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SUBJECT-INDEX**ADMINISTRATION OF JUSTICE:**

Criminal justice - Scientific test - Investigation - In case of poisoning - Held: Where poisoning is suspected, immediately after the post-mortem, prosecuting agencies should ensure that viscera is sent to FSL for examination and FSL should ensure that viscera is examined immediately and report is sent to investigating agencies/courts post haste - If viscera report is not received, court must ask for explanation and must summon the officer of FSL to give an explanation as to why viscera report is not forwarded to investigating agency/court - These scientific tests are of vital importance to a criminal case, particularly when witnesses are increasingly showing a tendency to turn hostile - In the instant case, all those witnesses who spoke about poisoning of victim, turned hostile - Therefore, viscera report gained significance - Directions issued.

Joshinder Yadav v. State of Bihar 567

ARBITRATION AND CONCILIATION ACT, 1996:

ss.2(1)(e) and 42 - Jurisdiction to determine the controversy emerging out of the award of the arbitral tribunal - Division of litigation between High Court exercising 'ordinary original civil jurisdiction' and 'Principal Civil Court of original jurisdiction' in a District - Held: s.42 mandates, that the court wherein the first application arising out of such a challenge is filed, shall alone have jurisdiction to adjudicate upon the disputes, which are filed later in point of time - This legislative intent must also be understood as mandating that disputes arising

out of the same arbitration agreement, arbitral proceeding or arbitral award, would not be adjudicated upon by more than one court, even though jurisdiction to raise such disputes may legitimately lie before two or more courts - s.42 is not of any assistance in the instant case as the challenge was made in different court on the same day - In view of facts and circumstances of the case, reliance placed on ss.15 and 16 CPC was misplaced - By virtue of s.2(1)(e), if choice is between High Court (in exercise of its "ordinary original civil jurisdiction") on the one hand, and "principal civil court of original jurisdiction" in the District i.e. the District Judge on the other, choice is made in favour of High Court - Code of Civil Procedure, 1908 - ss.15, 16.

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BAIL:

Anticipatory bail.

(See under: Code of Criminal Procedure, 1973) 465

CODE OF CIVIL PROCEDURE, 1908:

(1) ss.15, 16.

(See under: Arbitration and Conciliation Act, 1996) 507

(2) O.47, r.5 - Review - Scope of - Explained - Held: Even an erroneous decision cannot be a ground for court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of order and in absence of any such error, finality attached

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to judgment/order cannot be disturbed.

Dr. Subramanian Swamy v. State of Tamil Nadu & Ors.

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CODE OF CRIMINAL PROCEDURE, 1973:

(1) (i) ss.41(i)(a), 41(i)(b), 41A - Object of - Held: Is to check arbitrary or unwarranted arrest and protect the right to personal liberty guaranteed u/ Art. 21 of the Constitution.

(ii) s.438 - State of U.P. - Pre arrest bail - Grant of - Writ jurisdiction, if invocable - Held: s.438 has been specifically omitted and made inapplicable in the State - Still, a party aggrieved against whom FIR is lodged and/or charge-sheet is filed in court can invoke the jurisdiction of High Court u/Art. 226 of the Constitution for quashing of proceedings - The considerations, however which have to weigh with High Court to decide as to whether such proceedings are to be quashed or not are entirely different than that of granting interim protection against arrest - Since, grounds on which such an FIR or charge sheet can be quashed are limited, once writ petition challenging the validity of FIR or charge-sheet is dismissed, grant of relief, incidental in nature, against arrest would not arise, even when a justifiable case for grant of anticipatory bail is made out - Such a power has to be exercised very cautiously keeping in view, at the same time, that provisions of Art. 226 are a device to advance justice and not to frustrate it - Constitution of India, 1950 - Art. 226.

(iii) s.438 - Anticipatory bail - Purpose of - Discussed.

Km. Hema Mishra v. State of U.P. and Ors.

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(2) s.482 - Petition seeking to quash FIR and criminal proceedings - Petitioner, a visitor to prison - On search, mobile phone and charger recovered from him - FIR for offences punishable u/ss 42 and 45 of Prisons Act - High Court rejecting petition - Held: Case of appellant clearly falls under category (1) of grounds for quashing of FIR mentioned in the case of *Bhajan Lal* - On the date of alleged offence, mobile phone or charger was not listed as one of the prohibited articles under Punjab Prison Manual - Thus, no offence is made out u/s 42 of the Act, as there was no communication which was done or was attempted to being done contrary to rules - Further, appellant was not a prisoner on the date of occurrence - Therefore, he could not have committed a prison offence as defined u/s 45 of the Act - Judgment of High Court set aside - FIR and proceedings against appellant quashed - Prisoners Act, 1894 - ss.42,45 and 52-A.

Varinder Singh v. State of Punjab & Anr.

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CONSTITUTION OF INDIA, 1950:

(1) Art. 26 - Freedom to manage religious affairs - 'Religious denomination' - Connotation of - Held: Art. 26(d) protects the rights of 'religious denomination' to establish and administer the properties as clauses (c) and (d) guarantee a fundamental right to any religious denomination to own, acquire, establish and maintain such properties - Rights of 'denominational religious institutions' are to be preserved and protected from any invasion by State as guaranteed under Art. 26 and as statutorily embodied in s.107 of Madras

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Hindu Religious and Charitable Endowments Act, 1959.

(Also see under: Madras Hindu Religious and Charitable Endowments Act, 1959)

Dr. Subramanian Swamy v. State of Tamil Nadu & Ors. 308

(2) Art. 226.

(See under: Code of Criminal Procedure, 1973) 465

CONTEMPT OF COURT:

Disobedience of court's orders - Court directing reinstatement with consequential benefits as also back wages - Contempt petition alleging non-compliance of order as petitioner was denied benefit of re-designated post on a higher pay scale after his compulsory retirement - Held: Contempt proceedings are quasi-criminal in nature and, therefore, standard of proof required is beyond all reasonable doubt - If two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable - In order to punish a contemnor, it has to be established that disobedience of the order is 'wilful' - In the absence of any provision, the statutory authority cannot be asked to pay salary to two persons for one post, particularly in view of the fact that the person appointed to the post had never been a party to the lis, nor her re-designation/promotion had ever been challenged - No case made out to initiate contempt proceedings against respondents.

Ram Kishan v. Sh. Tarun Bajaj & Ors. 538

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CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860) 397, 418, 451 and 567

EVIDENCE:

Circumstantial evidence - Last seen theory - Held: This is one of the major circumstances pressed by prosecution - High Court has rightly found certain inherent contradictions in deposition of witnesses as regards deceased being last seen with accused - Investigation has also not been carried out properly and does not inspire confidence - Investigation. (Also see under: Penal Code, 1860)

State of Gujarat v. Ratansingh @ Chinubhai Anopsinh Chauhan 397

EVIDENCE ACT, 1872:

(1) s.106. (See under: Penal Code, 1860) 567

(2) s.114-A - Presumption in a gang rape - Held: Since prosecutrix has categorically said that sexual intercourse was committed by accused persons without her consent and forcibly, court has to draw the presumption that she did not give her consent - Defence has not led any evidence to rebut the presumption - Penal Code, 1860 - ss.376(2)(g). (Also see under: Penal Code, 1860)

State of Rajasthan v. Roshan Khan & Ors. 418

FIR:

Gang rape - Four hours delay in filing FIR - Held: Delay has been sufficiently explained by informant. (Also see under: Penal Code, 1860)

State of Rajasthan v. Roshan Khan & Ors. 418

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FOREIGN EXCHANGE:

(i) Memorandum of FLM issued by RBI - Clause 9 - Sale of foreign currency - Restriction - Held: Under paragraph 9, as between the money changers, a free hand has been given for purchase and sale of any foreign currency notes etc. in rupee value - The only restriction imposed therein is that Indian rupee value of foreign currency should not be paid by way of cash, but should always be paid in the form of a negotiable instrument or by debiting to purchasers' bank account - In the instant case, transaction was carried on by way of payment in the form of pay-orders -It cannot be held that whole transaction was in contravention of paragraph 3 of FLM.

(ii) Clause 3 - Sale of foreign currency - 'Authorised officials' - Held: When a money changer operates its business from its premises, any transaction by way of sale or purchase as part of its money changing business should be carried out only through an authorized representative - In the instant case, it is not the case of respondent that neither of the two persons who indulged in the transaction of money changing business were not the authorized officials - Impugned orders holding appellants guilty of violation of paragraph 3 of FLM r/w ss. 6(4), 6(5) and 7 of FERA and imposition of penalty being wholly unjustified, set aside - Foreign Exchange Regulation Act, 1973 - ss.6 (4), 6(5), 7 and 8.

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FOREIGN EXCHANGE REGULATION ACT, 1973:

ss.6 (4), 6(5), 7 and 8.

(See under: Foreign Exchange) 434

GENERAL INSURANCE (EMPLOYEES) PENSION SCHEME, 1995:

Para 14, 29 and 30.

(See under: General Insurance Employees Special Voluntary Retirement Scheme, 2004) 380

GENERAL INSURANCE EMPLOYEES SPECIAL VOLUNTARY RETIREMENT SCHEME, 2004:

Para 3,5 and 6 - Voluntary retirement Scheme - Eligibility - Qualifying service - Held: In view of para 6 of SVRs of 2004 and Para 14 of Pension Scheme of 1995, any employee retiring from service of company/corporation would qualify for payment of pension if he/she has rendered a minimum of ten years of service on the date of retirement - General Insurance (Employees) Pension Scheme, 1995 - Para 14, 29 and 30.

National Insurance Co. Ltd. & Anr. v. Kirpal Singh 380

HARYANA GENERAL SALES TAX RULES, 1975:

(i) r. 28-A (11) (a) (i) and (b) - Sales tax exemption allowed subject to assessee maintaining production for next five years on the average of preceding five years - Failure on part of assessee to comply with the condition - Held: Exemption being an exception has to be respected regard being had to its nature and purpose - Beneficiary unit having failed to fulfil the stipulation contained in r.28-A(11)(a)(i) and (b) is liable to pay full amount of tax benefit with interest.

(ii) s.28-A(11)(a)(i)(b) - Sales tax exemption - Held:

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Concept of exemption is required to be tested on a different anvil, for it grants freedom from liability - In the case at hand, it is 'unit' specific - Clubbing is not permissible - It amounts to violation of conditions stipulated under sub-r. (11) (a)(i) of r. 28A and, therefore, consequences have to follow.

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INTERPRETATION OF STATUTES:

(See under: General Insurance Employees Social Voluntary Retirement Scheme, 2004) 380

INVESTIGATION:

(See under: Evidence) 397

JUDGMENTS:

Finality of judgment - Order dated 25.2.1987 passed by High Court allowing the claim of respondent (Petitioner before High Court) to belong to 'Thandan' caste, a Scheduled caste - Subsequently, on the basis of observations of a Full Bench of High Court in *Pattika Jathi's* case, caste certificate of respondent scrutinized and Government passed order declaring him not to belong to 'Thandan' Scheduled caste, but to 'Ezhava' caste, an OBC - Held: Law favours finality to binding judicial decisions pronounced by courts that are competent to deal with the subject matter - Public interest is against individuals being vexed twice over with the same kind of litigation - The only exception to the doctrine of res-judicata is "fraud" that vitiates the decision and renders any judgment, decree or orders a nullity and non-est in the eyes of law - Judgement and order dated 25.2.1987 passed by High Court having attained

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finality, no fresh or further enquiry into the question settled thereby could be initiated, observations of Full Bench of High Court to the contrary notwithstanding - *Res judicata*.

R. Unnikrishnan and Anr. v. V.K. Mahanudevan and Ors. 350

MADRAS HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS ACT, 1959:

(i) s. 107 r/w ss. 44 and 45 (2) - Protection of rights of 'religious denomination' in consonance with Art. 26 of Constitution - Rights of Dikshitars to maintain Sri Sabhanayagar Temple at Chidambaram - Appointment of Executive Officer to maintain the Temple - Writ petition dismissed by High Court holding that the earlier judgment in *Marimuthu Dikshitar* did not operate as res judicata - Held: In *Marimuthu Dikshitar*, which had attained finality, it was recognized: (a) That Dikshitars, who are Smarthi Brahmins, form and constitute a 'religious denomination'; (b) Dikshitars are entitled to participate in administration of Temple; and (c) It was their exclusive privilege which had been recognised and established for over several centuries - These issues stood finally determined by High Court and, thus, doctrine of res judicata is applicable in full force - The declaration that "Dikshitars are religious denomination or section thereof" is a declaration of their status and making such declaration is a judgment in rem - Res judicata - Code of Civil Procedure, 1908 - O. 47, r. 1 - Review.

(ii) s. 107 r/w ss. 45 and 116 - Appointment of Executive Officer to manage Sri Sabhanayagar

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Temple at Chidambaram - Held: In view of the fact that rights of *Dikshitar*s to administer the Temple had already been finally determined by High Court in 1951, State authorities under the Act 1959 could not pass any order denying those rights - Act 1959 had been enacted after pronouncement of judgment in *Marimuthu Dikshitar's* case, but there is nothing in the Act taking away the rights of *Dikshitar*s declared by the court, in Temple or in administration thereof - An Executive Officer could not have been appointed in the absence of any rules prescribing conditions subject to which such appointment could have been made.

(iii) ss. 44 and 45 r/w s. 107 - Supersession of administration of Temple - Held: Supersession of rights of administration cannot be of a permanent enduring nature - Its life has to be reasonably fixed so as to be co-terminus with removal of the consequences of maladministration - Even if management of a temple is taken over to remedy the evil, management must be handed over to person concerned immediately after the evil stands remedied - Continuation thereafter would tantamount to usurpation of such proprietary rights or violation of fundamental rights guaranteed by the Constitution in favour of person(s) concerned - Impugned order is liable to be set aside for failure to prescribe the duration for which it will be in force.

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MAXIMS:

1. "*res judicata pro veritate accipitur*",
2. "*interest reipublicae ut sit finis litium*" and

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3. "*nemo debet bis vexari pro uno et eadem causa*"

(See under: Res Judicata) 308

PENAL CODE, 1860:

(1) s.302 r/w s.149, s.498A, s.201 - Dowry death - Allegation that victim-deceased was harassed by accused-in-laws for dowry, they poisoned her and threw her dead body in river - Conviction by courts below - Appeal by accused-brother-in-law on the ground that he had separated from his brothers and was not party to ill treatment meted out to deceased and to the murder - Held: Evidence of father and brother of deceased that she was subjected to cruelty and harassment did not suffer any dent and, therefore, was reliable - Other attendant circumstances such as strong motive, accused did not lodge report of missing, and the fact that all accused absconded from their house with their belongings led to an irresistible conclusion that they were responsible for death of deceased - False explanation by accused further strengthened prosecution case - Prosecution having established that accused treated the deceased with cruelty/harassment for dowry, accused ought to have disclosed the facts which were in their personal and special knowledge to disprove prosecution case - They failed to discharge the burden u/s.106 of Evidence Act, therefore, adverse inference has to be drawn against them - Conviction not interfered with - Evidence Act, 1872 - s.106.

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(2) (i) s.376 and s.506 - Rape of 14 year old girl - Conviction and seven years sentence by courts below - Held: Medical evidence corroborated the

evidence of prosecutrix that rape was committed on her - No interference called for with conviction and sentence - Crime against women.

(ii) s.376(i), proviso - Imposition of sentence of imprisonment for a term of less than seven years - Held: The proviso to s.376(1), as it stood prior to its amendment in 2013 expressly states that court may impose a sentence of imprisonment for a term of less than seven years in an offence u/s.376(1), "for adequate and special reasons to be mentioned in the judgment" - What is adequate and special, depends upon several factors and on the facts of each case - In the facts of the instant case, prosecutrix was a student of eighth class and about 14 years of age, and keeping in view the conduct of appellant and consequences of rape on prosecutrix, no adequate and special reasons are there to reduce the sentence to less than the minimum - Sentence/Sentencing.

Parminder alias Ladka Pola v. State of Delhi 451

(3) (i) ss.376, 302 and 21 - Rape and murder - Circumstantial evidence - Conviction by trial court and sentence of death - Set aside by High Court - Held: High Court has rightly held that evidence led by prosecution does not establish a complete chain of circumstances to connect the accused with the murder of deceased - There are significant defects and shortcomings in investigation; witnesses have come out with contradictory versions; and have made significant improvements in their versions in their depositions in the court - In a case of circumstantial evidence, it would be unwise to record conviction on the basis of such a scanty, weak and incomplete evidence - As

prosecution has not been able to prove the charges beyond reasonable doubt, High Court has rightly set aside the judgment of trial court.

(ii) s.376 - Rape - Victim, a 7 year old girl - Death of - Held: There was no direct evidence and High Court has rightly recorded a finding that on the basis of medical evidence offence of rape was not proved by prosecution beyond reasonable doubt.

State of Gujarat v. Ratansingh @ Chinubhai Anopsinh Chauhan 397

(4) (i) ss.376(2)(g) and s.366 - Gang rape - Six accused convicted by trial court - Acquittal by High Court - Held: Prosecution case that six accused committed gang rape on prosecutrix has been established by her evidence and evidence of her father as also, corroborated by medical evidence and FSL report - Judgment of High Court set aside and that of trial court convicting all accused of offences charged and sentencing them to 10 years RI and 4 years RI under the two counts, restored.

(ii) s.376(2)(g), Explanation 1 - Gang rape - Presumption - Held: In the instant case as per medical evidence, four persons had committed rape on prosecutrix - In view of Explanation 1 it is not necessary that prosecution should adduce clinching proof of a completed act of rape by each one of the accused on victim.

(Also see under: Evidence Act, 1872)

State of Rajasthan v. Roshan Khan & Ors. 418

PRISONS ACT, 1894:

(i) s.52-A - Visitor to prison - On search found in possession of a mobile phone and its charger - FIR dated 24.9.2009 - Section enforced by

Notification dated 8.3.2011 - Held: Notification will not apply to the case in hand, as alleged offence was committed in 2009, and retrospective effect will not apply in criminal law - Therefore, there is no offence made out against appellant - Code of Criminal Procedure, 1973 - s.482.

(ii) ss. 42 and 45 - Offences under the two provisions - Explained.

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RES JUDICATA:

(1) *Res judicata* - Meaning of - Explained - Maxims, "*res judicata pro veritate accipitur*", "*interest reipublicae ut sit finis litium*" and "*nemo debet bis vexari pro uno et eadem causa*".

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REVIEW:

(See under: Madras Hindu Religious and Charitable Endowments Act, 1959) 308

SENTENCE/SENTENCING:

(See under: Penal Code, 1860) 451

SALES TAX:

Sales tax exemption.

(See under: Haryana General Sales Tax Rules, 1975) 548

SOCIAL STATUS CERTIFICATE:

Scheduled caste certificate - Claim of respondent that he belonged to 'Thandan' caste, a Scheduled Caste, allowed by High Court by order dated 25.2.1987 on the report of KIRTADS and statement made by State counsel - Subsequently, on the basis

of observations made by Full Bench of High Court in Pattika Jathi's case, caste certificate of respondent scrutinized and Government declaring him to belong to 'Ezhava' community, an OBC - Held: In view of Presidential Order in terms of the Constitution (Scheduled Castes) Order Amendment Act, 2007 which was published in the official gazette on 30.8.2007 and Order dated 30.8.2010 issued by State Government that 'Ezhuvas' and 'Thiyyas' to be treated as OBCs, and the decision being prospective in nature, benefit granted to respondent till 30.8.2007 shall remain undisturbed - Respondent shall not be entitled to claim any benefit in future as a scheduled caste candidate but no benefit admissible to him as an OBC candidate shall be denied.

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WORDS AND PHRASES:

(1) Word 'means' and the expression, "unless the context otherwise requires" - Connotation of - Interpretation of statutes.

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(2) Word 'wilful' - Connotation of in the content of proceedings for contempt of court.

Ram Kishan v. Sh. Tarun Bajaj & Ors. 538

WORKMEN'S COMPENSATION ACT, 1923:

Interest on compensation - Relevant date - Held: Claimants are entitled to interest @12% from the date of accident and not from the date of award.

Saberabibi Yakubhai Shaikh & Ors. v. National Insurance Co. Ltd. & Ors. 303