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ADMINISTRATIVE LAW:

(1) Appointment of Assistant District Government Counsel.
(See under: Constitution of India, 1950 and Judicial Review) 1060

(2) Awarding of contract:
(See under: Government Contracts). 1127

(3) (i) Bias – Held: The presumption is in favour of bona fides of the order unless contradicted by acceptable material – In the instant case, though in respect of the allegation of bias/prejudice, mala fides, a ground has been taken in the writ petition before the High Court, but no material on record could be pointed out to substantiate the allegation.

(ii) Orders in disciplinary proceedings – Reasons to be recorded.

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(4) (i) Delegation of power.
(ii) Policy.
(See under: Bihar Municipal Act, 2007) 771

(5) (i) Legitimate expectation – Vocational Training Centres (VTCs) permitted to run various courses – Subsequently, decision taken to wind up certain courses – Held: Education is a dynamic system and courses/subjects have to keep changing with

regard to market demand, employability, potential availability of infrastructure etc. – No institute can have a legitimate right to run a particular course for ever and it is the pervasive power and authority vested in the Government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time.

(ii) Policy decision – Judicial review of.
(Also see under: Education/Educational Institution; Constitution of India, 1950; and Judicial Review)

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(6) Policy decision – Judicial review of.
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(7) (See under: Jurisdiction) 509

(8) Promissory estoppel
(See under: Land Acquisition Act, 1894) 243

(9) (i) State and/or its agencies/instrumentalities – Action/decision of, to give largesse or confer benefits – Held: Must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory or non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy – The allotment of land

which carries the tag of caste, community or religion is not only contrary to the idea of Secular Democratic Republic but is also fraught with grave danger of dividing the society on caste or communal lines – In the instant case, reservation and allotment of land to the named person was not preceded by any advertisement in the newspaper or by any other recognized mode of publicity inviting applications – Therefore, allotment of land was not done by following a procedure consistent with Art. 14 of the Constitution – Constitution of India, 1956 – Art. 14.

(ii) Rule of law

(Also see under: Constitution of India, 1950; and Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973)

Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh and Ors. 77

(10) (i) Subordinate legislation – Statutory authority keeping subordinate legislation in abeyance – Permissibility of – Held: It might be permissible in exceptional circumstances – However, such an order being legislative in character, is not warranted to be interfered by the Court/Tribunal.

(ii) Executive Instructions – Effect of – Held: Executive instructions do not have the force of law but are issued by the competent authority for guidance and to implement the scheme of the Act – It can be altered, replaced and substituted at any time – Law merely prohibits the issuance of a direction, which is not in consonance with the Act or the statutory rules applicable therein.

(iii) Executive Instructions – Revival of – Held: Once the old rule has been substituted by the new rule,

it stands obliterated, thus, ceases to exist and under no circumstance, can it be revived in case the new rule is held to be invalid and struck down by the Court – However, position would be different in case a statutory amendment by the Legislature is held to be bad for want of legislative competence, wherein the repealed statutory provisions would revive automatically.

(Also see under: Aircraft Act, 1934)

Joint Action Committee of Airlines Pilots Associations of India & Ors. v. Director General of Civil Aviation & Ors. 1019

ADVOCATES:

Appointment/renewal of term of Assistant District Government Counsel.

(See under: Constitution of India, 1950 and Judicial Review) 1060

AGRICULTURAL PRODUCE MARKET

COMMITTEES:

(See under: Andhra Pradesh Agricultural (Produce and Livestock) Markets Act, 1966) 990

AIRCRAFT ACT, 1934:

ss. 4A, 5 and 5A – Executive instructions regarding air safety – Issuance of Circular dated 29.05.2008 by Director General of Civil Aviation (DGCA) to the effect that Civil Aviation Requirements (CAR) dated 27.07.2007 had been kept in abeyance – Pending finalization of CAR 2007, revival of old Aeronautical Information Circular (AIC) 28/1992 – Validity and propriety of Circular dated 29.05.2008 – Held: CAR 2007 is neither a statute nor a subordinate legislation – They are merely executive instructions which can be termed as

special directions – There was a specific order in the form of interim measures, by the competent authority in exercise of statutory powers whereby AIC 28/92 was revived – DGCA has ample power to issue such instructions or directions in exercise of its power under the 1937 Rules – Thus, it cannot be said that the Circular dated 29.5.2008 was either issued illegally or without any authority – More so, the whole exercise was done to bring a new CAR into existence for which process has already been initiated and new CAR is likely to come into existence very soon – Aircraft Rules, 1937 – rr. 42A and 133A – Administrative law. (Also see under: Administrative Law)

Joint Action Committee of Airlines Pilots Associations of India & Ors. v. Director General of Civil Aviation & Ors. 1019

AIRCRAFT RULES, 1937:

rr. 42A and 133A.

(See under: Aircraft Act, 1934) 1019

AIRPORTS AUTHORITY OF INDIA ACT, 1994:

(i) s.22A r/w ss. 12(3) (aa) and 12A – Levy of development fees at airports – Letters dated 9.2.2009 and 27.2.2009 sent by Government of India approving levy of development fees by Delhi International Airport (P) Ltd. (DIAL) and Mumbai International Airport (P) Ltd. (MIAL) from embarking domestic and international passengers – Held: Since the lessee of an airport cannot be assigned the statutory function of the Airports Authority to establish airports or assist in establishing private airports in lieu of the existing airports at which the development fees is being collected, the lessee cannot under sub-s. (4) of s.

12A have the power of the Airports Authority to levy and collect development fees u/s. 22A of the 1994 Act – Thus, levy and collection of development fees by DAIL and MIAL as fixed by Central Government in the letters dated 9.2.2009 and 27.2.2009 is ultra virus the 1994 Act and, as such, the said two letters are not saved by s.6 of the General Clauses Act, 1897 – Interpretation of Statutes – General Clauses Act, 1897 – s.6.

(ii) s.22-A (as amended by 2004 Act) – Levy of development fee – Nature of – Held: Levy of development fee is not charges or any other consideration for services for the facilities provided by the Airports Authority – The levy u/s 22-A though described as fee is really in the nature of cess or a tax for generating revenue for the specific purposes mentioned in clauses (a), (b) and (c) of s.22-A – Articles 265 of the Constitution of India is, therefore, attracted which provides that no tax can be levied or collected except by the authority of law – Therefore, until the rate of development fees was prescribed by the rules, levy and collection thereof was without the authority of law – Constitution of India, 1950 – Article 265.

(iii) s.22A (as amended by Amendment Act, 2008) and s.13(1) of Airports Economic Regulatory Authority Act, 2008 – Levy and collection of development fee to be determined by Regulatory Authority – Held: After the amendment of s. 22A with effect from 01.01.2009, the rate of development fees to be levied and collected at the major airports such as Delhi and Mumbai is to be determined by the Regulatory Authority under clause (b) of sub-s. (1) of s. 13 of the 2008 Act and not by the Central Government – The

Regulatory Authority has already issued a public notice dated 23.04.2010 permitting DIAL to continue to levy the development fees from embarking domestic and international passengers with effect from 01.03.2009 on an ad hoc basis pending final determination u/s. 13 of the 2008 Act – But no such public notice has been issued by the Regulatory Authority pertaining to levy and collection of development fees by MIAL – Therefore, MIAL could not continue to levy and collect development fees at the major airport at Mumbai and cannot do so in future until the Regulatory Authority passes an appropriate order u/s 22A of the 1994 Act as amended by the Amendment Act, 2008 – Airports Economic Regulatory Authority Act, 2008 – s.13(1).

(iv) s.22A – Levy and collection of development fee at airports – Appropriation of – It is directed that DIAL and MIAL will account to the Airports Authority the development fee collected pursuant to the letters dated 9.2.2009 and 27.2.2009 – Central Government and the Airports Authority will ensure that the amount so collected has been utilized for the purposes mentioned in clauses (a) of s.22A – It is further directed that any development fees that may be levied and collected shall be credited to the Airports Authority and will be utilized for the purposes mentioned in clauses (a), (b) or (c) of s. 22A in the manner to be prescribed by the rules which may be made as early as possible – Legislation – Rules to be framed.

Consumer Online Foundation v. Union of India & Ors.

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AIRPORTS ECONOMIC REGULATORY AUTHORITY ACT, 2008:

s.13(1).

(See under: Airports Authority of India Act, 1994)

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ANDHRA PRADESH AGRICULTURAL (PRODUCE AND LIVESTOCK) MARKETS ACT, 1966:

ss.12, 12-B(5) and 23 – Non-payment by traders, of market fees re-assessed u/s.12-B(5) – Initiation of criminal proceedings – Petition u/s. 482 CrPC – Criminal proceedings quashed by High Court holding that the non-payment of market fees re-assessed u/s. 12-B(5) is not punishable u/s. 23 – Held: As per the Scheme of the Act, the assessment of market fee u/s. 12-B(1) or re-assessment u/s. 12-B(5) results in levy of fee u/s. 12(1) – Non-payment thereof would mean default in payment of fee levied under sub-section (1) of s.12 – High Court erred in quashing the criminal proceedings against the traders – Order passed by High Court set aside – Code of Criminal Procedure, 1973 – s. 482.

Agricultural Market Committee A.P. etc. v. M/s. M.K. Exports, A.P. etc. etc.

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APPEAL:

(1) Appeal against acquittal.

(i) Murder – Acquittal by trial court – Conviction by High Court u/s 302 IPC – Held: High Court can re-appraise the entire evidence and if it is found that the judgment of the trial court was perverse or against the evidence, the High Court has to interfere in the matter – Penal Code, 1860 – s. 302.

(Also see under: Penal Code, 1860 and Code of Criminal Procedure, 1973)

Fahim khan v. State of Bihar now Jharkhand 577

(ii) Power of appellate court – Scope – Held: The appellate court being the final court of fact is fully competent to re-appreciate, reconsider and review the evidence and take its own decision – Law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused – If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.

State of M.P. v. Ramesh and Anr. 1(2)

(iii) (See under: Constitution of India, 1950 and Service Law) 44

(iv) (See under: Narcotic Drugs and Psychotropic Substances Act, 1985) 877

(v) (See under: Penal Code, 1860 and Constitution of India, 1950). 1180

(vi) (See under: Penal Code, 1860) 1044

(2) Second appeal.
(See under Code of Civil Procedure, 1908) 884

APPROBATE AND REPROBATE:

(See under: Doctrines and Aircraft Act, 1934) 1019

ARBITRATION AND CONCILIATION ACT, 1996:

s.11 – Petition under – Impleadment of a non-party to arbitration agreement – Held: The appellant, a non-party to the construction agreement containing the arbitration clause, could not be roped in, as a party to such an arbitration – Order of the designate of the Chief Justice of High Court set aside, insofar as the appellant is concerned.

Deutsche Post Bank Home Finance Ltd. v. Taduri Sridhar and Anr. 674

(2) s.11(6) – Application for appointment of arbitrator after submitting ‘no-claim certificate’ and receipt of payment of final bill – Arbitrator appointed – Held: Where the dispute raised by the claimant with regard to validity of the discharge voucher or no-claim certificate or settlement agreement, prima facie, appears to be lacking in credibility, there may not be necessity to refer the dispute for arbitration at all – In the instant case, the conduct of contractor clearly shows that ‘no claim certificates’ were given by it voluntarily and it accepted the amount of the final bill voluntarily and the contract was discharged voluntarily – Order appointing the arbitrator u/s 11(6) set aside.

Union of India & Ors. v. M/s. Master Construction Co. 853

ARMS ACT, 1951:

s.25(1) (a).
(See under: Constitution of India, 1950) 1180

BAIL:

Grant of bail – Challenge to – Corporate scam – Fudging of the Company accounts and

manipulation of records by Chairman, M.D. and other Directors of a Company which were certified by the auditors – Huge financial loss to shareholders – Complaint against Chairman, Directors and Auditors of the Company – Entrustment of investigation to CBI – Grant of bail to two co-accused, namely, external and internal auditors of the Company by the High Court – Held: Not justified – External and internal auditors of the company, played a paramount role in inflating processing assets and bank balance of the Company – Also, the bail granted in favour of all the main accused had been cancelled by Supreme Court and directions were issued, on basis of which the trial has to be concluded within the schedule time – Order of the High Court set aside.

*CBI, Hyderabad v. Subramani
Gopalakrishnan & Anr.*

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BIHAR MUNICIPAL ACT, 2007:

(i) ss.23 and 27 – Election of new Mayor when the vacancy arises in the office of Mayor – Power of newly elected Mayor to nominate members of Empowered Standing Committee of the Municipal Corporation – Held: If a vote of no confidence is passed against the Mayor, and a new Mayor is elected in his place, the members of the Empowered Standing Committee nominated by erstwhile Mayor shall have to vacate their seats and the new Mayor will have the authority to nominate his nominees on the Committee – s.27 should be read down harmoniously with ss.25(4), 23 (3) and 21(3) of the Act thereby, holding that the nominated members shall also automatically vacate their office when the Mayor nominating them is no longer in the office – Municipalities –

Interpretation of statutes – Reading down a section – Constitution of India, 1950 – Articles 14, 243W.

(ii) s.22 – Concept of ‘Executive Power’ and Article 14 – Held: The term ‘Executive Power’ has been specifically used in s.22, and s.57 specifically uses the term ‘Municipal Governance’ – The executive function comprises both the determination of the policy as well as carrying it into execution – Administrative law – Constitution of India, 1950 – Article 14.

(iii) s.28(1) – Delegation of Powers – s.28(1) of the Act provides for delegation of the powers and functions of the Municipal Corporation to the Empowered Standing Committee, and u/s.28(2), the Committee may delegate its powers and function to the Chief Councillor or to the Chief Municipal Officer.

(iv) ss.57 to 59 – Principle of Collective responsibility – Held: Empowered Standing Committee is expected to function on the principle of collective responsibility – This element of collective functioning is introduced in Municipal Governance u/ss.57 and 59 of the Act – s.57(1) clearly uses the phrase ‘Municipal Governance’ – Besides, the Bihar Municipal Empowered Standing Committee Conduct of Business Rules make it clear that the executive power vests in the Committee – Though the Mayor nominates the members of the Committee, the decisions of the Committee are to be taken by majority, and the Committee members have to function on the basis of collective responsibility – Bihar Municipal Empowered Standing Committee Conduct of Business Rules, 2010 – rr.6, 7, 10.

(Also see under: Interpretation of Statutes)

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BIHAR MUNICIPAL EMPOWERED STANDING
COMMITTEE CONDUCT OF BUSINESS
RULES, 2010:

rr.6, 7 and 10.

(See under: Bihar Municipal Act, 2007) 771

BOMBAY RENT ACT, 1947:

ss.13(1)(e), 15(1), (2), 22 – Unlawful sub-letting – Suit for eviction on the ground of unlawful sub-letting by the tenant of leasehold property – Held: Sub-letting, made by the tenant after February 1, 1973, would constitute a ground for eviction u/ s.13(1)(e) – In the instant case, sub-lease though executed on June 17, 1978 was made effective retrospectively from June 15, 1964 – Material on record showed that sub-tenant was in possession of suit premises long before February 1, 1973 and had continued to be in possession on that date – Subletting, thus, clearly fell within the protective ambit of s.15(2) – Ground for eviction u/s.13(1)(e) not made out – Transfer of Property Act, 1882 – ss.106, 108(j), 114A – Rent control and eviction.

*Board of Trustees of the Port of
Mumbai v. M/s Byramjee Jeejeebhoy Pvt.
Ltd. & Anr.* 157

CHILD WELFARE:

Children engaged in circuses – Protection from physical and sexual abuse – Held: Government of India is fully aware about the problems of children working in various places, particularly, in circuses – Right of children to free and compulsory

education has been made a fundamental right under Article 21-A of the Constitution – Directions given to the Central Government to issue suitable notifications prohibiting employment of children in circuses within two months – Further directions issued to conduct simultaneous raids in all the circuses to liberate the children and check the violation of their fundamental rights and to take steps for their rehabilitation – Court also accepted the submission and recommendations of the Solicitor General of India – Each State should issue a Circular indicating how the recommendations will be implemented – Constitution of India, 1950 – Article 21-A read with Articles 14 - 17, 21, 23 and 24 – Juvenile Justice (Care and Protection of Children) Act, 2000- s.33(3) – Public interest litigation – International Conventions/Treaties – U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, i.e. the PALERMO Protocol on Trafficking.

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NOTIFICATIONS:

(1) Circular dated 29.05.2008 issued by Director General of Civil Aviation.
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(2) Government of Tamil Nadu, public Works Department GO No. 4682 dated 16.11.1951
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(3) (See under: Madhya Pradesh Revenue Book Circular) 77

(4) (i) Circular dated 6.3.1990 and 6.1.2000 issued of Government of Jamm and Kashmir.

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COAL INDIA EXECUTIVES (CONDUCT, DISCIPLINE AND APPEAL) RULES 1978:

rr. 27 and 28.

(See under: Service Law; and Constitution of India, 1950) 44

CODE OF CIVIL PROCEDURE, 1908:

(1) s.100 – Second appeal – Scope of – Single Judge of High Court setting aside judgment of lower appellate court – Held: Single Judge failed to point out any perversity in the judgment of lower appellate court – In the light of the categorical finding that no substantial question was involved having been recorded by the Single Judge, the necessary consequence would have been to dismiss the tenant's second appeal – West Bengal Premises Tenancy Act, 1956 – s.13(6).

(Also see under: Evidence Act, 1872; and West Bengal Premises Tenancy Act, 1956)

Mritunjoy Sett (D) By Lrs. v. Jadunath Basak (D) By LRs. 884

(2) O. 1, r.9.

(See under: Human Rights Act, 1993 and Party) 460

(3) O. 7, rr. 5 and 7 – Relief against defendants – Suit for possession initially filed against a single defendant – Subsequently defendant-2 also added, but no relief claimed against him – Held: In a case where prayer is not made against a particular defendant, no relief possibly can be

granted against him – There is no prayer for possession either in the original plaint or in the amended plaint against defendant-2 – Judgment of High Court set aside and that of trial court dismissing the suit restored – Party.

Dr. Shehla Burney and others v. Syed Ali Mossa Raza (D) by Lrs. and Ors. 841

(4) O.41, r.11.

(See under: Land Acquisition Act, 1894) 869

(5) O.41, r.31 – Guidelines for the appellate court as to how the court has to proceed and decide the case – Discussed – Held: It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points – Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court – Thus, the entire evidence must be considered and discussed in detail.

(Also see under: Specific Relief; and Evidence Act, 1872)

H. Siddiqui (D) by Lrs. v. A. Ramalingam 587

CODE OF CRIMINAL PROCEDURE, 1973:

(1) (i) ss.161(2); s. 313(3); and s. 315, proviso (b) – Rule against adverse inference from silence of the accused – Held: Statement of accused u/s.313 Cr.P.C. can be taken into consideration to appreciate the truthfulness or otherwise of the prosecution case – However, as such a statement

is not recorded after administration of oath and the accused cannot be cross-examined, his statement u/s.313 Cr.P.C. cannot be treated to be evidence within the meaning of s.3 of the Evidence Act – Constitution of India, 1950 – Article 20(3) – Evidence Act, 1872.

(Also see under: Penal Code, 1860 and Witnesses)

State of M.P. v. Ramesh and Anr. 1

(2) s.173.

(See under: Narcotic Drugs and Psychotropic substances Act, 1985; and Evidence Act, 1872). 967

(3)s. 173(8) and 220

(See under: Investigation; and Criminal Trial) 729

(4) s. 223 – Persons accused of offences committed in the course of same transaction –In an incident of death of one person caused by members of accused group, FIR lodged for offences punishable *inter alia*, u/ss. 302 and 324 r/w s. 149 IPC –The following day on the statement of one of the accused, another FIR lodged against members of complainant party for offences punishable, *inter alia*, u/s. 307/149 IPC – Prosecution of accused of the first FIR – Conviction by trial court –Affirmed by High Court – Held : For several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action – Thus , where there is a commonality of purpose or design, where there is

a continuity of action, then all those persons involved can be accused of the same or different offences “committed in the course of the same transaction” – Penal Code, 1860 – s. 302 and 24 r/w s. 149.

(Also see under: Penal Code, 1860)

Kuldip Yadav & Ors. v. State of Bihar 186

(5) s. 313 – Power of trial court to examine accused – Held: Though statements of accused recorded are extremely perfunctory, but no prejudice to the accused has been pointed out at any stage even before the Supreme Court – It must, therefore, be presumed that no prejudice has in fact occurred – Penal Code, 1860 – s. 302.

(Also see under: Penal Code, 1860)

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(6) ss. 397 and 401.

(See under: Penal Code, 1860) 1015

(7) s.482 – Manner in which High Courts ought to exercise their power to quash criminal proceeding when such proceeding is related to offences committed by companies – Discussed.

(Also see under: Negotiable Instruments Act, 1881)

Rallis India Ltd. v. Poduru Vidya Bhusan & Ors. 289

(8) s. 482.

(See under: Andhra Pradesh Agricultural Produce and Livestock) Markets Act, 1966) 990

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Empowered Standing Committee – Powers and duties – Discussed.

(Also see under: Bihar Municipal Act, 2007)

Afjal Imam v. State of Bihar and Ors. 771

COMPENSATION:

Assessment of compensation – Held: Compensation should be assessed so that the interest accruing therefrom would be sufficient for the maintenance of the family of the victim – Concept of compensation is wider than mere damages.

(Also see under: Motor Vehicles Act, 1988)

Urviben Chiragbhai Sheth v. Vijaybhai Shambhubhai Joranputra & Ors. 897

CONSTITUTIONAL LAW:

Separation of powers.

(See under: Jurisdiction) 509

CONSTITUTION OF INDIA, 1950:

(1) (i) Article 14 – Principle of equality – Exercise of power by political entities and officers/officials – Scope of – Held: For achieving the goals of Justice and Equality set out in the Preamble, the State and its agencies/instrumentalities have to function through political entities and officers/officials at different levels – The exercise of power by political entities and officers/officials for providing different kinds of services and benefits to the people always has an element of discretion, which is required to be used in larger public interest and for public good and in a rational and judicious manner without any discrimination against anyone – No functionary of the State or public authority

has an absolute or unfettered discretion, which is totally incompatible with the doctrine of equality and is an antithesis to the concept of rule of law – Administrative law – Rule of law

(ii) Part III; IV; Article 39(b) – Role of the State – Discussed.

(iii) Articles 226/32: Writ Petition – Locus standi – Held: Even if a person files a writ petition for vindication of his private interest but raises question of public importance involving exercise of power by men in authority then it is the duty of the Court to enquire into the matter.

(Also see under: Administrative Law; and Madhya Pradesh Nagar Tatha Gram Nivesh Adhinyam, 1973)

Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh and Ors 77

(2) Article 14.

(See under: Karnataka Industrial Area Development Board Regulations, 1969) 26

(3) Article 14.

(See under: Government Contracts). 1127

(4) Articles 14 and 226 – Writ petition challenging order of State Government by which it returned the panel list of candidates for appointment of Assistant District Government Counsel (Criminal) to District Magistrate and directed him to re-advertise the posts – High Court setting aside the order of the Government and directing it to make the appointments from the panel submitted by District Magistrate – Held: In the matter of engagement of A.D.G.C. (Criminal) the concept of public office does not come into play – The

choice is that of the Government; and none can claim a right to be appointed because it is a position of great trust and confidence – The directions given by High Court in the impugned Judgment run contrary to the well-settled principles of law and, therefore, cannot be upheld – The Judgment of High Court set aside.

(Also see under: Judicial Review)

State of U.P. & Ors. v. Rakesh Kumar Keshari & Anr 1060

(5) Articles 14 and 243W.
(See under: Bihar Municipal Act, 2007) 771

(6) Article 20(3).
(See under Code of Criminal Procedure, 1973) 1

(7) Article 21-A r/w Articles 14 – 17,21,23 and 24.
(See under: Child Welfare) 353

(8) Article 136 – Appeal against acquittal – Held: Burden is on the prosecution to prove and justify its case that findings of High Court in acquitting the accused were perverse and were not justifiable and that the High Court miserably failed to do justice and inferences drawn by it are not possible or could not have been drawn in law – In the instant case, the prosecution has failed to discharge the burden – Penal Code, 1860 – ss. 376 and 386 r/w ss. 148, 452/149, 377/149, 242/149, 323/149, 506 (2)/149 IPC – Arms Act, 1951 – s.25(1) (a) – Appeal.

(Also see under: Penal Code, 1860)

State of Maharashtra v. Ravikant Shankarappa Patil & Ors 1180

(9) Article 162 – Issuance of Government Orders/ Circulars – Extent of executive power of State – Explained – Held : In the instant case, there was neither any enactment nor any statutory rule nor any constitutional provision as to how the contractor, who has entered into contracts with the Government, should be permitted to contest election, more particularly, when a request is made by the contractor to terminate his contracts so as to enable him to contest the election –Therefore, the Government had all authority to issue Government Order dated November 16, 1951 to fill up the gaps – Government of Tamil Nadu, public Works Department GO No. 4682 dated 16.11.1951 – Representation of the People Act, 1951 – s.9-A.

(Also see under: Representation of The People Act, 1951)

P. H. Paul Manoj Pandian v. Mr. P. Veldurai 254

(10) Articles 215 and 225.
(See under: Contempt of Courts Act, 1971 329

(11) Article 226 – Writ petition challenging disciplinary inquiry and dismissal order – Statutory appeal against order of dismissal pending – Held: Writ petition could not have been proceeded with and heard on merits when statutory appeal was pending – Department also proceeded with the case without any sense of responsibility, as subsequent to dismissal of writ petition and writ appeal by High Court, the statutory appeal filed by delinquent after 15 months of the order of punishment was entertained though the limitation prescribed under the Rules was 30 days and the appeal was dismissed on merits without dealing

with the issue of limitation – Coal India Executives (Conduct, Discipline and Appeal) Rules, 1978 – Appeal – Limitation.

(Also see under: Administrative Law; and Service Law)

Chairman-Cum-M.D., Coal India Ltd., & Ors. v. Ananta Saha & Ors. 44

(12) Article 226 – Writ petition – Judgment reserved on 3.7.2009 – Subsequent Cabinet decision dated 18.7.2009 – Quashed by High Court – Held: There was no prayer in the writ petition for quashing of any policy or scheme or decision of the Government but the petitioner only prayed for certain directions for admission of the students in courses under SCVT for the session 2007-2008 – The conclusion of the High Court quashing the Cabinet decision dated 18.7.2009 was contrary to well established principles – The decision of the Cabinet ought not to be interfered with in judicial review so lightly as has been done in the instant case – Education/Educational Institutions – Administrative Law – Policy decision – Judicial Review – Subsequent event.

(Also see under: Education/Educational Institution; and Judicial Review)

State of H. P. and Ors. v. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh 533

(13) Articles 226 and 32 – Writ petition – Maintainability of in view of the plea of alternative remedy – Held: Constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy – Injustice, whenever and wherever it takes place, has to be

struck down as an anathema to the rule of law and the provisions of the Constitution – The Court endorses the view of the High Court that notwithstanding the provisions relating to the arbitration clause contained in the agreement, it was fully within its competence to entertain and dispose of the writ petition filed on behalf of the respondent-company – Contract – Alternative remedy.

(Also see under: Contract)

Union of India & Ors. v. Tantia Construction Pvt. Ltd. 397

(14) Arts. 226 and 309.
(See under: Raj Bhasha Adhikari Recruitment Rules 2005) 317

(15) Article 236(a).
(See under: Protection of Human Rights Act, 1993) 460

(16) Article 265.
(See under: Airports Authority of India Act, 1994). 911

CONTEMPT OF COURTS ACT, 1971:

(1) (i) ss.2(c) and 15 – Giving false evidence by filing false affidavit – Criminal case registered against an MLA – Sessions Judge granted him conditional bail for attending the Legislative Assembly to take oath as MLA – MLA filed contempt application alleging that on the direction, supervision and knowledge of the appellant (Commissioner of Police), respondent no.2 (Inspector) filed an application for cancellation of conditional bail granted to him and obtained stay of the bail order on the basis of false statement/

false affidavit thereby preventing him from attending the Assembly and taking oath as MLA – High Court held the appellant and respondent no.2 guilty and sentenced them to imprisonment for seven days – Held: Mere suspicion cannot bring home the charge of making false statement – Contempt proceedings being quasi criminal in nature, burden and standard of proof is the same as required in criminal cases – There was no material that the affidavit containing wrong information filed by respondent no.2 was made at the instance of the appellant – The appellant had also tendered unconditional apology – Further s.15 of the Act as well as the Madras High Court Contempt of Court Rules insist that for initiation of criminal contempt, consent of the Advocate General is required – Any deviation from the prescribed Rules must be deemed to be fatal to the proceedings taken to initiate action for contempt – These provisions were not strictly adhered to – Order of High Court convicting and sentencing the appellant set aside – Constitution of India – Articles 215 and 225 – Madras High Court Contempt of Court Rules, 1975.

(ii) s.2(c) – Criminal contempt – Jurisdiction of court to initiate proceedings for contempt – Held: While dealing with criminal contempt in terms of s.2(c), strict procedures are to be adhered – The jurisdiction to initiate proceedings for contempt as also the jurisdiction to punish for contempt are discretionary with the court – Contempt generally and criminal contempt certainly is a matter between the court and the alleged contemnor – The person filing an application or petition before the court does not become a complainant or petitioner in the proceedings – He is just an

informer – His duty ends with the facts being brought to the notice of the court – It is thereafter for the court to act on such information or not.

Muthu Karuppan v. Parithi Llamvazhuthi and Anr. 329

(2) (See under: Motor Vehicles Act, 1988) 142

CONTRACT:

(1) Bid.
(See under: Government Contracts) 1127

(2) Tender:

(i) Risk and Cost Tender – Construction of Rail Over-Bridge – Tender of contractor accepted and agreement entered into between the parties – Changes in design thereafter whereby Viaduct had to be extended involving additional cost – Held: The work relating to construction of Rail Over-bridge after the revised design consisted of two parts, one which the contractor was executing and the other to be executed by a different contractor – To proceed on the basis that the contractor was willing to undertake the entire work at the old rates was an error of judgment and the termination of the contract in relation to original Tender on the basis of said supposition was unjustified and was rightly set aside by the Single Judge of the High Court, which order was affirmed by the Division Bench – Constitution of India, 1950 – Articles 226 and 32.

(Also see under: Constitution of India, 1950)

Union of India & Ors. v. Tania Construction Pvt. Ltd. 397

(ii) Tender – Tehri Pump Storage Plant, a project for additional electricity generation – Appellant

(THDC), a corporation under the Government of India, handling the project right from August, 2007 – However, tender not finalized due to legal battle between the two bidders, respondent No.1 and respondent No.2 – Respondent no.1 filed writ petition – High Court passed interim order staying the whole tender process – Held: Not justified – Since the whole process was absolutely transparent, there is no scope to stall the whole process by finding fault with the tendering process and insisting that THDC could not invite fresh pricing bids – THDC acted in favour of the national interest by trying to prevent the exorbitant prices for the project and further trying to go to the realistic and minimum price – Contractual rights of competing parties like respondent no.1 and respondent no.2 not more important than the national interest – Stay order of High Court set aside – Parties to submit fresh price bids – THDC to accordingly take decision in respect of the grant of contract.

THDC India Ltd. v. Voith Hydro GMBH Co. and Anr. 618

COSTS:

(See under: Protection of Human Rights Act, 1993) 460

CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860) 313,
518, 769,
958, 1015, 1044,
1180 and 1189

CRIMINAL JURISPRUDENCE:

Presumption of innocence – Held: Every person is presumed to be innocent unless he is proved

guilty by the competent court.

State of M.P. v. Ramesh and Anr. 1

CRIMINAL LAW:

(1) Age of accused.
(See under: Penal Code, 1860) 982

(2) Age of the prosecutrix.
(See under: Penal Code, 1860). 1189

(3) Common intention/Common object.
(See under Penal Code, 1860) 300
and 550

(4) Common Object – Explained
(See under: Penal Code, 1860) 186

CRIMINAL TRIAL:

Transfer of investigation to CBI ordered by the Supreme Court – Submission of report by CBI and subsequent monitoring – Held: Once a charge sheet is filed in the competent court after completion of the investigation, the process of monitoring by the Supreme Court for the purpose of making the CBI and other investigating agencies concerned perform their function of investigating into the offences concerned comes to an end – Thereafter it is only the court in which the charge sheet is filed which is to deal with all matters relating to the trial of the accused, including matters falling within the scope of s. 173(8) CrPC.

(Also see under: Investigation)

Narmada Bai v. State of Gujarat & Ors. 729

DEEDS AND DOCUMENTS:

(1) (See under: Lease) 606

(2) (See under: Mohammedan Law and

Transfer of Property Act, 1882) 1155

DELHI MUNICIPAL CORPORATION ACT, 1957:

s.347D – Appeal against order of Appellate Tribunal – Under s.347D of the DMC Act and s.256 of NDMC Act appeal against orders of Appellate Tribunal shall lie to the Administrator – Under both the Acts, the jurisdiction of the Civil Court has been barred – Constitutionality of s.347D of the DMC Act and s.256 of NDMC Act, challenged – Held: s.347D of the DMC Act and s.256 of NDMC Act are not constitutionally valid – Both the said provisions are, therefore, declared unconstitutional being violative of Article 14 of the Constitution – In view of this, till a proper judicial authority is set up under the said Acts, the appeals to the Administrator u/s.347D of the DMC Act and s.256 of NDMC Act shall lie to the District Judge – All pending appeals filed under the erstwhile provisions shall stand transferred to the Court of District Judge, Delhi – However, the decisions which have already been arrived at by the Administrator under the said two provisions would not be reopened in view of the principles of prospective overruling – New Delhi Municipal Corporation Council Act, 1994 – s.256.

Amrik Singh Lyallpuri v. Union of India and Ors. 560

DEVELOPMENT CONTROL REGULATION FOR GREATER BOMBAY, 1991:

Reg. 3(7) – Transfer development rights (TDR) – Amenity – Order by High Court directing Municipal Corporation of Greater Bombay (MCGB) to grant additional transfer development rights and to issue development rights certificate equivalent to 85 %

of the area of a courtyard developed by the respondents in favour of MCGB – Correctness of – Held: As per the definition of ‘amenity’ under Regulation 3(7), asphaltting the courtyard amounts to ‘amenity’ – Once it is held as an amenity, there is no question of refusing the right of equivalent TDR – Clauses 5 and 6 in Appendix VII do not give a discretion to the Municipal Authorities to scale down the grantable TDR – Thus, the High Court was right in granting 100% TDR as against the development of courtyard by asphaltting the same.

Municipal Corporation of Greater Bombay & Anr. v. Yeshwant Jagannath Vaity & Ors. 653

DOCTRINES/PRINCIPLES:

(1) Doctrine of election – Basis of – Held: Doctrine of election is based on the rule of estoppel – Principle that one cannot approbate and reprobate inheres in it.

Joint Action Committee of Airlines Pilots Associations of India & Ors. v. Director General of Civil Aviation & Ors. 1019

(2) Doctrine of legitimate expectation. (See under: Administrative law and Education/Educational Institutions) 533

(3) Principle of collective responsibility. (See under: Bihar Municipal Act, 2007) 771

(4) Principle of sanctity of recitals in court proceedings. (See under: Motor Vehicles Act, 1988) 897

(5) Separation of powers.

1231

(See under: Jurisdiction) 509

Dunlop India Limited v. A.P. Rahna and Anr. 1080

EDUCATION/EDUCATIONAL INSTITUTIONS:

Vocational Training Centres (VTCs) – Cabinet decision dated 18.7.2009 discontinuing three courses, namely, Art and Craft, Library Science and PTI –Held: The Cabinet considered the proposal of the State Council for Vocational Training and after deliberation, took the decision to continue various courses under SCVT except the said three courses – Inasmuch as the Cabinet decision dated 18.7.2009 was not the subject matter or issue of the writ petition, State was not in a position to highlight all details before the High Court – High Court was not justified in interfering with the Cabinet decision dated 18.7.2009 – The quashing of Cabinet decision without analyzing the pros and cons restricts the State’s constitutional authority and powers to frame policy especially in such vital areas like imparting technical education, and, therefore, is not acceptable– Administrative law – Policy decision – Judicial review of.

(Also see under: Constitution of India, 1950, Administrative Law and Judicial Review)

State of H. P. and Ors. v. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh 533

EQUITY:

(1) When available – Held: Law prevails over equity if there is a conflict – Equity can only supplement the law, and not supplant it – Maxim – Dura lex sed lex.

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(Also see under: Raj Bhasha Adhikari Recruitment Rules 2005)

CMD/Chairman, B.S.N.L. and Ors. v. Mishri Lal and Ors. 317

(2) (See under: Land Acquisition Act, 1894) 243

EVIDENCE:

(1) Admission – Evidentiary value of – Held: Admission is the best evidence against the maker and it can be inferred from the conduct of the party – Admission implied by conduct is strong evidence against the maker but he is at liberty to prove that such admission was mistaken or untrue. (Also see under: Income Tax Act, 1961)

Income Tax Officer, Jind v. M/s. Mangat Ram Norata Ram Narwana 1137

(2) Burden of proof:

(i) (See under: Kerala Buildings (Lease and Rent Control) Act, 1965) 897

(ii) (See under: Negotiable Instruments Act, 1881) 289

(iii) Burden of proof in a contempt petition. (See under: Contempt of Courts Act, 1971). 329

(3) Circumstantial evidence:

(i) Held: In a case based on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established – The circumstances so proved must unerringly point towards the guilt of the accused – It should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else – It has to be

considered within all human probability and not in fanciful manner – Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence.

(Also see under: Penal Code, 1860)

Md. Mannan @ Abdul Mannan v. State of Bihar 518

(ii) (a) Circumstantial evidence.

(b) Extra-judicial confession.

(See under: Penal Code, 1860) 982

(4) Confession.

(See under: Narcotic Drugs and Psychotropic Substances Act, 1985) 967

(5) Dying declaration.

(i) (See under: Penal Code, 1860) 501

(ii) (See under: Penal Code, 1860) 958

EVIDENCE ACT, 1872:

(1) (i) ss.3 and 6 – Admissibility of evidence under – Discussed.

(ii) Evidence of Child Witness

(Also see under: Code of Criminal Procedure, 1973, Penal Code, 1860 and Witnesses)

State of M.P. v. Ramesh and Anr. 1

(2) ss. 17, 21 and 32(2) – ‘Admission’ – Suit for eviction of tenant – Tenant, on the basis of rent receipts claiming that notice for ejection was bad as one month’s clear notice according to Bengali Calendar was not given – Landlord on basis of lease deed claiming tenancy according to English Calendar – Neither of the two examining the predecessor-in-interest of landlord either to prove the rent receipts or the lease deed – Tenant

admitting in another suit the tenancy as per English Calendar – Held: In the circumstances, the ‘admission’ of tenant is the best possible form of evidence – West Bengal Premises Tenancy Act, 1956 – s.13(6).

(Also see under West Bengal Premises Tenancy Act, 1956; and Code of Civil Procedure, 1908)

Mritunjoy Sett (D) By Lrs. v. Jadunath Basak (D) By LRs. 884

(3) (i) ss. 25 and 26 – Confession made to officer of Central Bureau of Narcotics – Held: The officers of the Central Bureau of Narcotics are not police officers within the meaning of ss. 25 and 26 of the Evidence Act and, therefore, confessions made before them are admissible in evidence.

(ii) Confession – Code of Criminal Procedure, 1973 – s. 173.

(Also see under: Narcotic Drugs and Psychotropic Substances Act, 1985)

Ram Singh v. Central Bureau of Narcotics 967

(4) s. 32 – Dying declaration – Evidentiary value – Held: Dying declaration can be the sole basis for conviction, however, it has to be proved to be wholly reliable, voluntary, and truthful – Maker of the dying declaration must be in a fit medical condition to make it – Oral dying declaration is a weak kind of evidence, where the exact words uttered by the deceased are not available, particularly because of the failure of memory of the witnesses who are said to have heard it.

(Also see under: Penal Code, 1860)

Waikhom Yaima Singh v. State of Manipur 448

(5) s. 35
(See under: Penal Code, 1860) 1189

(6) s.65 – Secondary evidence relating to contents of a document – Admissibility of – Held: Secondary evidence relating to contents of a document is inadmissible, until non production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section – The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original – Mere admission of a document in evidence does not amount to its proof – The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. (Also see under: Specific Relief and Code of Civil Procedure, 1908)

H. Siddiqui (dead) by Lrs. v. A. Ramalingam 587

(7) s. 114, Illustration (f) – Presumption as to service of notice – Disciplinary inquiry – Notice sent to delinquent by registered post – Delinquent not participating in the proceedings and contending that notices were not served upon him in accordance with law – Held: The second show cause notice and the copy of the inquiry report had been sent under registered post – Therefore, there is a presumption in law, particularly, u/s 27 of the General Clauses Act, 1897 and s.114 Illustration (f) of the Evidence Act that the addressee has received the materials sent by post – Notice – Service of – General Clauses Act, 1897 – s.27.

(Also see under: Service Law; and Constitution of India, 1950)

Chairman-Cum-M.D., Coal India Ltd., & Ors. v. Ananta Saha & Ors. 44

EXECUTIVE:

Principle of collective responsibility.
(See under: Bihar Municipal Act, 2007) 771

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FIR:

Subsequent cross-FIR.
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FOREST (CONSERVATION) ACT, 1980:

Leasehold land, a reserved forest land – Non-renewal of lease by the State Government – Challenged – Held: In the event of extending the lease period, it was likely that the lessee would commence fresh cultivation on the land in question – The intention of the Government was to develop naturally grown forests over the lands which could only be done if the possession was taken by the Government – By virtue of the 1980 Act, no State Government or other authority could grant any lease, etc. in respect of forest land to any private person or any agency which was not owned, managed or controlled by the Government – State Government rightly refused the claim of lessee to renew the lease.

K. Balakrishnan Nambiar v. State of Karnataka 1143

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GENERAL CLAUSES ACT, 1897:		
(1) s.6.		
(See under: Airports Authority of India Act, 1994)	911
(2) s.27.		
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GOVERNMENT CONTRACTS:		
(1) Bid – Request For Proposal sent to bidders for supply of Fast Patrol Vessels – Tender condition that the price was to be firm and fixed for the entire duration of the contract and not subject to escalation – Petitioner No.1, lowest bidder claiming the benefit of Foreign Exchange Rate Variation (FERV) without specifying the foreign currency – Respondent No. 4, second lowest bidder indicating a firm rate of exchange as on the date of opening of the commercial bid – Subsequently, petitioner No. 1 amending its bid by withdrawing its initial offer and offering the quoted price without FERV content – However, the bid of petitioner No.1 declared as non-responsive and contract awarded to respondent No. 4 – Writ petition by petitioner No. 1 – Dismissed by High Court – Interference with – Held: Not called for – Standard of eligibility as laid down in the notice for tender could not be changed arbitrarily as that would be violative of Article 14 of the Constitution – Offer made by respondent No. 4 satisfied the requirements of firm and fixed offer – Administrative law –		

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Constitution of India, 1950 – Article 14.		
<i>Larsen and Toubro Ltd. & Anr. v. Union of India & Ors.</i>	1127
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HONOUR KILLINGS:		
‘Khap Panchayats’ (known as Katta Panchayats in Tamil Nadu) – Institutionalized crime on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people – Held: This is wholly illegal and has to be ruthlessly stamped out – There is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder – Administrative and police officials directed to take strong measures to prevent such atrocious acts. (Also see under: Schedules Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; and Social Justice)		
<i>Arumugam Servai v. State of Tamil Nadu</i>	488
INCOME TAX ACT, 1961:		
ss. 276C(i), 277, 278 – Discrepancies relating to entries of income, sale and purchase and bank accounts of respondent-firm – Revised return filed duly signed by the accused-partner – Assessment of income – Based on assessment, penalty imposed – Penalty paid – Complaint also lodged u/ss.276C(i), 277, 278 for prosecution of firm and partner – Magistrate held them guilty and imposed fine on the firm and the partner and awarded		

sentence of one year rigorous imprisonment to the partner – Acquittal of partner by appellate court – Upheld by High Court on the ground that prosecution was not able to prove that the return was signed/verified by the accused-partner – Held: At no point of time, the said partner made any objection that the return did not bear his signature or was not filed by him – The appellate court misdirected itself in not considering the evidence in right perspective and acquitting the accused – High Court also failed to correct the apparent error – Order of conviction passed by Magistrate restored – Evidence – Admission.

(Also see under: Evidence)

Income Tax Officer, Jind v. M/s. Mangat Ram Norata Ram Narwana & Anr. 1137

INTERNATIONAL LAW:

International Conventions/Treaties – U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, i.e. the PALERMO Protocol on Trafficking.

(See under: Child Welfare) 353

INTERPRETATION OF STATUTES:

(1) (i) Harmonious construction – Removal of anomaly – Held: When on a construction of a statute, two views are possible, one which results in an anomaly and the other not, the latter is to be adopted and not the former, seeking consolation in the thought that the law bristles with anomalies – It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction – Bihar Municipal Act, 2007.

(ii) Reading down a section.
(Also see under: Bihar Municipal Act, 2007)

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(2) Strict interpretation – Interpretation of tax statutes.

(See under: Jurisdiction) 509

(3) (See under: Airports Authority of India Act, 1994) 911

INVESTIGATION/INQUIRY:

Investigation by specialized agency -- Held: In an appropriate case, particularly, when the court feels that the investigation by the State police authorities is not in the proper direction as the high police officials are involved, in order to do complete justice, it is always open to the court to hand over the investigation to an independent and specialized agency like the CBI even if charge sheet has been submitted – In the instant case, the petitioner sought transfer of case to CBI to investigate fake encounter killing of her son (victim) – The analysis of the materials showed several lacuna on the part of the investigation by the State Government – In view of circumstances and in the light of the involvement of senior police officials of three States, to meet the ends of justice and in the public interest, CBI is directed to take up the investigation.

(Also see under: Criminal Trial)

Narmada Bai v. State of Gujarat and Ors. 729

JUDGMENTS/ORDERS:

(1) Correction of typographical errors.
(See under Land Acquisition Act, 1894) 557

(2) 'Summary decision' – Held: Is a decision which is short and quick and not elaborate but that does not mean 'non-reasoned dismissal.

(Also see under: Land Acquisition Act, 1894)

U.P. Avas Evam Vikas Parishad v. Sheo Narain Kushwaha & Ors. 869

JUDICIAL REVIEW:

(1) Appointment/renewal of Assistant District Government Counsel (Criminal) – Judicial review of – Principles explained – Recommendation by District Magistrate and the District Judge to renew the term of two incumbents – Government asking the District Magistrate to advertise the posts – Posts advertised and two incumbents also applied – Two panel lists sent by the District Judge submitted by District Magistrate to Government – Government asking the District Magistrate to re advertise the posts – In the writ petition filed by the two incumbents High Court setting aside the order of State Government and directing it to make the appointments from the lists sent by District Magistrate – Held: In view of provisions of para 7.06, 7.07 and 21.07 of the L.R. Manual and in view of poor performance of the incumbents the decision of the State Government not to accept the recommendation of the District Magistrate cannot be said to be arbitrary – The right of the State Government to engage, disengage and renew the term of its counsel and Law Officers in keeping with the need to best safeguard the public interest and monetary considerations, suitability of the incumbent and the interest of the Government as the client, will have to be upheld – L.R. Manual – Para 7.06, 7.07 and 21.07.

(Also see under: Constitution of India, 1950)

State of U.P. & Ors. v. Rakesh Kumar Keshari & Anr. 1060

(2) Policy decision of State Government with regard to permitting Vocational Training Centres to run technical courses – Judicial review of – Held: Inasmuch as it is the responsibility of the State to provide good education, training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials – Government is free to frame its policy, alter or modify it with regard to manpower requirement in various professional and technical fields – The courts do not substitute its views for the decision of the State Government with regard to policy matters.

(Also see under: Education/Educational Institutions; Constitution of India, 1950; and Administrative Law)

State of H. P. and Ors. v. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh 533

JUDICIARY:

(See under: Uttar Pradesh Higher Judicial Service Rules 1975; and Protection of Human Rights Act, 1993) 460

JURISDICTION:

Jurisdiction of courts to issue a mandate to legislate an Act and to make subordinate legislation in a particular manner – Scope of – Assessment order – Sales tax exemption not granted to respondent – Challenged – High Court

held that the wordings of central excise notification be read into the sales tax notification issued by the State Government – Held: It is inappropriate for the courts to issue a mandate to legislate an Act and to make subordinate legislation in a particular manner – The exclusive domain of legislation is with the legislature – Subordinate legislations are framed by the executive – It is always appropriate for each of the organs to function within its domain – In the instant case, High Court had directed the subordinate legislation to substitute wordings in a particular manner, thereby assuming to itself the role of a supervisory authority, which is not a power vested in the High Court – Exemption clauses should be strictly interpreted – The judgment of the High Court and also of the Tribunal set aside – Matter remitted to the first appellate court for consideration afresh – Sales tax – Interpretation of statutes – Administrative law – Doctrines/Principles of separation of powers – Legislation – Subordinate legislation.

State of U.P. and Ors. v. M/s. Mahindra and Mahindra Ltd. 509

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000:
s.33(3).
(See under: Child Welfare) 353

KARNATAKA INDUSTRIAL AREA DEVELOPMENT BOARD REGULATIONS, 1969:
Allotment of industrial sites – Enhanced demand raised for payment of final allotment price – Division Bench of the High Court quashed the enhanced demands – Held: Division Bench of the

High Court correctly concluded that the fixation of final price by the Board was without authority of law and was violative of Article 14 of the Constitution – Power to fix the final price, would have to be exercised in accordance with the principle of rationality and reasonableness – Records show that acquisition and development of land in the industrial area was made in phases – Thus, it cannot be said that all the allottees formed one class – Earlier allottees having sites in fully developed segments cannot be intermingled with the subsequent allottees in areas which may be wholly undeveloped – Also, once the allotment has been made, the Board cannot be permitted to exercise its powers of fixing the final price at any indefinite time in the future – Board sought to fix the final price after a gap of 13 years which is not permissible – Constitution of India, 1950 – Article 14.

Karnataka Industrial Areas Development Board & Anr. v. M/s. Prakash Dal Mill & Ors.

KERALA BUILDINGS (LEASE AND RENT CONTROL) ACT, 1965:

(i) s.11(4)(v) – Eviction on the ground that tenant ceased to occupy the premises for six months without reasonable cause – Held: If the premises is let out for business or commercial purpose, complete cessation of the business/commercial activity may give rise to a presumption that the tenant had ceased to occupy the premises – The initial burden to show that the tenant has ceased to occupy the premises continuously for 6 months is always on the landlord – Once such evidence is adduced, the burden shifts on the tenant to

prove that there was reasonable cause for his having ceased to occupy the tenanted premises for a continuous period of 6 months – In the instant case, the tenant did not produce any evidence to prove physical occupation of the premises or any business transaction – The finding of courts below that the landlord had succeeded in making out a case for eviction u/s.11(4)(v) and there was no reasonable cause for the tenant to have ceased to occupy the suit premises continuously for a period of six months is upheld – Rent Control and Eviction.

(ii) s.11(4)(v) – Financial difficulty of the tenant whether reasonable cause for non-occupation of the tenanted premises – Held: If the suit premises is let out for industrial or commercial/business purpose and the same is not used for the said purpose continuously for a period of six months, the tenant cannot plead financial crunch as a ground to justify non-occupation of the building unless cogent evidence is produced – Legal possession of the building by the tenant by itself, is not sufficient for refusing an order of eviction – Sick Industrial Companies (Special Provisions) Act, 1985 – s.22(1).

(iii) Eviction proceedings – Applicability of s.22(1) of SICA, 1985 – Held: Prohibition contained in s.22(1) does not operate as a bar to the maintainability of a petition filed for eviction of tenant – Sick Industrial Companies (Special Provisions) Act, 1985 – s.22(1).

(Also see under: *Res judicata*)

Dunlop India Limited v. A.P. Rahna and Anr.

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L.R. MANUAL (UTTAR PRADESH):

Para 7.06, 7.07 and 21.07.

(See under: Judicial Review; and Constitution of India, 1950)

.... 1060

LAND ACQUISITION:

Land belonging to claimants acquired on basis of requisition made by Andhra Pradesh State Road Transport Corporation (APSRTC) – Compensation awarded – Claimants filed execution petitions – APSRTC filed application in the execution petitions for impleadment as the second respondent – Application dismissed, which order was upheld up to the level of Supreme Court – In the execution petitions, Land Acquisition Officer directed to deposit the amounts in terms of the calculations made by the decree holders – Revision petitions filed by APSRTC dismissed by High Court, which order was upheld by the Supreme Court – Revision petitions filed by Land Acquisition Officer against the very same order of the executing court – Allowed by High Court – Justification of – Held: Not justified – The Land Acquisition Officer was trying to fight a battle of APSRTC which the latter had already lost – Order of the High Court set aside and that of the executing court restored.

Koka Suryanarayana Rao and Ors. v. Land Acquisition Offr. and Rev. Div. Offcr., A.P.

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LAND ACQUISITION ACT, 1894:

(1) s.16 – Land Acquisition – Vesting of land in State Government – Taking of actual possession – Acquisition of land for the purpose of urbanization – Objections filed by land owners –

Award passed by the Land Acquisition Collector – Writ petitions challenging the acquisition proceedings on various grounds including the violation of Regional Plan 2001 wherein the acquired land is shown as part of the Green Belt/ Green Wedge; and that land owners were in continuous possession of the acquired land and were cultivating the same – Dismissal of the writ petitions holding that once the land vested in the State Government, land owners did not have the locus to challenge the acquisition proceedings – Held: Vesting of land u/s. 16 pre-supposes actual taking of possession and till that is done, legal presumption of vesting enshrined in s. 16 cannot be raised in favour of the acquiring authority – Documentary evidence showed that actual and physical possession of the acquired land is still with land owners and no document placed before the Court to show that actual possession of the acquired land was taken on the particular date – Therefore, High Court was not right in holding that the acquired land would be deemed to have vested in the State Government – Matter remitted to High Court for disposal of the writ petition on merits.

Prahlad Singh & Ors. v. Union of India & Ors. 1002

(2) s.28A(3) – Appeal before Supreme Court allowed and the application u/s.28A(3) held maintainable – Application for correction of typographical errors in the judgment passed by the Supreme Court – Held: In view of the agreement between the counsel for the parties, direction issued that the errors be corrected.

V. Ramakrishna Rao v. Singareni Collieries Company Ltd. & Anr. 557

(3) s.48, and s.48-B (as inserted by Land Acquisition (Tamil Nadu Amendment) Act, 1996 – Release of acquired land – Cancelled – Held: When the order of re-conveyance was made on 10.3.1995, s.48 of the Act was holding the field and the land-owners had no right of asking for re-conveyance in 1995 as the possession had been taken in 1949 and land vested in Government in 1962 – Further, the Government divested itself by giving the land over to the Corporation – So, exercise of power by Government in cancelling the reconveyance cannot be faulted – Section 48-B is not retrospective in operation – Even before making release of land u/s 48-B, Government must be satisfied that the land is not required for any public purpose – Corporation needs the land for parking space, which is certainly a public purpose – In view of clear provisions of s.48, there is no question of promissory estoppel which is an equitable doctrine and has no application to the facts of the case – Promissory estoppel – Equity.

Commissioner, Corporation of Chennai v. R. Sivasankara Mehta and Anr. 243

(4) s. 54 – Appeal – Acquisition of lands of respondent for benefit of appellant – Compensation of Rs. 10,250/- per bigha awarded by the Land Acquisition Collector, enhanced to Rs. 1,10,250 per bigha by the reference court – Appeal u/s. 54 – Division Bench of the High Court dismissing the appeal summarily by a non-speaking order – Held: U/s. 54, a party aggrieved by the award of the reference court is entitled to file an appeal against the award of the reference court as of right – Such appeals which mostly relate to the correctness of the quantum of

compensation or apportionment, raise both questions of facts as well as questions of law – Provisions of O. 41 CPC are made applicable to such appeals – Thus, if the High Court wants to dismiss an appeal summarily without issuing notice, it should assign brief reasons, though not required to render a ‘brief judgment’ – On facts, on the basis of the rate of Rs.45 per sq.yd. awarded by the reference court, the price of a bigha comprising 2250 sq.yds., would be Rs.1,01,250 and not Rs.1,10,250 – Thus, there is an error apparent on the face of the award of the reference court – Also, several other appeals relating to the same notification, against similar fixation of market value by the reference court were already admitted by the High Court – Thus, the appeal raised sufficient grounds which require to be dealt with and decided by the High Court on merits – Matter remitted to the High Court for disposal of the appeal on merits – Code of Civil Procedure, 1908 – Or. 41, r.11.

(Also see under: Weights and Measures)

*U.P. Avas Evam Vikas Parishad v.
Sheo Narain Kushwaha & Ors.* 869

LAND ACQUISITION (TAMILNADU AMENDMENT)
ACT, 1996:
s. 48-B.
(See under: Land Acquisition Act, 1894) 243

LEASE:
(1) Leasehold property – Demand of misuser charges from lessee – Legality of – From 1983 onwards, the petitioner-DDA sent a series of show-cause notices to respondent alleging that he was misusing the property for office purposes

and that he had also raised unauthorized construction on the terrace of the property in violation of the terms and conditions of the lease deed – Respondent denied the alleged misuse in part and as regards the other part of alleged misuse took the stand that such violations had been done by his tenants without obtaining his sanction and consequently he had initiated eviction proceedings against them – No action taken by DDA – In 2004 when respondent applied to DDA for mutation of the property, DDA demanded arrears of misuse charges from the respondent – Respondent filed writ petition – High Court quashed the demand – Held: Respondent took prompt steps against the tenants for their transgression and one of the tenants has already vacated the premises occupied by him – Further, DDA did not take any follow-up action after issuance of the show-cause notices – Instead, after a lapse of 25 years the DDA set up a claim on account of misuser charges for the entire period – It would be inequitable to allow the DDA to take advantage of its inaction in claiming misuser charges – Though no limitation was prescribed for making a demand of arrear charges, the statutory Authority is required to act within a reasonable time.

*Delhi Development Authority v.
Ram Prakash* 606

(2) Lease of forest land.
(See under: Forest (Conservation) Act,
1980) 1143

LEGISLATION:

(1) Need to frame Rules.

(See under: Airports Authority of India Act, 1994) 911

(2) Subordinate legislation.
(See under: Jurisdiction) 509

LIMITATION:

(1) (See under: Constitution of India, 1950; and Service Law) 44

(2) (See under: Lease) 606

MADHYA PRADESH NAGAR TATHA GRAM NIVESH ADHINIYAM, 1973:

(i) Object of its enactment – Discussed.

(ii) s.23-A – Development Plan – Modification of – Notifications modifying the Bhopal Development Plan and change of land use – Held: The power of modification of development plan can be exercised only for specified purposes in terms of s.23-A(1)(a), – In the instant case, in the Bhopal Development plan, the use of land which was reserved and allotted to respondent No.5 was shown as public and semi-public (health) – State Government modified the plan by invoking s.23-A(1)(a) for facilitating establishment of an institute by respondent No. 5 – The exercise undertaken for the change of land use, which resulted in modification of the development plan was an empty formality because land was allotted to respondent No.5 almost two years prior to the issue of notification u/s.23-A (1)(a) and the objects for which respondent No.5 was registered as a trust had no nexus with the purpose for which modification of development plan could be effected under that section – Therefore, modification of the development plan was ultra vires the provisions of s.23-A(1)(a) – Urban

development.

(Also see under: Constitution of India, 1950; and Administrative Law)

Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh and Ors. 77

MADHYA PRADESH REVENUE BOOK CIRCULAR:

Unregistered societies and private trusts are not eligible for allotment of land.

(Also see under: Madhya Pradesh Nagar Tatha Gram Nivesh Adhinyam, 1973)

Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh and Ors. 77

MADRAS HIGH COURT CONTEMPT OF COURT RULES, 1975:

(See under: Contempt of Courts Act, 1971) 329

MAXIMS:

(1) *Dura lex sed lex.*

(See under: Raj Bhasha Adhikari Recruitment Rules 2005; and Equity) 317

(2) *“Sublato fundamento cadit opus”* – Applicability of.

(See under: Service Law) 44

MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957:

s. 21 read with s. 4(1)(a) – Illegal mining of iron ore – Department detected unauthorized mining operation in Government land – Action taken to seize iron ore illegally quarried and deposited on the leased area of appellant-mining lease holder – Department taking a decision to auction the seized iron ore – Complaint by the appellant that

instead of the illegally mined iron ore, the department was contemplating to sell the iron ore which was legally mined and accumulated by the appellant – Writ petition by the appellant – dismissed by High Court – Held: Appellant could legally mine upto 5500 metric tons only in a year which was increased to 41000 metric tons a year – Audit report indicates that the appellant had quarried and produced around one lakh ton of iron ore – Thus, the appellant cannot claim any right over seized iron ore – Interference u/Art. 136 not called for – Constitution of India, 1950 – Article 136.

B.R. Surendranath Singh v. Deputy Director, Department of Mines & Geology, Karnataka and Ors.

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MOHAMMEDAN LAW:

Hiba (gift) – Essential requisites of – Held: Are: (1) declaration of the gift by the donor, (2) acceptance of the gift by the donee and (3) delivery of possession – The rules of Mohammedan Law do not make writing essential to the validity of a gift and an oral gift fulfilling all the three essentials make the gift complete and irrevocable – However, the donor may record the transaction of gift in writing – In the instant case, as all the three essential requisites are satisfied the gift in favour of defendant 2 became complete and irrevocable – Judgment of High Court set aside and that of trial court, holding the gift deed genuine and binding between the parties, restored – Transfer of Property Act – ss. 129 and 123. (Also see under: Transfer of Property, 1882)

Hafeeza Bibi & Ors. v. Shaikh Farid (D) by LRs. & Ors.

1155

MOTOR VEHICLES ACT, 1988:

(1) s.41(6) r/w r. 50 of MV Rules, 1989– Issuance of notification under – For implementation of a new Scheme regulating issuance and fixation of new High Security Registration Plates (HSRP) – Invitation of tenders by various States to implement the Scheme – Held: – All those States which have invited tenders but have not finalized the same are directed to complete the process within the stipulated time and ensure implementation of HSRP Scheme at the earliest as also file affidavits before this Court showing complete compliance – As regards the category of States which have not even initiated any process for compliance of their statutory duty, it is an intentional disobedience of the orders of the Court – Further directions issued – Motor Vehicles Rules, 1989 – r.50 – Contempt of Courts Act, 1971.

Maninderjit Singh Bitta v. Union of India & Ors.

142

(2) s.166 – Motor accident – Compensation – Appellant, aged 30 years and earning around Rs. 1500/- pm, suffered disability and rendered bedridden as a result of the accident – Claim petition by appellant seeking Rs. 15 lakhs as compensation – Tribunal computed compensation as Rs. 6,07,000/- with interest at the rate of 9%, with the consent of the parties – Appeal filed by appellant claiming enhancement for compensation – Affidavit filed by advocate who appeared before the Tribunal contending that no such settlement was ever entered into by the consent of parties – Dismissal of the appeal by the High Court discarding the affidavit – Held: High Court took a

narrow view of the entire controversy – Tribunal could not accept the representation lowering down the claim on the mere oral statement of counsel – It should have insisted on production of some material for the same – Stand taken in the affidavit of the advocate appears probable since there is nothing on record to show that the appellant ever filed any petition or affidavit for settlement before the MACT – Principle of sanctity of recitals in Court proceedings is available to a Court of Record and cannot be stretched to the proceedings of a Tribunal – Since the accident took place in 1990 and the appellant has suffered 100% medical disability which is permanent in nature with no sign of recovery – She has two children and her husband expired prior to the incident – On basis of the materials on record, compensation of Rs.15 lacs allowed with interest at the rate of 8% on the enhanced compensation from the date of filing the claim petition before MACT till date of realization.

Urviben Chiragbhai Sheth v. Vijaybhai Shambhubhai Joranputra & Ors. 897

MOTOR VEHICLES RULES, 1989:

r.50.
(See under: Motor Vehicles Act, 1988) 142

MUNICIPALITIES:

(1) Municipal governance.
(See under: Bihar Municipal Act, 2007). 771

(2) (See under: Development Control Regulation for Greater Bombay, 1991) 653

(3) (See under: Delhi Municipal Corporation Act, 1957) 560

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985:

(1) ss. 2, 8 and 18 – Distinction between Opium and Morphine – Recovery of contraband – Conviction of accused-appellant – Held: The requirement under the law is first to identify and classify the recovered substance and then to find out under what entry it is required to be dealt with – If it is Opium as defined in clause (a) of s.2(xv) then the percentage of Morphine contents would be totally irrelevant – It is only if the offending substance is found in the form of a mixture as specified in clause (b) of s.2(xv), that the quantity of morphine contents become relevant – The instant case did not relate to a mixture of narcotic drugs or psychotropic substances with one or more substances – The material so recovered from the appellant was opium in terms of s.2(xv) – Percentage of morphine was not a decisive factor for determination of quantum of punishment, as opium is to be dealt with under a distinct and separate entry from that of morphine.

Harjit Singh v. State of Punjab 691

(2) (i) ss. 8 and 18 – ‘Conscious possession’ – Recovery of opium from a room belonging to a hotel – Conviction of the servant of the hotel on the basis of his confessional statement that he brought the opium to the hotel from the house of its owner on his direction and opium tablets were sold to truck drivers – Affirmed by High Court –

Held: Control over the goods is one of the tests to ascertain conscious possession so also the title – A servant of a hotel cannot be said to be in possession of contraband belonging to his master unless it is proved that it was left in his custody over which he had absolute control – The evidence clearly points out that title to the opium vested in the owners of the hotel – It cannot be held that the accused was in conscious possession of the opium – Conviction and sentence of accused set aside – Evidence Act, 1872 – ss.25 and 26.

(ii) Confession – Evidentiary value of – Held: A confession, if it is voluntary, truthful, reliable and beyond reproach is an efficacious piece of evidence to establish the guilt of the accused – However, before solely acting on confession, as a rule of prudence, the court requires some corroboration but as an abstract proposition of law it cannot be said that a conviction cannot be maintained solely on the basis of the confession made u/s 67 of the Act.

Ram Singh v. Central Bureau of Narcotics 967

(3) ss. 18 and 50 – Recovery of contraband goods – 10 kgs of opium allegedly found in the bag which the appellant was carrying – Recovery of 10 kg of opium from other accused – Both tried separately – Conviction of the other accused attaining finality – Trial court acquitted appellant on the ground that prosecution story was doubtful and the press note in local newspaper that 20 kgs of opium was recovered from the other accused but there was no reference to the appellant – High Court

reversed the order of acquittal on the ground that the press note could not be taken in evidence – Held: Provisions of s. 50 were not applicable in the instant case – The opium was allegedly recovered, from a bag, which the appellant was carrying – High Court wrongly proceeded on the basis that press note was a news item, whereas it was a press note issued by the SSP, veracity of which was accepted by PW-3 – The finding of High Court that the press note could not be relied upon was not correct – Trial court held in favour of the accused on consideration of the evidence, and as that view was clearly possible, High Court ought not have interfered in the matter in an appeal against acquittal – Appeal against acquittal – Evidence.

Bahadur Singh v. State of Punjab 877

NATURAL JUSTICE:

(See under: Party) 460

NEGOTIABLE INSTRUMENTS ACT, 1881:

ss. 138 and 141 – Offence by companies/firms – Dishonour of cheque issued by partnership firm – Complaint u/s.138 against firm and partners including respondents – Quashing of complaint sought by respondents on the ground that they had severed their connections with the firm much prior to the issuance of dishonoured cheques – High Court discharged the respondents – Held: Burden of proof that at the relevant point of time the respondents were not partners, lay specifically on them – The question as to whether or not they were partners in the firm during the relevant period

is one of fact, which has to be established in trial – High Court should not have interfered with the cognizance of the complaints having been taken by the trial court and discharged the respondents of the said liability at the threshold – Code of Criminal Procedure, 1973 – s.482 – Evidence – Burden of proof.

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

Rallis India Ltd. v. Poduru Vidya Bhusan & Ors. 289

NEW DELHI MUNICIPAL CORPORATION COUNCIL ACT, 1994:
s.256.
(See under: Delhi Municipal Corporation Act, 1957) 560

NOTICE:
(1) Service of notice.
(See under: Evidence Act, 1872 and Service Law) 44
(2) (See under: West Bengal Premises Tenancy Act, 1956) 884

PARTY:
(1) Necessary party – Impleadment of – Held: No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice – The principles enshrined in the proviso to Order I Rule 9, CPC provide that impleadment of a necessary party is mandatory and in case of non-joinder of

necessary party, the plaintiff/petitioner may not be entitled for the relief sought by him – In service jurisprudence, if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity – In case the services of a person is terminated and another person is appointed at his place, in order to get relief, the person appointed at his place is the necessary party for the reason that even if the plaintiff/petitioner succeeds, it may not be possible for the Court to issue direction to accommodate the petitioner without removing the person who filled up the post manned by plaintiff/petitioner – Service law – Code of Civil Procedure, 1908 – O.1 r.9 – Natural Justice.

(Also see under: Protection of Human Rights Act, 1993; and Protection of Human Rights (Amendment) Act, 2006)

J.S. Yadav v. State of U.P. & Anr. 460

(2) (See under: Code of Civil Procedure, 1908) 841

PENAL CODE, 1860:

(1) s.300, Exceptions 1, 4; s.304 Part I /149, s. 323/149, s. 147 and 148 – Altercation between the parties, resulted in fatal blow to victim and injuries to prosecution witnesses – Conviction u/ s. 302/149, 147 and 148 by courts below – Held: Appellant No.1 inflicted fatal blow to victim – No specific overt acts attributed to the remaining three accused except omnibus statement – Death caused by the accused was not pre-meditated as the incident took place as a result of sudden and grave provocation – Accused had no common

intention to cause death of the victim as only appellant No. 1 had hit the victim with Gandasa on head, without there being any pre-meditation amongst themselves – Injuries were not sufficient in the ordinary course of nature to have caused the death – Some of the accused also sustained injuries, which were caused by complainant party – Thus, the case falls under Exceptions 1 and 4 to s. 300 – Appellant No.1 convicted u/ss. 304 (Part-I) /149, 147, 148 and awarded sentence already undergone that is around 15 years – Other accused convicted u/ss. 323/149, 147 and 148 and awarded sentences already undergone which is more than 2 ½ years – Criminal Law – Common intention.

Veeran & Ors. v. State of M.P. 300

(2) s.302 – Refusal of wife to have sexual relation with her husband – Husband committed murder of his wife by strangulating her – Conviction and sentence u/s. 302, by the courts below – Plea of the husband that the case fell under Exception (4) to s. 300 and thus, he was liable for conviction u/ s. 304 Part (I) or (II) – Held: Husband caused as many as 14 injuries on the neck of the deceased and strangulated her with enormous force – He took undue advantage of the fact that he was male and was much stronger physically and the murder was committed in a revolting and cruel manner – Medical evidence to the effect that murder had been committed after sex between the couple – Thus, the cause for quarrel no longer existed – Conditions for applicability of Exception 4 to s.300 not fulfilled.

Babulal Sahu v. State of Chhatisgarh 313

(3) s.302 – Murder – Oral dying declaration by the victim in the hospital that appellant assaulted him – Victim expired the following day – Acquittal by the trial court – Conviction u/s. 302 by the High Court, on basis of the dying declaration – Held: Factum of the dying declaration is suspicious – No evidence about the fitness of the victim to make the dying declaration – Exact words of the dying declaration not available – They differ from witness to witness – Though the witnesses claimed to have reported to the informant about such dying declaration and the name of the assailant, there is no reflection of the name in the FIR – Trial court took a perfectly probable view which could not have been set aside for the mere fact that some other view could be taken on the basis of the dying declaration – Order of acquittal by the trial court restored.

(Also see under: Evidence Act, 1872)

Waikhom Yaima Singh v. State of Manipur 448

(4) s.302 – Conviction under – Allegation that accused-husband poured kerosene on the body of his wife and set her on fire – Dying declaration recorded by police officer and endorsed by the doctor to the effect that victim was in a fit mental condition to depose before the police – Conviction by courts below, on the basis of dying declaration – Held: Justified – The dying declaration was rightly made the sole basis for the conviction of accused – There was no explanation by the accused anywhere as to how the presence of kerosene was found on the inner and outer garments of his wife – It was not the defence of the accused that the death was suicidal or

accidental – The circumstances clinched the proof that it was the accused alone who committed the offence – Evidence – Dying declaration.

Gopal v. State of Karnataka 501

(5) s. 302 – Murder – Victim shot dead by three accused in presence of his mother – Acquittal by trial court – Two accused died pending appeal before High Court – Conviction by High Court of the surviving accused who had fired the shot – Held: Evidence of the mother of the deceased has been supported by other witnesses – Her evidence inspires full confidence – Delay in registration of FIR and sending the special report, explained – Conviction upheld – Code of Criminal Procedure, 1973 – ss. 157(3) and 313 – Appeal against acquittal.

(Also see under: Code of Criminal Procedure, 1973 and Appeal)

Fahim khan v. State of Bihar now Jharkhand 577

(6) s.302 – Conviction based on dying declaration – In the dying declaration, the victim had alleged that her husband-accused suspecting her chastity, beat her up and set her ablaze by pouring kerosene over her body –Held: The evidence of the doctor and the Magistrate, who recorded the dying declaration, was not at all shaken in the cross-examination – The victim also made an oral dying declaration to her father – The courts below did not err in relying upon the dying declaration and convicting the accused – Evidence – Dying declaration.

Natha Shankar Mahajan v. State of Maharashtra. 958

(7) s.302 – Murder – Conviction u/ss.302 and 379 – Allegation that accused committed murder of child by drowning her in a pond and thereafter removed silver chain from her person – Conviction based on circumstantial evidence – Circumstances were: disclosure statement, extra-judicial confession, recovery of silver chain from the accused and that accused was last seen with the victim – Held: Prosecution failed to prove the case of murder and theft of silver chain against the accused – Considering the short distance between the house of the victim and the pond, possibility of accidental drowning not ruled out – Accused was stated to be a frock wearing mohamedan girl on the relevant date and it was not shown as to how such a small girl could have drowned the victim – Sessions Judge should have used its discretion and sent the accused for medical examination to ascertain her exact age, which he failed to do – High Court did not advert to this aspect – Conviction by courts below set aside.

Roopsena Khatun v. State of West Bengal 982

(8) s.302 and s.302 r/w s.120B – Murder – Allegation that the wife alongwith another, murdered her husband – Prosecution primarily relying upon testimony of the 8 year old daughter – Conviction of by trial court – Set aside by High Court – Held: Testimony of child witness is affirmed by the statements of other witnesses, proved circumstances and medical evidence – Her deposition being precise, concise, specific and vivid without any improvement is worth acceptance in toto – High Court completely ignored the most material incriminating circumstances which

appeared against the accused – Findings recorded by High Court were contrary to the evidence on record and thus, were perverse – Judgment of the trial court restored.

(Also see under: Code of Criminal Procedure, 1973 and Witnesses)

State of M.P. v. Ramesh and Anr. 1

(9) ss.302/149, 302, 324/149 and 323/149 – Murder – Common intention – Enmity between the parties as daughter of one of the accused was teased – Seven accused armed with weapons raised lalkara threatening retribution – Injuries inflicted on two victims by accused – One of the victim succumbed to his injuries – Conviction of four accused whereas acquittal of the remaining accused – Upheld by the High Court – Held: Injury was caused directly and deep into the stomach of the victim, a very vital part, which led to death within a short time – Thus, it cannot be said that there was no intention to cause that very injury which ultimately led to the death of the victim – Accused were all of one family and they were annoyed with the members of the victim family – They lived close together in the same locality and came out armed and raised a lalkara that the opposite party be done away with and thereafter, the injuries were caused to the victims – Thus, a case of common intention is made out – Perusal of the injury attributed to the accused armed with lathi on the person of deceased would indicate that it is of very small dimension and there is a clear doubt as to whether an abrasion could be caused with a lathi which the accused was said to have been carrying – Therefore, the said accused is given benefit of doubt and acquitted –

However, conviction of the other accused upheld.

Gurmail Singh v. State of Punjab 550

(10) (i) ss. 302 and 324 read with s. 149 – FIR against 11 persons for causing death of one of the members of complainant party and causing injuries to others – On the following day cross-FIR registered against complainant party – Conviction by trial court of accused – Upheld by High Court – Held: The statements of prosecution witnesses u/s. 164 CrPC and their evidence before the court clearly show their improvements with due deliberation and consultation; and in the absence of credible explanation, conviction based on their testimony cannot be sustained – The place of occurrence has been shifted by informant and the Investigating Officer has admitted not making any site plan of the place of occurrence – The injuries on the accused, particularly, fire arm injury on A-1 has not been explained by the prosecution – The findings of the High Court and ultimate conclusion dismissing the appeals are perverse and resulted in failure of justice – Under the circumstances, the judgments of the High Court and the trial court are set aside – Accused acquitted.

(ii) s.149 – Member of unlawful assembly committing offence in prosecution of common object – Held: s.149 creates a specific offence and deals with punishment of that offence – Whenever the court convicts any person or persons of an offence with the aid of s. 149, a clear finding regarding the common object of the assembly must be given and the evidence discussed must show not only the nature of the common object but also

that the object was unlawful – In the absence of such finding as also any overt act on the part of the accused persons, mere fact that they were armed would not be sufficient to prove common object – In the instant case, there is no material to show that all the accused shared in common object, the object itself not being proved and their participation in it not made out by credible evidence – Without a clear finding regarding common object and participation therein by each one of the accused members, there can be no conviction with the aid of s. 149.

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

Kuldip Yadav & Ors. v. State of Bihar 186

(11) s.304 (Part-I) r/w s. 34 – Death due to gunshots – Three accused – Conviction u/s. 302 and sentence of life imprisonment by the trial court – High Court modified the conviction to one u/s. 304 (Part-I) r/w s. 34 on the ground that the matter related to a sudden quarrel without pre-meditation – Held: As regards two of the accused, no overt act has been attributed to them – They did not cause any injury to the deceased or to anybody else and the only allegation against them is that they had exhorted their co-accused to shoot at the deceased – Their conviction set aside – Conviction of the third accused u/s. 304(Part-I) does not call for interference – However, he was of tender age on the date of the incident and as on date he is 60 years of age – In the interest of justice, his sentence is reduced from 10 to 5 years – Sentence/Sentencing.

Zahoor & Ors. v. State of U.P 881

(12) s.304 (part-II) – Three accused – First two accused grappled and pinned down the victim – Third accused dealt a blow of axe on the head of the victim – Victim seriously injured and died in hospital – Courts below convicted accused u/s.302 and awarded life imprisonment – Held: There could not have been the intention to commit the murder of the victim though the common intention on the part of first two accused could be attributed since they did the overt act of grappling with and pinning down the deceased – Intention of third accused to not commit the murder was also justified by the fact that the accused who dealt a blow of axe did not repeat the assault – The blow could not be said to be intended towards the head of victim – It could have landed anywhere, however it landed on the head of the victim – Therefore, element of intention is ruled out – Conviction modified and converted into s.304 (part-II) – Sentence reduced to period already undergone.

Buddhu Singh v. State of Bihar (Now Jharkhand) 962

(13) ss. 366, 376, 302 and 201 – Rape and murder of a seven year old girl – Conviction based on circumstantial evidence – Victim was last seen with the accused – Confession by accused that he raped the victim and thereafter killed her –The dead body of the victim found pursuant to the statement given by the accused – Courts below convicted the accused and ordered death sentence – Held: The circumstances unerringly pointed towards the guilt of the accused and the chain was so complete that there was no escape from the conclusion that the crime was committed by the accused and none else – Conviction upheld

– As regards the sentence, accused was a matured man aged about 43 years and held a position of trust and misused the same in a calculated and preplanned manner – The injuries showed the gruesome manner in which the child was subjected to rape – The case fell in the category of the rarest of the rare cases and the courts below had correctly imposed the death sentence – Sentence/Sentencing – Circumstantial evidence.

(Also see under: Evidence)

Md. Mannan @ Abdul Mannan v. State of Bihar 518

(14) ss. 366, 376 and s. 363 r/w s. 109 – Punishment for kidnapping and rape – A1 allegedly kidnapped PW 4, compelled her to marry him and raped her – A2 and A3 were allegedly involved in compelling PW 4 to get married to A1 – Concurrent findings by the courts below that PW 4 was minor on the date of the incident – Trial court convicted A1 u/ss. 366 and 376 and sentenced him to rigorous imprisonment for 7 years – A2 and A3 convicted u/s. 366/109 sentenced to 3 years rigorous imprisonment – High Court upheld conviction and sentence of A1, however, modified that of A2 and A3 to s. 363/109 and sentenced them to two years imprisonment – Plea of appellants (A1, A2 and A3) before Supreme Court that PW 4 was major at the relevant time and that she married A1 voluntarily and not under compulsion – Held: School certificate issued by the Headmaster on the basis of the entry made in the school register corroborates the contents of the birth certificate issued by Municipality that prosecutrix was minor

on the date of the incident – Thus, no other issue required to be considered – Order of conviction and sentence passed by High Court does not call for interference – Evidence Act, 1872 – s. 35.

Murugan @ Settu v. State of Tamil Nadu 1189

(15) s. 376 – Accused raped his own daughter regularly for five years, and fathered a child from her – Conviction by courts below – Held: There is no reason to disbelieve the evidence of the daughter as also the courts below – The act of the accused was most barbaric and heinous – Conviction upheld.

Bhanu Valve v. State 769

(16) s.376(2)(g) – Gang rape – FIR lodged 60 hours after the incident at a police station about 22 km away from place of incident though police station of the village where incident took place was only 7 km away – Medical examination conducted in hospital 55 kms away on insistence of the prosecutrix who refused to be medically examined at place where FIR was lodged – As per medical evidence, no injury was found on person and there was no evidence of rape – Trial court found that prosecution case was doubtful and ordered acquittal – High Court held that order of trial court was perverse and convicted the accused u/s.376(2)(g) – Held: Explanation for delay in lodging FIR was unbelievable – Prosecution could not explain why prosecutrix insisted on medical examination at hospital 55 kms away – As per medical report, there was no injury on her genital and no evidence to show that she had been raped – Cumulative effect of evidence showed that the view of trial court was

possible – High Court ought not to have interfered with the decision of trial court – Conviction set aside – Appeal against acquittal.

Bhaiyamiyan @ Jardar Khan & Anr. v. State of Madhya Pradesh. 1044

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Officer under the Recruitment Rules of 2002, which, in fact were never in operation at any point of time – Moreover, a conscious decision was taken by formulating 2005 Rules which provided that all the posts should be filled up by a Limited Internal Competitive Examination – This was a policy decision and the High Court could not have found fault with it – When Rules are framed under Article 309 of the Constitution, no undertaking need be given to anybody and the Rules can be changed at any time – Order of the High Court set aside – Constitution of India, 1950 – Article 309 – Administrative Law.

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(From 06.04.2011 to 06.05.2011)

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(From 06.04.2011 to 06.05.2011)

Hon'ble Mr. Justice S.S. Nijjar, Judge, Supreme Court of India was on leave for one day on 28.04.2011 on full allowances.

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