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(2) (See under: Shipping) 70

ARBITRATION ACT, 1940:

s.31(4) - Territorial jurisdiction - Arbitration clause stipulating that venue of arbitration would be Delhi and the contract subject to Delhi jurisdiction - Suit filed in Gaya - Held: Application u/s 33 filed by appellant in Delhi High Court praying for a clarification as to whether arbitration proceedings would be governed by the 1940 Act or the 1996 Act will have to be treated as the first application in terms under the 1940 Act in the reference and all subsequent applications will have to be made in Delhi High Court, which alone will have jurisdiction in the matter and not the Gaya court - Order appointing arbitrators by Patna High Court was not in an application under the Act, but in a revision u/s 115 CPC arising out of an order in an application u/s 34 to stay the proceedings in a civil suit - Therefore, it cannot be said that the first application in a reference was made before Patna High Court - Orders of Patna High Court and of Sub-Judge, Gaya, set aside - Respondent shall obtain return of application u/s 14(2) from Gaya court and file it before Delhi High Court.

M/s. Milkfood Pvt. Ltd. v. M/s. GMC Ice Cream (p) Ltd. 801

ARBITRATION AND CONCILIATION ACT, 1996:

(1) ss. 11 and 16(1)(a) r/w s.49 of Registration Act and ss. 33, 35, 38 and 40 of Stamp Act -

Arbitration clause in an unregistered lease deed - Application for appointment of arbitrator - Held: An arbitration agreement does not require registration under the Registration Act - When a contract contains an arbitration clause, it is a collateral term relating to the resolution of disputes, unrelated to the performance of the contract - Therefore, having regard to the proviso to s. 49 of Registration Act read with s.16(1)(a) of the 1996 Act, an arbitration agreement in an unregistered but compulsorily registrable document can be acted upon and enforced for the purpose of dispute resolution by arbitration - However, having regard to s. 35, unless the stamp duty and penalty due in respect of the instrument is paid, the court cannot act upon the instrument, which means that it cannot act upon the arbitration agreement also which is part of the instrument - Procedure to be adopted where the arbitration clause is contained in a document which is not registered (but compulsorily registrable) and which is not duly stamped summed up, indicated - Order of the High Court set aside and the matter remitted to the Chief Justice of the High Court to decide the issue of stamp duty, and if the document is duly stamped, then appoint an arbitrator in accordance with law - Registration Act, 1908 - s.49, proviso - Stamp Act, 1899 - ss. 33,35,38 and 40.

SMS Tea Estates Pvt. Ltd. v. M/s. Chandmari Tea Co. Pvt. Ltd. 382
 (2) (See under:Tolls Act, 1851) 402

BAIL:

Repeated applications - Gross misuse of the process of court - Held: The accused-petitioner

had been absconding and though he was shown great indulgence by the Court of Session as well as the High Court on several occasions, the directions issued by the courts were relentlessly flouted - The repeated applications were a gross misuse of the process of court - SLP dismissed with direction that no further application for bail anticipatory or otherwise will be entertained by any court until and unless the accused-petitioner deposited a sum of Rupees One Lac before the Court of Session as a pre-condition for the consideration of any bail application that he may choose to file - Code of Criminal Procedure, 1973 - s.438 and 439.

Bhaskar Mishra v. State of Madhya Pradesh

.... 875

BIHAR FINANCE ACT, 1981:

(1) (i) s.46(4) - Exercise of *suo motu* power of revision by Joint Commissioner of Commercial Taxes - Held: Legal and proper - The Joint Commissioner exercised independent mind for issuing the notice and also recorded reasons for exercising the power u/s.46(4) thereafter, issued notice to the assessee after forming a decision - It cannot be said that while coming to the conclusion in the impugned notice, the Commissioner was influenced only by the opinion of the Deputy Commissioner - It was not a revision initiated on the basis of any application filed by the aggrieved party, namely, the Deputy Commissioner but initiation of a revisional proceeding by the Joint Commissioner by forming his own opinion and satisfaction to exercise *suo motu* power vested u/s.46(4) - Thus, order passed by the High Court as also the Joint Commissioner

setting aside the revised assessment order is set aside - Matter remitted back to the Joint Commissioner for consideration afresh.

(ii) s. 46(4) - Initiation of *suo motu* revisional proceeding by the Commissioner or by the Joint Commissioner - Period of limitation - Held: No period of limitation is prescribed for *suo motu* revision proceeding by the Commissioner or the Joint Commissioner - When the language of the legislature is clear and unambiguous nothing could be read or added to the language which is not stated specifically - If the legislature intended to provide for any period of limitation or intended to apply the provision of Article 137 into s.46(4), the legislature would have specifically said so in the Act itself - High Court read application of Article 137 of the Limitation Act to s. 46 (4) which was not correct - However, such power cannot be exercised by the revisional authority indefinitely - It has to be exercised within a reasonable period which depends on the facts and circumstances of the case - Joint Commissioner exercised *suo motu* powers of revision within about three years of time in some cases and in some cases soon after the expiry of three years period which was within a reasonable period of time - Limitation Act, 1963 - Article 137.

(iii) s. 46 (4) - Order passed by the Joint Commissioner setting aside the revised assessment order - Propriety and maintainability of - Held: Said order was passed during the pendency of the writ petition in the High Court - Assessee could not contest the matter very effectively before the Joint Commissioner - Thus, the order passed by the Joint Commissioner is

set aside and matter remitted back to him.

State of Jharkhand & Ors. Etc. v. M/s. Shivam Coke Industries, Dhanbad, Etc. 1110

(2) (See under: Sales Tax) 540

BIHAR SALES TAX RULES, 1983:
(See under: Sales Tax) 540

CARRIAGE BY AIR ACT, 1972:

Application of the Act - Held: Its rules apply to carriage performed by the State or by legally constituted public bodies - Thus, on facts, according to the Indian Law, the appellant-foreign airlines can be subjected to suit under the Act - By signing onto the Warsaw Convention, the appellant-foreign airlines expressly waived its Airlines' right to immunity in cases such as that sub judice - Thus, the Central Governments of both India and Ethiopia have waived that right by passing the Carriage by Air Act, 1972 and by signing onto the Warsaw Convention.

Ethiopian Airlines v. Ganesh Narain Saboo 936

CENTRAL EXCISE ACT, 1944:

(1) s.4(4)(d)(i) - Valuation for purpose of excise duty - Manufacture of motorcycles - Cost of packing charges - Assessability to excise duty - Held: The packing given by the assessee to its motorcycles was necessary for putting the excisable article in the condition in which it was generally sold in the wholesale market at the factory gate and, therefore, such cost was liable to be included in the value of the goods and the cost of such packing could not be excluded - Central Excise Tariff Act,

1985 - Chapter 87.

Royal Enfield (Unit of M/s. Eicher) Ltd. v. Commissioner of Central Excise, Chennai 1089

(2) s.11A - Demand of duty and levy of penalty - Suppression of facts - Extended period of limitation - Invocation of - Held: The statement of Managing Director was on record admitting the fact of clandestine clearance of excisable goods and, therefore, he has voluntarily come forward to sort out the issue and to pay the central excise duty liability - Since there was clandestine removal of excisable goods, the period of limitation has to be computed from the date of knowledge, arrived at upon raids on the premises - Extended period of limitation would be invocable as there was suppression of facts by the company with the intention to evade the excise duty.

(Also see under: Evidence).

Commissioner of Central Excise, Mumbai v. M/s. Kalvert Foods India Pvt. Ltd. and Ors. 902

(3) s. 35C(2) - Application under - For rectification of mistake - Power of appellate tribunal - Held: Re-appreciation of evidence on a debatable point cannot be said to be rectification of mistake apparent on record - Mistake apparent on record must be an obvious and patent mistake - On facts, the Appellate Tribunal exceeded the powers given to it u/s. 35C(2) of the Act, and tried to re-appreciate the evidence and reconsider its legal view taken earlier in pursuance of a rectification application, which it could not have done so.

Commissioner of Central Excise, Belapur, Mumbai v. RDC Concrete (India) P. Ltd. 982

CENTRAL MOTOR VEHICLES RULES, 1989:

rr.128(9), 93 - Restriction of carrying luggage on the roof of a tourist vehicle as provided u/s.128(9) - Validity of - Held: r.128(9) specifically provides that in a tourist vehicle, the permit holder should only provide luggage holds at the rear or at the sides or both, of the tourist vehicle with sufficient space and size - When the Rules specifically make a provision in regard to the place where luggage holds shall be provided by necessary implication, it goes to exclude all the other places of the tourist vehicle for being used as luggage holds - Motor Vehicles Act, 1988.

(Also see under: Constitution of India, 1950).

M/s. Sharma Transports v. The State of Maharashtra 699

CIRCULARS/GOVERNMENT ORDERS/
NOTIFICATIONS:

Notification dated 26.12.1977 issued u/s 12 of Bihar Finance Act, 1981) 540

CITY OF NAGPUR CORPORATION ACT:
s.269.

(See under: Constitution of India, 1950; and Mohammedan Law) 348

COAL:

Refund of excess price paid - Held: Without taking a plea of unjust enrichment either in the writ petition or before the Supreme Court, the plea cannot be entertained at the time of argument, particularly, in view of the fact that the respondents did not have any notice of such a plea taken for the first time at argument stage - In the instant case, it is a case of refund of price recovered by

the appellant in excess and not of any kind of payment of tax or duty - Pursuant to the orders of Supreme Court, the accounts in terms of the orders of the High Court have been verified and the said accounts have been settled - Therefore, appropriate steps shall be taken to give effect to the judgment and order passed by the High Court - The amount in terms of the settled accounts shall be paid by the respondents in accordance with law - Unjust enrichment - Plea - Constitution of India, 1950 - Article 14.

Eastern Coalfields Ltd. v. M/s Tetulia Coke Plant (P) Ltd. & Ors. 1103

CODE OF CIVIL PROCEDURE, 1908:

(1) s. 86 - Suit against foreign Rulers, Ambassadors and Envoys - Complaint before Consumer Fora against appellant-foreign airlines by respondent alleging deficiency in service - Applicability of s. 86 to proceedings before consumer fora - Case of appellant that being a foreign State or its instrumentality it could not be proceeded against under the Consumer Protection Act without obtaining proper permission of the Central Government - Held: Proceeding before the Consumer Forum comes within the sweep of term 'suit' - However, s. 86 is inapplicable - Consumer Protection Act, 1986 and the Carriage by Air Act, 1972, which came long after the CPC, are more focused and specific statutes, and thus, should be held to exclude s. 86 - In the fora created by the Consumer Act, the provisions of CPC are applicable to a limited extent - Rules created pursuant to the Consumer Act itself govern the procedure to be followed in

the Consumer Fora - Thus, appellant-foreign airlines is not entitled to sovereign immunity with respect to a commercial transaction and obligations that it undertakes in India - Consumer Protection Act, 1986 - Carriage by Air Act, 1972. (Also see under: Carriage by Air Act, 1972; Interpretation of Statutes; and Suit).

Ethiopian Airlines v. Ganesh Narain Saboo 936

(2) s. 100 - Second appeal - Jurisdiction of High Court - Held: Second appeal is entertainable by High Court only upon its satisfaction that a substantial question of law is involved in the matter and its formulation thereof - However, it is open to the High Court to reframe substantial question of law or frame substantial question of law afresh or hold that no substantial question of law is involved at the time of hearing the second appeal - On facts, the High Court interfered with the judgment and decree of the first appellate court without formulating the substantial question of law - Judgment of the High Court is set aside and the matter remitted to it for consideration afresh.

Umerkhan v. Bismillabi @ Babulal Shaikh & Ors. 551

(3) O.8, r. 5.
(See under: Tolls Act, 1851) 402

(4) (i) O. 23 r. 3 - Compromise of suit - Requirement of - Held: During the course of hearing of a suit or appeal, when parties enter into a compromise, the same should be reduced in writing in the form of an instrument and signed by the parties.

(ii) O. 47 r. 1(a) - Review Petition - Maintainability - Held: Even after dismissal of an SLP with or without reasons, the aggrieved party is entitled to file a review - In view of the language used in O. 47 r. 1(a), the review petition cannot be dismissed on the ground of maintainability - Thus, the review petition filed by the appellants was maintainable but in view of O. 3 r. 1 and 4, and in view of the conduct of the appellants in not raising any objection as to the act of their counsel except filing review petition, the claim of the appellants cannot be accepted.

(Also see under: Advocate).

Bakshi Dev Raj & Anr. v. Sudhir Kumar 816

CODE OF CRIMINAL PROCEDURE (ANDHRA PRADESH SECOND AMENDMENT) ACT, 1992 (A.P. ACT 3 OF 1992):

(See under: Constitution of India, 1950) 453

CODE OF CRIMINAL PROCEDURE, 1973:

(1) (i) s.125 - Maintenance - Claim for, entitlement - Held: During the subsistence of the first marriage and existence of a living wife (first wife), the claim of maintenance by the second wife cannot be entertained - But, proof and evidence of subsistence of an earlier marriage at the time of solemnizing the second marriage, has to be adduced by the husband taking the plea of subsistence of an earlier marriage and it has to be satisfactorily proved by tendering evidence - In the instant case, respondent-husband failed to establish his plea that his earlier marriage was at all in subsistence as he did not lead any evidence in support of his earlier marriage.

(ii) s.125 - Essential requirements of - Held: s.125

proceeds on *de facto* marriage and not marriage *de jure* - Thus, validity of the marriage will not be a ground for refusal of maintenance if other requirements of s.125 are fulfilled - If the evidence led in a proceeding u/s.125 raises a presumption that the applicant was the wife of the respondent, it would be sufficient for the Magistrate to pass an order granting maintenance under the proceeding - In a case u/s.125, the Magistrate has to take *prima facie* view of the matter and it is not necessary for the Magistrate to go into matrimonial disparity between the parties in detail in order to deny maintenance to the claimant wife - In the instant case, appellant had succeeded in proving that she was the legally married wife of the respondent.

Pyla Mutyalamma @ Satyavathi v. Pyla Suri Demudu & Anr. 996

(2) s.133.

(See under: Constitution of India, 1950; and Mohammedan Law) 348

(3) (i) s. 156 r/w s.198 and First Schedule (as amended by Andhra Pradesh Act 3 of 1992) - Offences punishable u/ss 494 and 495 IPC made cognizable and non-bailable in the State of Andhra Pradesh - Held: The amendment made shall prevail in the State of Andhra Pradesh notwithstanding the fact that in the Code offences punishable u/ss 494 and 495 are treated as non-cognizable offences - Once First Schedule to the Code stands amended and offences punishable u/ss 494 and 495 IPC are made cognizable offences, those offences will have to be regarded as cognizable offences in the State of Andhra

Pradesh for all purposes of the Code including for the purpose of s.198 thereof - Therefore, as the offences have been made cognizable offences in the State of Andhra Pradesh, the same will have to be dealt with as provided u/s 156 - Constitution of India, 1950 - Articles 246 (2), 254 (2), 254 (4) - Seventh Schedule - List III, Entry 2.

(ii) s. 155(4) - Case relating to two or more offences of which at least one is cognizable - Held: If the police files a charge-sheet in such a case, the court can take cognizance also of non-cognizable offence along with the cognizable offence by virtue of s. 155 (4).

(Also see under: Penal Code, 1860; and Constitution of India, 1950).

A. Subash Babu v. State of A.P.& Anr. 453

(4) s.173.

(See under: Constitution of India, 1950) 359

(5) s.235(2).

(See under: Negotiable Instruments Act, 1881) 328

(6) (i) s. 319 - Power to proceed against other persons appearing to be guilty of offence - Complaint u/s. 138 Negotiable Instruments Act against a firm and its partners - Subsequently, application u/s. 319 for joining appellant also as co-accused in the complaint, on the basis of a copy of registration of the firm showing the proposed accused as partners of the firm - Direction to join them as co-accused upheld by High Court - Held: High Court failed to consider whether the Magistrate had addressed to the

essential aspects before invoking power u/s. 319 - Also the High Court did not advert to the question whether or not filing of copy of registration of the firm by its partners would be covered by expression in the course of inquiry into or trial and evidence occurring in s. 319 which would also show that the appellant committed the offence - With regard to the criminal liability of a partner in the firm, there has to be evidence that when the offence was committed, the partner was in-charge of and was responsible to the firm for the conduct of the business of the firm - High Court did not consider these aspects - Matter remitted back to the High Court for reconsideration - Negotiable Instruments Act, 1881 - ss. 138 and 141.

(ii) s. 319 - Power under - Ambit and scope of - Explained.

Sarojben Ashwinkumar Shah v. State of Gujarat and Anr. 1138

(7) (i) s. 354(3) - Conditions to be satisfied prior to imposition of death penalty - Held: Death penalty should be imposed in rarest of rare cases and that too for special reasons to be recorded - Courts to take into consideration the mitigating circumstances and their resultant effects - Circumstances and the manner of committing the crime should be such that it pricks the judicial conscience of the court to the extent that the only inevitable conclusion should be awarding the death penalty.

(ii) s. 354(3) - Legislative intent behind the enactment - Explained.

(Also see under: Sentence/Sentencing;

Penal Code, 1860; and Evidence).

*State of Maharashtra v. Goraksha
Ambaji Adsul* 41

(8) s.386(a) - Power of the appellate court to reverse an order of acquittal - Held: Since the language of s.386(a) is clear and it places no restrictions on the power of the appellate court to convert an order of acquittal into a conviction, one cannot place restrictions on this power for that would really be amending the statute - On facts, sufficient evidence on record to prove the guilt of the accused-appellants beyond reasonable doubt - Making or circulating fake currency is a serious offence - No reason to take a lenient view in the matter - However, in the facts and circumstances of the case, while upholding the conviction of the appellants, the period of sentence reduced to five years rigorous imprisonment.

(Also see under: Interpretation of Statutes; Precedent; and Witness).

*C. Ronald & Anr. v. State, U.T. of Andaman
& Nicobar Islands* 1067

(9) s.482 - Scope of - Discussed - Chargesheet filed for commission of offences punishable u/ ss.120-B, 147, 148, 427, 307, 201 r.w. s.149, IPC - Criminal proceedings commenced against twelve persons - Petition by three for quashing of proceedings, allowed by High Court - Held: In a criminal proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in case the complaint does not disclose any offence or is frivolous, vexatious or oppressive - In the instant case,

perusal of entire complaint, materials collected and stated in the form of chargesheet, did not lead to presumption that there was no legal and acceptable evidence in support of prosecution - High Court exceeded its power in quashing the criminal proceedings on the erroneous assumption that the ingredients of the offence alleged by the prosecution were not made out - High Court also committed an error in assuming that with the materials available, the prosecution could not end in conviction - Impugned order quashing the criminal proceedings against the petitioners set aside - Direction to trial court to proceed with the case in direction to accordance with law.

*Padal Venkata Rama Reddy @ Ramu v.
Kovvuri Satyanarayana Reddy and Ors.* 623

(10) s. 482 r/w ss. 154(3) and 156 (3) - Petition by complainant seeking direction to entrust the investigation to CBI stating that one of the accused was a Police Inspector in the local police - Allowed by High Court - Held: It was not one of the exceptional situations calling for exercise of extraordinary power of the High Court to direct investigation by CBI - Order of High Court quashed and District Superintendent of Police directed to entrust the investigation to an officer senior in rank to accused-Inspector of Police .

T. C. Thangaraj v. V. Engammal & Ors. 647

COMPENSATION:

(1) (See under: Land Acquisition Act, 1894) 664 &
756

(2) (See under: Motor Vehicles Act, 1988) 616

CONSTITUTION OF INDIA, 1950:

(1) Article 19(1)(g) - Restriction on carrying the luggage on the roof of a tourist vehicle imposed by r.128(9) of the Central Motor Vehicles Rules, 1989 - Reasonableness of - Held: The restriction is a reasonable restriction keeping in view the safety of the passengers in a tourist vehicle - Therefore, the rule cannot be said either arbitrary or unreasonable or violative of Article 19(1)(g).

(Also see under: Central Motor Vehicles Rules, 1989).

M/s. Sharma Transports v. The State of Maharashtra 699

(2) Article 32 r/w s.173 Cr.PC - Writ petition seeking to transfer the investigation to CBI - Held: The petitioner herself is the accused - A huge amount has been collected from innocent persons giving them false assurances that their amount would have a high premium - No allegation of *mala fide* or *bias* has been alleged against any investigating authority nor had it been pleaded that charge sheet had been filed against the petitioner without investigating the case or having any vindictive attitude towards the petitioner - There is no cogent reason to interfere in the matter - Code of Criminal Procedure, 1973 - s.173.

Disha v. State of Gujarat & Ors. 359

(3) Article 136 - Interference with concurrent findings of courts below - In the instant case, the entire evidence is vitiated by serious errors and if the appellant's conviction is upheld, it would amount to miscarriage of justice - Therefore, the conviction as recorded by trial court and confirmed

by High Court cannot be sustained in law and, is set aside.

(Also see under: Penal Code, 1860; and Evidence Act, 1872)

Mustkeem @ Sirajudeen v. State of Rajasthan 101

(4) (i) Article 136 - Scope of - Held: The power under Article 136 is plenary power exercisable outside the purview of ordinary law to meet the demand of justice - It is meant to supplement the existing legal frame work - It is conceived to meet situations which cannot be effectively and appropriately tackled by the existing provisions of law - Supreme Court while entertaining an appeal by grant of special leave has power to mould relief in favour of the respondents notwithstanding the fact that no appeal is filed by any of the respondents challenging that part of the order which is against them - Further, the power can be exercised by Supreme Court in favour of a party even suo motu when it is satisfied that compelling grounds of its exercise exist.

(ii) Articles 246 (2) and 254 (2) - Seventh Schedule - List III, Entry 2 - By Andhra Pradesh Act 3 of 1992, First Schedule to Cr.PC amended and ss. 494 and 495 IPC made cognizable and non-bailable in the State of Andhra Pradesh - Held: If a law passes a test of Clause (2) of Article 254, it will make Clause (1) inapplicable to it - To the general rule laid down in Clause (1), Clause (2) engrafts an exception, viz. if the President assents to a State Law which has been reserved for his consideration as required by Article 200, it will prevail notwithstanding its repugnancy to an earlier

law of the Union - Code of Criminal Procedure (Andhra Pradesh Second Amendment) Act, 1992 (A.P. Act 3 of 1992) received the assent of the President - Constitutional law - Rule of repugnancy.

(Also see under: Penal Code, 1860; and Code of Criminal Procedure, 1973)

A. Subash Babu v. State of A.P. & Anr. 453

(5) Article 136 - Scope of - Held: The extra-ordinary jurisdiction of the court under Article 136 is not and cannot be a substitute for a regular appeal - Appellant cannot seek reversal of views taken by the courts below simply because another view was possible on the evidence adduced in the case - It must be demonstrated that the view taken by the trial court or the appellate court for that matter is affected by any procedural or legal infirmity or is perverse or has caused miscarriage of justice - Penal Code, 1860 - ss. 147, 148, 302/149 - Explosive Substances Act, 1908 - ss. 3 and 5.

(Also see under: Penal Code, 1860).

Gosu Jairami Reddy & Anr. v. State of A.P. 503

(6) (i) Article 141 - Precedent - Reliance on - Principles to be followed - Held: While applying precedents, the court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed because one additional or different fact may make a world of difference between conclusions in two cases - Precedent.

(ii) Article 226 - Writ of mandamus - Held: Can be issued only when there exists a legal right in the

writ petitioner and corresponding legal obligation in the State - There cannot be equality in illegality - On facts, it cannot be said that the action of the appellants is highly discriminatory in as much as some similarly situated persons have been appointed/absorbed as Sepoys.

(Also see under: Administrative Law; and Service Law).

Union of India & Anr. v. Arulmozhi Iniarasu & Ors. 1

(7) Article 141 - Law declared by Supreme Court - Binding effect of - Held: Only the principles of law that emanate from a judgment of Supreme Court, which have aided in reaching a conclusion of the problem, are binding precedents within the meaning of Article 141 - However, if the question of law before the Court is the same as in the previous case, the judgment of the Court in the former is binding in the latter, for the reason that the question of law before the Court is already settled - Thus, if the Court determines a certain issue for a certain set of facts, then, that issue stands determined for any other matter on the same set of facts - Precedent.

(Also see under: Land Acquisition Act, 1894).

Fida Hussain & Ors. v. Moradabad Development Authority & Anr. 290

(8) Article 226 r/w Articles 25 and 26 - Writ petition seeking redressal of grievances caused due to unauthorized burial of a saint in the school premises - Maintainability of - HELD: The action done created disturbance of law and order and public order and in that situation to restore peace and communal harmony and to control the volatile

situation, the recourse taken of filing a writ petition cannot be said to be unwarranted - Since there was statutory violation in the unauthorised action of burial of the saint, Article 226 was the only remedial measure available, which could be taken for immediate redressal of the grievances - Mohammedan Law - Code of Criminal Procedure, 1973 - s.133 - City of Nagpur Corporation Act - s.269.

(Also see under: Mohammedan Law).

Mohd.Hamid & Anr. Etc. Etc. v. Badi Masjid Trust & Ors. Etc. Etc.

348

(9) (i) Article 254 (2), Seventh Schedule, List II Entry 18 read with List III Entry 42 - KUZALR Act providing for vesting of forest land in State Government - Held: KUZALR Act is an enactment for agrarian reforms and principally relatable to Entry 18 (land) of List II read with Entry 42 in List III and only incidentally trenches upon "forest" i.e. Entry 17-A of list III - Indian Forest Act, 1927 is relatable to Entry 17-A read with Entry 42, both of List III and is in pith and substance relatable to Entry 17-A, as it deals with 'forests' and not with land and only incidentally spills over in the field of Entry 42 as it deals with "control over forest land and not property of the Government"-Indian Forest Act, 1927 does not deal with agrarian reforms, but deals with forest policy and management and, therefore, is in a different field - Consequently, in the instant matter, no case of repugnancy is made out and Article 254 (2) has no application - Accordingly, both the Acts are legally valid and constitutional - Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960- Rule of repugnancy - Doctrine of pith and

substance - Doctrine of occupied field.

(ii) Article 300-A, Seventh Schedule, List II, Entry 18 and List III, Entry 42 -Acquisition and requisitioning of property - Compensation - Private forests - Vesting of forest land in State by virtue of s. 4-A of KUZALR Act - Held: When State exercises the power of acquisition of a private property, provision is generally made in the statute to pay compensation to be determined according to the criteria laid down in the statute itself - In the instant case, acquisition of property by State in furtherance of the Directive Principles of State Policy was to distribute the material resources of the community - It does not require payment of market value or indemnification to the owner of the property expropriated - The acquisition and payment of amount are part of the same scheme and they cannot be separated - Though adequacy of compensation cannot be questioned in a court of law, but at the same time the compensation cannot be illusory.

(iii) Article 300-A read with Article 226 - Private forests - Vesting of forest land in State - Compensation - Revenue authorities denying compensation stating that the KUZALR Act did not provide for a method to compute compensation in cases where no income was derived from the forests - Held: Awarding no compensation attracts the vice of illegal deprivation of property even in the light of the provisions of the Act and, therefore, amenable to writ jurisdiction - The intention of the legislature to pay compensation is abundantly clear from the fact that s. 19 itself prescribes that compensation payable to a '*hissedar*' u/s 12 shall, in the case of

private forest, be eight times the amount of average annual income from such forest - In the instant case, income also includes possible income in case of persons who have not exploited the forest and have rather preserved it - Compensation directed to be awarded to the owners of the property by following a reasonable and intelligible criterion evolved on the guidelines provided and in the light of the law enunciated in the judgment - Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 - ss. 18 and 19 - Judicial review.

<i>Rajiv Sarin & Anr. v. State of Uttarakhand & Ors.</i>	....	1012
(10) (See under: Coal)	....	1103
(11) (See under: Sex Workers)	....	680

CONSTITUTIONAL LAW:

(1) (i) Rule of repugnancy.		
(ii) Doctrine of pith and substance.		
(iii) Doctrine of occupied field.		
(See under: Constitution of India, 1950)	....	1012
(2) Rule of repugnancy		
(See under: Constitution of India, 1950)	....	453

CONSUMER PROTECTION ACT, 1986:

Object of the Act.		
(Also see under: Carriage by Air Act, 1972; and Code of Civil Procedure, 1908)		
<i>Ethiopian Airlines v. Ganesh Narain Saboo</i>	936

CONTRACT:

(1) Construction of a bypass road - Concession		
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agreement authorising contractor to collect toll fee - Held: The State Government had not taken the defence that it was not agreed between the parties to issue the notification barring the traffic through the old route - The only issue remained as to whether there was delay in issuance of notification and implementation thereof - In such a fact-situation, the District Judge as well as the High Court fell in error in considering the issue which was not taken by the State before the arbitral tribunal during the arbitration proceedings and holding that there was no agreement for issuance of notification by State barring the old route - The issue as to whether the specific patch of the road was an integral or composite part of the project and the contractor could collect the toll fee on that part also stands concluded by the High Court and stands settled in favour of the contractor - Rajasthan Motor Vehicles Taxation (Amendment) Act, 1994 - Tolls Act, 1851.

(Also see under: Tolls Act, 1851; and Arbitration and Conciliation Act, 1996).

<i>M/s. MSK Projects (I) (JV) Ltd v. State of Rajasthan & Anr.</i>	402
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(2) High Seas Sale Agreement - Agreement for sale and purchase of Coal - Purchaser's liability - Held: Having entered into an agreement to purchase the coal in question it was upto the purchaser to fulfill its obligation towards the payment of the price of the coal and to lift the same from the Stevedore having particular regard to the fact that the Agreement was a High Seas Sales Agreement which entails clearance of the goods from the vessel and its entrustment with the Stevedore which involved heavy costs per diem

- *Prima facie*, the terms of the High Seas Sales Agreement appear to indicate that till the entire sale price was paid by the purchaser to the seller, latter would retain its lien over the coal in question and title would pass to the purchaser only on payment of the full price of the goods - However, having regard to the fact that an opportunity had been given to the purchaser to lift the balance quantity of coal on deposit of the specified amount within the stipulated period, the order of the High Court is modified to the extent that in the event the purchaser deposits the required amount, after deduction of the price of the coal already lifted by the seller, the purchaser will be entitled to lift the remaining quantity of coal lying in the custody of the Stevedore - In default of such deposit, the order of the High Court, subject to the modification, will continue in full force - Sale of Goods Act, 1930 - s.45(1)(a), s.46(1)(a) r/w s.47(1) and s.49(1)(a),(b) and (c).

*Suchetan Exports P. Ltd. v. Gupta
Coal India Limited and Ors.* 689

COSTS:

Imposition of realistic costs and punitive costs - Held: In consonance with the principle of equity, justice and good conscience, courts should ensure that legal process is not abused by litigants in any manner - It is the bounden duty of courts to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and courts must ensure that there is no wrongful, unauthorised or unjust gain for anyone by the abuse of the process of court - Besides the realistic costs, courts would be fully justified even imposing

punitive costs where legal process has been abused.

(Also see under: Administration of Justice; and Interest).

*Indian Council for Enviro-Legal Action v.
Union of India & Others* 146

CRIME AGAINST WOMEN:

(See under: Penal Code, 1860) 118
and 571

CRIMINAL JURISPRUDENCE:

(See under: Sentence/Sentencing) 41

CRIMINAL LAW:

(1) Benefit of doubt.
(See under: Penal Code, 1860) 282

(2) (i) Motive - Relevance of - Held: In a case based on eye-witness account of the incident, proof or absence of the motive is not of any significant consequence - If the motive is proved it may support the prosecution version - In the instant case, the prosecution case that the accused had a motive for the commission of the offence alleged against them stood satisfactorily proved.

(ii) Plea of *alibi* - Held: In the instant case, plea of *alibi* has been rightly rejected by the courts below on an appraisal of the evidence on record - A finding of fact concurrently recorded on the question of *alibi* is not disturbed by the Supreme Court in an appeal by special leave - Constitution of India, 1950 - Article 136.

(Also see under: Constitution of India, 1950;

	1179	
and Penal Code, 1860).		
<i>Gosu Jairami Reddy & Anr. v. State of A.P.</i>	....	503
CUSTOMS ACT, 1962:		
s. 108 - Accused found in possession of contraband - Confession made to Customs Officer - Held: In view of decision in <i>Noor Aga's</i> case, the confession was hit by the embargo placed by s. 25 of Evidence Act - Narcotic Drugs and Psychotropic Substances Act, 1985 - ss. 22 and 50 - Evidence Act, 1872 - s.25.		
(Also see under: Narcotic Drugs and Phychotropic Substance Act, 1985)		
<i>Nirmal Singh Pehlwan @ Nimma v. Inspector, Customs, Customs House</i>	....	446
DELAY/LACHES:		
(1) Delay in lodging FIR.		
(See under: Penal Code, 1860).	....	118
(2) Delay of 1 hour in lodging FIR - Delay in sending copy of FIR to jurisdictional Magistrate - Held: The credibility of the report was not affected on account of the so called delay of one hour in lodging of the complaint - So also, the receipt of the report by the Magistrate was not so inordinately delayed as to render suspect the entire prosecution case especially when no question regarding the cause of delay was put to the Investigating Officer.		
(Also see under: Penal Code,1860).		
<i>Gosu Jairami Reddy & Anr. v. State of A.P.</i>	....	503

	1180	
(3) (See under: Drugs and Cosmetics Act, 1940)	....	606
(4) (See under: Land Acquisition Act, 1894)	....	756
DISPLACED PERSONS (COMPENSATION AND REHABILITATION) ACT, 1954:		
(See under: Punjab Public Premises Land (Eviction and Rent Recovery) Act, 1973)	....	122
DOCTRINES/PRINCIPLES:		
(1) Doctrine of estoppel.		
(See under: Mohammedan Law)	....	718
(2) (i) Doctrine of legitimate expectation.		
(ii) Principle of promissory estoppel.		
(See under: Administrative Law)	....	1
(3) Doctrine of <i>spes successionis</i> .		
(See under: Mohammedan Law)	....	718
(4)' Polluter pays' principle.		
(See under: Administration of Justice)	....	146
(5) (i) <i>Principle</i> of expressio unius - Explained.		
(ii) <i>Principle</i> of restrictive immunity - Explained.		
<i>Ethiopian Airlines v. Ganesh Narain Saboo</i>	....	936
DRUGS AND COSMETICS ACT, 1940:		
ss. 25(3) and 35 - Drug manufactured by company found not of 'standard quality' - Delay in filing the complaint - Effect of - Held: The report of analyst is conclusive - The manufacturers did not express their intention to adduce evidence to controvert the report of the analyst within the period of limitation - The delay in filing the complaint becomes immaterial - On earlier occasions also the company was informed that the medicine in		

question was not of standard quality, but it did not make its intention clear to adduce any evidence to controvert Government Analyst's report - There is no ground to interfere with the well reasoned judgment of High Court declining to quash the criminal proceedings - Delay/Laches.

Glaxo Smithkline Pharmaceuticals Ltd. & Anr. v. State of Madhya Pradesh 606

ENVIRONMENTAL LAW:

Polluter pays principle.
(See under: Administration of Justice) 146

ESTOPPEL:

(See under: Mohammedan Law) 718

EVACUEE PROPERTY ACT, 1954:

(See under: Punjab Public Premises Land (Eviction and Rent Recovery) Act, 1973) 122

EVIDENCE ACT, 1872:

(1) s. 25.
(See under: Customs Act, 1962) 446

(2) s.27 - Information received from accused - On the disclosure statement made by the accused, weapons recovered - Held: With regard to s.27 what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused - Burden lies on the prosecution to establish a close link between discovery of the material objects and its use in the commission of the offence - What is admissible u/s 27 is the information leading to discovery and not any opinion formed on it by the prosecution - One

recovery witness was declared hostile and the other stated that recovery memos were prepared in the Police Station - Thus, the recovery of the weapons on disclosure of the appellants itself becomes doubtful - Penal Code, 1860 -s.304/34. (Also see under: Penal Code, 1850; and Constitution of India, 19501).

Mustkeem @ Sirajudeen v. State of Rajasthan 101

(3) s. 27.
(See under: Penal Code, 1860) 342

EVIDENCE:

(1) Circumstantial evidence - Conviction - Held: When the prosecution is able to establish the chain of events to satisfy the ingredients of commission of an offence, accused would be liable to suffer the consequences of his proven guilt. (Also see under: Penal Code, 1860; Code of Criminal Procedure 1973; Evidence; and Sentence/Sentencing).

State of Maharashtra v. Goraksha Ambaji Adsu 41

(2) Circumstantial evidence.
(See under: Penal Code, 1860) 342
and 494

(3) (i) Eye-witness account and medical evidence - Discrepancy - Held: It is a case where the witness describes the infliction of the injury in a region which may not be accurate from the point of view of human anatomy but which is capable of being understood in a layman's language to be an injury in an area that is proximate.

(ii) Non-examination of some of the witnesses of incident - Held: It is entirely in the discretion of the Public Prosecutor to decide which of the listed witnesses are essential for unfolding the prosecution story - Simply because more than one witnesses have been cited to establish the very same fact is no reason why the prosecution must examine all of them - Once the deposition of the eye-witnesses examined at the trial is accepted as trustworthy, non-examination of other witnesses would become inconsequential.

Gosu Jairami Reddy & Anr. v. State of A.P. 503

(4) Proving of an exception - Burden of proof - Held: The obligation to prove an exception lies on the accused but at the same time the onus of proof which the accused has to discharge is not as strict as in the case of the prosecution which has to prove its case beyond doubt - If the prosecution evidence itself shows that the defence taken by accused is probable, he is entitled to claim the benefit of that evidence as well - Penal Code, 1860 - 304 (Part-I).

(Also see under: Penal Code, 1860).

Mahendra Singh v. State of Uttaranchal 1062

(5) Statement made before Central Excise Officers - Admissibility of - Plea that statement made by the Managing Director of the assessee-company was not reliable - Held: Statements of Managing Director of the company and other persons were recorded by the central excise officers and they were not police officers, therefore, their statements containing all the details about the functioning of

the company which could be made only with their personal knowledge could not have been obtained through coercion or duress or through dictation - These statements, therefore, can be relied upon. (Also see under: Central Excise, Act, 1944).

Commissioner of Central Excise, Mumbai v. M/s. Kalvert Foods India Pvt. Ltd. and Ors. 902

(6) (See under: Penal Code, 1860). 118

EXCISE DUTY:

(See under: Uttar Pradesh Excise Act, 1910) 19

EXPLOSIVE SUBSTANCES ACT, 1908:

ss. 3 and 5.

(See under: Constitution of India, 1950; and Penal Code, 1860) 503

FAMILY LAW:

Divorce by mutual consent - Permanent alimony and maintenance to wife.

(See under: Hindu Marriage Act, 1955) 371

FINANCE ACT, 1994:

s.65 (105) zzzx - SIM cards - Taxability of the amount charged for - Held: The amount received by the cellular telephone company from its subscribers towards SIM Card forms part of the taxable value for levy of service tax, for the SIM Cards are never sold as goods independent from services provided, and the dominant position of the transaction is to provide services and not to sell the material i.e. SIM Cards which on its own but without the service would hardly have any value at all - The value of SIM cards forms part of the

activation charges as no activation is possible without a valid functioning of SIM card and the value of the taxable service is calculated on the gross total amount received by the operator from the subscribers - No element of sale was involved in the transaction - Kerala General Sales Tax Act, 1963.

Idea Mobile Communication Ltd. v. C.C.E. & C., Cochin

789

FUNDAMENTAL RULES:

F.R. 54-B.

(See under: Service Law)

594

GENERAL INSURANCE (EMPLOYEES') PENSION SCHEME, 1995:

(i) Clauses 22 and 30 - Resignation tendered by appellant in 1991 - In 1995, Pension Scheme introduced which was made applicable to employees who were in the service on or after first January, 1986 but had retired before the first day of November, 1993 and had exercised an option for same - Appellant opting for the Pension Scheme, 1995 on 20.10.1995 - Under sub-clause (1) of Clause 30 of the Pension Scheme, 1995, the appellant had completed 20 years qualifying service and had given notice of not less than 90 days in writing to the appointing authority of his intention to leave service and the appointing authority had accepted notice of the appellant and relieved him from service - Therefore, Clause 30 of the Pension Scheme, 1995 applied to the appellant even though in his notice he had used the word 'resign' - Respondents directed to consider the claim of the appellant for pension in accordance with the Pension Scheme, 1995 -

General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976 - Clause 5.

(ii) Clauses 22 and 30 - Object of - Held: The general purpose of the Pension Scheme, 1995, read as a whole, is to grant pensionary benefits to employees, who had rendered service in the Insurance Companies and had retired after putting in the qualifying service - Clauses 22 and 30 cannot be so construed as to deprive an employee of who had put in the qualifying service for pension and who had voluntarily given up his service after serving 90 days notice in accordance with sub-clause (1) of Clause 5 of the Scheme, 1976 and after his notice was accepted by the appointing authority.

(Also see under: Service Law).

Sheelkumar Jain v. The New India Assurance Co. Ltd. and Ors.

574

GENERAL INSURANCE (TERMINATION, SUPERANNUATION AND RETIREMENT OF OFFICERS AND DEVELOPMENT STAFF) SCHEME, 1976:

Clause 5.

(See under: General Insurance (Employees') Pension Scheme, 1995)

574

GOVERNMENT GRANTS:

(See under: Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978)

136

HARYANA CIVIL SERVICES (JUDICIAL BRANCH) RULES:

rr.7(1), 7(2), 8(1), 9.

(See under: Service Law) 736

HINDU MARRIAGE ACT, 1955:

(1) s. 11.

(See under: Penal code, 1860) 453

(2) s.25 r/w s.13-B - Decree of divorce by mutual consent - Permanent alimony and maintenance - Factors to be considered by the court - Held: No fixed formula can be laid for fixing the amount of maintenance - The status and mode of life of the claimant when she lived with her husband is also one of the relevant factors for determining the amount of maintenance - In the instant case, the wife was working as Air Hostess and getting sizeable income and after the marriage, at the instance of the husband, she resigned from her job - Considering the conditions prescribed in s. 25 relating to claim of permanent alimony/ maintenance and the facts that as on date the wife is not permanently employed and is living with her sister, the husband's income from salary, other properties standing in his name, future employment prospects and also considering the fact that he has re-married, has a child and has also to look after his parents, the ends of justice would be met by fixing maintenance at the rate of Rs.40,000/- per month - In the alternative, the amount of permanent alimony/ maintenance is fixed at Rs. 40 lakhs in lump sum to be paid by the husband to the wife which will forfeit all her claims.

Vinny Parmvir Parmar v. Parmvir Parmar 371

HOUSING:

Allotment of flat - Re-determination/re-fixation of

price after payment of the prescribed amount and delivery of possession - Issuance of notice by Housing Board to the respondent raising huge demand towards outstanding dues against the flat - Single Judge of the High Court quashed the demand notice and directed the Board to grant permission for transfer of the flat in favour of the respondent's daughter-in-law; and ordered for Vigilance inquiry against the Board and its officials - Order upheld by the Division Bench - Held: In absence of specific complaint furnishing required details by the respondent or anyone pointing mismanagement in the affairs of the Housing Board, the Single Judge was not justified in issuing directions for Vigilance Inquiry - Order relating to the relief granted to the respondent upheld and all other directions relating to the Board and its officials set aside.

Bihar State Housing Board & Ors. v. Asha Lata Verma 561

INDIAN POLICE SERVICE RULES, 1954:

rr. 3 and 5.

(See under: Service Law) 313

INTEREST:

(1) Interest to be awarded by arbitrator - Held: While award of interest for the period prior to an arbitrator entering upon the reference is a matter of substantive law, the grant of interest for the post-award period is a matter of procedure - Therefore, the arbitrator is competent to award interest for the period commencing with the date of award to the date of decree or date of realisation, whichever is earlier - So far as the rate of interest is concerned, s. 3 of Interest Act

empowers the court to award interest at the rate prevailing in the banking transactions - Thus, impliedly, the court has a power to vary the rate of interest agreed by the parties - In the instant case, the High Court rightly held that the District Judge was justified in reducing the rate of interest to 10% from 18% as had been awarded by the arbitral tribunal - Interest Act, 1978 - s.3 - Arbitration and Conciliation Act, 1976.

(Also see under: Contract; and Arbitration and Conciliation Act, 1976)

M/s. MSK Projects (I) (JV) Ltd v. State of Rajasthan & Anr. 402

(2) Compound interest, keeping in view unjust enrichment and restitution - Discussed - Chemical industries causing damage to ecology - Supreme Court directing remediation at the cost of polluter industries - Non-compliance of the order - Held: To do complete justice, prevent wrongs, remove incentive for wrongdoing or delay, and to implement in practical terms the concepts of Time Value of Money, restitution and unjust enrichment, or to simply levelise, interest has to be calculated on compound basis as it also takes into account the inflationary trends - Some of the statute law provide only for simple interest and not compound interest - It is a matter of law reform which the Law Commission must take note of - Law Commission is suggested to consider and recommend necessary amendments in relevant laws - However, the power of the court to order compound interest by way of restitution is not fettered in any way - The applicants are directed to pay the sum along with compound interest @ 12% - Environmental law - Restitution - Unjust

enrichment - Legislation - Code of Civil Procedure, 1908 - s.34.

Indian Council for Enviro-Legal Action v. Union of India & Others 146

INTEREST ACT, 1978:

s. 3

(See under: Interest) 491

INTERIM ORDERS:

Scope of - Held: Interim order should not be of such a nature that by virtue of which a petition or an application, as the case may be, is finally allowed or granted even at an interim stage - Normally, at an interlocutory stage no such relief should be granted that by virtue of which the final relief, which is asked for and is available at the disposal of the matter is granted.

(Also see under: Service Law).

Sec., U.P.S.C. and Anr. v. S. Krishna Chaitanya 842

INTERLOCUTORY APPLICATION:

(See under: Water Disputes) 491

INTERNATIONAL LAW:

(See under: Code of Civil Procedure, 1908; and Doctrines/Principles) 936

INTERNATIONAL TREATIES AND COVENANTS:

Warsaw Convention.

(See under: Carriage by Air Act, 1972) 736

INTERPRETATION OF CONSTITUTION:

Entries in the three lists of Seventh Schedule to the Constitution of India - Held: The entries being

the field of legislation must receive liberal construction inspired by a broad and generous spirit.

(Also see under: Constitution of India, 1950).

Rajiv Sarin & Anr. v. State of Uttarakhand & Ors. 1012

INTERPRETATION OF STATUTES:

(1) Interpretation - Held: The cardinal rule of interpretation is to allow the general words to take their natural wide meaning unless the language of the statute gives a different indication of such meaning and is likely to lead to absurd result, in which case their meaning can be restricted by the application of this rule and they may be required to fall in line with the specific things designated by the preceding words - When the language used in the statute is clear and unambiguous, it is the duty of the court to give effect to it - Central Motor Vehicles Rules, 1989 - r.128(9).

M/s. Sharma Transports v. The State of Maharashtra 699

(2) Where the words are clear, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions.

(Also see under: Code of Criminal Procedure, 1973).

C. Ronald & Anr. v. State, U.T. of Andaman & Nicobar Islands 1067

(3) Principle of statutory interpretation - Held: Specific statutes that come later in time trump prior to general statutes - Consumer Protection

Act, 1986 and the Carriage by Air Act, 1972, which came long after the Code of Civil Procedure, 1908, are more focused and specific statutes and, therefore, should be held to supersede s. 86 - Code of Civil Procedure, 1908.

(Also see under: Carriage by Air Act, 1972; and Code of Civil Procedure, 1908)

Ethiopian Airlines v. Ganesh Narain Saboo 936

INVESTIGATION:

(1) Non-seizure of the Jeep in which the victims travelled - Accused hurled bombs at the Jeep and hacked one of its occupants to death - Held: The vehicle in question was not used for the commission of the offence - It was, therefore, not necessary to seize the vehicle - All that the prosecution was required to establish was that the Jeep was indeed damaged on account of throwing of bombs - The Investigating Officer had taken care to have the damaged portions of the vehicle cut, seized and sent the same to the Forensic Science Laboratory for opinion - The report from the FSL supports the prosecution case.

(Also see under: Penal Code, 1860)

Gosu Jairami Reddy & Anr. v. State of A.P. 503

(2) Prayer for transfer of investigation to CBI. (See under: Constitution of India, 1950) 359

(3) (See under: Code of Criminal Procedure, 1973) 674

JUDICIAL NOTICE:		
(See under: Land Acquisition Act, 1894)	....	772
JUDGMENT:		
Finality of judgment.		
(See under: Administration of Justice)	....	146
JUDICIAL REVIEW:		
(See under: Constitution of India, 1950)	....	1012
JURISDICTION:		
Territorial jurisdiction.		
(See under: Arbitration Act, 1940)...	....	801
JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000:		
ss. 2(l), 7-A, 15, 20, Explanation (as amended by Amendment Act, 2006) and s. 64 read with s. 15 - Petitioner, along with others, convicted and sentenced to imprisonment for life u/ss 395, 120-B IPC etc. - Writ petition praying for release of the petitioner claiming juvenility - Held: Explanation to s. 20 makes it clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (l) of s.2, even if juvenile ceased to be a juvenile on or before 01.04.2001, when the Act came into force and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed - The petitioner was juvenile at the time of commission of the offence and, as such, entitled to the benefit of ss.2(1), 7-A, 20 and 64 of the Act - The claim of juvenility can be raised before any court at any stage, even after		

final disposal of the case - State Government or the Board could, either *suo motu* or on an application made for the purpose, review the case of juvenile, determine the juvenility and pass an appropriate order u/s 64 of the Act for immediate release of the juvenile whose period of detention had exceeded the maximum period provided in s. 15 of the Act i.e. 3 years - As the petitioner has already undergone 12 years in jail, he is directed to be released forthwith - Juvenile Justice (Care and Protection of Children) Rules, 2007 - rr. 12 and 98 - Constitution of India, 1950 - Articles 32 and 21.

Amit Singh v. State of Maharashtra & Anr. 890

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

(1) r. 12 - Claim of juvenility - FIR lodged against appellant for commission of offence u/ss. 302 and 307 IPC - Held: Entry relating to date of birth entered in the mark sheet of High School Examination as also school leaving certificate are valid proof of evidence for determination of age of a person - Date of birth mentioned in the High School mark sheet produced by the appellant has duly been corroborated by the School Leaving Certificate and has also been proved by the statement of the clerk and the principal of the School - Mother of the appellant corroborated his academic records which clearly show that the appellant was a juvenile on the date of occurrence as alleged in the FIR - Juvenile Justice (Care and Protection of Children) Act, 2000.

Shah Nawaj v. State of U.P. & Anr. 859

(2) rr. 12 and 98.

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

890

KARNATAKA SCHEDULED CASTES AND SCHEDULED TRIBES (PROHIBITION OF TRANSFER OF CERTAIN LANDS) ACT, 1978:

(i) ss. 4 and 5 - Land granted for 15 years for cultivation by the State Government, purchased within the prohibited period - After coming into force of the Act, application by grantee for resumption of the land - Plea of adverse possession - Held: Not available to the purchaser.

(ii) Government grant of agricultural land - Land purchased within the period of prohibition - After coming into force of the Act, application for resumption of the land filed by grantee - Plea of adverse possession by purchaser - Limitation - Held: The grant was for possession by way of cultivation for a limited period and it cannot be said that by the said grant the grantee had acquired absolute title to the land - Therefore, the period of limitation applicable would be 30 years - Adverse possession - Limitation.

G. Krishnareddy v. Sajjappa (d) by Irs. and Anr.

136

KERALA GENERAL SALES TAX ACT, 1963:

(See under: Finance Act, 1994)

789

KUMAUN AND UTTARAKHAND ZAMINDARI ABOLITION AND LAND REFORMS ACT, 1960:

ss. 4, 4-A(as amended by U.P. Act 15 of 1978), 8, 18(1) and 19(1)(b) - Forest land- Vesting of, in the State -Held: By virtue of s. 4-A, the rights, title and interest of every 'hissedar' in respect of forest

land situated in the specified areas ceased with effect from 1.1.1978 and the same were vested in the State Government - Rule 41 of KUZALR Rules provides that forests belonging to State shall be managed by "Gaon Sabha or any other local authority, established" upon a notification issued by the State - So, where the land acquired by the State is to be transferred to a Gaon Sabha/Village Panchayat for its management and use of land leading to betterment of village economy, the legislation is in the nature of agrarian reforms - It is settled law that agrarian reforms fall within Entry 18 of List-II read with Entry 42 of List III of the Seventh Schedule to the Constitution - Validity of KUZALR Act and, particularly, ss. 4-A, 18(1) and 19(1)(b) thereof is upheld - Constitution of India, 1950 - Article 254, Seventh Schedule, List II, Entry 18 read with Entry 42 of List III - Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Rules, 1965 - r.41.

(Also see under: Constitution of India, 1950).

Rajiv Sarin & Anr. v. State of Uttarakhand & Ors.

1012

KUMAUN AND UTTARAKHAND ZAMINDARI ABOLITION AND LAND REFORMS RULES, 1965:

r.41.

(See under: Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960)

1012

LAND ACQUISITION ACT, 1894:

(1) s. 4 - Acquisition of land to set up canals - Compensation - 'Canal affected persons' - Held: Supreme Court in *Narmada Bachao Andolan-I*

has held that 'canal affected persons' cannot be put at par with 'submergence affected persons' - It was not permissible for High Court to take a contrary view - The definition of 'oustee' under the Narmada Water Dispute Tribunal Award does not take within its ambit the 'canal affected person' nor does the said award apply to the projects in the instant case - However, in the interim order, Supreme Court has taken care of 'hardship cases' - As suggested by the State Government, the date of s. 4 notification shifted to the date of the instant judgment in relation to the canal affected persons and the Land Acquisition Collector directed to reconsider the market value of the land in question accordingly and make supplementary awards in accordance with the provisions of the Act - It is clarified that the further canal work would be subject to clearance which may be given by MoEF -- Public Interest litigation - Precedent.

State of Madhya Pradesh & Anr v. Medha Patkar & Ors.

.... 664

(2) (i) ss. 4 and 11 - Acquisition of land in two villages - Award by Land Acquisition Officer upheld by High Court and finally by Supreme Court in *Gafar's* case - Appeals by some other land owners of both the villages for enhancement of compensation - Held: In the case of *Gafar* the Court took the view that the evidences relied upon by the reference court while enhancing the compensation were not reliable, and, therefore, the High Court was justified in setting aside the order passed by the reference court and restoring the award passed by the LAO - The judgment in *Gafar's* case does not require reconsideration - Therefore, it would not be proper for the Court to

take a different view, on the ground that what was considered in *Gafar's* case was on a different fact situation - *Res judicata* - Precedent.

(ii) Recovery of differential compensation amount from land owners - Amount of compensation enhanced by reference court - High Court restoring the award of Land Acquisition Officer - Supreme Court upholding the order of High Court - Held: In the peculiar facts and circumstances of the case and in the interest of justice, it is clarified that the respondents are restrained from recovering the amounts paid as compensation or enforcing security offered while withdrawing the compensation amount pursuant to order passed by the reference court.

(Also see under: Constitution of India, 1950; and Natural Justice).

Fida Hussain & Ors. v. Moradabad Development Authority & Anr.

.... 290

(3) s. 4 r/w s.17(4), s.6 r/w s.17(1), and s.5-A - Acquisition of land - Invoking of urgency provisions u/s 17 and dispensing with the compliance of s. 5-A - Held: Acquisition of land for construction of District Jail, which is a public purpose, shall not, by itself justify the exercise of power of eliminating enquiry u/s 5-A in terms of s. 17 (1) and s.17 (4) - The Court should take judicial notice of the fact that certain public purposes by their intrinsic nature and character contemplate planning, execution and implementation of the schemes which generally take time of few years - Therefore, the land acquisition for said public purposes does not justify invoking of urgency provisions under the Act - In the instant case, the series of events shows

lethargy and lackadaisical attitude of State Government - The authorities are not justified in invoking the urgency provisions u/s 17 of the Act, thereby depriving the land-owners of their valuable right u/s 5-A to raise objections and to be given opportunity of hearing - Judicial notice.

Devendra Singh & Ors. v. State of U.P. & Ors. 772

(4) ss. 18 and 54 - Acquisition of land - Enhancement of compensation sought by assignees - Held: Even though in terms of the assignment deeds, assignees became entitled to seek substitution before the Land Acquisition Collector, they neither sought impleadment in the award proceedings nor produced the assignment deeds to show that the landowners had transferred the right to receive compensation - There was no explanation for the same - High Court committed an error by entertaining and allowing the amendment application filed by the assignees and that too without even advertng to the issue of unexplained delay of four and a half years - High Court first decided the appeals filed by the assignees and then disposed of the amendment application without going through the records - As such, Union of India and DDA were deprived of an opportunity to make a request to the High Court to remit the case to the reference court - Matter remitted to the Reference Court for fresh determination of the compensation payable to the landowners and/or assignees.

Delhi Development Authority v. S.S. Aggarwal & Ors. 756

LEGISLATION:

Compound interest- Need for amendment irrelevant laws.
(See under: Interest) 146

LIMITATION:

(See under: Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. 136

LIMITATION ACT, 1963:

Art. 137.
(See under: Bihar Finance Act, 1981) 1110

MAXIMS:

Maxim - '*Interest republicae ut sit finis litium*'
(See under: Administration of Justice)

Indian Council for Enviro-Legal Action v. Union of India & Others 146

MOHAMMEDAN LAW:

(1) Right of *spes successionis* - Relinquishment of - Held: Chance of a Mohammedan heir-apparent succeeding to an estate cannot be the subject of a valid transfer or release - Ordinarily there cannot be a transfer of *spes successionis*, but the same can be avoided either by the execution of a family settlement or by accepting consideration for a future share - It could then operate as estoppel against the expectant heir to claim any share in the estate of the deceased on account of the doctrine of *spes successionis* - A testamentary disposition by a Mohammedan is binding upon the heirs if they consent to the disposition of the entire property and such consent could either be express or implied - In the instant

case, the father got all sons and daughters except Respondent No.1 to execute relinquishment deeds whereby they all relinquished their respective claim to properties belonging to him on receipt of some consideration - The methodology resorted to by the father can be termed as a family arrangement - The five deeds of relinquishment executed by the five sons and daughters constituted individual agreements entered into between the father and the expectant heirs - The heir expectants were estopped under the general law from claiming a share in the property of the deceased father - Doctrine of spes successionis - Doctrine of estoppel - Transfer of Property Act, 1882.

Shehammal v. Hasan Khani Rawther and Ors.

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(2) Shifting of a grave - Held: There could be shifting of Muslim grave from an unauthorised place to a place which is authorised by law for such burial - Besides, interring a corpse in an unauthorised place without permission or consent of the owner and lessee of the property, amounts to usurping somebody else's property - Shifting of such graves would not be un-Islamic nor would it be violative of Articles 25 and 26 of the Constitution - In the instant case, a group of people took the dead body away forcibly from the place where it was proposed to be buried, forcibly entered the school premises and buried the dead body there - The entire action, therefore, was illegal, without jurisdiction and in violation of the law which brought in disturbances in the area and also created huge law and order problem for the Government - It is directed that the dead body of the saint be exhumed from the place of its present

burial and shifted to another appropriate place and buried in accordance with law with all dignity and respect and he shall be laid in peace for enabling his devotees to offer their prayers and respects, as and when they desire, in accordance with law - Constitution of India, 1950 - Art. 226 r/w Arts. 25 and 26.

(Also see under: Customs Act, 1962).

Mohd. Hamid & Anr Etc. Etc. v. Badi Masjid Trust & Ors. Etc. Etc.

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MOTOR VEHICLES ACT, 1988:

(1) s. 2(43) - Expression 'tourist vehicle' - Meaning of.

(Also see under: Central Motor Vehicles Rules, 1989).

M/s. Sharma Transports v. The State of Maharashtra

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(2) s. 166 - Motor accident - Permanent disability - Suitable compensation - Expression 'disability' - Connotation of - Claimant, a coolie, suffered grievous injuries - Permanent physical disability of right upper limb - Held: Compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury - Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper - In the instant case, the claim of claimant about his annual income was honest and bona fide - The doctor assessed permanent physical disability at 41% and stated that the claimant cannot do any manual work as a coolie - Insurance company directed to

deposit before the Tribunal the enhanced compensation amount together with interest from the date of petition till the date of deposit.

Ramachandrappa v. The Manager, Royal Sundaram Alliance Insurance Company Limited.

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(3) (i) Compensation - Deductions from - Claim towards future prospects - Held: Where in an appeal filed by the owner/insurer, if the High Court proposes to reduce the compensation awarded by the Tribunal, the claimants can defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation - Therefore, in an appeal by the owner/insurer, the appellant can certainly put forth a contention that if 30% is to be deducted from the income for whatsoever reason, 30% should also be added towards future prospects, so that the compensation awarded is not reduced - The fact that claimants did not independently challenge the award will not come in the way of their defending the compensation awarded, on other grounds - Or.41 Rule 33 of CPC enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections - Code of Civil Procedure, 1908 - O. 41, r. 33.

(ii) Compensation - Appeal challenging the quantum of compensation - Jurisdiction of the High

Court - Held: Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for High Court is to examine the facts and by applying the relevant principles, determine the just compensation - High Court cannot increase compensation in an appeal by owner/insurer for reducing compensation, nor can it reduce compensation in an appeal by claimants seeking enhancement of compensation.

Ranjana Prakash and Ors. v. Divisional

Manager and Anr.

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NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985:

(1) ss. 2(b) and (c) - Notification specifying commercial quantity of heroin as 250 gm - Heroin recovered from accused being 125 gm with concentration of 16.93% - Conviction and sentence of 12 years and fine of Rs. 1 lac imposed by trial court - Affirmed by High Court - Held: Accused is liable to be convicted u/s 21(b) and not u/s 21(c), as, on the relevant date, he was found in possession of contraband which is less than the commercial quantity as prescribed under the Act - The maximum punishment prescribed for the offence u/s 21(b) is rigorous imprisonment for a term of ten years and with fine of one lakh rupees - Therefore, the conviction of the accused is converted from s.21(c) to s.21(b) and sentence reduced from twelve years to ten years.

Nikku Khan @ Mohammadeen v. State of Haryana

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(2) s. 22 r/w s. 50 - Right of accused to be informed that he has an option of being searched in the presence of a Gazetted Officer or a Magistrate - Accused found in possession of 2 packets containing 1kg heroin each - Consent memo signed by him to be searched in presence of a Gazetted Officer - Held: The consent memo cannot be said as informing the accused of his right to be searched in the presence of a Gazetted Officer or a Magistrate as he was only given the option to be searched before one of the other - The Officer concerned did not state as to whether he had informed the accused of his right and he merely took his option as to whether he would like to be searched before a Gazetted Officer or a Magistrate - Thus, there has been complete non-compliance with the provisions of s. 50 - Conviction of the accused set aside - Customs Act, 1962 - 108.

(Also see under: Penal Code, 1860).

Nirmal Singh Pehlwan @ Nimma v. Inspector, Customs, Customs House 446

(3) s.42 - Non-compliance of - Held: s.42 presupposes that if an authorized officer has reason to believe from personal knowledge or information received by him that some person is dealing in a narcotic drug or a psychotropic substance, he should ordinarily take down the information in writing except in cases of urgency which are set out in the Section itself - s.42(2) is categorical that the information if taken down in writing shall be sent to the superior officer forthwith - In the instant case, appellant was convicted u/s.18 on the basis of statement of DSP and Inspector and recovery of opium from the residence of the

appellant - The Inspector clearly admitted that he had not prepared any record about the secret information received by him and had not sent any such information to the higher authorities - Likewise, the DSP did not state that he received any written information from the Inspector - Dispatch of a wireless message to Inspector does not amount to compliance with s.42(2) - There was, therefore, complete non-compliance with the provisions of s.42(2) which vitiated the conviction of the appellant.

Rajender Singh v. State of Haryana 879

NATURAL JUSTICE:

(1) Opportunity of hearing - In some of the appeals before the High Court, award of Land Acquisition Officer was upheld - Decision of High Court upheld by Supreme Court in *Gafar's* case - Subsequent appeals by other claimants on the grounds that in some cases their counsel were not heard while in some others applications for substitution of L.Rs. of deceased appellants were not considered before the High Court - Held: In some of the appeals the presence of the counsel before the High Court is recorded - It is settled position that the court speaks through its order and whatever stated therein has to be read as correct - Therefore, it cannot be said that counsel were not heard in all the matters against which the appeals are filed - As regards applications for substitution, their pendency will have no bearing as the law laid down in *Gafar's* case, has to be followed, since the notifications for acquiring the lands in respect of the villages are the same.

(Also see under: Land Acquisition Act,

1894; and Constitution of India, 1950).

Fida Hussain & Ors. v. Moradabad Development Authority & Anr. 290

(2) (See under: Service Law) 546

(3) (See under: Administrative Law) 19

NEGOTIABLE INSTRUMENTS ACT, 1881:

(1) ss. 138 and 139 - Presumption in favour of holder of cheque - Cheques issued by one of the two sister concerns for dues towards the goods supplied to the other of the said concerns - Dishonour of cheques - Held: It has been proved that in consideration of supply of goods to one sister concern, the other had made the payment - The trial court ought to have considered provisions of s.139 of the Act, which make it clear that there is a presumption with regard to consideration when a cheque has been issued by the drawer of the cheque - The presumption referred to in s.139 is rebuttable - In the instant case, no effort was made for rebuttal of the presumption and, therefore, the presumption must go in favour of the holder of the cheques - Accused held guilty of the offence punishable u/s 138 - On the date of hearing the accused on question of sentence, the records indicated that one of the accused had died - Therefore, appeal as regards him stands abated - In the circumstances, imposition of a fine of Rs.10,00,000/- on the other accused payable to the complainants as compensation would meet the ends of justice - Code of Criminal Procedure, 1973 - s.235(2).

Anil Sachar & Anr. v. M/s Shree Nath Spinners P. Ltd. & Ors. etc. 328

(2) ss. 138 and 141.

(See under: Code of Criminal Procedure, 1973) 1138

ORISSA SUPERIOR JUDICIAL SERVICE AND ORISSA JUDICIAL SERVICE RULES, 2007: r. 24.

(See under: Service Law) 736

PENAL CODE, 1860:

(1) ss. 120-B, 420, 467, 468, 471-A.

(See under: Prevention of Corruption Act, 1947) 439

(2) ss. 147, 148, 302/149 IPC and ss. 3 and 5 of the Explosive Substances Act - Accused hurling bombs at the Jeep of complainants and hacking one of the victims to death by hunting sickles - Conviction and life sentence by courts below - Held: It is evident from the depositions of the three eye-witnesses that the deceased was killed inside the factory by accused persons - The version of the eye-witnesses has been accepted as truthful by the trial court as also the High Court in appeal - The depositions of two other witnesses who were also in the factory premises substantially support the prosecution case - In the circumstances, there is no reason to interfere with the view taken by the courts below.

(Also see under: Constitution of India, 1950; Criminal Law; Delay/Laches; and Evidence).

Gosu Jairami Reddy & Anr. v. State of A.P. 503

(3) s.302/34 - Murder - Circumstantial evidence - Conviction by trial court - Upheld by High Court -

Held: Where the case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person - In the instant case, the eye-witnesses and one of the recovery witness, having retracted their statements u/s 161CrPC, were not believed by courts below - As regards other witnesses, there are several discrepancies and contradictions in their statements - No enmity could be established between the accused and the deceased, and there was nothing on record which warranted them to eliminate the deceased - Recovery witnesses were not local persons - Overwriting on the recovery memos was not explained by the I.O. - Thus, it would not be safe and proper to hold the accused guilty of the offence - They are accordingly acquitted - Evidence Act, 1872 - s.27 - Constitution of India, 1950 - Art. 136 - Code of Criminal Procedure, 1973 - s.162 - Explanation - "Contradiction".

Mustkeem @ Sirajudeen v. State of Rajasthan

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(4) ss. 302 and 201 - Conviction under - Circumstantial evidence - Held: Prosecution has been able to prove a complete chain of events which point towards the guilt of the accused - Statement of the accused u/s. 313 Cr.P.C. supports the prosecution case - Thus, there is no error in the concurrent findings recorded by the courts below convicting the accused u/ss. 302 and 201 - As regards the sentence, the manner in which the crime has been committed is deplorable but the attendant circumstances and the fact that

the accused even administered the sweets containing sedatives/poisonous substance to his own wife shows his frustration, and probably greed, for the property that had attained volcanic dimensions - Constant nagging was a mitigating circumstance in the commission of the crime - Thus, the case does not fall in the category of 'rarest of rare cases' - Order of sentence as modified by the High Court upheld.

State of Maharashtra v. Goraksha Ambaji Adsul

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(5) ss. 302, 201 and 379 - Conviction by courts below based on circumstantial evidence - Intercaste marriage - Death of the upper caste girl six years after the marriage - Allegation against appellant-paternal uncle of the victim that he took away the victim under some pretext and thereafter killed her - Held: The family of the deceased had accepted the marriage for about six years, more particularly, as even a child had been born to the couple - Thus, the motive is clearly suspect - The last seen evidence is equally uncertain - It is also difficult to believe that the appellant, who stately killed his niece on account of family honour, would act so low as to take such trifle jewellery from her dead body - It cannot be accepted that till 24 days after the incident, the appellant continued to move around with the jewellery - Also the said jewellery had not been recovered under a disclosure u/s. 27 of the Evidence Act but was taken on a search of the appellant's person - Appellant acquitted.

Dandu Jaggaraju v. State of A.P.

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(6) ss.302 and 307 r/w s.149 - Death of one person

and grievous injury to another caused by fire arms - Five accused, two armed with guns and three with lathis - Trial court convicted all the accused u/ ss.302 and 307 r/w s.149 - During pendency of appeal, one of the two accused who fired the shots, died - High Court dismissed the appeal - Held: Evidence of eye-witness was wholly reliable - The very spontaneity of the FIR indicated that witness was present at the murder site - Medical evidence also supported eye-witness account - The possibility that the three accused armed with lathis were roped in on account of animosity, cannot be ruled out and they must be given the benefit of doubt - Their conviction is set aside - However, conviction of the accused who fired the shot, upheld.

Prahalad Singh & Ors. v. State of M.P 282

(7) s.304 Part-I r/w s.34, and s.300, First exception -Culpable homicide not amounting to murder - Case of grave and sudden provocation -Accused allegedly killed their sister and her lover - Bodies of the two found in the courtyard of the house of the accused - Male deceased last seen with the accused - Trial court convicted the accused u/ s.302 r/w s.34 and sentenced them to life imprisonment - High Court, found it a case of grave and sudden provocation and accordingly altered the conviction to one u/s.304 Part I r/w s.34 and converted the sentence to rigorous imprisonment for five years - Appeal, by state - Held: There was no error in the approach of the High court in disbelieving the oral evidence - Also, no reason to differ with the conclusion arrived at by the High Court that the offence was committed due to grave and sudden provocation and would

fall under first explanation to s.300 and would amount to culpable homicide not amounting to murder - Thus, the offence would be covered u/ s.304 Part-I r/w s.34 - However, quantum of sentence not interfered with - circumstantial evidence.

State of Punjab v. Jagtar Singh and Ors. 494

(8) s. 304 (Part-I) - Gunshot injury causing death of victim - Held: The evidence of prosecution witnesses and the site plan indicating the shot to have been fired from a distance of 14-18 feet not supported by medical evidence which shows gunshot injuries one of entry with tattooing marks around it and the other of exit - Further, the accused also sustained injuries - It is, therefore, possible in the light of the evidence, that the accused had indeed been attacked and that he had caused one injury in self-defence from a short distance - Therefore, his involvement in a case of murder is not spelt out but as he has used a rifle from a very close range, his obvious intention was to cause death - He is acquitted of the offence punishable u/s 302, but convicted u/s 304 (Part-I) and sentenced to ten years rigorous imprisonment - Medical Jurisprudence - Evidence. (Also see under: Evidence).

Mahendra Singh v. State of Uttaranchal 1062

(9) s.306 - Abetment of suicide - Held: The facts disclosed that the deceased was harassed and beaten because she could not bear a child - Interference with the conviction not called for - Appellant has already undergone five years rigorous imprisonment - Sentence is reduced to

the period already undergone.

Sudarshan Kumar v. State of Haryana 571

(10) s. 376 (2) (g) - Gang rape - Three accused convicted of the offence - Pleas of non-corroboration of version of prosecutrix and delay in lodging the FIR - Held: The evidence of prosecutrix supported by the evidence of two more witnesses who reached the place of incident on hearing her shrieks - Besides, the medical evidence the Forensic Science Laboratory report, the articles recovered from the place of incident and the torn clothes of the victim support the factum of rape - If some delay has occasioned in registering the FIR, that cannot in any way detract from the other credible evidence - Conviction and the sentence of seven years RI upheld - Evidence - Delay in lodging FIR.

Srivalla Srinivasa Rao & Ors. v. State of A.P. 118

(11) (i) ss. 494 and 495, r/w s. 198(1), Cr.P.C. - Bigamy with concealment of factum of existing marriage - 'Person aggrieved' - Husband governed by Hindu Law - Complaint by second wife - Maintainability of - Held: Where second wife alleges that the accused husband had married her according to Hindu rites despite the fact that he was already married and the factum of the first marriage was concealed from her, the second wife would be an aggrieved person within the meaning of s. 198 Cr. P.C. - s. 494 IPC does not restrict the right of filing complaint to the first wife - Complaint can also be filed by the person with whom the second marriage takes place which is

void by reason of its taking place during the life of the first wife - Besides, until the declaration contemplated by s. 11 of Hindu Marriage Act is made by competent court, the woman with whom the second marriage is solemnized continues to be the wife within the meaning of s. 494 IPC and would be entitled to maintain a complaint against her husband for offences punishable u/ss 494 and 495 IPC - Code of Criminal Procedure, 1973 - s. 198 (1) - Hindu Marriage Act, 1955 - s. 11.

(ii) ss. 494, 495, 498A, 417 and 420 - Complaint by second wife against the husband - High Court quashing the proceedings pending before the Judicial Magistrate as regards s. 498A holding that the complainant was not wife within the meaning of s. 498A and was not entitled to maintain the complaint under the said provision - Held: High Court was not at all justified in its order - The conclusion of the High Court is such as to shake the conscience and sense of justice - Even in the absence of challenge either by the State or the complainant, in exercise of power under article 136, that part of the judgment of the High Court by which the complaint for offence punishable u/s 498A filed by the second wife is quashed by the High Court is set aside and the charge-sheet submitted by the IO shall stand revived - Constitution of India, 1950 - Art. 136.

(Also see under: Code of Criminal Procedure, 1973; and Constitution of India, 1950).

A. Subash Babu v. State of A.P. & Anr. 453

PLEA:

New plea raised at arguments stage.

(See under: Coal) 1103

PRACTICE AND PROCEDURE:

(See under: Land Acquisition Act, 1894) 756

PRECEDENT:

(1) Judgment of a court of law should not be read as a Euclid's theorem nor as a provision in a statute.

(Also See under: Code of Criminal Procedure, 1973).

C. Ronald & Anr. v. State, U.T. of Andaman & Nicobar Islands 1067

(2) (See under: Constitution of India, 1950). 1

(3) (See under: Land Acquisition Act, 1894) 290
and 604

PREVENTION OF CORRUPTION ACT, 1947:

ss.5(1),(c)(d), 5(2) and 5(3), proviso - Minimum sentence of one year - Power of Court to reduce the sentence - Conviction by trial court u/ss. 120-B, 420, 467, 468, 471-A IPC r/w ss.5(1)(d), 5(2) of the Prevention of Corruption Act - Upheld by High Court reducing sentence from 2½ years to 1½ years RI - Plea before Supreme Court for reducing the sentence to the period already undergone - Held: In view of the proviso to s.5(3) of the Prevention of Corruption Act and the facts and circumstances of the case that the accused is 71 years of age and has already undergone 6 months imprisonment, that from the date of occurrence, 29 years have passed and there is no record to show that the accused was involved in any other criminal case, ends of justice would

be met by modifying the sentence to the period already undergone - Ordered accordingly - Penal Code, 1860 - ss. 120-B, 420, 467, 468, 471-A IPC - Sentence/Sentencing.

Munilal Mochi v. State of Bihar & Anr. 439

PREVENTION OF CORRUPTION ACT, 1988:

ss. 7 and 13 (1) (d) r/w s. 13 (2) - Conviction by courts below - Held: Prosecution has not been able to prove that the accused had fixed the time and place to receive the money - Besides, the treated currency notes could not be found out nor is there any explanation for the same - The only circumstance that the test of fingers of accused was positive, would not be sufficient for conviction - Accused given benefit of doubt and acquitted accordingly.

P. Parasurami Reddy v. State of A.P. 656

PUBLIC INTEREST LITIGATION:

(1) (See under: Land Acquisition, Act, 1894).... 664

(2) (See under: Sex Workers) 680

PUNJAB PUBLIC PREMISES LAND (EVICTION AND RENT RECOVERY) ACT, 1973:

ss. 5 and 7 - Proceedings under - Land covered under Development Scheme of the Government claimed by the respondents as an evacuee property - Order of civil court that respondents be not dispossessed from the property otherwise than in due course of law - Held: Since the Evacuee Property Act has been repealed, there is no justification in the order passed by High Court remanding back the matter to the Settlement Commissioner to consider the claim of the

respondents once again inasmuch as the issue as to whether or not respondents are authorised or unauthorised occupants of the land in dispute and as to whether or not they are entitled to alternative plots or rehabilitation are matters which can be adjudicated upon separately in accordance with law but not in the manner as suggested by High Court - In order to comply with the directions of the civil court and also for eviction in accordance with law, proceeding initiated under the Public Premises Eviction Act should be continued till the same comes to a logical end - Evacuee Property Act, 1950 - Displaced Persons (Compensation & Rehabilitation) Act, 1954.

Jalandhar Improvement Trust v. Vinod Kumar and Ors.

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RAJASTHAN MOTOR VEHICLES TAXATION (AMENDMENT) ACT, 1994:

(See under: Contract)

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REGISTRATION ACT, 1908:

s.49, proviso.

(See under: Arbitration and Conciliation Act, 1996)

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RELIEF:

(See under: Interim Order.)

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REMEDY:

(See under: Constitution of India, 1950)

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RES JUDICATA:

(See under: Land Acquisition Act, 1894)

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RESTITUTION:

'Unjust enrichment' and 'restitution' - Explained -

Held: Courts have wide powers to grant restitution, and more so where it relates to misuse or non-compliance with court orders - Even if no benefit had been retained or availed even then, to do justice, the debtor must pay the money - It is not only disgorging all the benefits but making the creditor whole, i.e., ordering restitution in full, and not dependent on what he might have made or benefited, is what justice requires - The need for restitution in relation to court proceedings gives full jurisdiction to the court to pass appropriate orders that levelises - The court has only to levelise and not to go further into the realm of penalty which will be a separate area for consideration altogether - Environmental law.

(Also see under: Unjust Enrichment and Interest).

Indian Council for Enviro-Legal Action v. Union of India & Others

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REVIEW:

(See under: Code of Civil Procedure, 1908)

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REVISION:

(1) (i) Revisional Jurisdiction - Scope of - Maintenance application filed by wife u/s.125 Cr.P.C. - Allowed by trial court - On revision, High Court set aside the award on the ground that there was no valid marriage between the respondent and the appellant, as an earlier marriage between the respondent with his previous wife was subsisting - Held: High Court under its revisional jurisdiction is not required to enter into re-appreciation of evidence recorded in the order granting maintenance - In a case where the trial court has granted maintenance holding that the wife had been neglected and she was entitled to

maintenance, the scope of interference by the revisional court is very limited - The questions whether the applicant is a married wife and whether the children are legitimate/illegitimate, being pre-eminently questions of fact, cannot be reopened and the revisional court cannot substitute its own views - High Court, therefore, is not required in revision to interfere with the positive finding in favour of the marriage and patronage of a child - The order of High Court set aside and order passed by trial court restored.

Pyla Mutyalamma @ Satyavathi v. Pyla Suri Demudu & Anr. 996

(2) Revisional jurisdiction - Scope of.
(i) (See under: Code of Criminal Procedure, 1973) 996

(ii) (See under: Uttar Pradesh Trade Tax Act, 1948) 1076

(3) Suo motu power of revision.
(See under: Bihar Finance Act, 1981) 1110

SALE OF GOODS ACT, 1930:
(See under: Contract) 689

SALES TAX:

Vacuum cleaner - Held: Is a machinery run by electricity and therefore, is assessable as electrical goods - It is not excluded from the purview and ambit of Entry 81 of the Notification dated 26.12.1977 in any manner as is apparent from a bare reading of the contents of the said Entry - Plea of appellants that since vacuum cleaner is not specifically included within the Entry 81, therefore, it should be deemed to be excluded cannot be

accepted in view of the fact that none of the electrical goods, instruments, apparatus, which is included in the said Entry is specifically mentioned - If such an interpretation is accepted, entire Entry 81 would be rendered otiose - Notification dated 26.12.1977 issued u/s 12 of Bihar Finance Act, 1981.

M/s Eureka Forbes Limited v. State of Bihar and Ors. 540

SENTENCE/SENTENCING:

(1) Principles governing sentencing policy - Held: Awarding punishment is an onerous function in the dispensation of criminal justice - Court is expected to keep in mind the facts and circumstances of a case, principles governing award of sentence, the legislative intent of special or general statute raised in the case and impact of awarding punishment - Court need to examine these nuances with discernment and in depth - Criminal jurisprudence.

(Also see under: Code of Criminal Procedure; Penal Code, 1860; and Evidence).

State of Maharashtra v. Goraksha Ambaji Adsul 41

(2) (See under: Prevention of Corruption Act, 1947) 439

SERVICE LAW:

(1) Appointment/Recruitment/Selection:
(i) Recruitment - Part time contingent casual labourers paid on hourly basis - Not allowed to participate in the selection process for the post of sepoy due to age bar - Held: Engagement of employees as casual labourers even for

considerable long duration did not confer any legal right on them for seeking a mandamus for relaxation of age limit.

(Also see under: Administrative Law; and Constitution of India, 1950).

Union of India & Anr. v. Arulmozhi Iniarasu & Ors.

1

(ii) Selection Process - Civil Service Examination - Plea of respondent-candidate that he sent application/examination form through courier but he did not receive admission letter - High Court passed interim order directing institution to allow the candidate to appear in examination - Held: The candidate could not show any evidence that he had sent the application form - The authorities cannot be directed to declare the final result of the candidate, especially when his application form had not been received within the period prescribed - The candidate not only took the preliminary examination but also took the main examination and also appeared for the interview by virtue of interim orders though he had no right to take any of the examinations - Grant of such interim orders should have been avoided as they not only increase work of the institution which conducts examination but also give false hope to the candidates approaching the court - However, very often courts are becoming more sympathetic to the candidates and by interim orders authorities are directed to permit the students to take an examination without ascertaining whether the concerned candidate had a right to take the examination - For any special reason in an

exceptional case, if such a direction is given, the court must dispose of the case finally on merits before declaration of the result - Interim order.

(Also see under: Interim order)

Sec., U.P.S.C. and Anr. v. S. Krishna Chaitanya

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(iii) Selection process - Rounding off of qualifying marks - Haryana Civil Services (Judicial Branch) Examination - Qualifying marks in written examination and viva voce - Rounding-off or relaxation in marks or giving grace marks - Permissibility of - Held: There is no power provided in the statute nor any such stipulation is made in the advertisement nor in statutory rules permitting any rounding off or giving grace marks so as to bring up a candidate to the minimum requirement - The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for giving benefit of rounding off or relaxation - Haryana Civil Services (Judicial Branch) Rules: rr.7(1), 7(2), 8(1), 9.

Bhanu Pratap v. State of Haryana and Ors.

736

(iv) Selection process - Rounding off of qualifying marks - Orissa Judicial Service Examination - Main written examination - High Court directing the marks of the writ petitioner and two others to be rounded off as 45% and to call them for viva-voce - Held: No rounding off of the aggregate marks is permitted in view of the clear and unambiguous language of r. 24 - Orissa Superior Judicial Service and Orissa Judicial Service

Rules, 2007, r. 24.

Public Service Commission & Anr. v. Rupashree Chowdhary & Anr. 748

(2) Cadre allocation - Indian Police Service - Claim of a general category candidate that allocation of the OBC candidate, who was much below him in merit list, to Andhra Pradesh Cadre was unjust and instead he should have been allocated to the Andhra Pradesh Cadre and not to Manipur-Tripura Joint Cadre - Held: It is reiterated that the roster system ensures equitable treatment to both the general candidates and reserved candidates and, therefore, the roster system cannot be by-passed on some ground or the other which may result in unfair treatment to either general candidates or reserved candidates in violation of their right to equality under Articles 14 and 16(1) of the Constitution - In the instant case, the claimant filed the O.A. before the Tribunal belatedly by which time the 36 candidates including the OBC candidate concerned, had been allocated to different cadres, had already joined their respective cadres and undertaken training in their respective States, and any order of the Tribunal or the Court granting relief to the claimant will disturb the allocation of several members of the IPS - Constitution of India, 1950 - Articles 14 and 16(1) - Delay/Laches - Indian Police Service (Cadre) Rules, 1954 - rr. 3 and 5 - Central Government letter dated 31.5.1985 - Para 3(2).

G.Srinivas Rao v. Union of India & Ors. 313

(3) Pension.

(See under: General Insurance

(Employees') Pension Scheme, 1995) 574

(4) Suspension - Wages for the period of suspension - Held: Under sub-r. (3) of F. R. 54-B, even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a possible view in the facts of the case and on the materials before it, such view would not be interfered by the tribunal or the court - Fundamental Rules - F.R. 54-B (3), proviso.

The Greater Hyderabad Municipal Corporation v. M. Prabhakar Rao 594

(5) Termination/Removal/Dismissal:

Dismissal from service - Respondents, accused of obtaining admission in the training course for Primary Teachers' Training Institute Certificate by inflating their marks - Dismissal from service - Held: If a particular act is fraudulent, any consequential order to such fraudulent act or conduct is *non est* and void *ab initio* - No person should be allowed to keep an advantage which has been obtained by fraud - Respondents inflated their marks in order to obtain admission in the Primary Teachers' Training Institute - Thus, the admission sought for was through an illegal means which is deprecated - No fault can be found with the course of action taken - Respondents were issued show cause notice and were given an opportunity of hearing - Thus, there was no violation of the principles of natural justice - Natural

justice.

District Primary School Council, W.B. v. Mritunjoy Das & Ors. 546

SERVICE TAX:

(See under: Finance Act, 1994) 789

SEX WORKERS:

Rehabilitation of Sex workers - Held: Sex workers are entitled to a life of dignity - They can lead a life of dignity by earning their livelihood through their technical skills - Thus, panel consisting of senior advocates and NGO constituted by Supreme Court, to monitor rehabilitation of sex workers - The Secretaries, Social Welfare Departments of the State Governments and the Central Government to meet the panel constituted to discuss how proper schemes in the spirit of the order by Supreme Court can be prepared - Thereafter, the State and the Centre to come out with the schemes/suggestions indicating rehabilitation of sex workers, effective feedback as regards rehabilitation with a list of sex workers willing for rehabilitation - Panel to submit another report of the progress made - Public Interest Litigation - Social welfare - Constitution of India, 1950 - Art. 21.

Budhadev Karmaskar v. State of West Bengal 680

SHIPPING:

(1) Demurrage charges on account of delay in discharge of cargo - Claim for - Held: Read with the Charter Party, the Addendum made it abundantly clear that the Charterers had accepted the responsibility for the failure of the vessel to

discharge her cargo at Vadinar and had agreed to bear all the expenses for the delay in diversion of the vessel from Vadinar to Mumbai, including the time spent at Vadinar port and the expenses incurred towards pilotage, tugs and other port expenses - Apart from that the Charter Party specifically provided that extra expenses incurred on account of any change in loading or discharging ports, has to be paid by the Charterers, and any time thereby lost to the vessel shall count as used lay time - There was no reason to interfere with the award of the Arbitral Tribunal - Arbitration.

Shipping Corporation of India Ltd. v. Mare Shipping Inc. 70

SOCIAL WELFARE:

(See under: Sex Workers) 680

STAMP ACT, 1899:

ss. 33, 35, 38 and 40

(See under: Arbitration and Conciliation Act, 1996) 382

SUIT:

Meaning of - Held: Term 'suit' is a generic term taking within its sweep all proceedings initiated by a party for realisation of the right vested in him in law - In common parlance, the term 'suit' is taken to include all proceedings of a judicial or quasi-judicial nature in which the disputes of aggrieved parties are adjudicated before an impartial forum - Thus, proceedings before the consumer fora fall squarely within the term suit.

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

Ethiopian Airlines v. Ganesh Narain Saboo 936

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TRANSFER OF PROPERTY ACT, 1882:

(See under: Mohammedan Law) 718

TOLLS ACT, 1851:

Toll fee - Nature of - Construction of a bypass road - Concession agreement authorising the contractor to collect toll fee - Dispute between parties - Arbitration - Held: Toll fee is compensatory in nature wherein the Government can reimburse itself the amount which it had spent on construction of road/bridge etc. - State is competent to levy/collect the toll fee only for the period stipulated under the statute or till the actual cost of the project with interest etc. is recovered - It cannot be a source of revenue for the State - A person is debarred by law and statutory inhibition, as contained in Clause IV(a) of the notification, from collection of toll beyond the recovery of cost of construction - In order to do complete justice between the parties and protect the public exchequer, matter remitted to arbitral tribunal to work out the entitlement of the contractor - Arbitration and Conciliation Act, 1996 - Code of Civil Procedure, 1908 - O.8, r.5.

M/s. MSK Projects (I) (JV) Ltd v. State of Rajasthan & Anr. 402

TRADE MARKS:

Registered and unregistered brand name/trade marks - Held: It is not necessary that "Brand name" should be compulsorily registered - A person can carry on his trade by using a "Brand name" which is not even registered - But in violation/infringement of trade mark, remedy available would be distinctly different to an unregistered

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brand name from that of remedy available to a registered brand name.

Commissioner of Central Excise, Mumbai v. M/s. Kalvert Foods India Pvt. Ltd. and Ors. 902

UNJUST ENRICHMENT:

(1) (See under: Coal) 1103

(2) Unjust enrichment -Concept of - Discussed - Held: Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another - In the instant case, Supreme Court fixed the liability of the polluter industries - Their position was that of a 'judgment-debtor' - The industrial units did not pay the amount but sought to postpone the payment and in the meantime utilised the said amount and thereby got themselves benefited - As a consequence, State authorities were deprived of the use of that amount for taking remedial measures - It is settled principle that no one can take advantage of his own wrong - Whatever benefits a person has had or could have had by not complying with the judgment, must be disgorged and paid to the judgment-creditor and not allowed to be retained by the judgment-debtor - This is the bounden duty and obligation of the court - Environmental Law.

(Also see under: Administration of Justice; Restitution; and Interest).

Indian Council for Enviro-Legal Action v. Union of India & Others 146

UTTAR PRADESH EXCISE ACT, 1910:

(1) s. 28 - High strength rectified spirit (industrial alcohol) - Levy of excise duty - Power of State - Held: High strength rectified spirit (industrial alcohol) is a Central subject, thus, the State is not empowered to levy excise duty - Under s. 28, excise duty or a countervailing duty, as the case may be, can be imposed by the State on alcoholic liquor only when it reaches the stage of human consumption.

(Also see under: Administrative Law; and Uttar Pradesh Excise Manual)

Kesar Enterprises Ltd. v. State of U.P.
& Ors.

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(2) s.60(2) - Conviction by courts below - Held: Incident occurred in 1979 and the appellant had faced trial and other liquor proceedings for almost 32 years and that too for being in possession of only half a bottle of liquor - Appellant has already undergone 5½ months of sentence - In the interest of justice, orders of courts below set aside and the accused acquitted.

Man Singh v. State of U.P.

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UTTAR PRADESH EXCISE MANUAL:

r. 633 - Imposition of penalty for failure to furnish PD-25 pass, certified by the Collector - Held: Show-cause notice should be issued and an opportunity of hearing should be afforded to the person concerned before an order u/r. 633(7) is made, notwithstanding the fact that the said Rule does not contain any express provision in this regard - Before raising any demand and initiating

any step to recover from the executant of the bond any amount by way of penalty, there has to be an adjudication as regards the breach of condition of the bond or the failure to produce the discharge certificate within the stipulated time as also quantification of the penalty amount but there was absolutely no adjudication by any authority, except the allegation that the appellant had failed to furnish the PD-25 pass certified by the Collector - Thus, the action of the State for the recovery of penalty and interest, being violative of principles of natural justice, is null and void - Matter remitted to the jurisdictional Excise Commissioner - U.P. Excise Act, 1910 - s. 28 - Principles of natural justice.

(Also see under: Uttar Pradesh Excise Act, 1910; and Administrative Law).

Kesar Enterprises Ltd. v. State of U.P.
& Ors.

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UTTAR PRADESH TRADE TAX ACT, 1948:

(i) s.11 - Revisional jurisdiction - Scope of - Held: Normally High Court while exercising revisionary powers u/s.11 should not interfere with concurrent findings of fact by the lower authority, unless the findings recorded by the lower authorities are perverse or based on apparently erroneous principles which are contrary to law or where the finding of the lower authority was arrived at by a flagrant abuse of the judicial process or it brings about a gross failure of justice - Revision.

(ii) s.3-AAAA - Dealer purchased burnt mobil oil and refined the same - High Court set aside the concurrent finding and held that appellant was liable to be taxed u/s.3-AAAA - Held: Tribunal as

the second appellate forum is the last fact finding authority - Unless High Court, as a revisional authority, finds that the factual conclusions by both the appellate authorities are perverse, it cannot overturn the same - The order of the High Court is not sustainable - Matter remanded to the High Court for consideration afresh.

*M/s. Agarwal Oil Refinery Corporation,
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*Kachchh Jal Sankat Nivaran Samiti & Ors. v.
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THE

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(From 13.07.2011 to 10.08.2011)

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Hon'ble Mr. Justice Chandramauli Kr. Prasad, Judge, Supreme Court of India was on leave for one day on 02.08.2011 on full allowances.

ERRATA
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980	Last line from bottom	rules of the market. if State owned	rules of the market. If State owned