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(1) Appeal against acquittal – Acquittal by trial court – Power of appellate court to interfere with the order of acquittal – Held: Appellate court would not interfere with the order of acquittal, unless the conclusion recorded by the lower court is held to be perverse and has resulted in miscarriage of justice – Appellate court should also not interfere with an order of acquittal if two reasonable conclusions are possible.

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(2) (See under: Code of Criminal Procedure, 1973) 1070

(3) (See under: Penal Code, 1860) 1107

(4) (See under: Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) 1024

ARBITRATION AND CONCILIATION ACT, 1996:

ss.11(6) and (9) – Petition for appointment of arbitrator – Held: In view of consent of respondent, all disputes including existence of arbitrable disputes, referred to the sole arbitration of the nominated arbitrator.

Omnia Technologies P. Ltd. v. W.M.A. Van Loosbroek 711

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(1) s.27.

(See under: Penal Code, 1860) 176

(2) (See under: Maharashtra Control of Organized Crime Act, 1999) 792

ASSAM ELEMENTARY EDUCATION (PROVINCIALIZATION) (AMENDMENT) RULES, 2005:

Teachers Training – Elementary/Primary Schools – The amendment Rules substituting the requirement of diploma in teachers training by providing that preference would be given to trained candidates – High Court holding the amendment invalid being contrary to the NCTE Act and the Regulation 2001, but allowing the State Government to complete the recruitment process – Held: The decision of the High Court, permitting the State Government to continue with the recruitment process, initiated on the basis of the Amendment Rules, 2005, which have been declared by it to be illegal, is clearly indefensible – The leave granted by the High Court to the State to complete the selection process in terms of employment notice dated 2-12-2005, set aside and the said notice (dated 02-12-2005) also

quashed – Assam Elementary Education (Provincialization) Rules, 1977 – National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 – National Council for Teacher Education Act, 1993.

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BAIL:

Complainant's son allegedly shot down by the police – CBI after investigation of the matter submitted charge sheet against the accused police officials – Bail application – Rejected by the Sessions Judge, but allowed by High Court – Held: The allegations made against the accused-police officials cannot be brushed aside at this stage – CBI has already submitted charge-sheet – High Court ought to have taken into consideration the serious nature of the allegations, the possibilities of undue influence being exerted on the prosecution witnesses at the instance of the police officials – High Court committed serious error in granting bail to the accused-police officials – Penal Code, 1860 – ss. 302, 364, 201 and 120B.

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CENTRAL EXCISE RULES, 1944: rr. 57A and 57B – High Speed Diesel Oil – MODVAT credit – Benefit of – High Speed Diesel Oil used for the purpose of generation of electricity – Credit of duty paid on High Speed diesel Oil on 17/18.03.1997 – Entitlement to – Held: Assessee not entitled, as High Speed Diesel Oil was specifically excluded from the list of eligible inputs as per the Notifications dated 01.03.1994 and 16.03.1995 – Central Excise Act, 1944 – Finance Act, 2000 – Notification No. 5/94-CE(NT) dated

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CENTRAL SALES TAX ACT, 1956:

(i) s.3(a) – Inter-State trade – Sales agreement between assessee and the purchaser – Movement of goods from one State to another State – Held: In the instant case, there were prior contracts between the purchaser and the assessee and in pursuance of those contracts, the goods moved from the assessee’s factory at Hyderabad to its Branch offices to be delivered to the purchaser/ their nominees – In pursuance to sales agreement, the purchaser placed monthly indents on the assessee with instructions to dispatch the goods of given size and quantity to the named destination – Pursuant to such indents, the assessee dispatched the goods to its State godowns and the person-in-charge of the godowns to the purchaser division office by raising sales invoice – Therefore, the transaction between the assessee with its branch offices was a clear case of inter-State sales within the meaning of s.3(a) and not branch transfers as claimed by assessee.

(ii) s.2(g) – Sale of goods – Held: Includes agreement of sale of goods.

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(3) Notification No.56/2000/JUD-III dated 1.12.2000.
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(1) s.34.
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(2) O. 22, r.4 – Abatement of appeal – Inordinate delay in filing application for bringing legal heirs on record and for setting aside abatement – High Court passed a conditional order giving final opportunity to do the needful, failing which the appeal was to stand dismissed – Order not complied with – Subsequently, High Court allowed all applications condoning 3703 days delay in filing the application to bring the legal heirs on record

and 883 days delay in filing petition to set aside the dismissal order – Held: Whilst considering applications for condonation of delay u/s. 5 of the Limitation Act, the courts do not enjoy unlimited and unbridled discretionary powers – High Court, having recorded its conclusions and findings on the unacceptable explanation for delay, should not have condoned unconscionable delay – Judgment of High Court being unsustainable either in law or in equity, set aside – Limitation Act, 1963 – s. 5. (Also see under: Administration of Justice)

Lanka Venkateswarlu (D) by LRs. v. State of A.P. & Ors. 217

CODE OF CRIMINAL PROCEDURE, 1973:

(1) s.173(2).
(See under: Penal Code, 1860) 597

(2) s.239 – Discharge application – Allegation that appellant-Vice-Chancellor of the University obtained pecuniary advantage and caused corresponding wrongful loss to the University – FIR – Charge-sheet filed after 8-1/2 years – Application for discharge – Held: In the absence of previous sanction of the Syndicate of the University which is mandatory in nature, the prosecution could not be launched against the appellant – Delay of 8-1/2 years in filing charge-sheet was also not explained – Even otherwise, there was no mention in the FIR or in the charge-sheet that the appellant had made any personal gain in the transaction – Moreover, in view of sincere and speedy actions taken by the appellant as Vice-Chancellor, Government had decided earlier to withdraw the criminal proceedings against the appellant – In terms of s.114 of

Evidence Act, presumption can be drawn that the Government had taken conscious decision of exonerating the appellant – Even on merits, records depicted that the appellant had not caused any loss to the government by his actions – Thus, appellant made out a case for discharge from the criminal proceedings – Sree Sankaracharya University of Sanskrit Act, 1994 – Evidence Act, 1872 – s.114.

(Also see under: Sree Sankaracharya University of Sanskrit Act, 1994)

R. Ramachandran Nair v. The Deputy Superintendent Vigilance Police & Anr. 1054

(3) s.362.
(See under: Administration of Justice) 197

(4) s. 391 – Additional evidence at appellate stage – Held: Is permissible in case of a failure of justice – However, such power must be exercised sparingly and only in exceptional cases where the court is satisfied that directing additional evidence would serve the interests of justice – On facts, the electricity and telephone bills were not proved at the time of trial and in absence thereof, the documents cannot be relied upon – Thus, the judgments by the courts below suffered from procedural error and the amount shown in the bill cannot be taken into account.

(Also see under: Prevention of Corruption Act, 1988)

Ashok Tshering Bhutia v. State of Sikkim 242

(5) s.406 – Transfer petition – Complaint against police officials for killing a man in an alleged fake encounter in Dehradun – Investigation entrusted

to CBI – Father of deceased seeking transfer of case to Ghaziabad/Lucknow – Held: Case transferred from the Court of Special Judicial Magistrate, CBI, Dehradun to the Court of Special Judge, CBI, Delhi.

Ravindra Pal Singh v. Santosh Kumar Jaiswal & Ors. 970

(6) s. 482.
(See under: Penal Code, 1860) 437

(7) s.482 – Scope and ambit of – Explained.

Asmathunnisa v. State of A.P. represented by the Public Prosecutor, High Court of A.P., Hyderabad & Anr 1116

(8) Appeal against acquittal.
(See under: Penal Code, 1860) 1107

(9) Appeal against acquittal – Scope of – Held: While upsetting the judgment of acquittal, the appellate court must show the perversity in the judgment of the trial court – Appellate court also must record the finding that the view taken by the trial court was not possible in law at all – In the instant case, the judgment of the appellate court very clearly records a finding that the acquittal recorded by the trial court was based on flimsy grounds and was wholly unjustified – High Court has given very good reasons to set aside the findings arrived at by the trial court – Penal Code, 1860 – s. 302/34.

(Also see under: Penal Code, 1860)

Rajesh Singh & Ors. v. State of U.P. 1070

COMPANIES ACT, 1956:

(i) ss.391 and 394 – Amalgamation of companies – Amalgamation/merger scheme put up for sanction of Court – Obligation and jurisdiction of the Court – Held: The Court would not act as a court of appeal and sit in judgment over the informed view of the parties concerned to the scheme, as the same is best left to the corporate and commercial wisdom of the parties concerned, yet the Court is not expected to put its seal of approval on the scheme merely because majority of the shareholders have voted in favour of the scheme – Before according its sanction to a scheme of amalgamation, the Court has to see that the provisions of the Act have been duly complied with; the statutory majority has been acting bona fide and in good faith and are not coercing the minority in order to promote any interest adverse to that of the latter comprising the same class whom they purport to represent and the scheme as a whole is just, fair and reasonable from the point of view of a prudent and reasonable businessman taking a commercial decision.

(ii) ss.391 and 394 – Amalgamation of companies – Scheme of amalgamation between appellant company and another company – Single Judge of High Court sanctioned the scheme – Division Bench, however, revoked the sanction – Held: The Official Liquidator, though aware of the inspection report under s.209A containing adverse comments on the affairs of both the companies, relied only on the report of the auditors, which admittedly was not even verified – The findings in the report under s.209A were nonetheless placed before the Single

Judge, and he had considered the same while sanctioning the scheme of amalgamation – Therefore, the Single Judge had, before him, all material facts which had a direct bearing on the sanction of the amalgamation scheme, despite the aforesaid lapse on the part of the Official Liquidator – In this view of the matter, the Single Judge, having examined all material facts, was justified in sanctioning the scheme of amalgamation.

(iii) s.391(2), proviso and ss.209A, 235 and 237 – Amalgamation of companies – Amalgamation/ merger scheme put up for sanction of Court – Requirement of disclosing material facts relating to the companies – Whether existence of inspection proceedings under s.209A must be disclosed in terms of the proviso to s.391(2) – Held: Yes – Though inspection under s.209A, strictly speaking, may not be in the nature of an investigation, but at the same time it cannot be construed as an innocuous exercise for record, inasmuch as if anything objectionable or fraudulent in the conduct of the affairs of the company is detected during the course of inspection, it may lay the foundation for the purpose of investigations under ss.235 and 237.

(iv) s.394(1), second proviso – Amalgamation of companies – Amalgamation/ merger scheme put up for sanction of Court – Duty of the Official Liquidator – Held: An Official Liquidator acts as a watchdog of the Company Court – His duty is to satisfy the Court that the affairs of the company, being dissolved, have not been carried out in a manner prejudicial to the interests of its members and the interests of the public at large – Only upon

consideration of the amalgamation scheme, together with the report of the Official Liquidator, the Court can arrive at a final conclusion.

(v) s.394(1), second proviso – Amalgamation of companies – Amalgamation/ merger scheme put up for sanction of Court – Effect of misdemeanour on the part of the Official liquidator – Whether sanction of a scheme of amalgamation can be held up merely because the conduct of the Official Liquidator is found to be blameworthy – Held: It is neither proper nor feasible to lay down absolute parameters in this behalf – The effect of misdemeanour on the part of the Official Liquidator on the scheme as such would depend on the facts obtaining in each case and ordinarily the Company Judge should be the final arbiter on that issue.

SESA Industries Ltd. v. Krishna H. Bajaj and Ors. 317

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(2) (See under: Negotiable Instruments Act, 1881) 879

(3) (See under: Railways Act, 1989) 1160

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(See under: Election Symbols (Reservation and Allotment) Order, 1968) 920

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(1) (i) Article 13 – Parts III and IV.

- (ii) Article 300-A.
(See under: Land Acquisition Act, 1894) 728
- (2) Articles 14 and 16.
(See under: Service Law) 1154
- (3) Article 21.
(See under: Administration of Justice) 209
- (4) Articles 21 and 22(1) – Held: The expression “life or personal liberty” in Article 21 includes right to live with human dignity – Therefore, it includes within itself guarantee against the torture and assault by the States or his functionaries – Custodial death.
(Also see under: Custodial Death)
- Haricharan & Anr. v. State of Madhya Pradesh & Ors.* 769
- (5) Articles 23,15(3), 21-A, 24, 39(e) and (f), and 45 r/w s.23 of Juvenile Justice Act – Protection of children against sexual abuse – Held: Sexual abuse of children is one of the most heinous crimes – There are special safeguards in the Constitution that apply specifically to children – Several legislations and directions of the Supreme Court are there to safeguard their interests – But these are to be properly implemented and monitored – The Court hopes and trusts that all the authorities concerned through various responsible NGOs implement the same for better future of the children – Juvenile Justice (Care and Protection of Children) Act, 2000 – Penal Code, 1860.
(Also see under: Penal Code, 1860)
- Childline India Foundation & Anr. v. Allan John Waters & Ors.* 989

(6) Article 32 – Policy decision of the State Government – Fiscal decision – Judicial Review – Held: The Supreme Court, while exercising powers under Article 32, cannot substitute the opinion and/or view of the Government – On facts, the policy of the State Government in not granting rebate in respect of electricity charges to industrial units situated in a particular area was basically a fiscal decision and in absence of arbitrariness or unreasonableness in the said policy, it cannot be a subject-matter of judicial review of the Supreme Court under Article 32 – No right guaranteed to the petitioners under Article 14 of the Constitution was found to have been breached – Thus, no case was made out to interfere with the policy of the State Government.

(Also see under: Electricity (Supply) Act, 1948)

M/s. Shree Sidhballi Steels Ltd. and Ors. v. State of U.P. and Ors. 134

(7) Article 32 – Writ petition – Seeking implementation of the Building and Other Construction Workers (Regulations of Employment and Conditions of Service) Act, 1996 and Building and Other Construction Workers’ Welfare Cess Act, 1996 – Union of India and all States/Union Territories impleaded as party-respondents to the petition – Issuance of various orders and directions by the Court requiring the respective States to implement the provisions of the Act – Non-compliance of – Contempt petition filed – Court issuing show cause notice – Also issuing directions to the officers of the respective/appropriate Governments to be present in the Court on the next date of hearing – Building and Other Construction Workers (Regulations of

Employment and Conditions of Service) Act, 1996 – Building and Other Construction Workers' Welfare Cess Act, 1996 – Contempt of Courts Act, 1971.

National Campaign Committee for Central Legislation on Construction Labour v. Union of India & Ors. 889

(8) Article 32 – Writ petition seeking direction to the Union of India to take steps for release of writ petitioner from jail in Pakistan – Held: Supreme Court of India, for lack of jurisdiction, cannot give any direction to Pakistan authorities – Government of India on its own has been taking steps in this regard – However, the Court requests the Pakistan authorities to consider the appeal of the petitioner for remitting the remaining period of sentence and release him (as well as other similar Indian prisoners) in the humanitarian spirit – Pakistan Official Secrets Act, 1923 – s. 59/3.

Gopal Dass Thru. Brother Anand Vir v. Union of India and Anr. 856

(9) Article 136 – Appeal against judgment of High Court upholding conviction of accused as recorded by trial court – Held: It is settled law that when the trial court and the appellate court, on appreciation of evidence, by relying on acceptable materials, arrived at a conclusion, in the absence of perversity in such a conclusion, interference by Supreme Court exercising jurisdiction under Article 136 is not warranted – Penal Code, 1860 – s.302. (Also see under: Penal Code, 1860)

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(10) Articles 136 and 142.
(See under: Motor Vehicles Act, 1988) 480

(11) Article 141.
(See under: Precedent) 746

(12) Article 141 – If a subsequent co-ordinate bench of equal strength wants to take a different view from the prior decision of a co-ordinate bench, it can only refer the matter to a larger bench – Otherwise the prior decision of a co-ordinate bench is binding on the subsequent bench of equal strength – Precedent.

(Also see under: Service Law)

Union of India & Ors v. S.K. Kapoor 906

(13) Article 142.
(See under: Consumer Protection Act, 1986) 977

(14) Article 226.
(See under: Service Law) 589

(15) Articles 245(1) and 245(2) r/w Articles 51, 246, 248, 249, 250, 253 and 262 – Seventh Schedule Lists I and III – Power of Parliament to legislate in respect of extra-territorial aspects or causes – Held: Parliament may exercise its legislative powers with respect to extra-territorial aspects or causes only when such extra-territorial aspects or causes have, or are expected to have, some impact on, or effect in, or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, wellbeing of, or security of inhabitants of India, and Indians – Consequently, Parliament's power to enact legislation, pursuant to clause (1) of Article 245

may not extend to those extra-territorial aspects or causes that have no impact on or nexus with India – Income Tax Act, 1961 – ss.9(1)(1) and 9(1)(vii)(4).

(ii) Article 245(1) – Expression “for” “the whole or any part of the territory of India” – Connotation of – Explained.

(iii) Article 245(2) – Judicial review of an enactment – The subject of Clause (2) of Article 245 is the law made by Parliament, pursuant to Clause (1) of Article 245, and the object, or purpose, of Clause (2) of Article 245 is to specify that a law so made by Parliament, for the whole or any part of territory of India, should not be held to be invalid solely on the ground that such laws require extra-territorial operation – Clause (2) of Article 245 carves out a specific exception that a law made by Parliament, pursuant to Clause (1) of Article 245, for the whole or any part of the territory of India may not be invalidated on the ground that such a law may need to be operated extraterritorially.

GVK Inds. Ltd. & Anr. v. The Income Tax Officer & Anr. 366

(16) Article 226 – Order disposing of writ petition – Recording of reasons – Held: Is the fundamental to the administration of justice – In the instant case, the order passed by High Court does not satisfy the bare minimum requirement of an order disposing of writ petition under Article 226 – Administration of justice – Judgments/Orders. (Also see under: Public Interest Litigation

and Service Law)

P. Seshadri v. S. Mangati Gopal Reddy and Ors. 1134

(17) (i) Articles 310, 311(2)(b) – Sub-Judge – Removal from service invoking provisions of Article 311 (2)(b) – Held: In the facts and circumstances of the case, the High Court rightly held that it was not possible to hold an inquiry – Service Law.

(ii) Article 311(2)(b) r/w Articles 233, 234 to 236 – Sub-Judge – Removed from service with the recommendation of High Court without holding an inquiry – Held: A Subordinate Judge is also a judge within the meaning of provision of Article 233 r/w Articles 235 and 236 – High Court is vested with the power to take decision for appointment of subordinate judiciary under Articles 234-236 – Power could be exercised by High Court to dispense with an inquiry for a reason to be recorded in writing and such dispensation of inquiry for valid reasons when recommended to the Governor, it is within the competence of the Governor to issue such orders in terms of the recommendation of the High Court in exercise of power under Article 311(2)(b) – Independence of Judiciary – Separation of powers – Service Law.

Ajit Kumar v. State of Jharkhand & Ors. 830

(18) Article 324.

(See under: Election Symbols (Reservation and Allotment) Order, 1968) 920

(19) Seventh Schedule List I and List II; Articles 14, 19(1)(g) and 21.

(See under: Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 as also under Doctrines/Principles) 527

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(1) (i) Doctrine of pith and substance and doctrine of incidental encroachment.

(ii) Doctrine of occupied field.

(i) (See under: Doctrines/Principles and Interpretation of Statutes) 1

(ii) (See under: Doctrines/Principles and Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997) 527

CONSUMER PROTECTION ACT, 1986:

(i) s.12 r/w s. 21(b) – Complaint by insured against insurer for reimbursement of damages, caused to the insured vehicle in an accident – District Forum allowed the claim to the extent of Rs. 4 lakh – State Commission reduced the claim to Rs.2,72,517/- – National Commission, in revision, setting aside the finding of the two fora and holding that the driver had no valid licence on the relevant date – Held: From the evidence on record it has been clearly established that at the relevant time the driver had a valid driving licence – Since no revision was filed by the insured, against the amount allowed by the State Commission, compensation cannot be enhanced beyond that.

(ii) Interest – Though the Act does not contain any provision for granting interest, in order to do complete justice, invoking provisions of s.34 CPC, the insurer will pay interest @ 9% on the amount

awarded by State Commission from the date of the claim petition till the payment is made – Code of Civil Procedure, 1908 – s.34 – Interest – Constitution of India, 1950 – Article 142 – Motor Vehicles Procedure Manual (promulgated by Government of West Bengal) – Driving licence.

(iii) s.21(b) – Revisional power of National Commission – In the claim petition filed by insured against insurer both, the District Forum and the State Commission, recorded a finding that on the date of the accident, the driver of the bus was holding a valid driving licence – National Commission set aside the said finding and held that the driver had no valid licence on the relevant date – Held: Revisional power u/s. 21(b) can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside – In the instant case, there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to take a view different than that taken by the two Forums below – The order of National Commission set aside.

Mrs. Rubi (Chandra) Dutta v.

M/s. United India Insurance Co. Ltd. 977

CONTEMPT OF COURT:

(i) Allegation of damage to Mangroves and other vegetation of wet land in CRZ-I area, in willful disobedience of court order – Held: Under the garb of repairing the old bund, the appellants constructed a sort of pukka bund using boulders and debris alongwith a huge platform, violating the norms of environmental law and in flagrant violation and utter disregard of orders passed by

the courts and the District Collector – The appellants knowingly and purposely damaged the mangroves and other vegetation, which could not have been disturbed – Appellants directed to restore the height and width of the bund as it was existing prior to the order passed by the District Collector – Maharashtra Private Forest (Acquisition) Act, 1975 – s.21 – Forest (Conservation) Act, 1980 – Coastal Regulatory Zone Regulations, 1991.

(ii) Order – Void order – Effect of – Held: Even if an order is void, it is required to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void.

Krishnadevi Malchand Kamathia & Ors. v. Bombay Environmental Action Group & Ors. 291

CONTEMPT OF COURTS ACT, 1971:
(See under: Constitution of India, 1950) 889

CONTRACT:

(1) Sale and agreement of sale – Distinction between.

M/s Hyderabad Engineering Industries v. State of Andhra Pradesh 546

(2) Tender – Non-compliance of conditions – Condition of the tender to deposit 25% of sale price within one week – Letter issued to the sole tenderer to deposit the amount of sale price after adjusting the earnest money – Another letter sent to the bidder that further proceedings could be finalized only after the temporary injunction was

vacated by court – Held: Unless the conditions were fulfilled, the bidder cannot take advantage of mere remittance of a sum towards earnest money – Trial court rightly dismissed the suit for specific performance of agreement of auction sale – High Court in an erroneous assumption erred in concluding that there was a valid contract and in granting a decree for specific performance – Judgment of High Court set aside – Specific performance of contract – Suit.

Kerala Financial Corporation v. Vincent Paul & Anr. 862

CRIMES AGAINST WOMEN:

(1) Punishment – Held: Crimes against women are not ordinary crimes committed in a fit of anger or for property – They are social crimes – They disrupt the entire social fabric, and, therefore, they call for harsh punishment.

(Also see under: Custodial Violence)

Mehboob Batcha and Ors. v. State Rep. by Supdt. of Police 1091

(2) (See under: Penal Code, 1860) 437
and 1107

CRIMINAL LAW:

Suspicion, no matter how strong, cannot be the basis of conviction – Even in cases of custodial death, it is for the prosecution to establish beyond reasonable doubt a proper link between the accused and the commission of crime.

(Also see under: Custodial Death)

Haricharan & Anr. v. State of Madhya Pradesh & Ors. 769

CUSTODIAL DEATH:

Allegation of custodial death against the accused-police officials on the ground that detenu-deceased was kept in illegal custody and subjected to third degree torture for extracting confession that the deceased was guilty of the offence of theft – Conviction u/ss.304 (Part-II) and 330 – Held: The fact that deceased was tortured and subjected to electric shock whilst in police custody was well established by medical evidence – Prosecution proved beyond reasonable doubt that deceased was taken to the police station and upon his release, the police personnel terrorized the entire family – This was evident from the fact that widow, son and brother of the deceased all turned hostile – However, evidence on the record clearly showed that death of the deceased was a direct consequence of the inexcusable and inhuman torture by the police – No reason to interfere with the order of conviction – Penal Code, 1860 – ss.304 (Part-II) and 330.

(Also see under: Appeal and Constitution of India, 1950)

Haricharan & Anr. v. State of Madhya Pradesh & Ors.

.... 769

CUSTODIAL VIOLENCE:

(i) Accused-police personnel wrongfully confined PW-1's husband in police custody and beat him to death and also gang-raped PW1 in a barbaric manner within the premises of the police station – Conviction by courts below – One accused sentenced to 3 years RI, while the others sentenced to 10 years RI – Held: The accused deserve no mercy and should have been awarded

death sentence – However, none of the accused were charged u/s.302 IPC and instead the lower courts treated the death of PW-1's husband as suicide – Both trial court and High Court failed in their duty in this connection – In the normal course, Supreme Court could have issued notice of enhancement of sentence, but as no charge u/s.302 IPC was framed, conviction under that provision cannot be straightaway recorded and the punishment cannot be enhanced – Penal Code, 1860 – s.302.

(ii) Offence of custodial violence resulting in death of the victim – Held: Calls for harsh punishment – Custodial violence is in violation of Supreme Court's directive in *D.K. Basu's* case – Directive to all police officers up to the level of S.H.O. to follow directions given by Supreme Court in *D.K. Basu's* case.

(Also see under: Crimes Against Women)

Mehboob Batcha and Ors. v. State Rep. by Supdt. of Police

.... 1091

CUSTOMS ACT, 1962:

Notification nos. 113/83-Cus and 133/87-Cus – Indian built ship brought in India for breaking purpose – Leviable of customs duty – Vessel manufactured in a Customs Bonded Warehouse using certain imported items – When vessel ceased to ply and was grounded, it was auctioned and purchased by the appellant for breaking purpose – Demand of customs duty – Tribunal held that Notification no.133/87-Cus was applicable, and, therefore, the appellant was liable to pay customs duty on the vessel at the time of breaking of ship – Appeal before Supreme Court

– Supreme Court remanded the matter to the Tribunal – Tribunal dismissed the appeal holding that on the date of clearance, notification in force was 113/83-Cus and the duty would be payable in terms of the said notification and, therefore, question of applicability of judgment of Bombay High Court did not arise – Held: While deciding the case, the Tribunal ignored the specific directions issued by the Supreme Court – Therefore, the decision of the Tribunal was not sustainable – Matter remitted to Tribunal for consideration afresh.

(Also see under: Judicial Discipline)

M/s. Mustan Taherbhai v. Commnr. of Central Excise and Customs 353

DELAY/LACHES:

(1) Delay in lodging FIR – Strained relations between uncle and nephew – Assault by nephew on his uncle leading to internal injury to his brain and then to death after three days – FIR lodged three days after the incident – Held: Delay was not fatal to prosecution case since the dispute was within the family and in family dispute independent witnesses are reluctant to come forward to give evidence – Moreover, since there was no external injury, the FIR was lodged only after the condition of the deceased deteriorated. (Also see under: Penal Code, 1860)

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(2) (See under: Review) 746

DOCTRINES/PRINCIPLES:

(1) (i) Doctrine of legislation by reference – Meaning and applicability of – Held: When there is general reference in the Act in question to some earlier Act but there is no specific mention of the provisions of the former Act, then it is clearly considered as legislation by reference – In the case of legislation by reference, the amending laws of the former Act would normally become applicable to the later Act.

(ii) Doctrine of legislation by incorporation – Meaning and applicability of – Held: When the provisions of an Act are specifically referred and incorporated in the later statute, then those provisions alone are applicable and the amending provisions of the former Act would not become part of the later Act – This principle is generally called legislation by incorporation.

(iii) Doctrine of pith and substance and doctrine of incidental encroachment – Applicability of – Discussed – Held: Once it is found that in pith and substance, an Act is a law on a permitted field then any incidental encroachment, even on a forbidden field, does not affect the competence of the legislature to enact that law – An incidental cause cannot override the primary cause.

(iv) Doctrine of occupied field – Applicability of. (Also see under: Interpretation of Statutes)

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(2) Doctrine of merger – Held: By the doctrine of merger, the judgment of the lower court merges into the judgment of the higher court.

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(3) (i) Doctrine of pith and substance – Application of – Held: Doctrine of pith and substance is applied when a legislation overlaps both List I as well as List II of the Seventh Schedule to the Constitution – Constitution of India, 1950 – Seventh Schedule, List I and List II.

(ii) Doctrine of occupied field – Applicability of.

K. K. Baskaran v. State Rep. by its Secretary, Tamil Nadu & Ors. 527

(4) Doctrine of promissory estoppel – Object and applicability of – Held: The doctrine of promissory estoppel is not a hard and fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them – For application of doctrine of promissory estoppel, the promisee must establish that he suffered in detriment or altered his position by reliance on the promise – Normally, the doctrine of promissory estoppel is being applied against the Government, and defence based on executive necessity would not be accepted by the court – However, where public interest warrants, the principles of promissory estoppel cannot be invoked – Government can change the policy in public interest – Also, doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute.

M/s. Shree Sidhballi Steels Ltd. and Ors. v. State of U.P. and Ors. 134

(5) Principles of natural justice.
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ELECTION SYMBOLS (RESERVATION AND ALLOTMENT) ORDER, 1968:

(i) Object of enactment of the Order – Discussed.

(ii) Paragraphs 6A(i), (ii), 6B(A)(ii), 9(a), 9(b), 10A, 11, 12(1)(c) and 13(3)(a) – Validity of, challenged – Writ petitions and special leave petitions – Registered unrecognized political parties seeking direction to the Election Commission of India to allot common election symbols to their candidates in the ensuing elections to State legislative assembly – Elections process already set into motion in the State of Tamil Nadu – Held: No interim arrangement made regarding the allotment of election symbols for the forthcoming General Assembly Elections – This would, however, not effect the final outcome of the pending writ petitions and special leave petitions – Petitions listed for final disposal – Constitution of India, 1950 – Article 324 – Representation of the People Act, 1951 – s.29A – Conduct of Election Rules, 161 – rr.5, 10 – Notification No.56/2000/JUD-III dated 1.12.2000.

Desiya Murpokku Dravida Kazhagam and Anr. v. The Election Commission of India 920

ELECTRICITY (SUPPLY) ACT, 1948:

(i) s.49 – Notification issued in exercise of powers conferred by s.49 of the Act, granting Hill Development rebate to industries set up in hilly areas in respect of electricity charges to the extent of 33.33%, for a period of five years – Meanwhile, U. P. Electricity Reforms Act, 1999 came into force – The benefit completely withdrawn – Writ petition filed challenging the same – Plea of promissory estoppel – Held: The petitioners were not entitled to raise plea of estoppel as there can be no estoppel against the statute – The right to enjoy the benefit was defeasible in the sense that it was liable to be taken away or withdrawn in exercise of the very power under which the rebate/exemption was granted – Also, the petitioners, before starting their industrial units, had entered into an agreement making it clear that they were precluded from challenging revision of tariff – U. P. Electricity Reforms Act, 1999.

(ii) s.49 – Notification u/s.49 granting rebate/exemption in respect of electricity charges – Power of the State Government to curtail and/or withdraw the notification – Applicability of ss.14 and 21 of the General Clauses Act – Held: The Electricity (Supply) Act, being a Central Act, the provisions of ss.14 and 21 of the General Clauses Act would be applicable – The State Government, in view of s.21 of the General Clauses Act, could always withdraw, rescind, add to or modify an exemption notification – General Clauses Act, 1897 – ss.14 and 21.

(iii) Purpose of the Act – Held: The Act was enacted to provide for rationalization of production

and supply of electricity and generally for taking measures conducive to electrical development.

(Also see under: Constitution of India, 1950; and General Clauses Act, 1897)

M/s. Shree Sidhballi Steels Ltd. and Ors. v. State of U.P. and Ors. 134

ELECTRICITY REGULATORY COMMISSION ACT, 1998:

s.29 – Power of the licensee to amend and /or modify the electricity tariff – Scope – Held: The licensee has no power to amend and/or modify the tariff determined by the Electricity Regulatory Commission – U.P. Electricity Reforms Act, 1999 – ss.24 and 29.

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(1) Evidence of voice identification – Reliability of – Held: Evidence of voice identification is at best suspect, if not, wholly unreliable – Accurate voice identification is much more difficult than visual identification – It is prone to such extensive and sophisticated tampering, doctoring and editing that the reality can be completely replaced by fiction – Thus, the courts have to be extremely cautious in basing a conviction purely on the evidence of voice

identification – Identification.

(Also see under: Maharashtra Control of Organized Crime Act, 1999)

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(2) (See under: Motor Vehicles Act, 1988) 480

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(1) Delay in lodging FIR.

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(2) Re-registration of FIR.

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FOREST (CONSERVATION) ACT, 1980:

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GENERAL CLAUSES ACT, 1897:

(i) Purpose of the Act – Held: Is to place in one single statute different provisions as regards interpretations of words and legal principles which would otherwise have to be specified separately in many different Acts and Regulations – Whatever the General Clauses Act says whether as regards the meaning of words or as regards legal principles, has to be read into every statute to which it applies.

(ii) ss.14 and 21 – Principles laid in ss. 14 and 21 – Discussed – Held: By virtue of ss.14 and 21 of the Act, when a power is conferred on an authority to do a particular act, such power can be exercised from time to time and carries with it the power to withdraw, modify, amend or cancel the notifications earlier issued, to be exercised in the like manner and subject to like conditions, if any, attached with the exercise of the power.

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HOT RE-ROLLING STEEL MILLS ANNUAL CAPACITY DETERMINATION RULES, 1997:

Rule 96ZP r/w s. 3A of Central Excise Act – Compound Levy Scheme –Applicability of s.11-A – Held : Compound levy scheme for collection of duty based on annual capacity production u/s.3 and Capacity Determination Rules is a separate scheme from the normal scheme for collection of central excise duty – It is a comprehensive scheme in itself and general provisions in the Act and the Rules are excluded – The time limit prescribed for one scheme would be completely unwarranted for another scheme and the time limit prescribed u/s.11-A of the Act is no exception.

M/s Hans Steel Rolling Mill etc. v. Commnr. of Central Excise, Chandigarh 841

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(1) ss.9(1)(1) and 9(1)(vii)(4). (See under: Constitution of India, 1950)	366
(2) Capital receipt – Assessment year 1997-98 – Payment received under an agreement not to compete (negative covenant) – Held: Compensation attributable to a negative/restrictive covenant during the relevant assessment year was a capital receipt not taxable under the Act – It became taxable only w.e.f. 1.4.2003 – A liability cannot be created retrospectively – s.28(va) is mandatory and not clarificatory. <i>Guffic Chem P. Ltd. ETC. v. C.I.T., Belgaum & Anr.</i>	899
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surplussage ought to be avoided. <i>GVK Inds. Ltd. & Anr. v. The Income Tax Officer & Anr.</i>	366
(2) (i) Referential legislation as a tool of interpretative application – Held: The court, while applying referential legislation as a tool of interpretative application, should keep in mind that such interpretation should not, in any way, defeat the object and essence of principal legislation – The likelihood of any interference with the scheme under the principal Act would tilt against accepting such an interpretation. (ii) Self-contained code – Held: Should be distinguished from supplemental law. (Also see under: Doctrines/Principles) <i>Girnar Traders v. State of Maharashtra and Ors.</i>	1
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(2) (See under: Constitution of India, 1950) 1134

(3) *Suo motu* orders – Orders passed by court on its own motion – Sustainability of – Held: Such *suo motu* orders, without even a petition, are ordinarily neither justified nor sustainable – Ordinarily, there must be a petition on which the court can pass an order – On facts, the High Court was not justified in taking *suo motu* action on the basis of some information which was not disclosed in the impugned order – Judges must exercise restraint in such matters – By the impugned order, the High Court directed that if the Colleges failed to fill in the post of Principal within the stipulated period, the University would issue orders prohibiting admissions in the Colleges concerned – There is no statutory rule that in the absence of a permanent Principal, admissions in the Colleges cannot be made – Thus, the High Court indulged in judicial legislation, which is not ordinarily permissible – Also, none of the Colleges were made parties before the High Court – There was violation of the principles of natural justice – Order of the High set aside.

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JUDICIAL DEPREICATION:
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JUDICIAL DISCIPLINE:

While remanding the matter to the Tribunal, Supreme Court gave specific directions to Tribunal to examine the entire legal issue after ascertaining the foundational facts, regardless of its earlier view

in the matter – The Tribunal, while deciding the case, ignored the specific directions issued by the Supreme Court – Held: Tribunal erred in ignoring the specific directions of the Supreme Court – Judicial discipline obligated the Tribunal to appreciate the factual matrix as directed.

(Also see under: Customs Act, 1962)

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(1) (See under: Constitution of India, 1950) 366
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(See under: Railways Act, 1989) 1160

LAND ACQUISITION ACT, 1894:

(1) s. 5-A – Acquisition of land – Objections of land-owners – Plea that no opportunity of hearing was given – Held: The original report placed before the Court indicates that not only was the hearing afforded, but all the objections were specifically considered and decided.

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(2) s.5-A, 4, 17 and 6 – Acquisition of land for construction of district jail – Invoking of s.17(4) and dispensing with s.5-A inquiry – Held: There being more than 11 months gap between ss.4 and 17 notification and s.6 declaration, this itself indicates that there was no urgency for invoking the provisions of s.17(4) and denying the land owners their right u/s.5-A – Notification u/s.4 and declaration u/s.6 quashed so far as they relate to appellants – Possession of appellants over their lands not to be interfered with except in accordance with law.

(ii) s. 3(f) r/w ss. 5-A and 17(4) – Public purpose

– Held : Construction of a district jail is public purpose – The concept of public purpose in land acquisition has to be viewed from an angle which is consistent with the concept of a welfare State – Its application must be consistent with the constitutional ethos and especially the chapter under Fundamental Rights and also the Directive Principles – If public purpose can be satisfied by not rendering common man homeless and by exploring other avenues of acquisition, the courts, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice – Concept of public purpose must also be read into provisions of emergency power u/s 17 with consequential dispensation of right of hearing u/ s. 5-A – Constitution of India, 1950 – Article 13 – Parts III and IV – Social and economic justice.

(iii) ss 5-A and 17(4) – Hearing of objections – Held: The Act is a drastic law being expropriatory in nature as it confers on the State a power which affects person's property right and, therefore, has to be construed very strictly – It is reiterated that the right conferred u/s 5-A has to be read considering the provisions of Article 300-A of the Constitution and so construed the right u/s 5-A should be interpreted as being akin to a Fundamental Right and, therefore, the procedures which have been laid down for depriving a person of the said right must be complied with – Constitution of India, 1950 – Article 300-A – Interpretation of Statutes.

Dev Sharan & Ors. v. State of U.P. & Ors. 728

(3) Purpose and Scheme under the Act –

Discussed – Held: The primary object of the Act is acquisition of land for a public purpose which may be ‘planned development’ or even otherwise – The Act itself is a self contained code within the framework of its limited purpose, i.e. acquisition of land – It provides for complete machinery for acquisition of land including the process of execution, payment of compensation as well as legal remedies in case of any grievances. (Also see under: Maharashtra Regional and Town Planning Act, 1966)

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(1) Chapter VI-A of the Railways Act, 1989 – Several anomalies – Need for legislation. (See under: Railways Act, 1989) 1160

(2) Legislation by reference – Held: The rule of legislation by reference is bound to have exceptions – It cannot be stated as an absolute proposition of law that wherever legislation by reference exists, subsequent amendments to the earlier law shall stand implanted into the later law without analyzing the impact of such incorporation on the object and effectuality of the later law – The later law being the principal law, its object, legislative intent and effective implementation shall always be of paramount consideration while determining the compatibility of the amended prior

law with the later law as on relevant date.

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LIMITATION ACT, 1963:

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MAHARASHTRA CONTROL OF ORGANIZED CRIME ACT, 1999:

s.3 – Accused entering into a conspiracy on phone to eliminate a prominent businessman – Conviction and sentence under the relevant provisions of the MCOCA and Penal Code – Acquittal of A1 to A4 of all the charges leveled against them by the High Court – However, the conviction and sentence of appellant-A5 upheld – Held: High Court having disbelieved the prosecution version against A1 to A4, committed a grave error in upholding the conviction of the appellant only on the evidence of voice identification – Having disbelieved the voice identification in the case of accused Nos. 1 and 2, there was no reason to adopt a different yardstick in the case of the appellant – Voice identification was conducted without taking any precautions similar to the precautions which are normally taken in visual identification of suspects by witnesses – Veracity of the voice identification would not improve merely because a recording has been made after receiving official approval – Crucial identification was of the voice of the

person talking on the tape – Thus, the appellant entitled to the benefit of doubt as the prosecution failed to prove its case beyond reasonable doubt – Appellant acquitted of all the charges leveled against him – Penal Code, 1860 – Arms Act, 1959.

(Also see under: Evidence)

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MAHARASHTRA PRIVATE FOREST (ACQUISITION) ACT, 1975:

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

s.3(5) and s.28 r/w Schedule IV, items 1(a), (b), (d) and (f) – Complaint before Industrial Court/Labour Court – Maintainability of – Employee-employer relationship disputed – Questions: (1) Whether a person who is employed by a contractor who undertakes contracts for the execution of the whole of the work or any part of the work which is ordinarily work of the undertaking is an employee within the meaning of s.3(5) of the MRTU and PULP Act; (2) Whether a complaint filed under the MRTU and PULP Act by an employee as defined u/s.3(13) of the BIR Act, is maintainable although no direct relationship of employer-employee exists between him and the principal employer; and (3) Whether a complaint filed under the MRTU and PULP Act by employees u/s.3(13) of the BIR Act can be dismissed if the employer claims that they are not his direct

employees but are employed through a contractor – Referred to larger bench – Bombay Industrial Relations Act, 1946 – s.3(13).

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MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, 1966:

(i) Purpose of the Act – Held: The principal object of the Act is planned development of the State of Maharashtra by preparing development plans for regions and town planning schemes and constitution of various authorities to achieve the said purpose – It includes the function of acquisition of land but for a very limited purpose – Acquisition of land takes place only where the land is reserved, designated or required for complete development in the view of the Planning, Development or Appropriate Authority, as the case may be.

(ii) Scheme under the Act – Held: Act is a self-contained Code – It is an Act which completely provides for various steps in relation to execution of its object, constitution of various authorities to implement the underlying scheme of planned development, machinery for interested persons to raise their claims for adjudication under the provisions of the Act or at best to an authority referred to in the Act.

(iii) Chapter VII – All the provisions of the Land Acquisition Act, as amended by Land Acquisition (Amendment) Act, 1984, with particular reference on s.11A can not be read into the provisions of the MRTP Act on the principle of either legislation

by reference or legislation by incorporation – The intent of the legislature to make the MRTP Act a self-contained Code with definite reference to required provisions of the Land Acquisition Act is clear – Unambiguous language of the provisions of the MRTP Act and the legislative intent clearly mandates that it is a case of legislation by incorporation in contradistinction to legislation by reference – The provisions introduced in the Land Acquisition Act, 1894 by Amendment Act of 1984, limited to the extent of acquisition of land, payment of compensation and recourse to legal remedies provided under the said Act, can be read into an acquisition controlled by the provisions of Chapter VII of the MRTP Act but with a specific exception that the provisions of the Land Acquisition Act in so far as they provide different time frames and consequences of default thereof including lapsing of acquisition proceedings cannot be read into the MRTP Act – s.11A of the Land Acquisition Act being one of such provisions cannot be applied to acquisitions under Chapter VII of the MRTP Act – Reading of s.11A of the Land Acquisition Act into Chapter VII of the MRTP Act will render the substantive provisions of the MRTP Act ineffective, unworkable and may frustrate its object materially – Land Acquisition Act, 1894 – s.11A.

(Also see under: Land Acquisition Act, 1894)

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Inter-caste/Inter-religion marriage.

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(1) 'Expressio unius est exclusion alterius' – Applicability of.

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(2) Maxim 'ut res magis valeat quam pereat' – Held: A statute should be construed so as to make it effective and operative – Interpretation of Statutes.

Girnar Traders v. State of Maharashtra and Ors.

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MOTOR VEHICLES ACT, 1988:

(1) ss.163A and 166; Second Schedule – Claimant suffered multiple injuries on his leg in a motor accident – Claim petition u/s.166 – Determination of compensation – Structured formula as provided for under the Second Schedule including the multiplier – Applicability of – Held: Even if a claim is made u/s.166, the principles for determining compensation as per s.163A can be used as a guide – The Second Schedule can be used as a reference for determining compensation in a claim u/s.166 – The claimant was earning Rs.48,000/- per year – After deduction of 1/3rd for personal expenses, his annual income came to Rs.32,000/- – As per the Second Schedule, claimant being aged 48 years, a multiplier of 13 to be applied and accordingly, he is entitled to compensation of Rs.4,16,000/-, apart from Rs.5,000/- as compensation for hospitalization, special diet, attendant and transportation and Rs.22,209/- for cost incurred in purchase of medicines – Thus,

total compensation rounded off to Rs.4,43,000/- to be paid alongwith interest @ 9% by all the respondents jointly and severally.

Sant Singh v. Sukhdev Singh and Ors. 721

(2) s.166 – Fatal motor accident – Claim petition – Appreciation of evidence – Claim disallowed by Tribunal as also by High Court on the ground that in the FIR the number of offending vehicle and the name of the driver were not mentioned – Held: In motor accident claims, claimants are not required to prove the case like in a criminal trial – In the instant case, the incident was witnessed by the brother of the deceased and a co-villager, who gave the name of the driver and number of the vehicle to the police the following day – Applying multiplier of 17, compensation amount would come to Rs.3,93,428/- apart from funeral expenses and loss of consortium – However, exercising power under Article 142 of the Constitution and considering the number of claimants and the deceased being the sole bread earner, an amount of Rs. 6 lakh including funeral expenses and loss of consortium, is allowed with 7% interest from the date of application till payment – Constitution of India, 1950 – Articles 136 and 142 – Evidence.

Kusum lata & Ors. v. Satbir & Ors. 480

MOTOR VEHICLES PROCEDURE MANUAL (PROMULGATED BY GOVERNMENT OF WEST BENGAL):

Driving licence.

(See under: Consumer Protection Act, 1986) 977

NARCOTIC DRUGS AND PSYCHOTROPIC

SUBSTANCES ACT, 1985:

s.50 – Accused found carrying a gunny bag containing opium on his head – Search and seizure – Samples sent to laboratory for analysis – Accused convicted and sentenced – High Court setting aside the conviction on two grounds: (i) non-compliance with s. 50 of the Act, and (ii) absence of evidence to show as to when the sample had been sent to the laboratory – Held: Provisions of s.50 would no longer be applicable to a search in an alike case as the opium had been carried on the head in a gunny bag – However, there was no evidence to show as to when the samples had been sent to the laboratory – Samples remained in some unknown custody for fifteen days – High Court was fully justified in holding that the sanctity of the samples had been compromised which cast a doubt on the prosecution case – Judgment of the High Court on the second aspect does not call for interference – Acquittal upheld.

State of Rajasthan v. Tara Singh 1112

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NEGOTIABLE INSTRUMENTS ACT, 1881:		
(1) s.138 – Complaint of dishonour of cheques – Accused sentenced by Magistrate to pay a fine of Rs.4 lakh to complainant – High Court enhancing the amount of fine by Rs. 2 lakh – Appeal by complainant for jail sentence to the accused – Held: The gravity of a complaint under the Act cannot be equated with an offence under the provisions of the Penal Code or other criminal offences – An offence u/s 138 of the Act is almost in the nature of a civil wrong which has been given criminal overtones – The amount of compensation increased by a further sum of Rs.2 lakh. <i>Kaushalya Devi Massand v. Roopkishore Khore</i>	879
(2) ss.138 and 142 – Complaint u/s.138 – Locus standi of the complainant – Respondent no.1 issued cheque in favour of proprietary firm towards discharge of a pre-existing legal liability – Cheque dishonoured – Appellant claiming to be proprietor of the said proprietary firm – He filed complaint against respondent no.1 u/s.138 – Conviction of		

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respondent no.1 by trial court and appellate court however, set aside by High Court – Held: Justified – It is evident that the firm in question was the “payee” of the cheque and the appellant could not claim to be the “payee”, nor could he be the “holder in due course”, unless he established that the cheques had been issued to him or in his favour or that he was the sole proprietor of the firm and being so, he could also be payee himself and thus, entitled to make the complaint – The appellant failed to produce any documentary evidence to connect himself with the said firm, nor did he make any attempt to adduce any additional evidence at the appellate stage, in spite of the fact that the respondent raised this issue from the initial stage. <i>Milind Shripad Chandurkar v. Kalim M. Khan & Anr.</i>	698
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PENAL CODE, 1860:		
(1) ss. 120-B r/w ss. 306 and 506 – Inter-religious marriage – Unnatural death of husband – Investigation by the State Criminal Investigation Department (CID) – Writ petition by the mother and the brother of the deceased seeking transfer of investigation to CBI on ground of alleged nexus between the police and father-in-law of deceased – Single Judge of the High Court appointing CBI to enquire into the unnatural death of the husband and giving liberty to the CBI to proceed in accordance with law for filing charge-sheet before the competent court u/s. 173(2) CrPC and to make		

further investigation if necessary before it actually files the charge-sheet – Division Bench setting aside the order of the Single Judge, directing the CBI to start investigation afresh by treating the complaint of the deceased's brother as FIR and register a case of murder – Held: Order passed by the Division Bench not sustainable – CBI was justified in recording FIR in terms of the order passed by the Single Judge – Once an FIR had been registered lawfully and investigation had been conducted leading to filing of charge sheet before the competent court of law for the trial of accused persons, absolutely, there was no justifiable reason for the Division Bench to direct re-registration of the same by lodging another FIR after three years – Fresh investigation into the same allegation would be a futile exercise and would serve no purpose, more particularly, when there is no adverse comment on the investigation carried out by the CBI – Thus, order passed by the Division Bench of the High Court is set aside – Code of Criminal Procedure, 1973 – s. 173(2) – Investigation.

(Also see under: Social Justice)

Ashok Kumar Todi v. Kishwar Jahan & Ors. 597

(2) ss.120-B and 463.
(See under: Sree Sankaracharya University of Sanskrit Act, 1994) 1054

(3) s.302.
(See under: Custodial Violence) 1091

(4) s.302 – Murder – Conviction by trial court – Upheld by High Court – Held: The prosecution

has proved that on a petty issue, the accused had a grudge against the victim, and on the date of incident, in presence of the eye-witness caused fatal injuries by axe to the victim – The prosecution by way of medical evidence, the evidence of eye-witness and other witnesses, seizure of the axe at the instance of the accused, and the FSL report has proved its case against the accused beyond doubt – There is no ground for interference with the judgments of courts below – Constitution of India, 1950 – Article 136.

(Also see under: Constitution of India, 1950)

Prahalad Patel v. State of Madhya Pradesh 471

(5) s.302 – Murder – Allegation that the victim-deceased was strangled to death by her husband, sister-in-law and grandmother-in-law – Trial Court acquitted all the accused on the ground that there was no motive for the murder and the sanctity of the extra judicial confession was doubtful – High Court held the appellant-husband guilty, however upheld the acquittal of other accused – Held: There was no evidence to connect the appellant with the crime – High Court observed that the extra-judicial confessions were irrelevant in the circumstances, and yet relied on those confessions – There was no other evidence against the appellant – Some of the conclusions drawn by High Court were merely conjectural and were not borne out by evidence – The view taken by trial court was possible and should not have been interfered with by High Court – Appellant acquitted.

Ranjit Singh v. State of Punjab 1107

(6) s.302/34 – Murder – An eleven year old boy beaten and hanged to death by three accused – Acquittal by trial court – Conviction by High Court – Held: It is clear that all the three accused had taken part in beating the victim and they all dragged him into the room and closed the door – It was for the accused to explain as to how the victim died – It is very clear that all the three accused had acted with common intention of causing the death – High Court rightly convicted and sentenced them to imprisonment for life u/s 302 with the aid of s.34 – Code of Criminal Procedures, 1973.

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

Rajesh Singh & Ors. v. State of U.P. 1070

(7) s.302 r/w s.149 and s.120-B – Murder – Dispute over school land between deceased and the accused – FIR described that two sikh youths carrying rifles came to the house of deceased and asked him to settle the dispute – Deceased was taken from his house by them – The lambardar and the members of panchayat were also taken – Son of the deceased followed them – The two sikh youths in the presence of other accused fired at the deceased resulting in his death – Appellants arrested after 6 months of incident and identified for the first time in court by son of the deceased as those two sikh youths – Conviction of appellants u/s.302 r/w s.120-B – Upheld by High Court – Held: The physical description of the appellants given in FIR could not by itself pin the

murder on them – Prosecution did not come out how the investigation led to their identification as the primary assailants – The Sub-Inspector who arrested the appellants was not examined – There was substantial improvement in the statements made by son of deceased and the Lambardar – No threat was ever received by the deceased from appellants prior to the incident – The appellants were not properly identified, and, therefore, their involvement is ruled out – Identification.

Sukhbir Singh and Anr. v. State of Punjab 581

(8) s.302 r/w s.149 and s.307 – Murder and attempt to murder – Unlawful assembly – Common object – Vicarious liability – Allegation that a day after an altercation and assault on one of the accused, the accused persons indiscriminately fired at the victims causing grievous injuries to one and death of the other – Conviction by courts below of the six accused persons – Further, appeal of A-3 dismissed by Supreme Court – Appeals by the other five accused – Held: There was a definite background to the attack – The accused persons had carried a grudge against the victims – Presence of the 5 eye-witnesses was most natural – All of them unanimously stated that A-1 had ordered to bring the guns; that A-4 fired 3-4 rounds with his gun and caused injury to PW-7, and that A-5 and A-6 fired with pistols in their hands –Therefore, at least insofar as these persons are concerned, their presence and their active participation made them guilty u/s.149 IPC, though the author of the injury to the deceased was A-3 whose appeal has already been dismissed – However, the evidence of the eye-

witnesses that A-2 was instigating the other accused persons to fire, appears to be an exaggeration – Therefore, benefit of doubt granted to A-2 and he is acquitted – Arms Act – s.27.

Amerika Rai & Ors. v. State of Bihar 176

(9) ss. 302, 364, 201 and 120B.

(See under: Bail) 946

(10) ss.304 (Part-II) and 330.

(See under: Custodial Death) 769

(11) s.306 – Abetment of suicide – Allegation that the victim was prevented from using the car owned by her brother-in-law and his wife, and in this regard was also taunted by the latter – Victim committing suicide by hanging herself in her matrimonial house four days later – Victim's husband, brother-in-law's wife, and the appellants (two brothers-in-law and mother-in-law of the victim), charge sheeted u/ss. 304-B, 498-A and 306 – Petition u/s. 482 CrPC by the appellants – Charges u/ss. 498-A and 304-B quashed, however, charges u/s 306 upheld – Held: No proximate link between the incident when the deceased was denied permission to use the car with the factum of suicide which took place four days later – No instances of instigation or allegations against the appellants – Charges u/s. 306 against the appellants quashed – Code of Criminal Procedure, 1973 – s. 482.

M. Mohan v. The State represented by the Deputy Superintendent of Police 437

(12) s.325 – Grievous hurt – Accused assaulted his uncle – No external injury – Death of victim

after three days – FIR lodged three days after the incident stating that the accused attacked the deceased, sat on his chest and hit him on his head with a stone – Trial court held that prosecution story was not credible and acquitted the accused – High Court, however, convicted the accused u/s.304 (Part-II) and sentenced him to seven years rigorous imprisonment – Held: In the facts of the case, conviction u/s.304 (Part-II) was not justified – Delay in lodging FIR was explained – The injuries caused were apparently not with a stone but rough handling by the accused which led to the internal injury to the brain and then to death – The case fell squarely u/s.325 – Appellant having undergone about two years of the sentence, in the interest of justice, sentence reduced to that already undergone – FIR.
(Also see under: Delay/Laches)

Swapan Kumar Senapati v. State of West Bengal 205

(13) s.326/34 – Assault on victim, causing him grievous injury – Victim admitted in hospital – Death of victim after eighteen days – Accused convicted u/s. 302/149 – Conviction upheld by High Court, however, sentence modified to one u/s. 304 (Part-I) r/w 149 – Held: Medical evidence reveals that at the very initial stage the doctors did not realize the gravity of the situation as they had seen only one external injury on the buttocks of the deceased and did not even look at the possibility that some internal injuries too could have been caused considering the manner of the attack – However, it cannot be ruled out that had the doctors been a little vigilant during the 20 days

when the deceased was admitted to the hospital, the deceased could have been saved – Thus, accused liable to be convicted u/s. 326/34 and not u/s. 304(Part-I) r/w s.149 – To meet the ends of justice, sentence of the accused reduced to the period already undergone.

Tukaram & Ors. v. State of Maharashtra 237

(14) ss.377, 377 r/w 120B, 373, 373 r/w 109, 372, 323 and 120-B and s.23 of Juvenile Justice Act – Sexual abuse of, and physical assault on children of Anchorage Shelters in Mumbai – Conviction by trial court of all the three accused – Acquittal by High Court – Held: The analysis of the evidence of the two victims at the hands of the accused in the shelter homes clearly shows that two accused had sex with them on many occasions – They also had similar sex with other boys who stayed in the shelter homes – In the circumstances, the impugned judgment of the High Court acquitting all the accused in respect of charges levelled against them is set aside and the conviction and sentence passed by the trial court restored – Juvenile Justice (Care and Protection of Children) Act, 2000 – s.23.

(Also see under: Constitution of India, 1950)

Childline India Foundation & Anr. v. Allan John Waters & Ors. 989

(15) (See under: Maharashtra Control of Organized Crime Act, 1999 and Evidence) 792

PRECEDENT:

(1) Precedent – Held: Is a decision which lays down some principle of law – Mere stray observation by the court would not amount to a

precedent – Constitution of India, 1950 – Article 141.

(Also see under: Review; and Doctrines)

Gangadhara Palo v. The Revenue Divisional Officer & Anr. 746

(2) Supreme Court dismissing SLP against judgment of High Court – Held: The decision of the Supreme Court did not amount to a precedent as it did not contain any discussion on merits of the case.

(Also see under: Service Law)

State of U.P. and Ors. v. Rekha Rani 1154

(3) (See under: Constitution of India, 1950) 906

PREVENTION OF CORRUPTION ACT, 1988:

(1) s.13(1)(d).

(See under: Sree Sankaracharya University of Sanskrit Act, 1994) 1054

(2) (i) s.13(2) and 13(1)(e) – Charge sheet against appellant-police officer alleging that he was found in possession of assets, dis-proportionate to his known sources of income which was acquired by abusing his official position during the period from 1987-1996 – Appellant submitted the required information by Ext. D-4 giving full details of the properties acquired and possessed by him on plain paper after lodging of the FIR – Conviction and sentence u/s. 13(2) and 13(1)(e) by Special Judge – Upheld by the High Court – Held: Not sustainable – Prosecution has to establish that the pecuniary assets acquired by the public servant are disproportionately larger than his known sources of income and then it is for the public

servant to account for such excess – Offence becomes complete on the failure of the public servant to account for or explain such excess – Non-compliance of the 1981 Rules would not adversely affect the evidentiary value of Ext.D-4 and the appellant could not be fastened with criminal liability – High Court erred in not placing reliance on the evidence contained in Ext. D-4 – Taking into consideration the contents of Ext. D-4, the alleged unexplained income of the appellant is significantly lower than what had been alleged by the prosecution – Check period had been very long – Alleged unexplained income remains merely a marginal/paltry sum which any government employee can save every year – Thus, order of the courts below set aside – Sikkim Government Servants Conduct Rules, 1981 – r. 19.

(ii) s. 13(2) and 13(1)(e) – Defect or irregularity in investigation – Held: Has no bearing on the competence of the court or procedure relating to cognizance or trial, unless a miscarriage of justice has been caused thereby – On facts, there was an oral direction by the Superintendent of Police to the officer concerned to investigate the case – Issue as to whether the oral order could meet the requirement of law is a technical issue – There is nothing on record to show that the investigation had been conducted unfairly.

(iii) s. 19 – Grant of sanction for prosecution – Invalid sanction – Effect of – Held: Mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice – s. 19(1) is procedural and does not go to the root of the jurisdiction – Once the cognizance has been taken by the court under

CrPC, it cannot be said that an invalid police report is the foundation of jurisdiction of the court to take cognizance – On facts, in absence of anything to show that any defect or irregularity in obtaining sanction caused a failure of justice, it cannot be said that sanction was granted without taking into account the assets and income shown in the document.

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

Ashok Tshering Bhutia v. State of Sikkim 242

PREVENTIVE DETENTION:

(See under: Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug- Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982) 885

PUBLIC INTEREST LITIGATION:

Writ petition before High Court – Challenging extensions granted to Parpathedar of Tirumala Tirupathi Devasthanam by TTD Board – Allowed by High Court – Held : High Court ought to have satisfied itself with regard to the credentials of the writ petitioner before entertaining the petition as public interest litigation – A pure and simple service matter has been deliberately disguised as a public interest litigation at the instance of some disgruntled employees – The controversy with regard to the management of the Temple properties and funds, regarding which different proceedings are pending, have been deliberately mixed up with the extension granted to the employee – Order of High Court set aside – Service law – Constitution of India, 1950 – Article

226.

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

P. Seshadri v. S. Mangati Gopal Reddy and Ors. 1134

PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971:

Appellant, PSU, in the year 1972, appointing the respondent, as its dealer to sell appellant's petroleum products at appellant's premises at the price specified by the appellant – Breach of trust by the respondent – Suit before the Single Judge of Court of Small Causes – Interim order directing the appellant to maintain status quo – On appeal, the Division Bench of the Court of Small Causes vacated the direction – Order upheld by High Court – Meanwhile, termination of the dealership agreement – Difference of opinion on issues as to nature of licence granted to the respondent by the appellant under the Agreement; whether the High Court was justified in upholding the grant of interim order of status quo and directing the appellant to secure possession from the respondent of the petrol pump premises by resorting to proceedings under the Act; and whether the respondent had become a deemed tenant in 1972 – Matter referred to Larger Bench – Bombay Rents, Hotel and Lodging Houses, Rates Control Act, 1947 – ss. 15A and 5(4A).

Bharat Petroleum Corporation Ltd. v. Chembur Service Station 632

RAILWAYS ACT, 1989:

(i) s.20F(2) – Time period for making the award – Commencement of – Held: Period of one year, stipulated u/s.20F(2) for making the award, has to be reckoned from the date of publication of the declaration u/s.20E(1) in the official gazette – Land acquisition – Compensation.

(ii) s.20E(1) – Publication of notification – Requirement for – Held: s.20E requires the notification to be published only in the official gazette – The section does not require the notification of declaration to be published in any newspaper or by any other mode.

(iii) s.20F(2), first proviso – Award by competent authority within six months after the expiry of one year from the date of publication of the declaration – Validity of – Held: If the competent authority is satisfied that the award could not be made within a period of one year due to unavoidable circumstances, which are to be recorded in writing, he could make the award within eighteen months – The requirement regarding recording of reasons is not mandatory – On the facts of the case and on harmonious reading of the provision of s.20F, said reasoning in the award is treated as the reason for the delay in making the award – The acquisition did not, therefore, lapse – However, having regard to the second proviso to s.20F(2), the land owners are entitled to additional compensation for the delay in making of the award at a rate not less than 5% of the value of the award for each month of delay.

(iv) Several anomalies in the provisions of Chapter VIA – Discussed – Need for legislation – Legislation.

Dedicated Freight Corridor Corporation of India v. Subodh Singh & Ors. 1160

RAJASTHAN CIVIL SERVICES (MEDICAL ATTENDANCE) RULES, 1970:

rr.6 and 7 – Employee of Rajasthan District Court got operated for heart surgery in Escorts Heart Institute, New Delhi – Claim for re-imburement of medical expenses – Held: He is entitled to medical expenses to a limited extent permissible in the rules – High Court erred in granting full reimbursement by relying upon r.7 since it cannot be said that treatment for heart surgery was not available in State of Rajasthan.

State of Rajasthan v. Mahesh Kumar Sharma 489

RAJASTHAN SALES TAX ACT, 1954:

Notification dated 29.03.2001, Entry No. 184:

(i) Jaljira – Sales tax – Levy of – Held: Jaljira is a Masala packed into packets of different nature/ quantity and sold to the consumers – It would come within Entry No. 184 and taxable at the rate of 16%.

(ii) Aachar Masala, Jaljeera powder, Anar Masala, Methi Chatani, Pudina, Lehsoon Chatni, Chat Masala, Kitchen Masala, Mangodi Masala, Sambhar Masala, Dal Masala, Kasuri Methi, Heena Powder, Shikkai Powder, Lahsoon powder – Sales tax – Levy of – Held: These would be Masala packed falling under Entry No. 184 of the notification dated 29.03.2001 – Thus, taxable at the rate of 16%.

(iii) Idli Mix and Dosa Mix – Sales Tax – Levy of

– Held: Cannot be said to be Masala – Thus, would be excluded from being assessed for the purpose of sales tax assessment as ‘masala’.

Commercial Taxes Officer v. M/s. Jalani Enterprises 951

REFERENCE TO LARGER BENCH:

(1) (See under: Public Premises (Eviction of Unauthorised Occupant) Act, 1971) 632

(2) (See under: Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971) 753

(3) (See under: Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982) 885

RENT CONTROL AND EVICTION:

(See under: U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972) 202

REPRESENTATION OF THE PEOPLE ACT, 1951: s.29A.

(See under: Election Symbols (Reservation and Allotment) Order, 1968) 920

REVIEW:

(1) Review Petition – Maintainability of – Petitioner seeking review of impugned judgment on the ground that when the matter was heard, its counsel was not present – Held: Review petition cannot be argued merely on technicalities – On facts, entertaining the review petition was not only a futile exercise but sheer wastage of judicial time – The

review petition was filed on frivolous grounds as neither in the petition, nor during the course of hearing, the error/mistake in the judgment either on law or on facts was pointed out – Review application was filed without any sense of responsibility – Such a practice adopted by the litigants and the members of the Bar is deprecated – Review petition accordingly dismissed.

Delhi Pradesh Regd. Med. Prt. Assn. v. Union of India & Ors.

849

(2) (i) Review Petition – Maintainability of – Writ petition by appellant – Dismissed by High Court – SLP thereagainst also dismissed – Review petition before the High Court alongwith an application for condonation of delay in filing the review petition – Dismissed – Appeal before Supreme Court – Plea that review petition was not maintainable because against the main judgment of the High Court dismissing the writ petition the SLP had been dismissed – Held: There was a delay of 71 days in filing the review petition – High Court should have taken a liberal view and condoned the delay – Delay in filing the review petition before the High Court condoned – As regards maintainability of the review petition, it would make no difference whether the review petition was filed in the High Court before or after the dismissal of SLP – It is important whether the judgment of the High Court has merged into the judgment of Supreme Court by the doctrine of merger or not – Where there is a merger of the judgment of the High Court into that of the Supreme Court, there can be no review of a judgment of High Court – When there is no merger of the

judgment of the High Court with the order of Supreme Court, the judgment of the High Court can be reviewed – In the instant case, the judgment of the High Court could be reviewed – Matter remitted to High Court to decide the review petition on merits – Doctrine of merger – Delay/Laches – Limitation.

(ii) Review – Power of – Held: Cannot be taken away by a judicial order as that has been conferred by the statute or the Constitution – By judicial order, the statute or the Constitution cannot be amended.

Gangadhara Palo v. The Revenue Divisional Officer & Anr

746

REVISION:

(See under: Consumer Protection Act, 1986)

977

SALES TAX:

(1) Metal scraps – Rate of tax – Agreement between NLC, a government undertaking and assessee for sale of iron and steel scrap to the assessee – Dispute arose between the sales tax authorities and the assessee as to nature of the article – Held: Assessee is liable to pay sales tax @ 4% only – In the agreement what was sought to be sold was iron and steel scrap and rejected/condemned and obsolete secondary arisings – Terms and conditions of e-auction also indicated that what was being sold was scrap – Sale in question was made by public sector undertaking and the said sale was conducted for and on behalf of another public sector undertaking – Sale took place 36 years after the purchase of machineries

which had outlived its utility and had no value except scrap.

Commr. of Commercial Taxes and Ors. v. Chitrahara Traders 910

(2) Sales tax on Jaljeera, Achar Masala etc. (See under: Rajasthan Sales Tax Act, 1954) 951

SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989:

s.3(1)(x) – Punishment for offences of atrocities against a member of SC/ST – Appellant's husband speaking offending words by naming caste against the complainant in presence of his wife, when the complainant himself was not present – Incident took place at the residence of complainant – Prosecution of the appellant and her husband u/s.3(1)(x) – Petition u/s.482 CrPC by the appellant – Dismissed by the High Court – Held: For offence u/s.3(1)(x), the public must view the person being insulted for which he must be present which is not the case at hand – Even if all the facts mentioned in the complaint are accepted as correct in its entirety, the complaint does not disclose the essential ingredients of an offence – The High Court should ensure that such frivolous prosecutions are quashed under its inherent powers u/s. 482 CrPC – Order of High Court set aside – Complaint qua appellant quashed – Code of Criminal Procedure, 1973 – s. 482.

Asmathunnisa v. State of A.P. represented by the Public Prosecutor, High Court of A. P., Hyderabad & Anr 1116

SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002:

(i) s.18 – Requirement of pre-deposit of amount in terms of s.18 – Whether mandatory – Held: Right to file appeal u/s.18 is conferred subject to condition laid down in the second proviso thereto – There is an absolute bar to entertaining of an appeal u/s.18 of the Act unless the condition precedent, as stipulated, is fulfilled – In the instant case, the order of the Appellate Tribunal, entertaining borrower's appeal without insisting on pre-deposit was clearly unsustainable – Since the Debts Recovery Tribunal had not determined the debt due, the borrower is directed to deposit with the Appellate Tribunal an amount of Rs. 15 lakh within a period of four weeks – Thereafter, appeal to be entertained and decided on merits.

(ii) s.18, second proviso – Right to file appeal subject to conditions – Held: When a statute confers a right of appeal, while granting the right, the legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory – Bearing in mind the object of the Act, the conditions hedged in the second proviso cannot be said to be onerous – Interpretation of statutes.

Narayan Chandra Ghosh v. UCO Bank & Ors. 1024

SENTENCE/SENTENCING:

(See under: Crimes Against Women and Custodial Violence) 1091

SERVICE LAW:

(1) Appointment – Respondent applied for the post of Head Constable – Application form contained a question regarding prosecution for an offence and detention etc – Respondent answered the question in negative – He qualified in all the tests – While filling in the attestation form, he disclosed for the first time that he had been involved in a criminal case with his tenant which later on was compromised and he was acquitted – His candidature cancelled – CAT dismissed his petition – High Court holding cancellation of candidature of respondent as illegal – Held: Justified – In the application form, the respondent may not have mentioned that he was involved in a criminal case out of fear of automatic disqualification – Even otherwise, it was not a serious offence and, therefore, in such matters, a more lenient view should be taken.

Commr. of Police and Ors v. Sandeep Kumar 964

(2) Claim for requirement of medical expenses. (See under: Rajasthan Civil Services (Medical Attendance) Rules, 1970) 489

(3) Departmental enquiry – Supply of copy of the material relied upon in departmental proceedings to the charge sheeted employee in advance – Held: Is necessary, so that he may have a chance to rebut the same – Although Article 320(3)(c) is not mandatory, if the authorities consult the Union Public Service Commission and rely on its report for taking disciplinary action, then the principles

of natural justice require that a copy of the report must be supplied in advance to the employee concerned so that he may have an opportunity of rebuttal – On facts, the report of the Commission was not supplied to the employee concerned in advance and, therefore, the dismissal order was rightly quashed by the courts below – Principles of natural justice – Constitution of India, 1950 – Article 320(3)(c).

(Also see under: Constitution of India, 1950)

Union of India & Ors v. S.K. Kapoor 906

(4) Disciplinary proceedings – Findings recorded by Enquiry Officer – Interference by High Court in exercise of its power of judicial review – Scope of – Complaint against appellant-railway constable that he alongwith another constable jointly dragged and assaulted a passenger and snatched money from his possession – Enquiry Officer held the appellant guilty – Disciplinary authority ordered removal of appellant – Appellate Authority, however, substituted the punishment of removal to that of compulsory retirement – High Court quashed the order of compulsory retirement on the ground that the complainant-passenger was not examined – Justification – Held: Not justified – The High Court, while exercising the power of judicial review from the order of the disciplinary authority does not act as a court of appeal and appraise evidence – It interferes with the finding of enquiry officer only when the finding is found to be perverse – On facts, the finding recorded by the enquiry officer was based on materials on record and on proper appreciation of evidence, which cannot be said to be perverse, calling for

interference by the High Court.

Union of India and Ors. v. Manab Kumar Guha 272

(5) (i) Dismissal – On ground of willful dereliction of duty – Departmental enquiry against bank employee on the allegation that he allowed fraudulent withdrawal of certain amount by a person impersonating as account holder, resulting in loss to the bank – Dismissal from service – However, employee acquitted in the criminal case – Order of dismissal challenged on the ground of acquittal in the criminal case – High Court set aside the order of dismissal and issued direction for re-instatement with full backwages and consequential benefits – Held: Order passed by the High Court not justified – Order of acquittal passed by the criminal court by giving the employee the benefit of doubt, would not in any way render a completed disciplinary proceedings invalid nor would it affect the validity of the finding of guilt or consequential punishment – Standard of proof required in criminal proceedings and the departmental enquiries are different – Order of the High Court is set aside – Finding of guilt recorded by the disciplinary authority is upheld, however, the punishment is modified from ‘dismissal’ to ‘compulsory retirement’.

(ii) Departmental enquiries – Interference with – Held: Courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse or if principles of natural justice or statutory regulations have been violated

or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations – Constitution of India, 1950 – Article 226.

State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya 589

(6) Extensions of service of Parpathedar on contract basis after his superannuation at the age of sixty – High Court holding the extensions as contrary to r.13 and setting aside the order of TTD Board – Held: In terms of r.2, officers or staff who are appointed on contract basis or are taken on deputation from Government or other organization form a separate class and are not covered by the Rules – Engagement of employee concerned on contract basis would not attract r.13 – High Court erred in relying on r.13 to nullify the appointment of the employee – Order of High Court set aside – Public interest litigation – Constitution of India, Article 226 – Tirumala Tirupathi Devasthanam Service Rules, 1989 – rr. 2 and 13. (Also see under: Public Interest Litigation; and Constitution of India, 1950)

P. Seshadri v. S. Mangati Gopal Reddy and Ors. 1134

(7) Judicial Officer – Probationer Munsif – Discharged from service – Held: A person is placed on probation so as to enable the employer to adjudge his suitability for continuation and confirmation in the service – While taking a decision in this regard neither any notice is required to be given to the Probationer nor is he required to be given any opportunity of hearing – In the instant case, the order of termination was a

fall out of the unsatisfactory service of the incumbent adjudged on the basis of his overall performance and the manner in which he conducted himself – This is a case of termination of service simpliciter and not a case of stigmatic termination – Natural Justice.

Rajesh Kumar Srivastava v. State of Jharkhand & Ors. 823

(8) (i) Regularization – Claim for – Writ petition – Held: The High Court in exercise of its power under Article 226 cannot regularize an employee – Constitution of India, 1950 – Article 226.

(ii) Termination – Of temporary employee – Challenge to – Held: On facts, the employee's service was not terminated as a measure of punishment, therefore, no opportunity of hearing was necessary – Direction for her reinstatement cannot be sustained as she was only a temporary employee and had no right to the post – Merely because some others had been regularized did not give her any right – An illegality cannot be perpetuated – Constitution of India, 1950 – Articles 14 and 16.

(Also see under: Constitution of India, 1950)

State of U.P. and Ors. v. Rekha Rani 1154

(9) Seniority between two groups – Post of Block Development Officer – Inter-se seniority between the general category candidates (private respondents) and the Scheduled Caste/Scheduled Tribe candidates (appellants) – Rank list for the respondents prepared after due selection in 1987 but effective advice sent and appointments made

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legislations of Parliament do not occupy the field occupied by the Tamil Nadu Act, though the latter may incidentally trench upon the former – Thus, the Act is in pith and substance relatable to Entries 1, 30 and 32 of List-II of the Seventh Schedule – It empowers the State Government to attach and sell the properties of the fraudulent establishments to recover the money of the depositors – There is no violation of Articles 14, 19(1)(g) or 21 – Constitution of India, 1950 – Seventh Schedule, List I and List II; Articles 14, 19(1)(g) and 21.

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**REFERENCE MADE BY
HON'BLE THE CHIEF JUSTICE OF INDIA
SHRI S. H. KAPADIA
IN THE MEMORY OF
LATE SHRI S. SAGHIR AHMAD,
FORMER JUDGE, SUPREME COURT OF INDIA
ON 2ND MARCH 2011**

Mr. Attorney General, Mr. Solicitor General, Law Officers, Shri Pradeep Kumar Jain, Vice-President of the Supreme Court Bar Association, Shri D.K. Garg, President of AOR Association, Members of the Bar, Ladies and Gentlemen.

We assemble here today to mourn the death of Justice S. Saghir Ahmad, one of the esteemed Judges of this Court on 31st January, 2011. He died at the age of 75 at Medical University Hospital in Lucknow.

Late Justice Saghir Ahmad was born on 1st July, 1935 in the family of late Syed Mohammad Hussain, a practising Advocate in Oudh Chief Court, Lucknow which later became the Bench of the Allahabad High Court in 1948. He was enrolled as an Advocate of the Allahabad High Court on 6th December, 1961. He practised at Lucknow mainly on the Civil Side. He acted as a Standing Counsel for the Northern Railway from 1971 and for the U.P. Government from 1976. He was appointed as Additional Judge of Allahabad High Court on 2nd November, 1981. He became permanent Judge on 30th December, 1982. He was transferred to J&K High Court on 1st November, 1993. On 18th March, 1994, he was appointed as Chief Justice of J&K High Court. Thereafter, he took oath as Chief Justice of Andhra Pradesh High Court on 23rd September, 1994.

As a Chief Justice of the AP High Court during 1994-95, he earned the reputation of an ideal Judge and administrator

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with highly objective and humane approach. He had a flair for good language. He was known for his simple life and hard work. He used to make intensive study. He bestowed a lot of care before delivering the judgments. He was known to have special interest in the subjects of environment, election and human rights. He was a large hearted person. He was able to control aggressive judges or lawyers by his apt repartees and hearty laugh. No one could point a little finger against him either in judicial or administrative matters. He was known to be a good host. He had special culinary interest. He used to personally supervise cooking and give his own recipes for delectable food. His PPS used to stay till late night at his bungalow. While Justice Saghir Ahmad was having supper, his PPS used to read out the petitions and representations addressed to him as Chief Justice of AP High Court.

He was a pious person known to have his daily prayers punctually wherever he was. He used to read lots of religious books and condemn the trends of religious fundamentalism very strongly.

Justice Saghir Ahmad was appointed as Judge of the Supreme Court on 6th March, 1995. He retired on 30th June, 2000. Later he was appointed as a Chairperson of the Fifth Working Group on Centre-State Relations in which capacity he made important recommendations relating to abrogation of Article 370 of the Constitution along with the question of autonomy in the light of Kashmir Accord and the term of the Legislative Assembly of that State.

Justice S. Saghir Ahmad entertained Writ Petition No. 7542 (M/B) of 1989 *Satish Chandra Mishra v. State of U.P. & Ors.*, a public interest litigation, ventilating the grievance of blind persons. It so happened that prior to the commencement of the U.P. Public Servants (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Serviceman) Act, 1993; and Disabilities (Equal Opportunities Protection of Rights

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and Full Participation) Act, 1995, that Justice Saghir Ahmad as an interim measure directed the State Government (through Director, Harizan & Social Welfare, U.P.), to create certain posts for blind persons in State Services. In addition, as part of this interim measure he directed the U.P. State Road Transport Corporation to provide free travelling facilities in its buses and further directed the State Government to provide the aforementioned persons with winter clothes. Further through monitoring, the aforesaid directions were enforced.

In *Bodhisattva Gautam v. Subhra Chakraborty (Ms)*, (1996) 1 SCC 490, Justice Saghir Ahmad held that the court has jurisdiction to award interim compensation to a rape victim. He emphasized that the dignity of the woman has to be maintained. Further he held that in such a case the Court can exercise its jurisdictions suo motu. The same was held with regard to Public Interest Litigation as it is not necessary that the victim should approach the court personally. Similar view was reiterated by Justice Saghir Ahmad in *Chairman Railway Board v. Chandrima Das (Mrs.)*, (2000) 2 SCC 465.

In *Mr. 'X' v. Hospital 'Z'*, (1998) 8 SCC 296, the question arose in respect of the right of a person to know about the disease, if any, of the other person as they were likely to get married soon. After considering all aspects of various religions, he held that in such a situation, public disclosure of even true private facts may amount to an invasion of the right of privacy which may sometimes lead to the clash of one person's "right to be let alone" with another person's right to be informed. But right to healthy life being inherent in Article 21 of the Constitution, the Doctor is bound to disclose such facts as it is in public interest to protect others from "Venereal Disease" (V.D.) or HIV (+).

In *State of Andhra Pradesh v. Challa Ramkrishna Reddy*, (2000) 5 SCC 712, Justice Saghir Ahmad dealt with a case wherein a bomb was hurled in the prison and a prisoner died in

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that incident. In the inquiry, it surfaced that some police officer was also involved in the conspiracy. Justice Saghir Ahmad rejected the plea of limitation and Doctrine of Sovereign Immunity available under Article 300 of the Constitution observing that "right to life" is available even to the prisoners. The dependants of such deceased were entitled for compensation against the State and principle of sovereign immunity was not applicable. Compensation could not be limited to public law domain as the State failed to provide adequate security to the prisoners as required under prisons Rules.

After elevation of Justice Saghir Ahmad to the Lucknow Bench, he started residing in his official bungalow. However, every day he would visit his father. He used to comfort the feet of his father and remain in attendance till his father fell asleep each day. He donated 10% of his income towards charitable purposes. He regularly visited orphanages. When acting as an Advocate on behalf of the poor, he never charged fees. He was a good disciplinarian.

Justice Saghir Ahmad had passion for justice and the justice he meted out was always tampered with mercy. We are in mourning what is a common soul.

The true reflection of his personality and his perception of what he expected of a Judge is reflected in the decision of the Supreme Court in *S.P. Gupta's* case (1981) Supp SCC 87 at page 917 in which it is stated as follows:

"Were I not to follow the straight road for its straightness, I should follow it for having found by experience that in the end the straight road is commonly the happiest and the most useful track".

(Michel De Montaigne)

Justice Saghir Ahmad left behind his wife Mrs. Haseena Ahmad, three married daughters, two sons, grand daughters and grand sons.

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On behalf of my brethren, sister and on behalf of myself, we place on record our deep sense of sorrow and grief on the sad demise of Justice Saghir Ahmad and we hereby convey to his family members our profound sense of sorrow and our deepest condolences and sympathies.

May the departed soul rest in peace!

I request you all to observe two minutes' silence as a mark of respect to the departed soul after the reference is over.

**REFERENCE MADE BY
ATTORNEY GENERAL FOR INDIA
SHRI G.E. VAHANVATI
IN THE MEMORY OF
LATE SHRI S. SAGHIR AHMAD,
FORMER JUDGE, SUPREME COURT OF INDIA
ON 2ND MARCH 2011**

My Lord Justice Kapadia, Chief Justice of India, Hon'ble Judges, Mr. P.K. Jain, the Vice President of the Supreme Court Bar Association and Office Bearers of the Bar Association, the Learned Solicitor General, Mr. Gopal Subramaniam, other Law Officers, Members of the Bar, Ladies and Gentlemen.

On 24 January this year, Justice Saiyed Saghir Ahmad was admitted in the Trauma Centre of the Medical University, Lucknow with a respiratory problem. For a few days he was placed on the ventilator. He recovered considerably. So the ventilator was removed. His family and friends and well wishers were relieved. He was normal and conscious, talking freely to visitors. Persons who admired him and who were close to him were constantly in touch with the family and were relieved to hear that he was on his way to recovery.

Then suddenly, on 31 January, he once again developed breathing problems. The end came in the evening. It was all so sudden. People were stunned and the reactions were simultaneous. There was shock and distress all around. Tributes started pouring in from all over including from international quarters, from people who had come into contact with him, who knew him and admired him. All these tributes had one common theme-they mourned the loss of a loveable and affectionate human being. This perhaps is the best tribute a person can get hope for. The fragrance that you leave behind is distilled from your actions and your deeds. This is your most enduring legacy.

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Justice Saghir Ahmad was born on 1st July 1935, in the family of Syed Mohammad Hussain, a Senior Advocate of the Allahabad High Court. He worked in the Chamber of the late Naseerudin Shah, a prominent Civil lawyer of the State of U.P. Prior to his elevation as Judge of the Allahabad High Court in 1981, Justice Ahmad was Standing Counsel of the Uttar Pradesh Government continuously since 1976. He was Judge of the Allahabad High Court for twelve long years. Between 9.1.1993 to 31.10.1993 he was the Senior Judge of the Lucknow Bench of that Court. Thereafter, on 1.11.1993 he became Chief Justice of the Jammu & Kashmir High Court, and later, in 1994 he moved as Chief Justice of the Andhra Pradesh High Court. He was appointed Judge of this Hon'ble Court on 6 March 1995.

As Judge of this Hon'ble Court he was a party to 721 judgments and wrote 271 judgments himself. He was also a part of the Nine Judge Bench which gave an advisory opinion in the matter of the appointment of judges in 1999. Justice Saghir Ahmad was also a party to the leading judgment on the right to privacy in the PUCL case in 1996.

One of the judgments which Justice Ahmad, wrote was in relation to a Judicial Officer in the case of *Yoginath D. Dagde v. State of Maharashtra*. He observed that the High Court has a duty to protect Judicial officers of subordinate courts from unscrupulous litigants and lawyers and that it was imperative for High Courts to protect its Judicial Officers from ill conceived or motivated complaints made by unscrupulous lawyers and litigants. For persons who knew Justice Saghir Ahmad, this judgment would come as no surprise since it was well known that though he left Uttar Pradesh in 1991 he maintained contact with members of the subordinate judiciary. It is said that to younger Judicial Officers with a reputation for integrity, he was some kind of a patron saint.

The wide range of the topics he dealt with in his judgments shows his versatility. Justice Ahmad spoke out for tribals in

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Samatha's case, for women workers employed on casual basis. He asserted the right of female workers in the *Muster Roll* case, for the victim of rape on railways in *Chandrima Das's* case and for HIV affected patients in *Mr. 'X' v. Hospital 'Z'* where he upheld the rights of HIV patients to Government service.

All the people who knew Justice Saghir Ahmad intimately mentioned his many splendoured personality, and above all, his innate simplicity and humility. He was as comfortable praying in a small mosque by the roadside as he was eating jalebis in a nearby dhaba.

The present Vice Chancellor of the National Law University, Orissa, who has written a tribute to justice Saghir Ahmad relates a remarkable incident. Justice Saghir Ahmad was his Ph.D examiner. At that time Justice Ahmad was a Sitting Judge of the Supreme Court. He wanted to conduct the viva in Delhi. The University said 'No.' So Justice Ahmad found time to go down to Aligarh and conducted the viva. He had read the thesis meticulously. He told the proponent of the thesis that he checked all the references to case law but he could not find twelve citations. Faizan Mustafa explained that these were Italian cases from European works. This incident speaks volumes for the approach of justice Saghir Ahmad, and his sincere thoroughness.

Justice Saghir Ahmad was always known for his courtesy and gentility, his soft-heartedness and emotional nature. Perhaps it would be appropriate to say that he truly imbibed the noble culture of Lucknow.

After he retired from this Court, Justice Saghir Ahmad was appointed as Chairman of the Human Rights Commission of Rajasthan. He was also appointed as Chairman of the Fifth Working Group on Centre-State Relations. Given his commitment to education, he was associated in various capacities with numerous educational institutions in Lucknow,

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Delhi and Aligarh.

Justice Saghir Ahmad is survived by his wife and two sons, of whom Mohd. Mansoor Ahmad is a practicing Advocate of the Allahabad High Court and Syed Mohd. Asif who is a Software Engineer. His three daughters are all married.

I would like to end not only by praying to God that his family has the strength to withstand this loss, but also by quoting four lines of a tribute paid to him on his death which sums up the man:-

“Faith in Allah was your living force,

Honesty was your inborn virtue;

Humanism was embedded in you,

Simplicity was rooted in your blood.”

Justice Ahmad, I pray to God that he grants you the peace and repose which you so richly deserve.

**REFERENCE MADE BY
SHRI P.K. JAIN VICE PRESIDENT,
SUPREME COURT BAR ASSOCIATION**

**IN THE MEMORY OF
LATE SHRI S. SAGHIR AHMAD,
FORMER JUDGE, SUPREME COURT OF INDIA
ON 2ND MARCH 2011**

Hon'ble Mr. Justice S.H. Kapadia, the Chief Justice of India, My Lords Hon'ble Judges of the Supreme Court of India, Mr. Goolam Vahanavati, the learned Attorney General of India, Mr. Gopal Subramaniam, the learned Solicitor General of India, other law officers, members of the Bar.

We have assembled here this morning to pay our tribute to Hon'ble Justice late S. Sagir Ahmed former judge of Supreme Court of India who left for his heavenly abode on 31st January, 2011.

Mr. Justice S. Sagir Ahamed was born on 1st July 1935. After having completed his Bachelor of law, he got himself enrolled as an Advocate in Allahabad High Court in December, 1961 and mainly practised on the civil side. Within 10 years of his practice he became standing counsel of the Northern Railway in 1971 and later was appointed Standing counsel of the Government of Uttar Pradesh in 1975. Considering his expertise and knowledge at the Bar, he was elevated as Additional Judge, Allahabad High Court on 2nd Nov, 1981 and made its permanent Judge on 30th Dec, 1982.

After serving the Allahabad High Court as its most popular Judge, he was transferred to Jammu & Kashmir High Court on 1.11.93 and within a period of about 4 months he was elevated as its Chief Justice on 18.3.94. He later adorned the office of Chief Justice of Andhra Pradesh High Court from 23.9.94 until

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his appointment as judge of the Supreme Court of India on 6.3.1995. He left the portals of Supreme Court of India on 30.6.2000 when he laid office as judge of this court on retirement by leaving behind an indelible mark of his personality.

Justice S. Saghir Ahmed was admired by every member of this Bar. He always gave patient hearing to the members. He always encouraged the junior members of the Bar. He hardly ever lost his cool.

After his retirement as Judge, Supreme Court of India, he was appointed as Chairman of Rajasthan State Human Right Commission on 16th Feb, 2001.

He was appointed as Chairman of Sarai Banjara Rail Accident Judicial Enquiry Commission. He submitted his report on 10th March, 2010.

He was also appointed as Chairman of the Prime Minister's Working Group on Centre-State relations for Jammu & Kashmir. He never left behind any unfinished task. Even as Chairman of Prime Minister's working group, he submitted his report to the State Government in 2009-2010.

Justice Sagir Ahmed was a true Nationalist and Nation's interest were close to his heart therefore, it was small wonders that his report on Centre-State relations was not to the liking of separatist groups. In his report, he recommended that slogan of "self rule" of certain party could not be considered in its entity. Regarding "self-rule" his report stated that "self-rule" appears to relates to "autonomy" in a wider context, which can be considered by the Central Government if and when approached with documents containing specific proposals of the "self rule" regarding abrogation of Article 370 of the Constitution of India, which provides special status to the State of Jammu and Kashmir, Justice Ahmed recommended that it is for the people of the State to decide that how long they want to continue with its present form.

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After his retirement he settled down in Lucknow. He is survived by his wife, 3 daughters and 2 sons.

In his death, the legal fraternity has lost a great legal luminary.

On behalf of the members of the Supreme Court Bar Association and on my own behalf I express my heartfelt condolence to the bereaved family.

May his soul rest in peace.



THE

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Containing Cases Determined by the Supreme Court of India

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JUDGES OF THE SUPREME COURT OF INDIA

(From 23.02.2011 to 30.03.2011)

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2. Hon'ble Mr. Justice Altamas Kabir
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26. Hon'ble Mr. Justice Chandramauli Kr. Prasad
27. Hon'ble Mr. Justice H. L. Gokhale
28. Hon'ble Mrs. Justice Gyan Sudha Misra
29. Hon'ble Mr. Justice Anil R. Dave

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2011-VOL-3**

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