brought into <u>force</u> and,
(2009)16 (Addl.)	670	23 from top	these words deemed	these words <u>are</u> deemed
(2009)16 (Addl.)	676	14 from top	question was <u>not</u> squarely before	question was squarely before
(2009)16 (Addl.)	699	4 from top	dated <u>3rd</u> of March	dated <u>5th</u> March