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SUBJECT-INDEX**ADMINISTRATIVE LAW:**

Policy regarding retail outlets of petroleum products - Claim of landowners for dealership - Held: Concept of a dealership in respect of a retail outlet is completely alien to concept of a COCO unit - With the discontinuance of earlier policy of granting dealerships in respect of retail outlets and introduction of a new policy of awarding M&H Contracts in respect of COCO outlets, land owners who had entered into fresh lease agreements after the policy to grant dealerships had been suspended, cannot claim any right on the basis of earlier policy in the absence of any Letter of Intent having been issued thereunder - Doctrines of promissory estoppel and legitimate expectation are not applicable - Claims of appellants/petitioners have to be treated on the basis of agreements subsequently entered into by Oil Companies - It will be open to appellants/petitioners to approach the proper forum in the event they have suffered any damages and loss, which they are entitled to recover in accordance with law - Promissory estoppel - Doctrine of legitimate expectation.

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CIRCULARS/GOVERNMENT ORDERS/**NOTIFICATIONS:**

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(2) G.O. dated 13.7.1978 issued by Government of Kerala.

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CODE OF CIVIL PROCEDURE, 1908:

s.96 - First appeal - Suit for partition decreed by trial court holding the suit properties as joint family properties relying on the statement made by first defendant in a letter as admissible - High Court reversed the judgment without examining implications of the said letter - Held: Non consideration of the letter by Division Bench of High Court, would amount to total misreading of the evidence - Similarly, Division Bench miserably failed to examine the issue relating to gift as regards the first item of suit scheduled properties - Though, such a claim was made by defendant, there was no iota of evidence to support the said claim -The ingredients of s.122 of Transfer of Property Act relating to gifts were not shown to have been complied with - Judgment of High Court set aside and that of trial court restored - Transfer of Property Act, 1882 - s.122 - 'Gift' - Evidence Act, 1872 - s.17.

Vathsala Manickavasagam & Ors. v. N. Ganesan & Anr. 320

CODE OF CRIMINAL PROCEDURE, 1973:

(1) s.161 and s.162(2).

(See under: Penal Code, 1860; as also Evidence Act, 1872) 293

(2) s.216 - Court's power to alter charge - Trial court subsequent to order in *Rajbir's* case, adding charge for offence punishable u/s 302 to that already framed for offences punishable u/ss 304-B and 498-A IPC etc. - Held: A charge u/s 304B

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IPC is not a substitute for a charge of murder punishable u/s 302 - Ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients - If there is evidence direct or circumstantial to *prima facie* support a charge u/s 302 IPC, trial court can and indeed ought to frame such a charge, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters - Order in *Rajbir's* case, explained - In the instant case, trial court acted mechanically, for it framed an additional charge u/s 302 IPC without advertent to evidence adduced in the case and simply on the basis of direction issued in *Rajbir's* case - Order passed by High Court and that passed by the trial court framing the charge u/s. 302 IPC are set aside and matter is remitted to trial court for a fresh order keeping in view the observations made in the judgment.

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(3) s. 311 - Power of court to re-examine a witness - Principles to be followed while dealing with an application u/s 311 - Culled out - Held: In the instant case, the application of complainant for his re-examination has no bona fides - Trial court had opportunity to observe demeanour of complainant which persuaded it to reach the conclusion and that deserves more credence while examining correctness of order passed by it - Order of trial court did not call for any interference, in any event, behind the back of appellant - Trial shall be completed expeditiously - Evidence Act, 1972 - s.138.

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(4) s. 482 - Quashing of FIR - Investigation pending for more than nine years - In departmental inquiry on identical charges, appellant exonerated in inquiry report - Held: The instant case is a fit one, where High Court should have exercised its power u/s 482 - Records have not been made available to investigating agency - Keeping the investigation pending will be futile, as department is not sure whether original records can be procured for investigation to bring home the charges - Considering the fact that delay is caused by respondent, constitutional guarantee of a speedy investigation and trial under Art. 21 of the Constitution has been violated and as appellant has already been exonerated in departmental proceedings for identical charges, FIR is quashed - Constitution of India, 1950 - Art. 21 - Speedy investigation/trial.

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CONSTITUTION OF INDIA, 1950:

(1) Arts. 48-A and 51-A(g) r/w. Art. 21 - Protection and improvement of environment including forests, rivers, lakes and wildlife - Held: The constitutional mandate and the "doctrine of public trust" enjoins upon Government to protect the resources for enjoyment of general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of few - In the instant case, execution of the project, including construction of restaurant on bank of river, is ex-facie contrary to mandate of G.O. dated 13.1.1978, which was issued by State Government in discharge of its Constitutional obligation under Art. 48-A - Respondents are directed to demolish the structure raised - Doctrine of public trust - G.O. dated 13.7.1978 issued by Government of Kerala

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- Environmental law.

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DOCTRINES/PRINCIPLES:

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(2) Promissory estoppel - Doctrine of legitimate expectation.
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EDUCATION/EDUCATIONAL INSTITUTIONS:

Primary education - Medium of instruction from 1st to 4th standard - Held: In view of the fact, that a two-Judge Bench in *English Medium Students Parents Association* has already arrived at a decision as to the question whether medium of instruction should be that of mother tongue, it is not appropriate to decide the very same issue under different grounds by a coordinate Bench - Besides, the vital question involved in the instant matters has a far-reaching significance on the development of children - Considering the constitutional importance of the matter, the same is referred to a Constitution Bench - Reference to larger Bench.

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ENVIRONMENTAL LAW:

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EVIDENCE:

Dowry death - Evidence of independent witnesses - Held: Instances of cruelty and harassment for dowry, generally remain within personal knowledge of near relations, and their evidence is not to be discarded for independent corroboration or for not reporting the matter to Panchayat.

(Also see under: Penal Code, 1860)

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EVIDENCE ACT, 1872:

(1) s. 17 - Admission - In a suit for partition, letter of defendant produced by plaintiff wherein he had stated the suit properties as joint family properties - Held: Once there is admission in a statement either oral or documentary, onus would shift to the party who made such an admission and it will become an imperative duty on such party to explain it - In the absence of any satisfactory explanation, it will have to be presumed to be true - In the instant case, the letter written by defendant is a statement constituting a tacit admission - Every ingredient of s.17 relating to said document was fully complied with.

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

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(2) s.32 - Dying declaration - Statement recorded by doctor, who conducted medico-legal examination - Held: The dying declaration recorded by doctor was also signed by husband of deceased - There is nothing to suggest that any relation of deceased was present to influence the doctor.

(Also see under: Penal Code, 1860)

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(3) s.32(1) - Dying declaration - Statement of deceased recorded by police soon after the occurrence - Factors to be considered to place reliance upon such statement as dying declaration - Explained - Held: The grievous injuries sustained by victim on his vital parts of body and his death within 24 hours, was sufficient to reach a conclusion that whether or not he was in expectation of his death - The further finding of courts below that there was no scope for any manipulation at the instance of police also strengthens the reliance placed upon by prosecution on the said statement by treating it as a dying declaration - Sub-s.(2) of s.162, CrPC makes the position clear that the statement as a dying declaration would squarely fall within the said sub-section and has only to satisfy the stipulations contained in s. 32(1) of Evidence Act - High Court rightly relied upon the said statement as a dying declaration, squarely falling within the statutory prescription of s. 32(1) of Evidence Act - Penal Code, 1860 - s.302/149, 307/149, 452, 148 and 147 - Code of Criminal Procedure, 1973 - ss.151 and 162(2). (Also see under: Penal Code, 1860) <i>Rafique @ Rauf & Others v. State of U.P.</i>	293
(4) ss.113-A and 113-B. (See under: Penal Code, 1860)	408
(5) s.113-B - Presumption as to dowry death - Explained - Held: In the instant case, prosecution has successfully proved ingredients of s.304-B IPC and, as such, s.113-B of Evidence Act automatically comes into play. (Also see under: Penal Code, 1860) <i>Ranjit Singh v. State of Punjab</i>	394
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JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000: ss. 2(k), 2(l), 7-A, 20 and 49 - Accused convicted u/ss 302 and 324 IPC aged less than 18 years on date of commission of offence (i.e. 6.5.1995) - Held: Is entitled to benefit of the Act - Conviction affirmed - However, the sentence awarded by trial court as affirmed by High Court set aside and matter sent to Juvenile Justice Board for imposing adequate sentence - Juvenile Justice Act, 1986 - Juvenile Justice (Care and Protection of Children) Rules, 2007 - rr.12 and 98. <i>Ketankumar Gopalbhai Tandel v. State of Gujarat</i>	576
JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007: rr.12 and 98. (See under: Juvenile Justice (Care and Protection of Children) Act, 2000)	576
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proceeding or appeal before a higher court, rental compensation is to be determined on the basis of award passed by Land Acquisition Officer - Subsequently, if there is upward revision of amount, consequences will follow and re-determination of the rental compensation can be made.

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PENAL CODE, 1860:

(1) ss.302/149, 307/149, 452, 148 and 147 - Accused indulging in indiscriminate firing, causing death of one of their opponents and injuries to two others - Conviction and life sentence awarded by courts below - Held: Presence of informant and injured witnesses at the place of occurrence has been sufficiently explained - Their evidence and statement of deceased recorded soon after the incident, injury reports and post-mortem report as well as motive clearly bring home the guilt of accused - Having regard to the extent of the injuries sustained by deceased, and witnesses, and the aggression with which the offence was committed, which resulted in the loss of life of one person considered along with the motive, there is absolutely no scope to modify conviction and sentence imposed - Code of Criminal Procedure, 1973 - s.161 and s.162(2) - Evidence Act, 1872 - s.32(1).

(Also see under: Evidence Act, 1872)

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(2) ss. 304-B and 498-A - Conviction and sentence awarded by courts below - Held: Death by burn injuries was caused otherwise than in normal circumstances - Deceased was, soon before her death, subjected to cruelty and harassment by appellants for dowry - Prosecution has proved

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beyond reasonable doubt that appellants are guilty of offences punishable u/ss 304-B and 498-A - As regards plea for reduction of sentence, High Court has already reduced the life sentence u/s 304-B to 10 years RI, which calls for no interference - Evidence Act, 1872 - s.32.

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(3) ss.304-B and 498-A - Dowry death - Bride found dead in her matrimonial home within 4 months of marriage - Conviction of husband and sentence of life imprisonment - Held: Prosecution has successfully proved the ingredients necessary to attract s. 304-B - There is no reason to differ with conclusion of trial court as affirmed by High Court that appellant is guilty of the offences punishable u/ss. 304-B and 498-A - However, taking into consideration the fact, that appellant has got re-married and has three children including one handicapped son, and his mother is also paralysed, sentence awarded u/s 304-B is reduced to seven years - Evidence Act, 1872 - s.113-B.

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(4) ss. 304-B and 498-A - Suicide committed by bride in her matrimonial home - Acquittal by trial court - Conviction of husband by High Court - Held: Once prosecution failed to prove the basic ingredients of harassment or demand of dowry, and evidence brought on record was doubted by trial court, it was not open to High Court to convict the appellant on presumption referring to s. 113-A or s. 113-B of Evidence Act - Presumption of innocence of accused being primary factor, in absence of exceptional compelling circumstances and perversity of the judgment, it was not open to High Court to interfere with judgment of trial court in a routine manner - Judgment of High Court set

aside - Evidence Act, 1872 - ss.113-A and 113-B.
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(5) ss. 304-B, 498-A and 201 r/w s.34 - Dowry death - Death of bride in matrimonial home - Cremation hurried - Conviction of husband u/ss 304-B, 498-A and 201 and of other accused u/s 201/34 - Held: Prosecution has proved that death of bride occurred otherwise than under normal circumstances - Statements of witnesses are trustworthy and they stated that deceased was subjected to harassment by her husband and other accused-relatives in connection with demand for dowry just prior to her death - Further, cremation was hurried without informing the parents of bride - Accused failed to explain about presence of pesticide in vomiting of deceased - Therefore, trial court rightly drew an inference of guilt of accused-appellants - Evidence Act, 1872 - s.113-B r/w s.106.

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(6) ss. 395/397 - Dacoity in gold jewellery workshop - Conviction of appellant-taxi driver along with another and sentence of 10 years RI - Held: The evidence on record has clearly established involvement of appellant in commission of the offence - Courts below rightly convicted him - However, as regards sentence, ends of justice would be met by altering his sentence to the period already undergone, i.e. 7 ½ years.

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REFERENCE TO LARGER BENCH:

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SECURITIES CONTRACTS (REGISTRATION) ACT, 1956:

s.13 - Contract in notified areas illegal in certain

circumstances - Transfer of shares of Peerless General Finance and Investment Company - Held: In the instant case, the place where the contract for sale of shares has been entered is a notified area for the purpose of s.13 - Further, the contract is not between members of a recognized stock exchange and, therefore, as held by Company Law Board, is in violation of s.13.

(ii) s. 2(h)(i) - 'Securities' - 'Shares of Peerless General Finance and Investment Company - Held: For shares of a public limited company to come within the definition of securities they have to satisfy that they are marketable - 'Marketability' requires free transferability - Subject to certain limited statutory restrictions, shareholders possess the right to transfer their shares - It is this right which satisfies the requirement of free transferability - Shares of public limited company though not listed in stock exchange, come within the definition of 'securities' and, therefore, provisions of the Act would apply including the indictments contained in s.13.

(iii) ss.2(i) and 16 - 'Spot delivery contract' - Explained - Shares of Peerless transferred - Part of consideration passed more than 6 years after the transfer - Held: The transaction does not come within the expression 'spot delivery contract' as defined in s.2(i) and, as such, is in violation of s.16 and Notification dated 27.6.1969 - Central Government Notification dated 27.6.1969.

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TRANSFER OF PROPERTY ACT, 1882:
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(See under: Code of Civil Procedure, 1908) 320