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SUBJECT-INDEX**ADMINISTRATION OF JUSTICE:**

Criminal justice - Suppression of fact by accused
 - Fraud on court - Cognizance of offences by Magistrate - Charges framed by Sessions Judge
 - Order of quashment of summons obtained by accused-respondent from another Sessions Judge hearing revision against the order of Magistrate, by calculated concealment of facts - Held: Though respondent was fully aware about the fact that charges had been framed against him by Sessions Judge, yet he did not bring the same to the notice of the other Sessions Judge hearing revision against order of Magistrate taking cognizance - As order of quashment of summons was obtained by practising fraud and suppressing material fact before a court of law to gain advantage, power u/ Art. 142 of the Constitution invoked to do complete justice between the parties - Order of quashment of summons set aside - Order framing charges restored - Trial directed to continue - Penal Code, 1860 - ss. 307, 323, 324 and 341 - Maxims - "*supressio veri, expression fairsi*" - Constitution of India, 1950 - Art. 142.

Moti Lal Songara v. Prem Prakash @ Pappu and Anr. 496

APPEAL:

(1) Appeal against acquittal - Scope of interference.
 (Also see under: Penal Code, 1860)

Bhadragiri Venkata Ravi v. Public Prosecutor High Court of A. P., Hyderabad 529

(2) Appeal against conviction and appeal against acquittal - Distinction between - Discussed.
 (Also see under: Penal Code, 1860)

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ARBITRATION AND CONCILIATION ACT, 1996:

s.11, 13 and 34 - Party to a dispute invoking the jurisdiction of International Chamber of Commerce (ICC) and appointment of arbitrator pursuant thereto - Entitlement of the other party to proceed in terms of s.11(6) in such a situation - Held: Where in terms of agreement, arbitration clause has already been invoked by one of the parties thereto under ICC Rules, provisions of s.11(6) cannot be invoked again, and, in case other party is dissatisfied or aggrieved by appointment of an Arbitrator in terms of agreement, his/its remedy would be by way of a petition u/s.13, and, thereafter, u/s.34 - On facts, respondent was entitled to invoke Rules of Arbitration of the ICC for the conduct of arbitration proceedings - Once provisions of ICC Rules of Arbitration had been invoked by respondent, proceedings initiated thereunder could not be interfered with in a proceeding u/s.11 - International Chamber of Commerce Rules.

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CALTEX [ACQUISITION OF SHARES OF CALTEX OIL REFINING (INDIA) LTD. AND OF THE UNDERTAKINGS IN INDIA OF CALTEX (INDIA) LIMITED] ACT 1977:
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(See under: Orissa Municipal Act, 1950) 420

CODE OF CRIMINAL PROCEDURE, 1973:
s.190(1)(b) - Order of Magistrate taking cognizance against accused-respondent - Held: On facts, cannot be found fault with - Magistrate took cognizance on the basis of facts brought to his notice by the appellant-informant and, therefore, he, in fact, exercised power u/s.190(1)(b) - Penal Code, 1860 - ss. 307, 323, 324 and 341.
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COMPANY LAW:
(i) Listed companies - Corporate Governance and Directors - Obligations of Directors - Held: Obligations of Directors in listed companies are particularly onerous - Over-riding obligation of Directors to approve accounts only if they are satisfied that they give true and fair view of profits or loss for the relevant period and correct financial position of company.
(ii) Company Law - Disclosure and transparency - Requirement of - Held: Companies Act casts an

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obligation on company registered under Companies Act to keep Books of accounts to achieve transparency - Disclosure of information about company is crucial for accurate pricing of company's securities and for market integrity - Records maintained by company should show and explain company's transactions, it should disclose with reasonable accuracy the financial position, at any time - Accounts to give a true and fair view.
(Also see under: Securities and Exchange Board of India Act, 1992)

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CONSTITUTION OF INDIA, 1950:
(1) Art.141 - Law declared by Supreme Court - State Legislative Assembly elections - Appellant declared elected defeating his nearest rival, the respondent - Respondent filed election petition on ground of corrupt practice of booth capturing - Respondent also moved I.A. alleging double voting claiming it to be a facet of booth capturing, and praying for calling of records of voters' counterfoils (in Form 17A) - Single Judge of High Court called for such records, but that order set aside by Supreme Court on ground that impersonation and double voting would amount to deception and it will be a facet of improper reception of votes and not booth capturing - Notwithstanding the judgment of Supreme Court, subsequently, single Judge of High Court directed registers of voters (Form 17A) to be sent to FSL for scientific examination and verification of signatures/finger prints and after examination of court witnesses including finger print expert, and defence witnesses, a

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petition - Further, single Judge held that respondent had received more votes, and therefore, declared him as elected - Held: Single Judge of High Court clearly transgressed limits of his jurisdiction by going into counterfoils of voters inspite of the fact that Supreme Court had already ruled in the facts of the case, that no case was made out for calling for the counterfoils - This amounts to judicial indiscipline and disregard of the mandate of Art. 141 of the Constitution - Election petition was filed only on the ground of booth capturing which was not established - Single Judge entered into an impermissible exercise - Representation of the People Act, 1951 - s.123 (8) r/w s.135A and s.100 (1) (d) (iii) - Judicial discipline.

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(3) Part IX-A - Arts. 243-ZC and 243-ZF, 244 and Fifth Schedule, items 5(1) and 6(1) - Applicability of Orissa Municipal Act - To the Scheduled area - After coming into force of Part IX of the Constitution w.e.f. 1st June 1993 - Held: In view of s.243-ZC, Part IX-A of the Constitution was not applicable to Scheduled area in question - But the Act was made applicable to the area w.e.f. 31st May, 1994 by issuance of a public Notification issued by Governor in exercise of its power conferred under Clause 5(1) of Fifth Schedule to the Constitution - In view of s.243ZF, Municipal Act can be applicable to Scheduled area even beyond the period of one year, if it is not inconsistent with provisions of Part IX-A - Since no provision of the Act is shown to be

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inconsistent with provisions of Part IX-A, it would be applicable to Schedule area in question even beyond the period of one year - Orissa Municipal Act, 1950 - Notification SRO No. 743/1995 dated 14-8-1995.

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CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860) 434
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CRIMINAL TRIAL:

(See under: Administration of Justice) 496

EVIDENCE:

(1)(i) Circumstantial evidence - Held: In a case based on circumstantial evidence, where no eye-witness account is available, when an incriminating circumstance is put to accused and accused either offers no explanation for the same, or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.

(ii) Last seen theory - Duty of accused to give explanation - Held: In cases where accused has been seen last with deceased victim, it becomes the duty of accused to explain the circumstances under which the death of victim has occurred.

(iii) Medical evidence - Strangulation - Proof of. (Also see under: Penal Code, 860)

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(2) Confession - Extra-judicial Confession - Held: If extra-judicial confession is voluntary and made in a fit state of mind, it can be relied upon along with other materials.

(Also see under: Penal Code, 1860)

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(3)(i) Witness - Held: All witnesses of prosecution need not be called - But witnesses essential to unfolding of narrative on which prosecution is based must be called by prosecution.

(ii) Confession - Extra-judicial confession - Admissibility of.

(Also see under: Penal Code, 1860)

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EVIDENCE ACT, 1872:

(1) s.32 - Multiple dying declarations - Appreciation of.

(Also see under: Penal Code, 1860)

Bhadragiri Venkata Ravi v. Public Prosecutor High Court of A.P., Hyderabad 529

(2) s. 114-A.

(See under: Penal Code, 1860) 544

FIR:

Delay in lodging of FIR - Effect - Held: Mere delay in lodging of FIR cannot be regarded by itself as fatal to case of prosecution - Whether delay creates a dent in prosecution story and ushers in suspicion has to be gathered by scrutinizing the explanation offered for delay in light of totality of facts and circumstances - On facts, explanation offered for

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delay was not implausible.

(Also see under: Penal Code, 1860)

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LABOUR LAW:

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MAHARASHTRA RECOGNITION OF TRADE UNION AND PREVENTION OF UNFAIR LABOUR PRACTICES ACT, 1971:

ss. 28 and 30(1)(b) and Schedule IV item 6 - Unfair Labour Practice - Allegation by workman - Held: Courts below rightly held that Company indulged in unfair labour practices - In the facts of the case, amount of reasonable compensation granted by Industrial Court is modified - However, since workmen have already withdrawn compensation amount, no steps to be taken by management to recover differential amount from workmen.

Bajaj Auto Limited v. Rajendra Kumar Jagannath Kathar & Ors. 301

MAXIMS:

(1) "*acta exteriora indicant interiora secreta*" (external actions reveals inner secrets)



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(See under: Securities and Exchange Board of India Act, 1992) 391

(2) "*supressio veri, expression falsi*".
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MUNICIPALITIES:

(See under: Orissa Municipal Act, 1950) 420

NATIONAL SECURITY:

(See under: Official Secrets Act, 1923) 339

OFFICIAL SECRETS ACT, 1923:

s.3(1)(c) - Supply of secret information pertaining to Indian Armed Forces to Pakistani Intelligence - Conviction of appellant alongwith RI of seven years - Held: Justified - Matters under Official Secrets Act are very sensitive which require immediate action - Merely because independent witnesses turned hostile, police witnesses' evidence cannot be disbelieved - Trial judge came to the right conclusion by accepting the evidence of police witnesses - Prosecution evidence made it clear that documents of strategic importance to Nation were recovered from possession of appellant and other accused and they failed to give satisfactory explanation.

Safi Mohd. v. State of Rajasthan 339

ORISSA MUNICIPAL ACT, 1950:

Applicability of the Act to Scheduled Area.
(See under: Constitution of India, 1950) 420

PENAL CODE, 1860:

(1) s.302 - Death of woman due to burn injuries - Acquittal of accused-appellant (divorced husband

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of deceased) by trial court - But conviction by High Court u/s.302 - Held: There were three dying declarations - First two declarations did not implicate appellant - The third declaration implicated him, but the same being full of contradictions does not inspire confidence - Settled legal proposition that in case there are apparent discrepancies in two dying declarations, it would be unsafe to convict the accused - In such a fact situation, accused gets benefit of doubt - Trial court found material inconsistencies in the case of prosecution and did not see any reason to rely upon the third dying declaration - High Court did not consider the matter in correct perspective nor did it observe the parameters laid down by Supreme Court to interfere against order of acquittal - Order of trial court restored.

Bhadragiri Venkata Ravi v. Public Prosecutor High Court of A. P., Hyderabad 529

(2) ss. 302 and 394 - Conviction - Held: On facts, proper - Evidence of PWs sufficient to unfold prosecution story and prove beyond reasonable doubt that appellant had killed the deceased and committed theft of his mule cart - Appellant made extra-judicial confession - Motive of appellant was to take possession of mule cart and sell the same and make money - Recoveries of articles pursuant to disclosure statement made by appellant clearly point to the guilt of appellant.

Sucha Singh v. State of Haryana 560

(3) ss.302 and 404 - Homicidal death by strangulation - Conviction of appellant for killing

his wife - Held: Appellant had been doubting the character of his wife and therefore, had adequate motive to eliminate her - In spite of the fact that he had been in the same room, he failed to furnish any explanation as under what circumstances his wife was found dead - Particularly, in view of the fact that courts below excluded the theory of suicide - Conduct of appellant that he had given a false information to his in-laws and while dead body was lying in his house, he stayed in a Guest House; and further that he had absconded from the city, suggest that he is guilty - Conviction of appellant upheld.

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(4)(i) ss. 302, 460, 148, 427 and 342 - Murder - By unlawful assembly with a common object - Conviction - Conversion of death sentence into life imprisonment by High Court - Held: The crime took place because village Sarpanch suspected that deceased persons were responsible for killing his son - All accused persons have almost spent thirteen years in custody - Similarly placed persons have been imposed life sentence - It cannot be said that imprisonment for life was inadequate - Not a case which can be treated to be a case of extreme culpability - No error in the decision of High Court by which it commuted death sentence to life imprisonment - Sentence/Sentencing.

(ii) ss. 302, 460, 148, 427 and 342 - Murder - Appeal against conviction of some accused - Acquittal by High Court - Held: On facts, approach of High Court cannot be said to be totally

implausible - It took note of the involvement of number of persons and, after filtering the grain from the chaff and on due consideration of material on record, extended benefit of doubt to accused persons it acquitted - Conclusions arrived at by High Court in recording the acquittal justified.

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(5) ss. 307, 323, 324 and 341.

(See under: Code of Criminal Procedure, 1973) 496

(6) ss. 307, 323, 324 and 341.

(See under: Administration of justice) 496

(7) ss. 376, 302, 302 r/w 201 and 506 - Rape followed by double murder - Appellant injured his sister-in-law and then he had sexual intercourse with her and thereafter, he attacked her 13 months' old daughter - Caused their death by pouring kerosene and setting them on fire - Conviction and sentence of life imprisonment - Held: Justified - Extra-judicial confession by appellant rightly accepted by trial court - Evidence of PWs amply proved various circumstances as pleaded by prosecution - Prosecution established all the links - Not only appellant had knowledge that he had committed heinous crime but he also caused disappearance of evidence and had intention to screen the offence by burning the dead bodies - Reports submitted by Scientific Officers, coupled with post mortem certificate and evidence of Medical Officer, established beyond doubt that it was a clear case of murder - Overall assessment of evidence of prosecution witnesses clearly

established the circumstances against accused in a cogent manner.

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(8) ss. 376, 365 and 90 - Rape and consensual sex - Distinction between - Allegation that appellant enticed the prosecutrix, wrongfully confined her and had sexual intercourse with her in lieu of his promise to marry her - Conviction of appellant by courts below u/ss. 365 and 376 - Held: In a case like this, court must very carefully examine whether accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception - s.90 IPC cannot be called into aid to pardon the act of the girl in entirety, and fasten criminal liability on the accused, unless court is assured that from the very beginning, accused had never really intended to marry her - In the instant case, prosecutrix had left her home voluntarily, of her own free will to get married to appellant - She was 19 years of age at the relevant time - In fact, while she was proceeding with appellant so that the two could get married in court, they were apprehended by police - Allegation of "false promise of marriage" raised by prosecutrix, thus, has no basis - Charge of deceit/rape cannot be leveled against appellant - Appellant entitled to benefit of doubt - His conviction set aside - Evidence Act, 1872 - s. 114-A.

Deepak Gulati v. State of Haryana 544

REPRESENTATION OF THE PEOPLE ACT, 1951:

s.123 (8) r/w s.135A & s.100 (1) (d) (iii)

(See under: Constitution of India, 1950) 475

SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992:

s.12A and s.15HA r/w s.15J - Securities Market - Market abuse - Allegations of, against appellant, who was promoter as well as whole time Director of company in question - Held: Disclosure and transparency are the two pillars on which market integrity rests - Disclosure of information about companies whose securities are traded on a public market is crucial for accurate pricing of companies' securities and also for efficient operation of market - On facts, investors' confidence was eroded and market was abused for personal gains and attainments - Directors "created artificiality" and manipulated financial results of company resulting in price rise of scrip of company and then pledged their shares at artificially inflated prices to raise substantial funds from financial institutions - Clear violation of s.12A of SEBI Act r/w Regulations 3 and 4 of 2003 Regulations which essentially intends to preserve 'market integrity' and to prevent 'market abuse' - Conduct of Directors was fraudulent, which attracted penalty provisions contained in s.15 HA r/w s.15J of SEBI Act - SEBI rightly restrained appellant-Director for two years from buying, selling or dealing with any securities and from being Director of any listed company - Adjudicating officer rightly imposed penalty of Rs.50 lakhs u/s.15HA of SEBI Act - Maxims - *acta exteriora indicant interiora secreta*" (external actions reveal inner

secrets) - Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 - Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(e), 4(2)(f), 4(2)(k), 4(2)(r).

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SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICE RELATING TO SECURITIES MARKET) REGULATIONS, 2003:

Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(e), 4(2)(f), 4(2)(k), 4(2)(r)

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SENTENCE/SENTENCING:

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TRANSFER OF PROPERTY ACT, 1882:

ss. 106 and 111(g) - Lease - Renewal of - Property leased out for 20 years - Meanwhile, property mortgaged by appellant-lessor, but later redeemed it - Determination of tenancy by appellant u/s.106 of Transfer of Property Act on expiry of original lease period - Challenged by respondent - High Court holding that appellant was under legal obligation to renew the lease for further period of 20 years - Held: Not proper - Respondent did not comply with requirements as provided under lease deed - It did not send notice for renewal to mortgagee who had stepped into the shoes of owner of property till same was redeemed to appellant-lessor and thus failed to exercise its right

to get renewal of lease - Determination of tenancy by appellant u/s106 of Transfer of Property Act perfectly legal and valid - Respondent also not entitled to continue as tenant with reference to s.7 of Caltex Act as no fairness, reasonableness and non-arbitrariness on its part to avail right under that provision - Since respondent continued in possession of property even after termination of tenancy, it is liable to pay mesne profits by way of damages to appellant - Caltex [Acquisition of Shares of Caltex Oil Refining (India) Ltd. and of the Undertakings in India of Caltex (India) Limited] Act 1977 - s.7.

Ram Bharosey Lal Gupta(d) by Lrs. & Ors. v. M/s Hindustan Petroleum Corp. Ltd. & Anr. 323

WITNESSES:

(1) Related witness - Murder - Held: Witnesses lost their father, husband and relative - They mentioned about weapons used, assault made and parts of body where injuries were inflicted - Nothing on record to discard their testimony as untrustworthy.

(Also see under: Penal Code, 1860)

Kanhaiya Lal & Ors. v. State of Rajasthan 361

(2) Witness.

(See under: Evidence) 560