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ADMINISTRATIVE LAW:

(1) Delegated Legislation/Subordinate legislation - MCI and DCI introducing NEET by amending the relevant Regulations, for admission to medical and dental courses - Held: Freedoms and rights flowing from Arts. 19(1)(g), 25, 26, 29(1) and 30 of the Constitution cannot be superseded by Regulations framed by a statutory authority by way of delegated legislation - The fact that such power was exercised by MCI and DCI with previous approval of Central Government, as contemplated u/s 33 of 1956 Act and u/s 20 of 1948 Act, would not bestow upon the Regulations framed by MCI and DCI, which are in the nature of subordinate legislation, primacy over the Constitutional provisions.

(Also see under: Education/Educational Institutions)

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(2) Policy regarding retail outlets of petroleum products - Claim of landowners for dealership - Held: Concept of a dealership in respect of a retail outlet is completely alien to concept of a COCO unit - With the discontinuance of earlier policy of granting dealerships in respect of retail outlets and introduction of a new policy of awarding M&H Contracts in respect of COCO outlets, land owners who had entered into fresh lease agreements after the policy to grant dealerships had been suspended, cannot claim any right on the basis of

earlier policy in the absence of any Letter of Intent having been issued thereunder - Doctrines of promissory estoppel and legitimate expectation are not applicable - Claims of appellants/petitioners have to be treated on the basis of agreements subsequently entered into by Oil Companies - It will be open to appellants/petitioners to approach the proper forum in the event they have suffered any damages and loss, which they are entitled to recover in accordance with law - Promissory estoppel - Doctrine of legitimate expectation.

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APPEAL:

(1) Appeal against acquittal.

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(2) Criminal appeal - Decided by High Court in absence of counsel for accused - Held: Court should not decide criminal case in absence of counsel for accused - Accused should not suffer for the fault of his counsel and court must appoint another counsel as an amicus curiae to defend the accused - It is duty of appellate court to look into the evidence adduced in the case so as to arrive at the conclusion whether prosecution case can be said to have been proved beyond reasonable doubt - Credibility of a witness has to be adjudged by appellate court in drawing inference from proved and admitted facts - In the case on hand, the said recourse has not been followed by High Court - Impugned order is set aside and matter remitted to High Court for disposal afresh - Appellant is in custody for nearly two months as against the sentence of two years - Therefore, he is ordered to be released on bail

till the disposal of appeal pending before High Court - Bail.

Shridhar Namdeo Lawand v. State of Maharashtra 1057

(3) Judgment of acquittal - Interference with, by appellate court - Scope of - Explained.

(Also see under: Penal Code, 1860)

S. Anil Kumar @ Anil Kumar Ganna v. State of Karnataka 408

ARBITRATION AND CONCILIATION ACT, 1996:

s.11 - Application for appointment of arbitrator - Territorial jurisdiction - Held: Where the contract specifies the jurisdiction of courts at a particular place and such courts have jurisdiction to deal with the matter, an inference may be drawn that parties intended to exclude all other courts - A clause like this is not hit by s. 23 of the Contract Act - Such a clause is neither forbidden by law nor it is against public policy - It does not offend s. 28 of Contract Act - Absence of words like "alone", "only", "exclusive" or "exclusive jurisdiction" is neither decisive nor does it make any material difference in deciding the jurisdiction of a court - The very existence of a jurisdiction clause in an agreement makes the intention of parties clear and it is not advisable to read such a clause in the agreement like a statute - Contract Act, 1872 - ss.23 and 28 - Maxim, *expressio unius est exclusio alterius*.

Swastik Gases P. Ltd. v. Indian Oil Corp. Ltd. 581

ATOMIC ENERGY ACT, 1962:

(See under: Land Laws) 863

BAIL:

(1) (See under: Appeal) 1057

(2) (See under: Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986) 823

BOMBAY POLICE ACT, 1951:

ss. 33A and 33B - Prohibition on bar dancing in State of Maharashtra - s.33-A prohibiting to hold performance of dance of any kind or type in any eating house, permit room or bear bar, but exempting the establishments covered u/s 33-B from any such restriction - Held: A distinction, the foundation of which is the classes of establishments and the classes/kind of persons, who frequent the establishments and those who own the establishments, cannot be supported under the Constitutional philosophy - ss. 33A and 33B introduce an invidious discrimination which cannot be justified under Art. 14 of the Constitution - Yet at the same time, both kinds of establishments are to be granted licenses and regulated by the same restrictions, regulations and standing provisions - It would be more appropriate that the State Government re-examines the recommendations made by the Committee and the suggestions made in the judgment to bring about measures which should ensure safety and improve working conditions of bar girls - Constitution of India, 1950 - Arts. 14, 19(i)(a), 19(1)(g) and 21.

State of Maharashtra (M/s)& Anr. v. Indian Hotel & Restaurants Assn. & Ors. 654

CENTRAL EXCISE TARIFF ACT, 1985:

Heading 52.03 - Cotton yarn of various counts - Demand raised against assessee for manufacturing cotton of higher counts than the

declared ones - Held: If on inspection of a manufacturing premises on a particular day, it is detected that goods of a particular specification are being manufactured, Revenue is entitled in law to presume that (until the manufacturer proves the contra) goods of the same specification are continued to be manufactured - However, in the instant case, no samples were drawn for Revenue to draw an initial presumption - Further, having regard to the paltry amount involved in the matter and first appellate authority found substance in defence of assessee, judgment of first appellate authority as affirmed by Appellate Tribunal, not interfered with - Evidence Act, 1872 - s.114, III(d).

Commissioner of Central Excise, Madurai v. Ayyappan Textiles Ltd. 771

CIRCULARS/GOVERNMENT ORDERS/ NOTIFICATIONS:

(1) (i) Notification No. MCI-31(1)/2010-MED/49068 dated 21.12.2010.

(ii) Notification No. MCI. 18(1)/2010-MED/49070 dated 21.12.2010.

(iii) Notifications both bearing No. DE-22-2012 and dated 31.5.2012, as regards BDS and MDS courses.

(See under: Education/Educational Institutions) 908

(2) G.O. dated 13.7.1978 issued by Government of Kerala.
(See under: Constitution of India, 1950) 352

(3) Government of West Bengal Memo No. 1736(21) GA dated 1.11.1999.
(See under: Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) 117

(4) Central Government Notification dated 27.6.1969.
(See under: Securities Contracts (Registration) Act, 1956) 547

COAL BEARING AREAS (ACQUISITION AND DEVELOPMENT) ACT, 1957:
(See under: Land Laws) 863

CODE OF CIVIL PROCEDURE, 1908:
(1) s.96 - First appeal - Suit for partition decreed by trial court holding the suit properties as joint family properties relying on the statement made by first defendant in a letter as admissible - High Court reversed the judgment without examining implications of the said letter - Held: Non consideration of the letter by Division Bench of High Court, would amount to total misreading of the evidence - Similarly, Division Bench miserably failed to examine the issue relating to gift as regards the first item of suit scheduled properties - Though, such a claim was made by defendant, there was no iota of evidence to support the said claim - Ingredients of s.122 of Transfer of Property Act relating to gifts were not shown to have been complied with - Judgment of High Court set aside and that of trial court restored - Transfer of Property Act, 1882 - s.122 - 'Gift' - Evidence Act, 1872 - s.17.

Vathsala Manickavasagam & Ors. v. N. Ganesan & Anr. 320

(2) (i) O.6, r.17 - Written statement - Amendment - Equitable set-off - Suit for declaration as regards plaintiffs' entitlement to certain amounts - Defendants seeking amendment of written statement after more than 3 years of its filing and seeking to grant of a decree for a certain amount

- Held: Division Bench of High Court has rightly allowed the amendment on the basis that the claim put forth could be treated as a plea in the nature of equitable set-off, for it has treated the stand taken in the amendment petition to be a demand so connected in the nature and circumstances that they can be looked upon as a part of one transaction - The view expressed by the Division Bench has to be treated as a prima facie expression of opinion - Whether the claim would be allowable or not will depend upon the evidence adduced before the court so as to sustain a claim of equitable set-off.

(ii) O. 8, rr. 6 and 6-A - Set off and counter claim - Legal set off and equitable set-off - Explained.

Jitendra Kumar Khan and Others v. The Peerless General Finance and Investment Company Limited and others 1093

CODE OF CRIMINAL PROCEDURE, 1973:

(1) s.161 and s.162(2).
(See under: Penal Code, 1860; and Evidence Act, 1872) 293

(2) ss. 177, 178 and 179.
(See under: Negotiable Instruments Act, 1881) 165

(3) s.216 - Court's power to alter charge - Trial court subsequent to order in *Rajbir's* case, adding charge for offence punishable u/s 302 to that already framed for offences punishable u/ss 304-B and 498-A IPC etc. - Held: A charge u/s 304B IPC is not a substitute for a charge of murder punishable u/s 302 - Ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients - If there is evidence

direct or circumstantial to *prima facie* support a charge u/s 302 IPC, trial court can and indeed ought to frame such a charge, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters - Order in *Rajbir's* case, explained - In the instant case, trial court acted mechanically, for it framed an additional charge u/s 302 IPC without adverting to evidence adduced in the case and simply on the basis of direction issued in *Rajbir's* case - Order passed by High Court and that passed by trial court framing the charge u/s. 302 IPC are set aside and matter is remitted to trial court for a fresh order keeping in view the observations made in the judgment.

Jasvinder Saini & Ors. v. State (Govt. of NCT of Delhi) 340

(4) s.306(5)(b) - Tender of pardon to accomplice and committal of case to Court of Session - Offences punishable u/ss 420, 468, 471 and 477-A r/w s.120-B IPC - Additional Chief Metropolitan Magistrate granting pardon to one of accused on his turning approver, and committing the case to Court of Session - Held: Charges leveled against appellants are all triable by Magistrate's Court, and cognizance is taken by Additional Chief Metropolitan Magistrate and not by Chief Metropolitan Magistrate - Further, it was also not an offence triable by Special Judge under Criminal Law Amendment Act, 1952 - It was, thus, a case falling in the category of 'any other case' under sub-s. (5)(b) of s.306 and had to be made over to Chief Metropolitan Magistrate for trial - Order of High Court directing the case to be tried by Court of Session is set aside - Proceedings will stand restored to file of Chief Metropolitan Magistrate who shall proceed with trial - As regards

cancellation of order granting pardon, it would be for appellants to apply before Magistrate concerned.

Dilip Sudhakar Pendse & Anr. v. Central Bureau of Investigation 646

(5) s.311 - Power of court to re-examine a witness - Principles to be followed while dealing with an application u/s 311 - Culled out - Held: In the instant case, the application of complainant for his re-examination has no bona fides - Trial court had opportunity to observe demeanour of complainant which persuaded it to reach the conclusion and that deserves more credence while examining correctness of order passed by it - Order of trial court did not call for any interference, in any event, behind the back of appellant - Trial shall be completed expeditiously - Evidence Act, 1972 - s.138.

Rajaram Prasad Yadav v. State of Bihar & Anr. 420

(6) s.313.
(See under: Penal Code, 860) 780

(7) s.427.
(See under: Negotiable Instrument Act, 1881) 617

(8) s.438 - Anticipatory bail - Cancellation of - Investigation against appellants for causing gunshot injuries to complainant, pending - Addl. Sessions Judge granting anticipatory bail - Held: This is not a fit case for granting anticipatory bail, especially when investigation is not over and the weapon used in the offence is yet to be traced - None of the accused persons had disclosed the source from which the weapon and bullets were procured - Additional Sessions Judge, while

granting anticipatory bail, opined that after having considered the medical report, ingredients of s. 326 IPC have not been satisfied - It was too early for Additional Sessions Judge to express any opinion merely looking at the medical report, which, however, positively indicates of gunshot injury, may be simple, and it is due to that reason that police has added offences u/s. 307 IPC as well as s. 25 of Arms Act - Additional Sessions Judge has committed an error in granting anticipatory bail to respondents - Order passed by Additional Sessions Judge and affirmation order passed by High Court, are set aside.

Nasiruddin v. State (NCT) Delhi and Ors. 1085

(9) s. 482 - Quashing of criminal proceedings - Stage of approaching the High Court - Explained. (Also see under: Negotiable Instruments Act, 1881)

Mrs. Aparna A. Shah v. M/s. Sheth Developers Pvt. Ltd. & Anr. 69

(10) s. 482 - Quashing of FIR - Investigation pending for more than nine years - In departmental inquiry on identical charges, appellant exonerated in inquiry report - Held: The instant case is a fit one, where High Court should have exercised its power u/s 482 - Records have not been made available to investigating agency - Keeping the investigation pending will be futile, as department is not sure whether original records can be procured for investigation to bring home the charges - Considering the fact that delay is caused by respondent, constitutional guarantee of a speedy investigation and trial under Art. 21 of the Constitution has been violated and as appellant has already been exonerated in departmental

proceedings for identical charges, FIR is quashed - Constitution of India, 1950 - Art. 21 - Speedy investigation/trial.

Lokesh Kumar Jain v. State of Rajasthan 519

(11) (i) s. 482 r/w ss. 319 and 397(2) - Order of Court of Session rejecting prayer of complainant u/s. 319 to summon applicants, set aside by High Court - Held: Order passed by trial court refusing to issue summons on the application filed by complainant u/s. 319 decides rights and liabilities of appellants in respect of their involvement in the case and, as such, cannot be said to be an interlocutory order so as to bar a revision to High Court u/s. 397(2).

(ii) s. 482 - Exercise of power by High Court - Held: Inherent power of court can be exercised when there is no remedy or express provision in the Code for redressal of the grievance - In the instant case, complainant ought to have challenged the order before High Court in revision u/s. 397 and not by invoking inherent jurisdiction of High Court u/s. 482.

(iii) s. 482 r/w s. 401(2) - Opportunity of hearing - Held: A valuable right accrued to appellants by reason of the order passed by Court of Session refusing to issue summons - In the circumstances, principle of giving notice and opportunity of hearing as contemplated u/s 401(2) should be applied where such orders are challenged in High Court u/s. 482 - Order of High Court set aside and matter remanded to it for decision afresh after giving opportunity of hearing to appellants - Notice.

Mohit alias Sonu and another v. State of U.P. and Another 86

COKING COAL MINES (NATIONALISATION) ACT, 1972:
(See under: Land Laws) 863

COMPENSATION:
(1) (See under: Land Acquisition Act, 1894) 1037
(2) (See under: Motor Vehicles Act, 1988) 45
and 276

CONSTITUTION OF INDIA, 1950:
(1) Arts. 14, 19(i)(a), 19(1)(g) and 21.
(See under: Bombay Police Act, 1951) 654
(2) Arts. 14, 21 and 22(4).
(See under: Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986) 823

(3) Art. 19(1)(g) r/w Art. 14 - Prohibition on dance - s.33-A of Bombay Police Act prohibiting dance of any kind of type in any eating house, permit room or bear bar - Held: State has failed to establish that restriction is reasonable or that it is in the interest of general public - The impugned legislation has led to closure of a large number of establishments and unemployment of over seventy five thousand woman workers - It has proved to be totally counterproductive and being ultra vires Art.19(1)(g), cannot be sustained - Bombay Police Act, 1951 - ss. 33-A - Convention on the Elimination of All Forms of Discrimination Against Women (CEADAW) - Doctrine of severability - Doctrine of reading down.

(Also see under: Bombay Police Act, 1951)
State of Maharashtra & Anr. v. Indian Hotel & Restaurants Assn. & Ors. 654

(4) Arts. 19(1)(g), 25, 26 and 30 - National Eligibility-cum-Entrance Test (NEET) for Medical

and Dental courses - Held: The course of action adopted by MCI and DCI would not qualify as a reasonable restriction, but would amount to interference with rights guaranteed under Art. 19(1)(g) and, more particularly, Art.30, which is not subject to any restriction similar to Art. 19(6) - Admissions to educational institutions have been held to be part and parcel of their right to administer and the same cannot be regulated, except for the purpose of laying down standards for maintaining the excellence of education being provided in such institutions.

(Also see under: Education/Educational Institutions)

Christian Medical College Vellore & Ors v. Union of India and Ors. 908

(5) Arts. 19(1)(g), 25, 26(a), 29(1) and 30(1) - Seventh Schedule, List I, Entry 66 - List III, Entry 25.

(See under: Education/Educational Institutions) 908

(6) Arts. 48-A and 51-A(g) r/w. Art. 21 - Protection and improvement of environment including forests, rivers, lakes and wildlife - Held: The constitutional mandate and the "doctrine of public trust" enjoins upon Government to protect the resources for enjoyment of general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of few - In the instant case, execution of the project, including construction of restaurant on bank of river, is ex-facie contrary to mandate of G.O. dated 13.1.1978, which was issued by State Government in discharge of its Constitutional obligation under Art. 48-A - Respondents are directed to demolish the structure raised - Doctrine of public trust - G.O. dated 13.7.1978 issued by Government of Kerala

- Environmental law.

Association for Environment Protection v. State of Kerala and Others 352

(7) (i) Art.136 - Supreme Court of India - Power to modify its decisions - Held: Constitution of India bestows upon Supreme Court the inherent power to modify its earlier decision if it finds that the error pointed out in modification petition was under mistake and earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration had resulted in miscarriage of justice - Interlocutory applications.

(ii) Art. 141.

(Also see under: Extradition Act, 1962)

Abu Salem Abdul Qayyum Ansari v. Central Bureau of Investigation & Anr. 1061

(8) Arts. 233 and 234.

(See under: Prevention of Corruption Act, 1988) 1

(9) Arts. 294 and 297.

(See under: Land Laws) 863

(10) Art. 300A.

(See under: Land Acquisition Act, 1894) 192

(11) (See under: Code of Criminal Procedure, 1973) 519

CONTRACT ACT, 1872:

ss.23 and 28.

(See under: Arbitration and Conciliation Act, 1996) 581

COSTS:

(See under: Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) 117

CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860) 370,
394, 408, 505,
760 and 780

CRIMINAL LAW:

Motive.

(See under: Penal Code, 1860) 179

DENTISTS ACT, 1948:

(See under: Education/Educational
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DOCTORINES/PRINCIPLES:

(1) Doctrine of public trust.

(See under: Constitution of India, 1950) 352

(2) (i) Doctrine of severability.

(ii) Doctrine of reading down.

(See under: Constitution of India, 1950) 654

(3) Promissory estoppel - Doctrine of legitimate expectation.

(See under: Administrative Law) 469

(4) Rule of ejusdem generis.

(See under: Negotiable Instruments Act,
1881) 69

EDUCATION/EDUCATIONAL INSTITUTIONS:

(1) Medical and Dental education - Admission to MBBS, Post-Graduate Medical Courses, BDS and MDS courses - National Eligibility-cum-Entrance Test (NEET) - Held: The Notifications and the 2010 (Amendment) Regulations whereby MCI introduced NEET and the corresponding amendments in the Dentists Act, 1948 are ultra vires the provisions of Arts. 19(1)(g), 25, 26(a), 29(1) and 30(1) of the Constitution, since they have the effect of denuding the States, State-run

Universities and all medical colleges and institutions, including those enjoying the protection of these constitutional provisions, from admitting students to their M.B.B.S., B.D.S. and Post-graduate courses, according to their own procedures, beliefs and dispensations, which is an integral facet of the right to administer - MCI or DCI has no authority under the relevant Acts to take away the right of educational institutions to admit students - MCI is not empowered under 1956 Act to conduct NEET - Regulations cannot prevail over the constitutional guarantees under Arts. 19(1)(g), 25, 26, 29(1) and 30 of the Constitution - Impugned Notifications are quashed - This will not, however, invalidate actions so far taken under the amended Regulations, including the admissions already given on the basis of NEET conducted by MCI, DCI and other private medical institutions, and the same shall be valid for all purposes - Indian Medical Council Act, 1956 - s. 33 r/w ss. 19 and 20 - Dentists Act, 1948 - Constitution of India, Arts. 19(1)(g), 25, 26(a), 29(1) and 30(1) - Seventh Schedule, List I, Entry 66 - List III, Entry 25.

(Also see under: Constitution of India, 1950)

Christian Medical College Vellore & Ors v. Union of India and Ors.

908

(2) Primary education - Medium of instruction from 1st to 4th standard - Held: In view of the fact, that a two-Judge Bench in *English Medium Students Parents Association* has already arrived at a decision as to the question whether medium of instruction should be that of mother tongue, it is not appropriate to decide the very same issue under different grounds by a coordinate Bench - Besides, the vital question involved in the instant matters has a far-reaching significance on the

development of children - Considering the constitutional importance of the matter, the same is referred to a Constitution Bench - Reference to larger Bench.

State of Karnataka & Anr. v. Associated Management of (Govt. Recognized unaided English medium) Primary and Secondary Schools & Ors. 446

ENVIRONMENTAL LAW:

(See under: Constitution of India, 1950) 352

EVIDENCE:

(1) Appreciation of evidence - Minor contradictions and inconsistencies - High Court setting aside the conviction and acquitting the accused by referring to some discrepancies - Held: Every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments not affecting the core of the case, should not be taken to be a ground to reject prosecution evidence - While appreciating the evidence of a witness, approach must be as to whether evidence of witness read as a whole appears to have a ring of truth - High Court in its appreciation of evidence has laid undue emphasis on some contradictions which do not affect prosecution case - It has read the evidence not as a whole but in utter fragmentation and appreciated the same in total out of context - Testimonies of prosecution witnesses are credible and there is no reason to treat their testimony as untrustworthy - Penal Code, 1860 - s.302.

(Also see under: Penal Code, 1860)

Mritunjoy Biswas v. Pranab @ Kuti Biswas and Anr. 1105

(2) Documentary evidence - Held: The documents that have not been relied upon before the court by defendant cannot be referred to or treated as evidence without proper proof of contents thereof. (Also see under: Land Acquisition Act, 1894)

Ramanlal Deochand Shah v. The State of Maharashtra & Anr. 631

(3) Dowry death - Evidence of independent witnesses - Held: Instances of cruelty and harassment for dowry, generally remain within personal knowledge of near relations, and their evidence is not to be discarded for independent corroboration or for not reporting the matter to Panchayat.

(Also see under: Penal Code, 1860)

Ranjit Singh v. State of Punjab 394

(4) Evidence of complainant in a bribe case - Nature of - Discussed.

(Also see under: Prevention of Corruption Act, 1988)

State of Punjab v. Madan Mohan Lal Verma 1130

EVIDENCE ACT, 1872:

(1) s. 17 - Admission - In a suit for partition, letter of defendant produced by plaintiff wherein he had stated the suit properties as joint family properties - Held: Once there is admission in a statement either oral or documentary, onus would shift to the party who made such an admission and it will become an imperative duty on such party to explain it - In the absence of any satisfactory explanation, it will have to be presumed to be true - In the instant case, the letter written by defendant is a statement constituting a tacit admission - Every ingredient of s.17 relating to said document

was fully complied with.

(Also see under: Code of Civil Procedure, 1908)

Vathsala Manickavasagam & Ors. v. N. Ganesan & Anr. 320

(2) s.32 - Dying declaration - Statement recorded by doctor, who conducted medico-legal examination - Held: The dying declaration recorded by doctor was also signed by husband of deceased - There is nothing to suggest that any relation of deceased was present to influence the doctor.

(Also see under: Penal Code, 1860)

Manoj & Ors. v. State of Haryana 505

(3) s.32(1) - Dying declaration - Statement of deceased recorded by police soon after the occurrence - Factors to be considered to place reliance upon such statement as dying declaration - Explained - Held: The grievous injuries sustained by victim on his vital parts of body and his death within 24 hours, was sufficient to reach a conclusion that whether or not he was in expectation of his death - The further finding of courts below that there was no scope for any manipulation at the instance of police also strengthens the reliance placed upon by prosecution on the said statement by treating it as a dying declaration - Sub-s.(2) of s.162, CrPC makes the position clear that the statement as a dying declaration would squarely fall within the said sub-section and has only to satisfy the stipulations contained in s. 32(1) of Evidence Act - High Court rightly relied upon the said statement as a dying declaration, squarely falling within the statutory prescription of s. 32(1) of Evidence Act - Penal Code, 1860 - s.302/149, 307/149, 452, 148 and

147 - Code of Criminal Procedure, 1973 - ss.151 and 162(2).

(Also see under: Penal Code, 1860)

Rafique @ Rauf & Others v. State of U.P. 293

(4) s.47 - Evidence as to hand writing - Held: The witness who claimed to be conversant with handwriting of accused because of alleged correspondence, deposed that he had neither seen the accused writing the endorsement nor was he himself recipient of any correspondence from accused - He had no prior knowledge of handwriting of accused or signature of the author - He was, thus, not a competent witness to depose regarding handwriting of accused.

(Also see under: Penal Code, 1860)

B. Raghuvir Acharya v. Central Bureau of Investigation 132

(5) ss. 63 and 65.
(Penal Code, 1860) 760

(6) ss. 63 and 65(c) - 'Secondary evidence' - Witnesses deposing that original dying declaration was not traceable - Trial court granting permission to lead secondary evidence and permitting carbon copy to be adduced in evidence - Held: In view of provisions of ss.63 and 65, such a course is permissible.

(Also see under: Penal Code, 1860)

Kaliya v. State of Madhya Pradesh 760

(7) ss.113-A and 113-B.
(See under: Penal Code, 1860) 408

(8) s.113-B - Presumption as to dowry death - Explained - Held: In the instant case, prosecution has successfully proved ingredients of s.304-B IPC and, as such, s.113-B of Evidence Act

automatically comes into play.

(Also see under: Penal Code, 1860)

Ranjit Singh v. State of Punjab 394

(9) s.113-B r/w s.106.

(See under: Penal Code, 1860) 370

(10) s.114, III(d).

(See under: Central Excise Tariff Act, 1985) 771

(11) s.138.

(See under: Code of Criminal Procedure, 1973) 420

EXTRADITION ACT, 1962:

(i) ss.3(1) and 21 - Extradition - Accused in 1993 Bombay Blast case, extradited to India from Portugal (Extradition order dated 28.3.2003) on the assurance that he would not be awarded capital sentence and imprisonment for more than 25 years - Additional charges framed - Difference of opinion between Courts in India and courts in Portugal as regards trial of accused for additional charges - CBI seeking to modify judgment in *Abu Salem* and praying for withdrawal of additional charges - Held: Taking note of the fact that the offences for which the appellant was extradited to India are grave enough to even award him the maximum punishment and, therefore, no prejudice would be caused if the application for modification is allowed - Accordingly, prayer of CBI allowed and additional charges permitted to be withdrawn - However, the analysis and reasoning rendered in the judgment of *Abu Salem* with regard to the interpretation of the Principle of Speciality stands good as the law declared by the Court under Art. 141 of the Constitution of India and shall be binding on all courts within the territory of India - Constitution of India, 1950 - Art. 141.

(ii) ss. 3(1) and 21 - Ministerial order of Government of Portugal permitting extradition of accused in 1993 Bombay blast case - Additional charges framed by Special Court - Lisbon Court of Appeals holding the additional charges in violation of extradition order and authorization granted ought to be terminated - Held: Constitutional Court of Portugal holding that Portuguese law does not provide for any specific consequence for violation of the Principle of Specialty and the findings may not be construed as a direction to Union of India to return the appellant to Portugal but shall only serve as a legal basis for Government of Portugal, should it choose to seek the return of appellant to Portugal through political, or diplomatic channels, which has not been done till date - In this view of the matter, order of Extradition dated 28.03.2003 stands valid and effective in the eyes of law.

(Also see under: Constitution of India, 1950)

Abu Salem Abdul Qayyum Ansari v. Central Bureau of Investigation & Anr. 1061

FIR:

(1) Non-mentioning of name of accused in FIR - Held: Evidence shows that accused was named at earliest opportunity - There is nothing on record to suggest that he was falsely implicated by way of an afterthought.

(Also see under: Penal Code, 1860; and Evidence)

Mritunjoy Biswas v. Pranab @ Kuti Biswas and Anr. 1105

(2) (See under: Code of Criminal Procedure, 1973) 519

GIFT:

(See under: Code of Civil Procedure, 1908) 320

HINDU LAW:

'Coparcenary property' - 'Coparcener' - Held: Coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor - So long, on partition, an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property and if a son is subsequently born, the alienation made before the birth cannot be questioned - But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener - Therefore, in the instant case, sale deeds and release deed executed by the father after the birth of his son, to the extent of the entire property are illegal, null and void.

Rohit Chauhan v. Surinder Singh & Ors. 897

INCOME TAX ACT, 1961:

ss.2(24), 15, 16 and 17 - "Income", "salary", "perquisite" - Connotation of - Deduction of 40% of incentive bonus paid to Development Field Officer of LIC prior to 1.4.1989 claimed as expenditure incurred for canvassing business - Held: Incentive bonus has to be treated as salary, subject to permissible deductions u/s 16 - Expenses incurred in performance of duty as Development Officer for generating the business so as to make him eligible for incentive bonus is not permissible deduction and, therefore, the same

is exigible to tax.

T.K. Ginarajan v. Commissioner of Income Tax, Cochin, Kerala 813

INDIAN MEDICAL COUNCIL ACT, 1956:

(1) s.19-A(2) - Furnishing of copies of regulations and amendments by MCI to States - Held: Submission of draft amended Regulations to State Governments for their views cannot be said to be directory, since MCI has to take into consideration the comments, if any, received from any State Government in respect thereof, before submitting the same to Central Government for sanction.

(Also see under: Education/Educational Institutions)

Christian Medical College Vellore & Ors v. Union of India and Ors. 908

(2) s. 33 r/w ss. 19 and 20.

(See under: Education/Educational Institutions) 908

INTERLOCUTORY APPLICATIONS:

(See under: Constitution of India, 1950) 1061

INTERNATIONAL CONVENTIONS/TREATIES:

(1) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

(See under: Constitution of India, 1950) 654

(2) Proclamation adopted by the Economic and Social Commission for Asian and Pacific Region (ESCAP).

(See under: Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) 117

INTERNATIONAL LAW:

Extradition - Explained.

Abu Salem Abdul Qayyum Ansari v. Central Bureau of Investigation & Anr. 1061

INTERPRETATION OF STATUTES:

Ejusdem generis.

(See under: Negotiable Instruments Act, 1881) 69

INVESTIGATION:

(See under: Penal Code, 1860) 1105

JUDGMENTS/ORDERS:

(See under: Sentence/Sentencing) 802

JURISDICTION:

(See under: Negotiable Instruments Act, 1881) 165

JUVENILE JUSTICE ACT, 1986:

(See under: Juvenile Justice (Care and Protection of Children) Act, 2000) 576

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000:

ss. 2(k), 2(l), 7-A, 20 and 49 - Accused convicted u/ss 302 and 324 IPC aged less than 18 years on date of commission of offence (i.e. 6.5.1995) - Held: Is entitled to benefit of the Act - Conviction affirmed - However, the sentence awarded by trial court as affirmed by High Court set aside and matter sent to Juvenile Justice Board for imposing adequate sentence - Juvenile Justice Act, 1986 - Juvenile Justice (Care and Protection of Children) Rules, 2007 - rr.12 and 98.

Ketankumar Gopalbhai Tandel v. State of Gujarat 576

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007:

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KERALA MINOR MINERAL CONCESSION RULES, 1967:

Mines and Minerals.

(See under: Land Laws) 863

LAND ACQUISITION:

Rental compensation for pre-acquisition period - Entitlement to as per award of Land Acquisition Officer or on the amount as enhanced by reference court - Held: During the pendency of a reference proceeding or appeal before a higher court, rental compensation is to be determined on the basis of award passed by Land Acquisition Officer - Subsequently, if there is upward revision of amount, consequences will follow and re-determination of rental compensation can be made.

Kazi Akiloddin Sujaoddin v. State of Maharashtra & Ors. 382

LAND ACQUISITION ACT, 1894:

(1) (i) ss. 4 and 6 - Acquisition of land by State Government for setting up of Railway complex - 'Public purpose' - Held: Under ss. 4 and 6, it is the "appropriate Government" which is to be satisfied about the 'public purpose' for which the land is to be acquired and which is vested with responsibilities contemplated u/ss. 4 and 6 - 'Public purpose' may be relatable to (i) Union/Central Government, or (ii) State Government or (iii) a "general public purpose", which is neither exclusively relatable to Central Government nor fully relatable to State Government, but furthers a common public purpose relatable both to a Union and a State cause.

(ii) ss. 3(ee), 4, and 6 - "Appropriate Government" - Held: If the purpose of acquisition is exclusively

for the Union, then Union/Central Government will have exclusive jurisdiction to acquire the land - If the purpose of acquisition is exclusively for a State, or for "a general public purpose", then the State Government concerned will have exclusive jurisdiction to acquire land - In the instant case, though the land was acquired for Railway complex, but additionally the purpose of acquisition had a nexus with the State and, as such, the purpose for acquisition can certainly be described as "a general public purpose" - Therefore, State Government had jurisdiction to acquire the land because it duly satisfied the requirement of the term 'appropriate Government' referred to in ss. 4 and 6 - While acquiring the land of appellants, State Government has proceeded in due course of law - As such, appellants cannot be stated to have been deprived of their lands/property, without the authority of law and there has been no violation of appellants' right under Art. 300A of the Constitution - Constitution of India, 1950 - Art. 300A.

Rajendra Nagar Adarsh Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan & Ors. 192

(2) ss. 4, 6 and 23 - Acquisition of agricultural land for industrial development - Compensation - Comparative sale transactions - Criteria for determination of market value of acquired land - Explained - Held: That the acquisition of land is for commercial purpose should be the relevant criteria for determining the market value by Land Acquisition Officer and reference court - Reference court, while enhancing the compensation, was right in placing reliance upon sale instances even of small plots of land and holding that there is a trend of escalation of price of land situated in proximity of acquired land - The said finding of

fact has been erroneously set aside by High Court - Reference court by placing reliance upon documentary and oral evidence on record, and by re-determining the market value, has awarded just and reasonable compensation - Judgment of High Court set aside and award passed by reference court, restored.

Digamber & Ors. v. State of Maharashtra & Ors. 1037

(3) s.18 - Reference to civil court - Scope of - Held: A reference to civil court is not in the nature of an appeal where appellate forum takes a view based on the evidence before the forum below - In a reference, on the question of adequacy of compensation determined by Collector, burden to prove that his award does not correctly determine the amount of compensation and that it needs enhancement is upon landowner - To that extent claimant is in the position of a plaintiff - In the absence of any evidence to prove that the amount awarded by Collector does not represent true market value of property as on the date of preliminary notification, reference court will not be justified in granting any enhancement - Order of reference court set aside and matter remitted to it for disposal afresh after giving opportunity to landowners to lead evidence in support of their claim - Evidence.

Ramanlal Deochand Shah v. The State of Maharashtra & Anr. 631

LAND LAWS:

Jenmis or holders of jenmom rights in Malabar area - Rights with regard to minerals underneath the soil - Held: Ownership of sub-soil/mineral wealth should normally follow the ownership of land, unless owner of land is deprived of the same by

some valid process - No such deprivation is brought to the notice of the Court - Appellants are, therefore, the proprietors of minerals obtaining in their lands - The recitals in patta or Collector's standing order that exploitation of mineral wealth in the patta land would attract additional tax cannot in any way indicate the ownership of State in minerals - The power to tax is a necessary incident of sovereign authority (imperium) but not an incident of proprietary rights (dominium) - Constitution of India, 1950 - Arts. 294 and 297 - Mines and Minerals (Regulation and Development) Act, 1957 - Mineral Concession Rules, 1960 - Kerala Minor Mineral Concession Rules, 1967 - Coking Coal Mines (Nationalisation) Act, 1972 - Coal Bearing Areas (Acquisition and Development) Act, 1957 - Atomic Energy Act, 1962 - Oilfields (Regulation and Development) Act, 1948 - Mines and Minerals.

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MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, 1957:

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MOTOR VEHICLES ACT, 1988:

(1) ss.149 r/w ss.146 and 147 - Insurer to satisfy awards against third party risk - Fatal accident - Held: It is the statutory right of a third party to recover the amount of compensation from insurer, who cannot disown its liability on the ground that although driver was holding a licence to drive a light motor vehicle, it contained no endorsement to drive commercial vehicle - It is for insurer to proceed against insured for recovery of the amount in the event there has been violation of any condition of insurance policy - In the instant case, driver was holding a valid driving licence to drive light motor vehicle - Merely because he did not get any endorsement in driving licence to drive Maxi Cab, which is a light motor vehicle, High Court has committed grave error of law in holding that insurer is not liable to pay compensation because driver was not holding licence to drive commercial vehicle - Judgment of High Court set aside - Insurer is liable to pay compensation awarded.

*S. Iyyapan v. M/s United India Insurance
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(2) (i) 166 - Fatal accident - Compensation - Deceased employed in US - Date for fixing the rate of exchange - Deduction towards personal expenses - Held: If claimant files petition claiming compensation in Indian Rupees(INR), date of filing of claim petition is the proper date for fixing the rate of exchange at which foreign currency amount has to be converted into INR - Deceased aged 45 years, multiplier of 14 applicable - At the time of death, there being four dependents, 1/4th of total income to be deducted towards personal expenses - Amount of compensation payable with 12% interest.

(ii) s.166 - Fatal accident - Compensation - Propriety of Tribunal and High Court apportioning contributory negligence at 75:25 and 50:50 respectively and awarding compensation accordingly - Held: Evidence of eye-witness, FIR and charge-sheet against driver of offending vehicle, established that he caused the death due to negligent driving - Therefore, Tribunal and High Court erred in concluding that accident occurred due to negligence on the part of deceased as well.

Jiju Kuruvila & Ors. v. Kunjamma Mohan & Ors. 276

NEGOTIABLE INSTRUMENTS ACT, 1881:

(1) s.138 - Dishonour of cheques - Conviction and sentence - Plea for concurrent running of sentences - Held: Applying the principle of single transaction, substantive sentences awarded to appellant in each case relevant to the transactions with each company ought to run concurrently - However, there is no reason to extend that concession to transactions in which borrowing company is different, no matter appellant before the court is the promoter/Director of the said other companies also - But, provisions of s. 427, Cr.P.C. do not permit a direction for concurrent running of substantive sentences with sentences awarded in default of payment of fine/compensation - Code of Criminal Procedure, 1973 - s.427.

V.K. Bansal v. State of Haryana and Ors. Etc. Etc. 617

(2) ss. 138 and 141 - Dishonour of cheque - Liability of joint account holders - Complaint u/s. 138 - Held: Under s. 138, it is only the "drawer" of cheque who can be made liable for penal action - Strict interpretation is required to be given to

penal statutes - In a case of issuance of cheque from joint account, a joint account holder cannot be prosecuted unless cheque has been signed by each and every joint account holder - Appellant has not signed the cheque - s. 141 is not attached - The term "association of persons" has to be interpreted ejusdem generis having regard to the purpose of the principle of vicarious liability incorporated in s. 141 - Proceedings as regards appellant, quashed - Interpretation of statutes - Ejusdem generis.

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(3) ss.138 and 141 - Dishonour of cheque - Territorial jurisdiction - In view of the law laid down in Bhaskaran's case, the Magistrate in whose jurisdiction the drawee resides and, as such, has filed the complaint, has territorial jurisdiction to try the complaint - s.178 of the Code has widened the scope of jurisdiction of a criminal court and s.179 has stretched it to still a wider horizon - Code of Criminal Procedure, 1973 - ss. 177, 178 and 179 - Jurisdiction.

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PENAL CODE, 1860:

(1)(i) ss. 120-B, 420/409, 411, 477-A IPC and ss.13(1)(d) r/w s.13(2) of Prevention of Corruption Act - Brokerage claimed illegally and dishonestly

- Units of CANCIGO floated by CMF, purchased in the names of Andhra Bank, and ABFSL and payment made by broker - Further, false claim of brokerage on the investment made by Sahara India and IDBI - Held: So far as Trustee and General Manager of CMF is concerned, there is no material of his involvement in the crime - He is acquitted of all the charges - As regards broker, he disguised his investment and dishonestly claimed brokerage from CMF - He was not engaged as a broker in the transactions - Prosecution has proved that the broker is guilty of making a false representation to CMF to deceive it to part with the stated amount - Acquittal of co-accused on the ground of non-corroboration has no application to accused himself - Judgment of Special Court affirmed with modification.

(ii) ss. 420/409, 411 and 477-A - Accused originally charged with offences punishable u/ss 120-B, 420/409, 411 and 477-A - His conviction u/s 409 converted to that u/s 420 IPC - His conviction u/s 411 upheld - However, in view of acquittal of two other accused, his conviction u/s 477-A set aside - Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 - Scam.

B. Raghuvir Acharya v. Central Bureau of Investigation

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(2) s. 302 - Married woman burnt alive by her mother-in-law (appellant) - Conviction and sentence of life imprisonment - Held: Deceased in her dying declaration recorded by doctor, stated that her mother-in-law poured kerosene on her and set her on fire - Carbon copy of dying declaration rightly admitted by trial court as secondary evidence - No objection was raised at

that time - As incident occurred in the house of appellant, and she was present at the relevant time, she could have furnished explanation as to how and under what circumstances victim died - Matter was within her special knowledge - Courts below rightly held that appellant was responsible for causing the death - Evidence Act, 1872 - ss. 63 and 65.

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(3) s.302 - Murder caused by gun-shot - Conviction by trial court - Acquittal by High Court - Held: Husband of deceased has clearly deposed to have seen the accused firing at his wife - Nephew of deceased (informant) has stood by his earlier version - They are the most natural witnesses and there is no reason that they would falsely implicate the accused - Besides, in the instant case, abscondence of accused gains significance - Non-examination of the treating doctor at Primary Health Centre does not affect prosecution case - When there is ample unimpeachable ocular evidence and the same has been corroborated by medical evidence, non-recovery of the weapon does not affect prosecution case - Judgment of acquittal passed by High Court being wholly unsustainable, is set aside and conviction recorded by trial court, restored - Investigation - Evidence.

Mritunjoy Biswas v. Pranab @ Kuti Biswas and Anr.

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(4) s. 302/34 - Death of victim by gunshot injury - 14 accused - Conviction of appellant and sentence of life imprisonment - Held: Out of the two brothers of deceased, evidence of one was disbelieved by High Court as he made inconsistent statements u/s 161 Cr.P.C. and before court - The other

brother introduced names of other accused persons whom he did not name in FIR - There was no recovery of gun used in the crime or of any pellet - Courts below, having disbelieved the entire case of prosecution as regards 13 out of 14 accused, on the basis of the same evidence should not have convicted the appellant when there was no clinching evidence or incriminating circumstance against him - Further, appellant did not abscond, which fact proves his defence that he has nothing to do with the crime - Prosecution has failed to establish its case beyond reasonable doubt - Conviction and sentence imposed on appellant, set aside.

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(5) s.302 r/w s.34 - Murder - Common intention - Conviction by courts below - Held: Appellants were not on-lookers - Their intention is clearly reflected from their presence with weapons at the place of occurrence till the commission of crime and thereafter dragging the dead body to courtyard of one of the accused-appellant - Thus, it cannot be said that s.34 is not attracted - In the circumstances, establishing of any motive is inconsequential - Criminal law - Motive.

Birendra Das & Anr. v. State of Assam 179

(6) ss.302/149, 307/149, 452, 148 and 147 - Accused indulging in indiscriminate firing, causing death of one of their opponents and injuries to two others - Conviction and life sentence awarded by courts below - Held: Presence of informant and injured witnesses at the place of occurrence has been sufficiently explained - Their evidence and statement of deceased recorded soon after the incident, injury reports and post-mortem report as

well as motive clearly bring home the guilt of accused - Having regard to the extent of the injuries sustained by deceased, and witnesses, and the aggression with which the offence was committed, which resulted in the loss of life of one person considered along with the motive, there is absolutely no scope to modify conviction and sentence imposed - Code of Criminal Procedure, 1973 - s.161 and s.162(2) - Evidence Act, 1872 - s.32(1).

(Also see under: Evidence Act, 1872)

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(7) ss. 304-B and 498-A - Conviction and sentence awarded by courts below - Held: Death by burn injuries was caused otherwise than in normal circumstances - Deceased was, soon before her death, subjected to cruelty and harassment by appellants for dowry - Prosecution has proved beyond reasonable doubt that appellants are guilty of offences punishable u/ss 304-B and 498-A - As regards plea for reduction of sentence, High Court has already reduced the life sentence u/s 304-B to 10 years RI, which calls for no interference - Evidence Act, 1872 - s.32.

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(8) ss.304-B and 498-A - Dowry death - Bride found dead in her matrimonial home within 4 months of marriage - Conviction of husband and sentence of life imprisonment - Held: Prosecution has successfully proved the ingredients necessary to attract s. 304-B - There is no reason to differ with conclusion of trial court as affirmed by High Court that appellant is guilty of offences punishable u/ss. 304-B and 498-A - However, taking into consideration the fact that appellant has got re-married and has three children including one

handicapped son, and his mother is also paralysed, sentence awarded u/s 304-B is reduced to seven years - Evidence Act, 1872 - s.113-B.

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(9) ss. 304-B and 498-A - Suicide committed by bride in her matrimonial home - Acquittal by trial court - Conviction of husband by High Court - Held: Once prosecution failed to prove the basic ingredients of harassment or demand of dowry, and evidence brought on record was doubted by trial court, it was not open to High Court to convict the appellant on presumption referring to s. 113-A or s. 113-B of Evidence Act - Presumption of innocence of accused being primary factor, in absence of exceptional compelling circumstances and perversity of the judgment, it was not open to High Court to interfere with judgment of trial court in a routine manner - Judgment of High Court set aside - Evidence Act, 1872 - ss.113-A and 113-B.

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(10) ss. 304-B, 498-A and 201 r/w s.34 - Dowry death - Death of bride in matrimonial home - Cremation hurried - Conviction of husband u/ss 304-B, 498-A and 201 and of other accused u/s 201/34 - Held: Prosecution has proved that death of bride occurred otherwise than under normal circumstances - Statements of witnesses are trustworthy and they stated that deceased was subjected to harassment by her husband and other accused-relatives in connection with demand for dowry just prior to her death - Further, cremation was hurried without informing the parents of bride

- Accused failed to explain about presence of pesticide in vomiting of deceased - Therefore, trial court rightly drew an inference of guilt of accused-appellants - Evidence Act, 1872 - s.113-B r/w s.106.

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(11) s.307 r/w s.319 - Attempt to murder - Ingredients of - Explained - Held: A gun shot may miss vital part of body and may result in a lacerated wound, that itself is sufficient to attract s.307 - High Court is, therefore, in error in reducing the sentence, holding that the injury was not on vital part of body - Sentence/Sentencing.

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(12) s.376(1) - Rape of a girl aged about 15 years - Suicide committed by her - Conviction by courts below u/s 376(1) with sentence of 10 years RI - Held: Keeping in view the evidence of eye-witness, supported by other witnesses, medical report and forensic laboratory report, conclusion of guilt found proved against appellant by trial court as well as High Court cannot be faulted - Code of Criminal Procedure, 1973 - s.313.

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(13) ss. 395/397 - Dacoity in gold jewellery workshop - Conviction of appellant-taxi driver along with another and sentence of 10 years RI - Held: The evidence on record has clearly established involvement of appellant in commission of the offence - Courts below rightly convicted him - However, as regards sentence, ends of justice would be met by altering his sentence to the period already undergone, i.e. 7 ½ years.

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(i) s. 38 - Age relaxation vis-à-vis physically handicapped - Appointment of physically handicapped challenged as he had crossed the age prescribed - Held: Expression "appropriate Government and local authority shall formulate schemes for ensuring employment of persons with disability" and "may provide for relaxation of upper age limit" - Connotation of - Where Legislature uses the words 'shall' and 'may' in close proximity of each other, as in s. 38, word 'may' cannot be construed as mandatory - Act postulates age relaxation only as directory or expectant - Failure to mandate age relaxation is a lacuna in the legislation - Since Government Order not providing age relaxation to physically handicapped continues to hold the field, succour cannot be extended to appellant who is indubitably suffering from a disability - Government of West Bengal Memo No. 1736(21) GA dated 1.11.1999 - Service law - Age relaxation to physically handicapped - Costs - Proclamation adopted by the Economic and Social Commission for Asian and Pacific Region (ESCAP) - Legislation.

(ii) s.2(t) - 'Person with disability' - Held: Means a person suffering from not less than forty per cent of any disability as certified by a medical authority - On the coming into force of Disabilities Act on 7.2.1996, definition in s.2(t) shall apply notwithstanding any State legislation or Rules irreconcilable or repugnant thereto.

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(1) (i) s.3(1) r/w s.4(3) and s.22 - 2G Spectrum case - Nomination of Special Judge - Jurisdiction of Special Court to take cognizance of offences punishable u/ss 420/12B IPC as per second supplementary charge-sheet filed by CBI in the FIR for offences punishable under PC Act - Held: Apart from an offence punishable under the Act, any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified thereunder can also be tried by a Special Judge - From second charge-sheet it is clear that petitioners are co-accused in 2G Scam case - Thus, s. 220,Cr.P.C. will apply and the petitioners though accused of different offences i.e. u/s 420/120-B IPC alleged to have been committed in the course of 2G Spectrum transactions, u/s 223, Cr. P.C. they may be charged and can be tried together with the other co-accused of 2G Scam cases.

(ii) s. 3(1) - 2G Spectrum case - Nomination of Special Judge - Held: State Government may appoint as many Special Judges as may be necessary and specified in the notification to try any offence punishable under the Act - In the instant case, as co-accused have been charged under the provisions of the PC Act, NCT of Delhi is well within its jurisdiction to issue Notification(s) appointing Special Judge(s) to try 2G Scam case(s) - In view of Arts. 233 and 234, it is well within the jurisdiction of High Court to nominate officer(s) of the rank of District Judge for appointment and posting as Special Judge(s) under sub-s. (1) of s. 3 - Constitution of India, 1950 - Arts. 233 and 234.

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(2) (i) ss. 7 and 13(1)(d) r/w s.13(2) - Conviction by trial court, set aside by High Court - Held: Demand of illegal gratification is sine qua non for constituting an offence under the Act - Mere recovery of tainted money is not sufficient to convict the accused, unless there is evidence to prove payment of bribe or that the money was taken voluntarily as a bribe - Prosecution has not disclosed the genesis of the case correctly - There is, therefore, no cogent reason to interfere with the conclusion reached by High Court - Appeal against acquittal.

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s.13 - Contract in notified areas illegal in certain circumstances - Transfer of shares of Peerless General Finance and Investment Company - Held: In the instant case, the place where the contract for sale of shares has been entered is a notified area for the purpose of s.13 - Further, the contract is not between members of a recognized stock exchange and, therefore, as held by Company Law Board, is in violation of s.13.

(ii) s. 2(h)(i) - 'Securities' - 'Shares of Peerless General Finance and Investment Company - Held: For shares of a public limited company to come within the definition of securities they have to satisfy that they are marketable - 'Marketability' requires free transferability - Subject to certain limited statutory restrictions, shareholders possess the right to transfer their shares - It is this right which satisfies the requirement of free transferability - Shares of public limited company though not listed in stock exchange, come within the definition of 'securities' and, therefore, provisions of the Act would apply including the indictments contained in s.13.

(iii) ss.2(i) and 16 - 'Spot delivery contract' - Explained - Shares of Peerless transferred - Part of consideration passed more than 6 years after the transfer - Held: The transaction does not come within the expression 'spot delivery contract' as defined in s.2(i) and, as such, is in violation of s.16 and Notification dated 27.6.1969 - Central Government Notification dated 27.6.1969.

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(2) Trial court sentencing the accused to 3 years RI u/s 307 IPC for causing gun shot injuries to victims - High Court reducing the sentence to period already undergone - Held: In spite of various judicial pronouncements of Supreme Court, High Courts are reducing the sentence without application of mind and stating any reasons - In a case where accused persons have been found guilty u/s 307 IPC, the sentence already undergone, of about 20 to 50 days or 211 days, would not be an adequate sentence and not commensurate with the guilt established - If High Court considers it fit to reduce the sentence, it must state reasons, for the reduction - Administration of justice - Judgments/Orders. (Also see under: Penal Code, 1860)

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(1) Age relaxation to physically handicapped.

(See under: Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) 117

(2)(i) Compassionate appointment of respondent as Constable - Claim for appointment on compassionate ground as Sub-Inspector, without appearing in physical test - Held: It is for the appointing authority to see that minimum standard of working and efficiency expected of the post is maintained - The rule has merely dispensed with written test or interview by a selection committee, but not the maintenance of minimum standard of

efficiency required for the post - Respondent after being disqualified in physical test could not have claimed as a matter of right appointment in respect of a particular post - Circular issued by Inspector General of Police is in consonance with r.8(2) - Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 - rr. 5 and 8(2).

(ii) Compassionate appointment - Object of - Explained - Held: The posts in Classes III and IV are the lowest posts in non-manual and manual categories and, therefore, they alone can be offered on compassionate grounds to relieve the family of financial destitution and to help it get over the emergency - Favourable treatment given to such dependant of deceased employee in such posts has a rational nexus with object sought to be achieved viz. relief against destitution.

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s.27 - Complaint for wrongfully withholding the property forming part of textile undertaking - Held: In *Doypack's* case, the issue of vesting of premises in question was neither considered nor was decided by Supreme Court - Categorical decision in *Doypack*, rejection of subsequent

application filed by appellant for clarification/ modification, direction to approach the civil court, dismissal of complaint u/s 27 of the Act and proceedings under PP Act, go against the claim and stand of appellant - Orders of trial court and High Court upheld - Public Premises (Eviction of unauthorized Occupants) Act, 1971-ss. 5 and 7.

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(i) s. 12 - Trial by Special Courts to have precedence - Constitutional validity of - Held: Legislature has incorporated such a provision so that an accused does not face trial in two cases simultaneously and a case before Special Court does not linger owing to clash of dates in trial - Emphasis is on speedy trial and not denial of it - As the trial under the Act would be in progress, accused would have opportunity to defend himself and there cannot be denial of fair trial - Thus, the provision does not frustrate the concept of fair and speedy trial which are imperative facets of Art. 21 of the Constitution - The concept of preventive detention is not even remotely attracted to arrest and detention for an offence under the Act - There is a distinction between an accused who faces trial in other courts and the accused in Special Courts under the Act, because such accused is a gangster as defined u/s. 2(c) of the Act - Differentiation between the two is a rational one and cannot be said to be arbitrary - It does

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Wakf Tribunal - Jurisdiction of - Suit for perpetual injunction restraining the defendants/respondents from interfering in administration, management and peaceful possession and enjoyment of Mosque - Held: Dispute is with regard to management and peaceful enjoyment of Mosque and madrassa and assets which relate to Wakf - Nature of relief clearly shows that Wakf Tribunal has got jurisdiction to decide the disputes - There is no error in Wakf Tribunal entertaining the suit - High Court committed an error in holding otherwise - Order passed by High Court is set aside and the matter remitted to it to consider the revision on merits - Suit.

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WORDS AND PHRASES:

Expression, 'regulate' - Connotation of - Explained.

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COUNCIL OF LAW REPORTING**

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CHIEF JUSTICE OF INDIA

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(Chief Justice of India w.e.f. July 19, 2013)

HON'BLE MR. JUSTICE G.S. SINGHVI

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JUDGES OF THE SUPREME COURT OF INDIA

1. Hon'ble Shri Altamas Kabir, Chief Justice of India
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(Chief Justice of India w.e.f. July 19, 2013)
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11. Hon'ble Mr. Justice Chandramauli Kr. Prasad
12. Hon'ble Mr. Justice H.L. Gokhale
13. Hon'ble Mrs. Justice Gyan Sudha Misra
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15. Hon'ble Mr. Justice S.J. Mukhopadhaya
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25. Hon'ble Mr. Justice Vikramajit Sen
26. Hon'ble Mr. Justice Pinaki Chandra Ghose
27. Hon'ble Mr. Justice Kurian Joseph
28. Hon'ble Mr. Justice A.K. Sikri
29. Hon'ble Mr. Justice Sharad Arvind Bobde

**MEMORANDA
OF
JUDGES OF THE SUPREME COURT OF INDIA**

1. Hon'ble Mrs. Justice Gyan Sudha Misra, Judge, Supreme Court of India was on leave for 2 (two) days from 24.07.2013 to 25.07.2013, on full allowances.
2. Hon'ble Mr. Justice A.K. Patnaik, Judge, Supreme Court of India was on leave for 1 (one) day on 15.07.2013, on full allowances.
3. Hon'ble Mr. Justice Surinder Singh Nijjar, Judge, Supreme Court of India was on leave for 9 (nine) days w.e.f. 18.07.2013, to 26.07.2013, on full allowances.
4. Hon'ble Mrs. Justice Ranjana Prakash Desai, Judge, Supreme Court of India was on leave for 4 (four) days w.e.f. 23.07.2013, to 26.07.2013, on full allowances.

**ERRATA
VOLUME INDEX 7 (2013)**

Page No.	Line No.	Read for	Read as
320	2 from bottom	admission is in	is admission in
451	7	<u>Ashwih</u>	<u>Ashwin</u>
620	16	<u>[Para 17]</u>	<u>[Para 16-17]</u>
789	16	standard and of	standard of
802	8 from bottom	have found been guilty	have been found guilty
923	9 from bottom	medical facilities	<u>good</u> medical facilities
923	8 from bottom	<u>good</u> doctors	doctors
1093	11 from bottom	<u>opinion, Whether</u>	<u>opinion-Whether</u>