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- Rejection of application u/O. 7 r.11 without
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correct - Held: Rejection of application u/O. 7 r.11
without deciding the application u/s.80(2) was not
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application u/s. 80(2), irregularity in filing the suit
continues - By mere filing of application it cannot
be presumed that application is granted.

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allowing a party to adduce additional evidence at
the stage of appeal - Held: A party can seek liberty
to produce additional evidence at appellate stage,
but the same can be permitted only if evidence
sought to be produced could not be produced at
the stage of trial in spite of exercise of due
diligence and that evidence could not be produced
as it was not within knowledge of the party and
was fit to be produced by appellant before
appellate forum - In the instant matter, appellants
are a public authority and sought to produce a road
map which, it is unbelievable, was not within their
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stage of first appeal.

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(2) ss. 195/340 - Applicability of - Held: If documents have been forged and fabricated prior to filing of those documents in court, provisions of ss. 195/340 are not attracted.

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(3) s. 378 - Appeal against acquittal - Power of High Court - Held: So long as the view taken by trial court was a possible view, High Court ought not to disturb the findings of trial court.

(Also see under Penal code, 1860)

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(4) (i) s.438 - Power under - Purpose and scope of - FIR u/s. 420, 467, 468 and 471 IPC - Anticipatory bail granted on condition that accused

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would deposit Rs. one crore in fixed deposit in the name of complainant - - Held: Object of putting conditions while granting bail, is to avoid possibility of the person hampering the investigation -Any condition which has no reference to fairness or propriety of investigation or trial, cannot be countenanced as permissible under law - Therefore, condition of deposit for grant of anticipatory bail is untenable - Accused, presumably an innocent person, entitled to right to liberty under Art 21 of the Constitution - Direction to deposit FDR set aside - Condition imposed on accused to make himself available to police not to hamper with investigation and not to leave India without previous permission of court - Constitution of India, 1950 - Art 21.

(ii) s.438 - Anticipatory bail - Grant of - Parameters for - Discussed.

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Court had issued such direction - Thus, there was no consideration of application for bail filed by respondent on merits - Order passed by Magistrate quashed - Direction issued that if respondent appears and surrenders before Magistrate and prefers application for bail, the application shall be decided on merits and in accordance with law.

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(7) s.482 - Prosecution for commission of offences punishable u/ss.7, 9, 13 (2) r/w s.13(1)(d) of Prevention of Corruption Act and s.120-B r/w s.384 IPC - Application filed by accused-appellant seeking exemption from personal appearance - Dismissed by trial court - Order affirmed by High Court in petition filed by appellant u/s.482 CrPC - Held: Trial court, despite the report of medical board and deposition of Doctor, came to the conclusion that appellant was not of 'unsound mind' nor was

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she incapacitated by her age and illness - Since said finding had been specifically questioned by appellant, High Court should have adverted to that aspect of the matter also - Process of appreciation of material concerning medical condition of appellant and her alleged incapacity to make her defence was inevitable - Inasmuch as the same escaped attention of High Court, order passed by it unsustainable - Matter remitted back to High Court for disposal afresh in accordance with law.

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(2) Art. 21.
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(3) Art. 226 - Land acquisition - Award - Writ petition filed by appellant-landowner within 5 weeks of the passing of the award - Maintainability - Held: The writ petition was filed within reasonable time - It could not be simply dismissed on the ground of delay or laches.
(Also see under Law Acquisition Act, 1894)

M/s V.K.M. Kattha Industries Pvt. Ltd. v. State of Haryana & Ors. 33

CONTEMPT OF COURTS ACT, 1971:

(i) s.12(1) r/w Explanation thereto - Contempt

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proceedings against appellants for not furnishing requisite information to High Court - Challenge to - Held: High Court had required appellants-State officials to furnish names of such land owners who had not filed their objections u/s.5A of Land Acquisition Act, and yet their lands were released from acquisition - Though information furnished in written statement filed by appellant was just the reverse (as information was furnished in respect of landowners who had filed their objections), circumstances of the case do not lead to the sole conclusion that there was a deliberate or wilful attempt on the part of appellant not to furnish the requisite information or to furnish wrong information to High Court - Rather, failure to furnish requisite information to court may have been occasioned by a momentary error of judgment on the part of appellant - For the said lapse, he tendered his unqualified apology in affidavit alongwith which he also furnished the requisite information - Situation calls for a broad and magnanimous view of the matter and acceptance of unconditional apology tendered by appellant - Order of High Court holding appellant guilty of contempt of court, set aside - Land Acquisition Act, 1894 - s.5A.

(ii) Exercise of contempt jurisdiction - Scope - Held: The power to punish for contempt is a rare specie of judicial power, which by the very nature calls for exercise with great care and caution.

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DELAY/LACHES:

(1) Delay - Condonation of - Delay on part of State in filing writ appeal before High Court - In the application for condonation of delay date of filing the appeal was inadvertently mentioned as 2.11.2006 instead of 8.11.2006 - Dismissal of application on the ground that delay of 6 days i.e. from 2.11.2006 to 8.11.2006 not explained - Held: It is not proper to terminate a proceeding on technical ground like limitation, where there is no gross negligence, or deliberate inaction or lack of bonafides - High Court ought to have condoned the delay - Matter remitted to High Court.

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EDUCATION / EDUCATIONAL INSTITUTIONS:

Dental College - Increase of admission capacity for academic year, 2013-14 - Applicant did not fulfill the mandatory criteria of its being recognized for its existing admission capacity - After the cut-off date for sending the application to Dental Council of India (DCI), Central Government rejected application on the ground of non-fulfillment of eligibility criteria - Held: There was no delay in sending the recognition order (as regards existing

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capacity of the college), by DCI to Central Government - The cut-off date for sending the application to DCI could not have been extended by Central Government - It is not possible to change the time schedule - Sanctity to time schedule has to be attached - Cut-off date for starting professional courses, particularly, medical courses should not be tinkered with - Dental Council of India (Establishment of New Dental Colleges, Opening of New Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006 - Regulations 4, 18, 19 and 20.

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Witness - Related witness - Appreciation of evidence - Held: To be undertaken in the facts of each case having regard to ordinary human conduct, prejudices and predilections - On facts, deposition of PW found reliable by trial court as also High Court, no matter he was related closely to deceased - Version given by PW corroborated by medical evidence - Prosecution case as to the manner in which assaults started and place of occurrence proved by deposition of PW.

(Also see under: Penal Code, 1860)

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Matrimonial dispute - Two suits by wife, one for restraining the husband from marrying during her

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lifetime and another for perpetual injunction restraining the husband and his father from alienating suit property as she herself and her daughter (born out of the marriage) were entitled to 1/3rd share - She also filed petition u/s. 9 of Hindu Marriage Act - Trial court decided the suit on merits - Petition u/s. 9 dismissed by trial court - High Court held that suits were not maintainable because the plaintiff was a minor at the time of filing the suits - However, court gave liberty to the wife to initiate criminal proceedings u/s. 376 IPC against husband - Held: The relief sought by wife, in effect, was for restitution of conjugal rights and maintenance for the child - It was essentially a matrimonial dispute - Therefore, court erred in making the observation giving her liberty to initiate criminal proceedings, rather than encouraging and persuading the parties to reconcile - In matrimonial matters it is paramount duty of the court to restore peace in family - Only as a last resort, case should be decided on merits - The appropriate course, in the instant case, would have been that the case was referred for conciliation/mediation.

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Delay in lodging FIR - Effect - Held: Delay in lodging of FIR is not by itself fatal to case of prosecution nor can delay itself create any suspicion about truthfulness of the version given by informant - So long as there is cogent and acceptable explanation for delay it loses its significance - Whether or not

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the explanation is acceptable will depend upon facts of each case - On facts, no reason to disbelieve prosecution case only because FIR was delayed by a few hours especially when delay was satisfactorily explained.

(Also see under: Penal Code, 1860)

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Art. 2262.

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GOVERNMENT LITIGATION:

Frivous and vexatious litigation by State Power Corporation - Division Bench of High Court imposing cost on appelland-Corporation to be recovered from officer who authorised filing of appeal - Held: Since appeal preferred by Corporation was totally frivolous, High Court has rightly awarded the cost - In spite of Government's own policy and reprimand from Supreme Court on numerous occasions, there is no significant positive effect on various Government officials who continue to take decision to file frivolous and vexatious appeals - It imposes unnecessary burden on courts - Cost be recovered from officers who take such frivolous decisions of filing appeals even after knowing well that these are totally vexatious and uncalled for appeals - It is clarified that such an order of recovery of cost from officer concerned be passed only in those cases where appeal is found to be ex-facie frivolous and decision to file

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appeal is also found to be palpably irrational and uncalled for - Punjab Civil Service Rules - r. 2.2(B), second proviso - Costs - National Litigation Policy, 2010 of Government of India.

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INCOME TAX ACT, 1961:

ss. 214 and 244A - Whether Revenue liable to pay interest to assessee, if aggregate of instalments of Advance Tax of TDS paid, exceeds the assessed tax - Held: In Sandvik case, Court had directed Revenue to pay compensation for delay in payment of statutory interest and it was not an interest on interest - s.244A (as inserted by Act No. 4 of 1988) provides for interest on refunds under various contingencies - Thus, it is only that interest provided under the statute which may be claimed by assessee from Revenue and no other interest on such statutory interest - Question answered accordingly.

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KARNATAKA LAND REFORMS ACT, 1961:

s.45 - Entitlement of respondent to be registered as an occupant u/s.45 - Held: To satisfy the requirement of s.45 to be registered as an occupant, claimant has to satisfy that he was the tenant in respect of land which he was cultivating personally on the appointed day (1st March, 1974) - Neither tribunal nor High Court went into the question as to whether the property said to have been given on lease to tenant on the appointed day, came within definition of land under the Act - Tribunal made spot inspection much later than the appointed day on 15th December, 1987 which had no relevance at all with rights of parties - Rights of parties have to be crystallized on the basis of what existed on appointed day - Matter remitted back to tribunal.

Harsha V. Rai v. State of Karnataka & Anr. 222

(2) Form No.7 - Application under - Respondent claiming to have sent application in Form No. 7 by post to Special Tehsildar, Land Reforms - Pursuant to direction of High Court enquiry u/s.48-A conducted by Land Tribunal after taking on record, the Xerox copy of application produced by respondent - Tribunal held that no application under

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Form No.7 was on record - In Writ Petition, single Judge of High Court remanded the matter to Land Tribunal for finding out whether respondent made application under Form No.7 and whether the same was on record - Held: Order of single Judge in remanding the matter to Tribunal again, rendered the order passed by Tribunal ineffective for no reason - It was not open to single Judge to remand the matter to Land Tribunal - Karnataka Land Reforms (Amendment) Act, 1974.

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LAND ACQUISITION ACT, 1894:

(1) (i) ss.4 and 5A - Non-publication of substance of notification as prescribed under the Act in the locality concerned - Effect - Held: The requirement is mandatory - By effecting such publication in the locality, it is possible for the person in possession, namely, either owner or lessee to make representation/objection in enquiry u/s.5A - By non-publication of the same in the locality, owner or occupier loses his valuable right - Appellant-company prevented from making objection u/s.5A - Acquisition proceedings in respect of lands belonging to appellant-company therefore liable to be quashed.

(ii) s.4 - Acquisition of running industrial unit for public purpose - Held: Not justified - Appellant-Company was a running industrial unit even prior to notification u/s.4 - Therefore could not be acquired for a public purpose - No justification in acquiring a running industrial unit for industrialization of the area - Impugned notifications qua the running industrial unit cannot be sustained in law.

(iii) s.4 - Appellant-Company running an industry similar to the public purpose for which lands were being acquired - Location of appellant-Company on the extreme corner of acquired lands - Respondent-State itself excluded more than 76 acres of land - Held: Even if the Government or the authority concerned excludes the lands of appellant-Company, there would not be any difficulty in executing the scheme - Lands of appellant-company ought to have been excluded.

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(2) s.5A.
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LIMITATION ACT, 1963:
Art. 54 - Law of limitation in Union Territory of Pondicherry, erstwhile French Establishment - Suit

for specific performance of contract filed in Pondicherry in 1991 - Suit resisted on the ground of limitation - Applicability of Limitation Act, 1963, vis-à-vis, Article 2262 of the French Code Civil - Held: Limitation Act was passed by the Parliament on 5.10.1963 - Since by that time, Union Territory of Pondicherry had become part of India, Limitation Act automatically extended to the then Pondicherry and consequently, came into force in Union Territory of Pondicherry on 1.1.1964 - Consequently, it is not Article 2262 of French Code Civil that applied to suit in question, but Art.54 of Limitation Act - Said suit having been filed beyond period of limitation prescribed u/Art.54 of Limitation Act, was clearly barred by limitation - French Code Civil - Art. 2262.

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MSR Leathers v. S. Palaniappan

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(Also see Code of Criminal Procedure, 1973)

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(3) s.302 / 304 (Part-II) - Assault with sticks and stones leading to death of a person - Conviction of accused-appellants u/s.302 - Plea for altering conviction from s.302 to s.304 (Part-II) - Held: Not tenable - The manner in which deceased was assaulted and the brutality of assault shows that accused formed an unlawful assembly with the object of killing the deceased - Nature of injuries caused to deceased clearly indicative of accused having had the intention of killing him.

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(4) s. 304 (Part-II) - Prosecution and conviction of accused u/s. 304 by courts below - Held: Intention of accused to kill the deceased not proved beyond reasonable doubt - However, it can be held that he had knowledge that his act was likely to cause

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death - Conviction altered to one u/s. 304 (Part-II) - Sentence of life imprisonment reduced to 7 years.

Kunwar Pal v. State of Uttarakhand 239

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(6) (i) s.376 - Rape - FIR after birth of child - Prosecutrix had previous acquaintance with appellant, he being her elder brother's friend - Conviction of appellant by courts below -Held: The time and place of alleged occurrence, ten months delay in filing FIR and the manner in which it was filed, cast a doubt on prosecution version - Version of a rape victim commands great respect and acceptability, but, if there are some circumstances which cast some doubt in the mind of court about veracity of victim's evidence, then, it is not safe to rely on uncorroborated version of victim of rape - Conviction and sentence imposed on appellant set aside.

(ii) s.375 - Rape - Consent - Meaning of.
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Multi-storeyed flats - Purchased by members of Cooperative Society or shareholders of Company - Right, title, interest over such flats - Nature of - Held: It is a species of property, whether that right

has been accrued under Articles of Association of a Company or through bye-laws of a Cooperative Society - It cannot be said that flat-owners cannot sell, let, hypothecate or mortgage their flats for availing of loan without permission of builder, Society or Company - Right of transfer is incidental to right of ownership and such a right can be curtailed or taken away only by reason of a Statute - There is no error with warrant of attachment issued by DRT on flat in question.

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SENTENCE/SENTENCING:

Conviction u/ss. 148, 324/149 and 326/149 IPC and sentence of 3 years SI by trial court and appellate court - Revisional court upheld the conviction, but reduced the sentence to 3 months on ground of delay in criminal proceedings - Held: It is solemn duty of court to strike a proper balance while awarding sentence - Taking a lenient view showing misplaced sympathy to accused on any consideration reduces the criminal justice system into a mockery - In the instant case, in view of serious nature of injuries on victims, High Court was not justified in reducing the sentence - Penal Code, 1860 - ss. 148, 324/149 and 326/ 149.

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SERVICE LAW:

(1) Appointment/Recruitment/Selection

(I) UPSC recommended names of candidates for appointment - 6 vacancies remained unfilled because of recommended candidates not joining - UPSC was approached to recommend names for 6 vacancies - UPSC recommended only 3 names - Held: Though a person included in the select list, does not acquire any right to be appointed - But the decision of Government not to fill up the advertised vacancies should not be arbitrary or unreasonable - In the instant case, decision of UPSC in forwarding 3 names against requisition for 6 vacancies was inappropriate - Exclusion of names of appellants, even when vacancies were available, has resulted in discrimination - Constitution of India, 1950 - Arts 14 and 16 - Office Memorandum dated 14-7-1967 - Clause 4(c).

Manoj Manu & Anr. v. Union of India & Ors. 8

(II) Compassionate appointment - During pendency of the application, new Scheme came into force providing that all applications pending on the date of the Scheme to be considered for grant of ex-gratia payment to the family instead of compassionate appointment - Compassionate appointment directed by courts below - Held: Courts below not correct in directing the appointment - Mere death of a Government employee in harness does not entitle the family to claim compassionate appointment - The meliorating relief should not be taken as opening an alternative mode of recruitment

to public employment - Courts cannot confer benediction to make appointments on sympathetic grounds when the regulation framed in this respect does not contemplate or cover such appointment - Liberty to applicant to apply for consideration under the new Scheme.

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(2) Pension - Commutation of - Respondent retired from service of appellant-company - Prior to retirement, he had applied for commutation of his pension - 17 years after retirement, grievance raised by respondent in regard to non-receipt of commuted pension amount - Held: Tribunal proceeded in haste in not addressing the dispute in detail - High Court also passed a laconic order - Matter remanded back to High Court for complete and detailed consideration of the matter.

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(3) Voluntary retirement - Employee seeking voluntary retirement under Voluntary Retirement Scheme - During pendency of his application for approval from the competent authority, he did not attend the duty - Application rejected - Held: Employee did not ensure compliance of Regulation 12(b) of Service Regulations which required three months notice as a condition for applying VRS - Acceptance of application was also subject to approval of Competent Authority -Employee having not attended the duty even before approval of his application, would be considered as having voluntarily abandoned the service and there was

no requirement on the part of employer to pass any order on his application - Indian Airlines Service Regulations - Regulation 12(b).

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'Approval' - Meaning of in the context of Service Law.

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