

CONTENTS

Atmaram v. State of U.P.	.....	513
AVK Traders (M/s.) v. Kerala State Civil Supplies Corporation Ltd.	.....	562
Batra (G.L.) v. State of Haryana and Others	.....	431
Commissioner of Income tax v. M/s Excel Industries Ltd.	.....	490
Devendra Patel v. Ram Pal Singh & Ors.	.....	291
Dulcina Fernandes & Ors. v. Joaquim Xavier Cruz & Anr.	.....	480
Escorts Limited (M/s.) v. Rama Mukherjee	.....	339
Girraj Prasad Meena v. State of Rajasthan & Ors.	.....	393
Kishan Ram & Ors. v. State of Uttarakhand	.....	405
Krishna Reddy (L.) v. State by Station House Officer & Ors.	.....	521
Mak Data P. Ltd. v. Commissioner of Income Tax-II	.....	570
Mansoor (M.) & Anr. v. United India Insurance Co. Ltd. & Anr.	.....	421

Nagoor Pichai @ Badusha v. State Tr. Sub-Inspector of Police	.....	356
ONGC Ltd. v. M/s. Modern Construction and Co.	.....	466
Pinakin Mahipatray Rawal v. State of Gujarat	.....	306
Rajesh Talwar (Dr.) and Anr. v. C.B.I. and Anr.	.....	504
Shree Mahavir Carbon Ltd. (M/s.) v. Om Prakash Jalan (Financer) & Anr.	.....	541
Soma Suresh Kumar v. Government of Andhra Pradesh & Ors.	.....	328
Somdev Kapoor v. State of West Bengal & Ors.	.....	452
State of Bihar & Anr. v. Lalu Singh	.....	552
State of Orissa v. Kanhu Charan Majhi	.....	530
State of Rajasthan v. Girdhari Lal	.....	443
Sushila Devi v. State of Rajasthan and Ors.	.....	379
Union of India & Ors. v. B. Banerjee	.....	296
Yash Deep Trexim Private Limited v. Namokar Vinimay Pvt. Ltd. & Ors.	.....	366

SUBJECT-INDEX**ANDHRA PRADESH PROTECTION OF****DEPOSITORS OF FINANCIAL
ESTABLISHMENTS ACT, 1999:**

ss. 2, 3, 5, 8 and 9 - Writ petition u/Art. 32 - Challenging constitutional validity of the Act - On the ground of legislative competence of State Legislature - Held: Bank in question comes within the definition of 'financial establishment' u/s. 2(c) - It does not fall in the category of institutions excluded from the purview of s.2(c) - The object and purpose as well as provisions of the Act are *pari materia* with similar Acts of Maharashtra, Tamil Nadu and Pondicherry, constitutional validity whereof has been upheld - Therefore, the Act is held as constitutionally valid - Constitution of India, 1950 - Seventh Schedule - List-I, Entry 45, List-II, Entry 32 - Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 - Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999 - Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004.

Soma Suresh Kumar v. Government of Andhra Pradesh & Ors.

..... 328

BAIL:

Grant of - Validity - Assault with a sharp edged weapon and lathis - Four victims - All suffered serious injuries - One died - Case registered u/ ss.147,148,149,323,325,302 IPC - Respondent and three co-accused denied bail by Sessions

(iii)

Judge - High Court, however, granted them bail - Held: Keeping in view criminal antecedents of respondent as well as specific role assigned against him, and the plea of the State that respondent violated the terms of his bail by threatening or intimidating witnesses, it was incorrect and imprudent for High Court to grant him bail at least till such time as examination of eye witnesses had been completed - Accordingly, bail of respondent cancelled - Alleged role ascribed to one co-accused identical in material particulars to that of respondent, both of whom allegedly were armed with sharp edged weapons - High Court erred in granting bail to that co-accused as well - Other two co-accused were not armed with sharp edged weapons but with lathis/dandas - Bail order in respect of them accordingly not interfered with.

Atmaram v. State of U.P. 513

BIHAR POLICE MANUAL:

r. 431(b).

(See under: Code of Criminal Procedure, 1973)

..... 552

**CIRCULARS/GOVERNMENT ORDERS/
NOTIFICATIONS:**

Circular dated 28.9.2005 issued by Excise Commissioner, West Bengal.

(See under: West Bengal Excise (Selection of New Sites and Grant of Licence for Retail Sale of Liquor and Certain Other Intoxicants)

Rules, 2003) 452

CODE OF CIVIL PROCEDURE, 1908:

(1) O. 7 r.10 - Plaint returned - To be presented before court of competent jurisdiction - Suit before court of competent jurisdiction de

(v)

the defendant to pay interest on decretal amount from the date of filing of suit - Payment of interest from the date of filing of suit before court of competent jurisdiction - Claim of interest by decree-holder from the date of suit filed before the court, not having jurisdiction - Held: Once plaint was returned under O. 7 r.10 and presented before court of competent jurisdiction, subsequent suit was a fresh suit and not continuation of previous suit - Decree-holder cannot be permitted to take advantage of his own mistake of instituting suit before wrong court - So, not entitled to interest from date of presenting the plaint before wrong court.

ONGC Ltd. v. M/s. Modern Construction and Co. 466

(2) O. 22, r.10 - Devolution of interest during pendency of suit - Suit instituted by partnership firm consisting of two partners - One of them died - Subordinate court allowed amendment sought by the sole surviving partner (appellant) and permitted him to proceed with the suit as a proprietary concern - Held: Justified - Court can grant leave to prosecute the suit against the person to or upon whom such interest has been devolved - On facts, the partner who died was none other than the father of appellant, and the other heir of deceased partner was sister of appellant who was not interested in joining the firm - Therefore, there was complete devolution of interest in favour of appellant.

M/s. AVK Traders v. Kerala State Civil Supplies Corporation Ltd. 562

CODE OF CRIMINAL PROCEDURE, 1973:

(1) s.173 - State of Bihar - Criminal Investigation

(vi)

Department (CID) - Whether Inspector of C.I.D. can be treated in law as officer-in-charge of the police station for purpose of submitting the report contemplated u/s.173(2) - Held: r.431(b) envisages that an Inspector of C.I.D. can exercise the power of an officer-in-charge of a police station - Once it is held that Inspector of C.I.D. can exercise the power of an officer-in-charge of a police station, its natural corollary is that Inspector of C.I.D. is competent to submit the report as contemplated u/s.173 - Bihar Police Manual - r.431(b) - Police Act, 1861 - ss. 7 and 12.

State of Bihar & Anr. v. Lalu Singh 552

(2) s.227.

(See under: Penal Code, 1860) 521

(3) s. 233 r/w s.91 - Application u/s.233 r/w. s.91 by accused seeking reports of scientific test conducted on 3 persons who were initially suspected accused in the case - Application disposed of by trial court - Petition u/s.482 seeking the reports, rejected by High Court on the ground that application was vexatious and intended to delay the proceedings - Held: Criminal courts are not obliged to accede to request made by any party to entertain and allow application for additional evidence, and are bound in terms of s.233(3) Cr.P.C. to refuse such request, if it appears that they are made in order to vex the proceedings or delay the same - In the facts of the case, it is evident that accused have been adopting dilatory tactics.

Dr. Rajesh Talwar and Anr. v. C.B.I. and Anr. 504

(4) (i) s.252 and Chapter XXI-A - FIR u/s. 365 IPC - Alleging offence of kidnapping against 7 persons

(vii)

- Police filed charge-sheet u/s.323 and 343 r/w. s.34 IPC only against two accused - Both the accused filed application pleading guilty of offences charged - Trial court without notice to victim convicted the accused u/ss.323 and 343 r/w. s.34 IPC and concluded the trial same day - Application u/s. 482 by appellant dismissed by High Court - Held: Order of trial court stands vitiated as it proceeded not only in great haste but adopted a procedure not known in law - Court was obliged to put the victim to notice before extending the benefit to accused persons.

(ii) s. 216 - Finality of charges - Filing of charge-sheet and taking cognizance has nothing to do with finality of charges, as charges can be altered, amended, changed and added at any stage upto the stage of conviction.

Girraj Prasad Meena v. State of Rajasthan & Ors. 393

(5) s.482.
(See under: Judgment) 541

COMPENSATION:

(See under: Motor Vehicles Act, 1988) 480

CONSTITUTION OF INDIA, 1950:

(1) Arts. 316 and 14 - Appointment as Chairman of State Public Service Commission - Of the Government servant who was drawing wages at a higher level than the wages fixed under Regulations governing service conditions of Public Service Commission - Remuneration of Chairman refixed in view of his last pay drawn in government service by relaxing the relevant rule - Subsequently, benefit withdrawn by State Government - Propriety of - Held: The benefit granted to the Constitutional

(viii)

appointee by relaxing the regulation, could not have been withdrawn by State Government - Especially when master and servant relationship not established between Constitutional appointee and State Government - Withdrawal of benefit was discriminatory and violative of Art. 14 - Haryana Public Service Commission (Conditions of Service) Regulations, 1972 - Regulation 6.

G.L. Batra v. State of Haryana and Others 431

(2) Seventh Schedule - List-I, Entry 45, List-II, Entry 32.

(See under: Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999) 328

CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860) 306, 443 and 521

CRIMINAL TRIAL:

(See under: Code of Criminal Procedure, 1973) 504

ELECTION LAWS:

'Candidate'.
(See under: Representation of the People Act, 1951) 291

EVIDENCE ACT, 1872:

(1) s.113A.
(See under: Penal Code, 1860) 306

(2) ss.113A and 113B.
(See under: Penal Code, 1860) 443

FAMILY LAW:

Matrimonial Law - Extra Marital relationship -
Meaning of - Held: Extra-marital relationship as

such is not defined in IPC.

Family Law - Matrimonial Law - Alienation of affection by stranger - Anglo-Saxon common law on alienation of affection - Applicability - Held: It does not have much roots in India, the law being still in its nascent stage.

Family Law - Matrimonial Law - Alienation of affection by stranger - Liability - When arises - Held: A person is not liable for alienation of affection for merely becoming a passive object of affection - The liability arises only if there is any active participation, initiation or encouragement on the part of defendant - Acts which lead to loss of affection must be wrongful, intentional, calculated to entice the affection of one spouse away from the other, in order to support a cause of action for alienation of affection - For proving a claim for alienation of affection, it is not necessary for a party to prove an adulterous relationship - On facts, third person did not intrude into the family life of the couple and court on evidence acquitted her of all the charges levelled against her - Consequently, it cannot be said that third person had in any way contributed or abetted the deceased in committing the act of suicide, or had attempted to alienate the affection of husband towards his deceased wife.

Pinakin Mahipatray Rawal v. State of Gujarat 306

HARYANA PUBLIC SERVICE COMMISSION
(CONDITIONS OF SERVICE) REGULATIONS,
1972:

Regulation 6.

(See under: Constitution of India, 1950) 431

INCOME TAX ACT, 1961:

(1) s.28(iv) - 'Advance licence benefit' and 'duty

entitlement pass book benefit' under import export policy - Taxability of - relevant assessment year - Whether the year of receipt of benefit or the year in which such benefits are actually utilized - Held: Income becomes taxable when it is accrued - Income tax cannot be levied on hypothetical income - Income can be said to have accrued when it becomes due and is accompanied by a corresponding liability of the other party to pay the amount - The benefits could be hypothetical income until goods are actually imported and made available for clearance - Therefore, assessment of assessee u/s.28(iv) in the facts of the case, not correct.

Commissioner of Income tax v. M/s Excel Industries Ltd. 490

(2) s.271 r/w s.274 - Explanation 1 to s.271(1)(c) - Scope of - Concealment of income - Penal proceedings against appellant - Challenge to - Held: Explanation to s.271(1) raises a presumption of concealment, when a difference is noticed by AO, between reported and assessed income - Burden is then on assessee to show otherwise, by cogent and reliable evidence - When initial onus placed by Explanation, is discharged by him, onus shifts on Revenue to show that amount in question constituted income and not otherwise - The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty - On facts, surrender of income by appellant-assessee was not voluntary in the sense that offer of surrender was made in view of detection made by AO in search conducted in the sister concern of assessee - AO had recorded a categorical finding that he was satisfied that assessee had c

(xi)

particulars of income and was liable for penalty proceedings under s.271 r/w s.274 - No illegality found in department initiating penalty proceedings against appellant-assessee.

Mak Data P. Ltd. v. Commissioner of Income Tax-II 570

INVESTIGATION:

Monitoring of investigation - By Supreme Court - Investigation by CBI under monitoring of Supreme Court - Continuance of monitoring pleaded even after charge-sheet filed and trial commenced - Held: Monitoring is not permissible after investigation is complete and charge-sheet filed.

Sushila Devi v. State of Rajasthan and Ors. 379

JUDGMENTS/ORDERS:

Reasoned judgment - Need for - Held: Court while recording a decision, is supposed to record sufficient reasons for taking the decision or arriving at a particular conclusion - In the instant case, High Court, set aside the order of subordinate criminal court without assigning any reason as to how it reached the conclusion that dispute was of civil nature - Matter remanded to High Court - Code of Criminal Procedure, 1973 - s.482 - Penal Code, 1860 - ss.420/406/468/471.

M/s. Shree Mahavir Carbon Ltd. v. Om Prakash Jalan (Financer) & Anr. 541

JUDICIAL PROPRIETY:

Judgment by co-ordinate Bench - Over-ruling the judgment of another co-ordinate Bench - Held: Not proper - Appropriate course in such case is, to refer the matter to larger Bench.

G.L. Batra v. State of Haryana and Others 431

(xii)

JURISDICTION:

(See under: Negotiable Instruments Act, 1881) 339

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

(See under: Tamil Nadu Borstal Schools Act, 1925) 356

LIQUOR:

(See under: West Bengal Excise (Selection of New Sites and Grant of Licence for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003) 452

MAHARASHTRA PROTECTION OF INTERESTS OF DEPOSITORS (IN FINANCIAL ESTABLISHMENTS) ACT, 1999:

(See under: Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999) 328

MAXIMS:

'*Actus curiae neminum gravabit*' - Applicability.

ONGC Ltd. v. M/s. Modern Construction and Co. 466

MOTOR VEHICLES ACT, 1988:

(1) s.166 - Claim under - Adjudication of - To be on the touchstone of preponderance of probability - Deceased was riding a scooter which got hit by pick-up van driven by first respondent - Claims Tribunal assessed compensation at Rs. 6.66 lakhs, but ultimately rejected the claim citing that accident had occurred on account of negligence of deceased - Order affirmed by High Court - Held: Evidence before Tribunal was recorded seven years after accident - Keeping in view

jurisdiction exercised by Tribunal, it was not correct on its part to hold against claimants for their failure/inability to examine the pillion rider as a witness, more particularly in view of the hapless condition in which claimants must have been placed after death of their sole breadwinner and sufficiently long period of time that had lapsed in the meantime - Further, Tribunal failed to appreciate the evidence on record in its proper perspective - High Court failed to notice the lacunae in the award of Tribunal - Case fit for interference by Supreme Court - Accident in question occurred due to rash and negligent driving of pick-up van by first respondent - Claimants-appellants entitled to compensation as quantified by Tribunal alongwith interest @ 6% p.a. with effect from date of award of Tribunal.

Dulcina Fernandes & Ors. v. Joaquim Xavier Cruz & Anr. 480

(2) s.166 - Fatal accident - Claim for compensation - By parents of deceased - Tribunal granted compensation by deducting 1/3 towards personal and living expenses of deceased and by applying multiplier of 17 - High Court reduced compensation amount by using multiplier of 12 - Held: In view of the facts that deceased was bachelor and claimants were his parents, deduction towards personal and living expenses should have been 50% and not 1/3rd - Since deceased was 24 years of age, multiplier of 18 ought to have been applied - Compensation amount determined by deducting 50% towards personal and living expenses and by applying multiplier of 18 - In addition, compensation paid towards loss of love and affection and ritual expenses.

M. Mansoor & Anr. v. United India Insurance Co. Ltd. & Anr. 421

NEGOTIABLE INSTRUMENTS ACT, 1881:

s.138 - Dishonour of cheque - Jurisdiction to try offence u/s.138 - Held: Court within the jurisdiction whereof, dishonoured cheque was presented for encashment, would have jurisdiction to entertain the complaint filed u/s.138.

M/s. Escorts Limited v. Rama Mukherjee 339

NOTICE:

(See under: Code of Criminal Procedure, 1973) 393

ORISSA CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES, 1962:

rr. 31 and 32 - Review - Of the order passed by Government authorities, dropping disciplinary proceedings against respondent-employee - Permissibility - Held: An order passed by Government authorities can be reviewed under rr. 31 and 32 - Under r. 32 it can be reviewed within a period of 6 months - Under r. 31, it can be reviewed by Governor, for which the rule does not prescribe any limitation - In the instant case, review of order dropping the disciplinary proceedings, can be said to have been passed by Governor u/r.31 in view of rr.11 and 12 of Orissa Government Rules of Business - Though r.31 does not prescribe any limitation period, power should be exercised within reasonable period - Review of order after a period of 5 years cannot be said to be reasonable period - So, the review was rightly held bad by courts below - In view of peculiar circumstances of the case, on principle of 'no work no pay' direction not to pay back-wages, but to pay pension on the basis of last pay actually drawn by him from the date on which employee would have been superannuated -

Orissa Government Rules of Business - rr.11 and 12.

State of Orissa v. Kanhu Charan Majhi 530

ORISSA GOVERNMENT RULES OF BUSINESS:

rr.11 and 12.

(Service Law) 530

PENAL CODE, 1860:

(1) s.302.

(See under: Tamil Nadu Borstal Schools Act, 1925

..... 356

(2) s. 302 r/w s.149 and s.147 - Murder - Assault with lathis leading to death - Five accused including three appellants - Conviction of appellants by courts below - Held: On facts, justified - Evidence of three eye-witnesses as corroborated by statement in FIR within four hours of incident clearly establish that five accused persons including three appellants had assaulted the deceased with lathis when his hands and legs were tied with a rope - Other witnesses supported prosecution case - Delay of four hours in lodging of FIR sufficiently explained - Oral testimony of eye-witnesses, recovery of rope from the spot and medical evidence establish beyond reasonable doubt that five accused persons tied hands and legs of deceased and gave him jointly 27 injuries with lathis - So, common object of assembly was to commit offence punishable u/ s.302 - Trial court and High Court rightly convicted appellants u/s.302 r/w s.149, IPC.

Kishan Ram & Ors. v. State of Uttarakhand 405

(3) ss.302, 498A r/w s.34 - Charges under - Abated qua husband-accused due to his death - Parents-

in-law (accused) discharged - Held: In the facts of the case, prima facie case not made out against the accused-parents in law - They were rightly discharged - Code of Criminal Procedure, 1973 - s.227.

L. Krishna Reddy v. State by Station House Officer & Ors. 521

(4) (i) ss.306 and 304B - Death of married woman due to burn injuries within 7 years of marriage - Conviction of accused-husband u/s. 304-B and sentence of life imprisonment - Converted by High Court to s.306 and sentence reduced to five years imprisonment - Held: No specific allegation as to whether accused demanded dowry - No evidence on record to come to definite conclusion that soon before her death, deceased was subjected to cruelty or harassment by accused for, or in connection with any demand of dowry - In absence of such ingredient, presumption that accused had caused dowry death cannot be drawn - However, it is established from ocular and documentary evidence that deceased was subjected to cruelty and harassment by accused, as a result, she was driven to meet suicidal death - High Court rightly presumed, having regard to all other circumstances of the case, that such suicidal act had been abetted by accused and convicted him u/s.306 - Evidence Act, 1872 - ss.113A and 113B.

(ii) s.304B - Offence under - Main ingredient - Held: The main ingredient of the offence u/s.304B which is required to be established by State is whether "soon before her death" deceased was subjected to cruelty and harassment by her husband, "for or in connection with demand of dowry", to allege

"dowry death" - Period which can come within the term "soon before" cannot be put within four corners of time frame - It is left to court for its determination depending upon facts and circumstances of each case.

State of Rajasthan v. Girdhari Lal 443

(5) ss.420/406/468/471.

(See under: Judgment) 541

(6) ss. 498A and 306 - Married woman committing suicide within 7 years of marriage, allegedly due to extra-marital relationship between her husband and his colleague - Suicide note left by deceased - Conviction of husband u/ss. 498A and 306 - Held: On facts, not justified - Husband did not ill-treat the wife, either physically or mentally or by demanding dowry and both were living in the matrimonial home till the date wife committed suicide - Prosecution did not discharge the burden that husband had instigated, conspired or intentionally aided so as to drive the wife to commit suicide or that the alleged extra-marital affair was of such a degree which was likely to drive the wife to commit suicide - Besides, suicide note completely exonerates husband, which states that he was not responsible for death of deceased - Evidence Act, 1872 - s.113A.

Pinakin Mahipatray Rawal v. State of Gujarat 306

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995:

s.47.

(See under: Service Law) 296

POLICE ACT, 1861:

ss. 7 and 12.

(See under: Code of Criminal Procedure, 1973) 552

PONDICHERRY PROTECTION OF INTERESTS OF DEPOSITORS IN FINANCIAL ESTABLISHMENTS ACT, 2004:

(See under: Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999) 328

PROBATION OF OFFENDERS ACT, 1958:

s.12 - Conviction of accused u/ss. 323 and 343 r/ w. s.34 IPC, on their having pleaded guilty - Further held that conviction would not affect their Government service - Held: Trial court had no competence to make any observation having civil consequences.

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

Girraj Prasad Meena v. State of Rajasthan & Ors. 393

PUBLIC INTEREST LITIGATION:

(See under: West Bengal Excise (Selection of New Sites and Grant of Licence for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003) 452

RAILWAY ESTABLISHMENT MANUAL:

Volume-I - Running Allowance Rules, 1981 - rr. 902, 903, 905 and 907.
(See under: Service Law) 296

REFERENCE TO LARGER BENCH:

(See under: Judicial Propriety) 421

REPRESENTATION OF THE PEOPLE ACT, 1951:

ss.79(b) and 82(b) - Person whose nomination rejected, whether can be considered as a 'candidate' for the purpose of s.82(b) - Held: Where nomination of person is rejected on the ground of such person being disqualified, he is neither a duly nominated candidate nor can he claim to be duly nominated candidate, within the meaning of s.79(b) - Therefore, he cannot be considered as 'candidate' for the purpose of s.82(b).

Devendra Patel v. Ram Pal Singh & Ors. 291

RUNNING ALLOWANCE RULES, 1981:

rr. 902, 903, 905 and 907.

(See under: Service Law) 296

SERVICE LAW:

(1) Allowance in lieu of kilometrage (ALK) - Entitlement - To medically decategorised Driver, working as Crew Controller with stationary duties - Held: Running Allowance is to be paid only to running staff engaged in actual movement of trains or to the staff temporarily assigned stationary duties who are likely to go back and perform running duties - Medically decategorised Driver, in stationary duty, since not falling in either of the categories, not entitled to Running Allowance (ALK) - Running Allowance to which the medically decategorised staff was entitled, while a member of running staff, has been protected as part of his pay in the post of Crew Controller - Such act of appellant is in compliance with provisions of s.47 of Disabilities Act - Railway Establishment Manual-Volume-I - Running Allowance Rules, 1981 - rr.902, 903, 905 and 907 - Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - s.47.

Union of India & Ors. v. B. Banerjee 296

(2) (See under: Orissa Civil Services (Classification, Control and Appeal) Rules, 1962) 530

SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985:

s.3(o) - Applicability of the Act - To foreign companies registered in India - Held: In view of object and scheme of the Act and financial health of company in question, company does not fall within ambit of expression 'sick industrial company' defined u/s. 3(o) - So, provisions of the Act do not apply - The question whether the Act applies to foreign companies registered in India, is left open.

Yash Deep Trexim Private Limited v. Namokar Vinimay Pvt. Ltd. & Ors. 366

SUIT:

Date of filing of suit.

(See under: Code of Civil Procedure, 1908) 466

TAMIL NADU BORSTAL SCHOOLS ACT, 1925:

(i) ss. 2(1), 8 and 10 - Petitioner convicted u/s.302 IPC for murder and sentenced to life imprisonment - He was over 19 years of age on the date of incident, and 22 years 9 months old on the date of conviction - Plea for detention of petitioner in a Borstal School - Held: Definition of 'adolescent offender' in s.2(1) of Borstal Schools Act stipulates requirement of being not less than 16 years but not more than 21 years of age on the date of conviction - Petitioner being over 21 years on the date of his conviction, it would not be advisable to detain him in a Borstal School as he may detrimentally influence younger persons - No impediment or legal impropriety in his having to undergo his sentence in an ordinary

not entitled to bail - Juvenile Justice (Care and Protection of Children) Act, 2000 - Penal Code, 1860 - s.302.

(ii) ss. 2(1) and 8 - Definition of 'adolescent offender' - Distinction between 'adolescent' and 'juvenile' - Discussed.

(iii) Tamil Nadu Borstal Schools Act, 1925 - Borstal School - Held: Is a halfway house intended to prepare a person for imprisonment in a regular/ordinary jail.

(iv) Tamil Nadu Borstal Schools Act, 1925 - Provisions of - Difference from provisions of the Juvenile Justice Act - Held: Borstal Schools Act merely concerns detention of a convict, whereas Juvenile Justice Act deals with detention as also punishment or sentence that can be imposed - Juvenile Justice (Care and Protection of Children) Act, 2000.

Nagoor Pichai @ Badusha v. State Tr. Sub-Inspector of Police 356

TAMIL NADU PROTECTION OF INTERESTS OF DEPOSITORS (IN FINANCIAL ESTABLISHMENTS) ACT, 1997:

(See under: Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999) 328

WEST BENGAL EXCISE (SELECTION OF NEW SITES AND GRANT OF LICENCE FOR RETAIL SALE OF LIQUOR AND CERTAIN OTHER INTOXICANTS) RULES, 2003:

r.8 (as amended in 2004) - Application made in 1992 for issuance of licence for retail sale of liquor - Granted in 2006 - High Court held that licence

was in violation of amended r.8 which prohibited grant of licence for retail sale of liquor at a new site within 1000 feet from educational institutions/religious places - Plea that application having been made in 1992 rules applicable at that time were applicable and not subsequent amended rules - Held: Rules which are prevalent on the date when application is considered are to be applied and not the date when application is made - On the basis of amended new Rules, appellant could not have been granted the licence - West Bengal Excise Rules, 1993 - r.8 - Circular dated 28.9.2005 issued by Excise Commissioner, West Bengal.

Somdev Kapoor v. State of West Bengal & Ors. 452

WEST BENGAL EXCISE RULES, 1993:

r.8.
(See under: West Bengal Excise (Selection of New Sites and Grant of Licence for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003) 452

WORDS AND PHRASES:

(1) 'Reasoning' - Meaning of.
M/s. Shree Mahavir Carbon Ltd. v. Om Prakash Jalan (Financer) & Anr. 541
(2) Term "soon before" - Meaning of.
(See under: Penal Code, 1860) 443