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**SUBJECT-INDEX****CODE OF CRIMINAL PROCEDURE, 1973:**

(1) s.157 - Three days' delay in sending express report to Magistrate - Held: There was no delay in reporting the matter to police - FIR was factually recorded without delay and investigation started on the basis of FIR - In the circumstances, delay, in forwarding the report to Magistrate does not in any way vitiate the case of prosecution - Besides, no prejudice is shown to have been caused to accused.

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(2) ss.366, 432 and 433A - Double murder - Death sentence confirmed by High Court - Held: In the peculiar facts and circumstances, the case did not fall within the category of 'rarest of rare case' though it called for stringent punishment - Though accused committed murder of his wife and daughter, he was feeling frustrated because of the attitude of his wife and children - It was thirst for retaliation, which became the motivating factor in this case - Moreover, probability of appellant's rehabilitation and reformation not foreclosed - Therefore, his sentence modified from one of death penalty to that of life imprisonment till the end of his life, subject, however, to remission, if any, to be granted by appropriate Government satisfying the conditions prescribed in s.432 and further substantiate check u/s.433A by passing appropriate speaking orders.

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(3) (i) s.482 - Scope of - Death of married woman - Sessions Judge discharged the accused-appellants, namely, husband and in-laws of deceased - High Court quashed the discharge order - Held: Not justified - Post-mortem report, Central Forensic Science Laboratory's report, as also inquest report, sufficient to exculpate the appellants from the allegations levelled in the complaint - The matter needed to have been evaluated, on the basis of one of the parameters laid down in *Bhajan Lal's* case, namely, whether the criminal proceedings initiated by complainant were actuated by malice and ulterior motive for wreaking vengeance on the accused with a view to spite him due to some private/personal grudge - Judicial conscience of High Court ought to have persuaded it, on the basis of the material examined by it, to quash the criminal proceedings initiated against appellants - Criminal proceedings against appellants set aside - Penal Code, 1860 - ss.498A, 304B r/w s.120-B.

(ii) s.482 - Jurisdiction of High Court, if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges - Discussed - Steps delineated to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in High Court u/s.482.

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(2) Art. 136.

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(3) Art. 226 - Power of writ court to correct errors  
apparent on the face of record.

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(4) (i) Arts. 226 and 142 - Writ petition seeking  
direction to Land Acquisition Collector to complete  
acquisition proceedings - Held: Court cannot  
compel Land Acquisition Collector to pass awards  
in respect of land acquisition proceedings which  
had already lapsed - In the instant case, since  
owners have suffered damages, they are entitled  
to compensation - In order to do complete justice,  
it is ordered that each of the petitioners shall be  
paid a lump sum amount of Re.1 lakh towards  
damages for the hardships they have undergone  
on account of seepage resulting in dampness and  
cracks to their residential buildings - Land  
Acquisition Act, 1894 - ss. 4(1), 6, 48 and 36.

(ii) Art. 226 - Writ petition seeking direction to Land  
Acquisition Collector to act in terms of letter issued  
by Secretary to Government - Held: Is wholly  
misconceived - If a subordinate authority in  
Government does not act in terms of direction or

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instruction issued by superior authority, it is not for  
court to order compliance, if it is not otherwise  
governed by a statutory procedure.

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CONSUMER PROTECTION ACT, 1986:

s.14(1)(f) - Medical treatment - Deceit - Appellant's  
son suffering from convulsions/fits - First  
respondent, an Ayurvedic practitioner, had claimed  
through advertisement that he had total cure for  
such convulsions/fits - Allegation that he  
administered Allopathic medicines passing them  
off as ayurvedic medicines - Held: First respondent  
was guilty of unfair trade practice and adopted  
unfair method and deceptive practice by making  
false statement orally as well as in writing - Both  
the child and his mother (appellant) suffered  
physical and mental injury due to misleading  
advertisement, unfair trade practice and negligence  
of respondents - Appellant and the child thus  
entitled for enhanced compensation for the injury  
suffered by them - Since no reason given by  
National Commission for deducting 50% of  
compensation amount and to deposit the same  
with the Consumer Legal Aid Account of the  
Commission that part of the order passed by  
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compensation enhanced from Rs.5 lakhs (as  
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CUSTOMS ACT, 1962:

s.28, proviso and s.112 - Levy of customs duty and penalty - Challenge to - Plea of assessee that the demand of duty along with the penalty was barred by limitation turned down by Tribunal - Held: Conclusion of Tribunal that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is untenable - For operation of the proviso, intention to deliberately default is a mandatory prerequisite - In the instant case, from the evidence adduced by assessee, an inference of bona fide conduct is drawn in its favour - Therefore, the extended period of limitation under the proviso could not be invoked.

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(2) Testimony of related witnesses - Non-examination of independent witnesses - Discussed - Judicial notice.

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EVIDENCE ACT, 1872:

s.32 - Relevance of dying declarations - Approach to be adopted by courts with respect thereto - Held: By enacting s.32(1), legislature has accorded a special sanctity to the statement made by a dying person as to the cause of his death - When such statement is made at the earliest opportunity without any influence being brought on the dying person, there is absolutely no reason to take any other view for the cause of his or her death - Absence of any corroboration cannot take away its relevance - On facts, dying declarations of appellant's wife gave the real cause of her burn injuries - The victim having suffered 91% burn injuries, there was hardly any time to secure the presence of magistrate or to record her statement in a detailed question-answer form - Absence of these factors itself did not take away the evidentiary value of the recorded statement - Prosecution proved its case beyond any reasonable doubt.

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- (1) (i) Legislation by reference.  
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## INVESTIGATION:

- (1) (i) Investigation - By State Police and by CBI - Permissibility - Held: Investigation was initiated by State Police and subsequently taken over by CBI, considering the volume and importance of offence - There is no infirmity in continuing the investigation by CBI in view of s. 5 (3) of Delhi Special Police Establishment Act - Delhi Special Police Establishment Act, 1946 - s. 5(3).  
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- (ii) Defective investigation - Effect of - Held: Mere defect in investigation and lapse on the part of Investigating Officer cannot be a ground for acquittal - It is for the Court to scrutinize the prosecution evidence de hors such lapses - Criminal trial.  
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(2) s.48(1) - Acquisition de-notified - Single Judge of High Court set aside the de-notification - Order overturned by Division Bench - Held: While exercising extraordinary jurisdiction u/Art. 226 of the Constitution, Single Judge came across incongruities in the proceedings of the Minister which resulted in issuance of de-notification - Order of Single Judge in setting aside such a patent illegality cannot be held to be beyond the powers vested in Constitutional Court - Division Bench completely omitted to take note of relevant facts while interfering with order of Single Judge - Order of Single Judge restored - Constitution of India, 1950 - Art. 226 - Power of writ court to correct errors apparent on the face of record.

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## MOTOR VEHICLES ACT, 1988:

- (i) s.166 - Fatal accident - Compensation - Computation of - Deductions - Held: Provident Fund, Pension, Insurance, receivable by heirs on account of victim's death will not come within the periphery of the Act to be termed as 'pecuniary advantage' liable for deduction.
- (ii) Compassionate appointment -Deductions towards 'pecuniary advantage' - Held: Compassionate appointment cannot be termed as 'pecuniary advantage' and any amount received on such appointment is not liable for deduction for determining the compensation.
- (iii) Deduction towards income-tax - If annual income comes within taxable range, income tax is

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required to be deducted for determining actual salary of deceased and presumption would be that employer has deducted the tax at source from employee's salary - In case of income of a non-salaried victim, claimant is required to prove that deceased had paid income tax and no further tax is required to be deducted from the income.

(iv) Compensation - Multiplier - Increase towards future income - Held: Deceased being a Government servant and 28 ½ years at the time of death, his pay would have doubled if he would have continued in service till the date of retirement - Therefore, 100% increase in future income of deceased should have been allowed by Tribunal and High Court - Multiplier of 17 would be applied.

(v) s.166 - Fatal accident - Amounts towards loss of consortium, loss of estate, loss of love and affection for daughter, loss of love and affection for widow and mother and funeral expenses awarded.

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**NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985:**

s.32-A - Sentence awarded under the Act, not to be suspended, nor any remission/commutation to be ordered - Questions (i) Whether s.32-A is violative of Arts. 72 and 161 of Constitution; and (ii) whether s.32-A is violative of Arts 14 and 21 of the Constitution, inasmuch as the same abrogates the rights of a convict under the Act to be granted remission/commutation, etc. - Referred to larger

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**PENAL CODE, 1860:**

(1) ss. 120-B and 420 r/w. ss. 511, 465 and 471 - Criminal conspiracy to cheat Passport Office, to obtain passports on the basis of ante-dated passport applications - Conviction by courts below - Held: Prosecution proved its case - Supreme Court not to interfere with concurrent findings of facts except where there is serious infirmity in appreciation of evidence, and findings are perverse - Conviction confirmed - However, in view of the fact that accused has a small child, sentence reduced to six months from two years - Constitution of India, 1950 - Article 136.

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(2) (i) ss. 147, 148, 302/149 and 307/149 - Group of 15 accused opened fire on complainant party causing death of two and injuries to others - Conviction by courts below - Held: There is ample evidence to support prosecution case that accused came with fire arms and opened fire on complainant party - It is an undisputed fact that two persons died of fire-arm injuries and all the injuries suffered by others were also fire-arm injuries - In the circumstances, non-detection of pellets or bullets will not be of any consequence - Conviction and sentence upheld - Code of Criminal Procedure, 1973 - Investigation - Non-recovery of bullets/pellets - Criminal law - Motive.

(ii) s.141 read with ss.40, 144 and 149 - "Other offence" occurring in Clause 'Third' of s.141 - Connotation of - Held: s.40 makes it clear that for all offences punishable under IPC, the main clause of s.40 would straight away apply in which event the expression "other offence" used in s.141 'Third', will have to be construed as any offence for which punishment is prescribed under IPC - Principle of ejusdem generis is not applicable - Interpretation of statutes - Ejusdem generis.

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

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(3) s.302 - Double murder - Death sentence commuted to imprisonment for life.

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(4) ss.498A, 304B r/w s.120-B.

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#### RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993:

(i) ss. 17 and 19 (19) of 1993 Act r/w ss.529(1)(c), proviso and 529-A of Companies Act - Recovery of debts of company by bank/financial institution - Claim of workmen - Held: Where a company is in liquidation, a statutory charge is created in favour of workmen in respect of their dues over security of every secured creditor and this charge is pari passu with that of secured creditor - Such statutory charge is to the extent of workmen's portion in relation to security held by secured creditor of

debtor company - This position is equally applicable where assets of company have been sold in execution of recovery certificate obtained by bank or financial institution against debtor company when it was not in liquidation but before the proceeds realised from such sale could be fully and finally disbursed, the company had gone into liquidation - Relevant date is the date of winding up order and not the date of sale - Where the sale of security has been effected in execution of recovery certificate issued by DRT, distribution of undisbursed proceeds has to be made by DRT alone in accordance with s. 529A of Companies Act and by no other forum or authority - Companies Act, 1956 - ss. 529(1)(c) proviso, and 529-A - Interpretation of Statutes - Legislation by reference - Legislation by incorporation.

(ii) s.19(19) of 1993 Act r/w ss.529-A and 529(1)(c), proviso of Companies Act - Company in liquidation - Debt of bank/financial institution and claim of workmen - Held: Once the company is in winding up, the only competent authority to determine workmen's dues and quantify workmen's portion is the liquidator, who has to act under supervision of company - s.19(19) does not clothe DRT with jurisdiction to determine workmen's claims against debtor company.

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s.2(16B) r/w s.47-A - 'Market value' - Registration  
on orders of court - Stamp duty - Held: An  
instrument has to be valued in terms of market  
value at the time of its execution - Market value for  
the purpose of Stamp Act is not same as suit  
valuation for the purpose of jurisdiction and court  
fees - Registering authority cannot be compelled  
to follow invariably the value fixed by court for the  
purpose of suit valuation - Orders of courts below  
are set aside - Trial court shall consider the matter  
afresh after affording an opportunity of hearing to  
appellant and pass appropriate orders with regard  
to stamp duty for the purpose of registration of  
partition deed - Suits Valuation Act, 1887 -  
Registration Act, 1908 - West Bengal Stamp  
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SCHEDULED TRIBES (IDENTIFICATION) ACT,  
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s.5 - Issuance of certificate - Competent authority  
- Respondent claiming to be a member of

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Scheduled Tribe on the basis of certificate issued  
by Director, Backward Class Welfare, West Bengal  
- Held: The notification specifically stipulates that a  
candidate belonging to SC/ST/BC must have a  
certificate in support of his/her claim from a  
competent authority as specified under the Act -  
There is no error in the decision taken by the  
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was produced from competent authority.

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