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CODE of CRIMINAL PROCEDURE, 1973:

s. 167 r/w s. 57 – Remand of accused in police custody – On revival of complaint at the instance of a third party and after accused were enlarged on bail by High Court – Held: Grant of order for police remand should be an exception and not a rule and for that investigating agency is required to make out a strong case and must satisfy the Magistrate that without police custody it would be impossible for police authorities to undertake further investigation – Order permitting police remand cannot be treated lightly or casually and strict adherence to the statutory provision is mandatory.

S 167 r/w s. 57 – Police remand – Held: In the instant case, the order for police remand of appellants cannot be sustained for: (i) courts below have overlooked the fact that complainant had entered into a compromise with the alleged accused/appellant in the civil suit and had withdrawn the complaint which was later revived at the instance of a third party who had nothing to do with the complaint and (ii) High Court had granted bail to appellants which clearly had a bearing on the plea seeking police remand — Disclosure of reasons by magistrate allowing police remand specially in a matter when accused has been enlarged on bail by High Court is all the more essential – Constitution of India, 1950 – Art. 21.

s. 167 – Police remand after accused had been granted bail by High Court – Procedure – Held: Correct course for investigating authorities should have been to approach the High Court as power of Magistrate to grant police remand after the accused has been granted bail by the High Court, would cease to exist — Therefore, High Court as also Judicial Magistrate were not legally justified in permitting police remand of appellants even for three days in the wake of the existing facts and features of the matter — Impugned order passed by High Court as also that passed by Judicial Magistrate, permitting police remand of the appellants are set aside—Practice and Procedure.

s.57 r/w s.167 CrPC and Art. 22(2) – Detention of a person by police and period of remand in police custody – Discussed – Constitution of India, 1950 – Arts. 21 and 22(2).

Satyajit Ballulbhai Desai & Ors. v. State of Gujarat 1

Constitution of India, 1950 – Arts.226, 316 and 320 – State Public Service Commission – Appointment of Chairman – Interference u/Art.226 of the Constitution – Scope – Held: High Court should not normally, in exercise of its power u/Art.226, interfere with the discretion of the State Government in selecting and appointing the Chairman of the State Public Service Commission – But in an exceptional case, if it is shown that relevant factors implied from the very nature of the duties entrusted to Public Service Commissions u/Art.320 have not been considered by the State Government in selecting and appointing the Chairman of the State Public Service Commission, the High Court can invoke its wide and extraordinary powers u/Art.226 and quash the selection and appointment to ensure that the discretion of the State Government is exercised within the bounds of the Constitution –On facts, where appointment of ‘H’ as Chairman of the Punjab Public Service Commission was quashed by the High Court while exercising jurisdiction u/Art.226, the materials on record do not indicate that ‘H’ had any knowledge or experience whatsoever either in administration or in recruitment nor do the materials indicate that he had the qualities to perform the duties as the Chairman of the State Public Service Commission u/Art.320 – Decision of the State Government to appoint ‘H’ as the Chairman of the Punjab Public Service Commission was invalid for non-consideration of relevant factors implied from the very nature of the duties entrusted to Public Service Commissions u/Art.320 – Impugned order of High Court accordingly not interfered with.

Constitution of India, 1950 – Art.226 – Power under – Exercise of – Scope – Held: Art.226 vests in the High Court the power to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

Public Service Commission – State Public Service Commission – Appointment of Chairman – Procedure – Implied relevant factors – Held: It is for the Governor who is the appointing authority to lay down the procedure – But in absence of any procedure laid down by the Governor, the High Court would not have absolute discretion – The State Government has to select only persons with integrity and

competence for appointment, because the discretion vested in the State Government u/Art.316 is impliedly limited by the purposes for which the discretion is vested and the purposes are discernible from the functions of the Public Service Commission enumerated in Art.320 – The State Public Service Commission is expected to act with independence from the State Government and with fairness, besides competence and maturity acquired through knowledge and experience of public administration – Even though Art.316 does not specify the aforesaid qualities of the Chairman of a Public Service Commission, these qualities are amongst the implied relevant factors which have to be taken into consideration by the Government while determining the competency of the person to be selected and appointed as Chairman of the Public Service Commission u/Art.316 – Constitution of India, 1950 – Articles 316 and 320.

Public Interest Litigation – Selection of ‘H’ for appointment as Chairman of the Punjab Public Service Commission –Writ petition challenging such appointment – Maintainability – Held: Respondent No.1 filed the writ petition for espousing the cause of the general public of the State of Punjab with a view to ensure that a person appointed as the Chairman of the Punjab Public Service Commission is a man of ability and integrity so that recruitment to public services in the State of Punjab are from the best available talents and are fair and is not influenced by politics and extraneous considerations – Considering the averments in the writ petition, it cannot be held that the writ petition was just a service matter in which only the aggrieved party had the locus to initiate a legal action in the court of law – The writ petition was a matter affecting interest of the general public in the State of Punjab and any member of the public could espouse the cause of the general public so long as his bonafides was not in doubt – When respondent No.1 brought to the notice of the High Court through the writ petition that the State Government of Punjab proposed to appoint ‘H’ as Chairman of the Public Service Commission, only because of his political affiliation, the High Court rightly entertained the writ petition as a public interest litigation.

Practice & Procedure – Reference to larger Bench – Writ petition challenging appointment of ‘H’ as Chairman of the Punjab Public Service Commission – Division Bench of the High Court made academic reference to Full Bench of three Judges of the High Court on specific questions of law – Justification – Held: On facts, justified – No merit in the submission that the Division Bench of the High Court having found in its order that the irregularities and illegalities pointed out in the writ petition against ‘H’ were unsubstantiated, should not have made an academic reference to the larger Bench of the High Court – The Division Bench of the High Court was of the view that the persons to be appointed must have competence and integrity, but how such persons are to be identified and selected must be considered by a Bench of three Judges and accordingly made the reference – Punjab High Court Rules – rr. 6, 7, 8 and 9.

Practice & Procedure – Reference to larger Bench – Scope of reference – Writ petition challenging appointment of Chairman of the Punjab Public Service Commission – Division Bench of the High Court made reference to Full Bench of three Judges of the High Court on specific questions of law relating to procedure for identifying persons of competence and integrity for such appointment – Full Bench, instead of deciding the specific questions, gave directions to the State of Punjab and the State of Haryana to follow a particular procedure for appointment of Members and Chairman of the Public Service Commission till such time a fair, rational, objective and transparent policy to meet the mandate of Art.14 of the Constitution was made – Justification – Held: Not justified – The Full Bench of the High Court decided issues which were not referred to it by the Division Bench of the High Court – It acted beyond its jurisdiction and usurped the constitutional power of the Governor in laying down the procedure for appointment of the Chairman and Members of the Public Service Commission – Constitution of India, 1950 – Art.316.

State of Punjab v. Salil Sabhlok and Ors. 18

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on Sex-Selection) Act, 1994 – ss. 7 and 16A – Discrimination towards female child – Sex Selective Abortion – Misuse of pre-natal diagnostic techniques for elimination of female foetus – Lack of proper supervision and effective implementation of the Act by various States – Directions given for proper and effective implementation of the Act as well as the various directions issued by the Supreme Court – All the State status report within three months – Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on

Sex-Selection) Rules, 1996 – rr.3A and 9(8).

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Maharashtra Control of Organised Crime Act, 1999 (MCOCA) - ss.3(1)(i), 3(2), 3(3), 3(4), 3(5) & 18 - Bomb blasts in local trains of Mumbai Suburban Railways - Two set of cases - Special Case no.21 of 2006 and Special Case no.4 of 2009 - Accused in Special Case no.4 of 2009, different from accused in Special Case no.21 of 2006 - Special Case no.4 of 2009, not jointly tried with Special Case no.21 of 2006 - Confessional statements made by three accused in Special Case no.4 of 2009 before witnesses at serial nos. 64 to 66 holding the rank of Deputy Commissioners of Police - Accused-respondents in Special Case no.21 of 2006, to establish their own innocence, desired to produce the witnesses at serial nos. 64 to 66 in Special Case no. 4 of 2009, and prayed for summoning them as defence witnesses - Prayer declined by trial court - Order set aside by High Court - On appeal, held: In view of the expressed bar contained in s.60 of the Evidence Act, it is not open to the accused-respondents, to prove the confessional statements through the witnesses at serial nos. 64 to 66 - Said witnesses cannot vouchsafe the truth or falsity of the confessional statements - Only those who had made the confessional statements can vouchsafe for the same and may be produced as defence witnesses by the accused-respondents, for their statements would fall in the realm of relevance u/s.11 of the Evidence Act - S.18 of the MCOCA overrides the mandate contained in ss.25 and 26 of the Evidence Act, by rendering a confession as admissible, even if it is made to a police officer (not below the rank of Deputy Commissioner of Police) - However, s.18 of the MCOCA makes such confessional statements admissible, only for "the trial of such person, or co-accused, abettor or conspirator" - It is not the contention of the accused-respondents that the three accused in Special Case no. 4 of 2009 who made confessional statements were the accused themselves along with the co-accused (abettor or conspirator) in Special Case no.21 of 2006 - Ingredients for admissibility of a confessional statement u/s.18 of the MCOCA thus not satisfied - From different angles and perspectives based on the provisions of the Evidence Act and MCOCA, it is inevitable that the accused-respondents cannot be permitted to summon the witnesses at serial nos. 63 to 66 as defence witnesses, in order to substantiate the confessional statements made by the three accused in Special Case no. 4 of 2009, who were not accused/co-accused in Special Case no. 21 of 2006 - Evidence Act, 1872 - ss.60 and 11 - IPC - ss.302, 307, 324, 325, 326, 327, 427, 436, 120B, 121-A, 122, 123, 124A, 201, 212 - Unlawful Activities (Prevention) Act, 1967 - ss.10, 13, 16, 17, 18, 19, 20, 40 - Explosives Act, 1884 - ss.6, 9B - Explosive Substances Act, 1908 - ss.3, 4, 5, 6 - Prevention of Damage to Public Property Act, 1984 - ss.3, 4 - Railways Act, 1989 - ss.151, 152, 153, 154.

Maharashtra Control of Organised Crime Act, 1999 (MCOCA) - s.18 - Confession made to a police officer (not below the rank of Deputy Commissioner of Police) - Admissibility - Held: S.18 of the MCOCA makes such confessional statements admissible, only for "the trial of such person, or co-accused, abettor or conspirator" - Since s.18 of the MCOCA is an exception to the rule laid down in ss.25 and 26 of the Evidence Act, the same has to be interpreted strictly, and for the limited purpose contemplated thereunder - Evidence Act, 1872 - ss.25 and 26.

Criminal trial - Confessional statement - Admissibility of - Discussed, with reference to the provisions of the Evidence Act - Evidence Act, 1872.

STATE OF MAHARASHTRA v. KAMAL AHMED MOHAMMED VAKIL ANSARI & ORS. 129

Judicial service – Complaint against judicial officer – By the accused whose case she was trying – Alleging demand of illegal gratification – Enquiry Officer finding her guilty – High Court on administrative side recommended the State Government imposition of punishment of compulsory retirement – Accordingly the delinquent officer given compulsory retirement – Challenged – Division Bench of High Court rejected the challenge – On appeal, held: Imposition of punishment of compulsory retirement on the delinquent officer is not correct – Complainant was disbelieved by the Enquiry Officer as well as the High Court on various issues – The court wrongly put the burden to prove those negative circumstances on the delinquent officer, while the onus was on the department to prove the charges – In the facts of said that the complainant had ill-will and motive to make allegations against the delinquent officer, the order of punishment is set aside and the delinquent officer is honourably exonerated of all the charges

– Cost imposed on the State to the tune of Rs.5 lakhs to be paid to the delinquent officer – Evidence
– Burden to prove.

Judiciary – Duty of higher judiciary to protect subordinate judiciary – Held: For functioning of democracy, an independent judiciary, to dispense justice without fear and favour, High Court need to protect the honest judicial officers.

Service Law:

Departmental Inquiry – Quasi Criminal/Quasi judicial in nature – Standard of proof – Held in such cases though doctrine of proof beyond reasonable doubt does not apply, but principle of probabilities would apply.

Departmental Inquiry – Evidence /material relied on in preliminary inquiry – Also relied on in regular inquiry – Held: In absence of information in the charge-sheet that evidence/material in preliminary inquiry would be relied on, it was not permissible to rely on the same in regular inquiry – Reliance thereon is violative of principles of natural justice – Natural Justice.

Natural Justice – Applicability of – Held: Natural justice is an inbuilt and inseparable ingredient of fairness and reasonableness – It should be strictly adhered to whenever as a result of an order, civil consequences follow – In certain factual circumstances, even non-observance of the rule would itself result in prejudice.

Judicial Review – Scope of – Held: It is circumscribed and confined to correct errors of law or procedural error, resulting in manifest miscarriage of justice or violation of principles of natural justice – However, the Court should exercise its discretion with great caution keeping in mind the larger public interest.

Nirmala J. Jhala v. State of Gujarat & Anr. 195

Prevention of Corruption Act, 1988 - s.19(1)(c) - Sanction for prosecution - Competent authority - Employee of an undertaking of the State of Uttar Pradesh - Consequently taken on deputation and posted in a undertaking of the State of Uttarakhand - While working there, case lodged against employee-respondent u/s.7 r/w s.13(1)(d) and 13(2) of the Act - Respondent repatriated on the same day to his parent organization by the State Government of Uttarakhand which also granted sanction for his prosecution - High Court quashed prosecution holding that the State Government of the Uttar Pradesh was competent to remove him and to grant necessary sanction, and not the State Government of Uttarakhand - Whether respondent being on deputation to an undertaking of the State Government of Uttarakhand, it had the power to repatriate him which would mean the power of removal from office by the State Government of Uttarakhand - Held, No - The power to repatriate does not embrace within itself the power of removal from office as envisaged u/s.19(1)(c) of the Act - The purport of taking the sanction from the authority competent to remove a corrupt government servant from his office is not only to remove him from his temporary office but to remove him from government service - It was the State Government of the Uttar Pradesh which was competent to remove the respondent and to grant necessary sanction.

Prevention of Corruption Act, 1988 - Office - Meaning of - Repatriation - Effect of - Words and Phrases.

STATE OF UTTARAKHAND v. YOGENDRA NATH ARORA 233

Code of Civil Procedure, 1908 - Order XXII, rule 4(4) - Suit pending before High Court - Death of sole defendant during pendency of the suit - High Court proceeded with the matter ex-parte, as against the sole defendant, without impleading his legal representatives in his place - Justification - Held: On facts, the defendant had filed a written statement but had thereafter failed to appear and contest the suit - High Court had taken a conscious decision u/Order XXII Rule 4(4), to proceed with the matter ex-parte as against interests of such a defendant, without first requiring the plaintiff to implead the legal representatives of the deceased defendant - This was clearly permissible u/ Order XXII Rule 4(4) - It was done on the High court's satisfaction, that it was a fit case to exempt the plaintiff from the necessity of impleading legal representatives of the sole defendant - Determination of the High Court, with reference to Rule 4(4), accordingly, upheld.

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Hindu Succession Act, 1956 – s.14(2) – ‘Life interest’ created in favour of a Hindu female – Under a ‘Will’ executed prior to commencement of the Act – Held: After commencement of the Act, the ‘life interest’ would not stand converted to ‘absolute title’.	
Words and Phrases – Expression ‘destitute’ – Meaning of, in the context of Succession.	
Shivdev Kaur (D) By Lrs. & Ors. v. R.S. Grewal	267
Code of Criminal Procedure, 1973 – s.482 – Complaint case – Issuance of summons – Quashing of – Respondent no.1-company dealt with securities and were registered stock brokers and agents – Appellant opened a Demat Account with respondent no.1-company – Respondent nos.2 to 7 were Managing Director, Company Secretary and Directors of respondent no.1-company – Complaint filed by appellant alleging that the respondents committed criminal breach of trust and cheating, inasmuch as they sold off 8,76,668 shares of the appellant and misappropriated the entire sale proceeds – Metropolitan Magistrate summoned the respondents to face trial under ss.415, 409, 34, 120B – Criminal proceedings initiated against respondent nos.2 to 7 – Quashed by High Court – Justification – Held: Justified – Order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto – Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record – On facts, the order passed by the Magistrate reveals that two witnesses were examined by the complainant but none of them specifically stated as to which of the accused committed breach of trust or cheated the complainant except general and bald allegations made therein – In the order issuing summons, the Magistrate did not record his satisfaction about the prima facie case as against respondent Nos.2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors of the company which is sine qua non for initiating criminal action against them – Issuance of summons against respondent Nos.2 to 7 was therefore illegal and amounted to abuse of the process of law – Penal Code, 1860 – ss. 415, 409, 34 and 120B.	
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