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(2) s.37(1) - Interest for the amount withheld by the railway administration - Grant of - Held: Arbitrator passed an award directing the railway administration to refund the amount along with interest and subsequent interest @ 18% pa. - Arbitrator in awarding interest to the contractors failed to take into account the provisions contained

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in Indian Railways Standard Conditions of Contract which disentitled the contractors from claiming any interest or damages for withholding or retention under lien by railway administration - Also, as per s.37(1), arbitrator could not have awarded any interest from the date when the recovery was made till the award was made - Interest would have been payable from the date when the award was made till the money was deposited in the court - Upon the amount being deposited, no further interest could be paid to the contractors - Interest.

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(2) s.378 - Acquittal by trial court - Scope of interference by High Court - Held: High Court in an appeal u/s.378 is entitled to reappraise the evidence and conclusions drawn by trial court, but the same is permissible only if the judgment of trial court is perverse - Exercise of power u/s.378 by the court is to prevent failure of justice or miscarriage of justice.
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(3) ss. 432 and 433-A.
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(4) s.482 - Quashing of criminal pro

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inspector found the articles stored for consumption of prisoners in the jail premises to be adulterated - Case registered against the Superintendent of Jail u/s.16(1)(a) - Petition for quashing of issuance of summons - High Court dismissed the petition - Held: s.7 prohibits a person to manufacture for sale or store, sell or distribute any adulterated food - Contravention of s.7 by any person is punishable u/s.16 - Expression 'store' as used in s.7 and s.16 means storage of adulterated article of food for sale - Storage of adulterated article other than for sale does not come within the mischief of s.16 - Therefore, criminal proceedings quashed - Prevention of Food Adulteration Act, 1954 - s.16.

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(5) s.482 - Quashing of proceedings - Allegation against accused-respondents that they conspired with the bank officials and projected inflated figures of the creditworthiness of the companies represented by them to secure more advances/ loans from the bank than they were entitled to - Accused-respondents charged u/ss.120-B/420, IPC - Suit for recovery by Bank - Consent decree - Civil liability of the accused to pay the amount to the bank settled amicably - No subsisting grievance of the bank in this regard - High Court quashed proceedings u/s.482 - Held: Justified - s.482 inheres in High Court the power to make such order as may be considered necessary to, inter alia, prevent the abuse of the process of law or to serve the ends of justice - Continuance of a criminal proceeding which is likely to become oppressive or may partake the character of a lame prosecution would be good ground to invoke the extraordinary

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power u/s.482 - Penal Code, 1860 - ss.120-B/420.

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implementation of that order by seeking refuge under any statutory rule and it is not open to the parties to go behind the orders and truncate the effect of those orders - There has been a willful disobedience by the contemnors of the orders passed by the Court, which is nothing but interference with the administration of justice - Contemnors have shown scant respect to the orders passed by the highest Court of the land and depicted undue haste to fill up the entire seats evidently not to attract better students or recognize merit, but possibly to make unlawful gain, adopting unhealthy practices - Therefore, to maintain the sanctity of the orders of the Court, the parties cannot get away by merely tendering an unconditional and unqualified apology after enjoying the fruits of their illegality, the Court imposes a fine of Rs.50 lakhs - Directions given for adjustment of seats in the following academic sessions - Medical education.

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Delay in filing writ petitions - Bills raised by JSEB on the basis of Clause 4(c) of the 1994 HT Agreement, even after the formulation of 2004 Tariff Schedule - Payment made under threat of disconnection - Writ petition - Direction by High Court to appellant to refund the excess amount charged under the bills raised for earlier period - Challenged on the ground that there was delay in filing of writ petition by consumers - Held: Delay

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was duly explained - Consumers had paid the amount of bills raised by JSEB under protest because of the threat of disconnection - While doing so, they had raised specific plea with the JSEB that it was now supposed to raise the bills in accordance with the 2004 Tariff Schedule - Matter remained under consideration at the level of JSEB which kept approaching the Court as well as SERC seeking clarification of 2004 Tariff Schedule.

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ELECTRICITY LAWS:

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States which were supplying electricity to the consumers and determining the operation rates at which the electricity was to be supplied - After the enactment of Electricity Act, 2003, power to frame tariff is given to the SERC - 2003 Act has distanced the Government from all forms of regulations, including tariff regulation which is now specifically assigned to SERC - Thus, State Electricity Boards have no power whatsoever to frame tariff which is under the exclusive domain of the SERC - Electricity Act, 2003 - Electricity Act, 1910 - Electricity (Supply) Act, 1948.

(ii) Fixation of tariff by SERC - Issue of demand charge from HT consumers - Held: The 1994 HT Agreement was not saved under Electricity Act, 2003 and the tariff structure - Issue of demand charge from HT consumers was considered and given effect to in the Tariff Order dated 27.12.2003 which came into effect on 1.1.2004.

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INCOME TAX ACT, 1961:

(i) s.244-A - Liability of revenue for payment of interest on refund of tax made to resident/deductor u/s 240 - Held: Language of s. 244-A is precise, clear and unambiguous - Sub-s. (1) of s.244A speaks of interest on refund of the amounts due to an assessee under the Act - Assessee is entitled for the said amount of refund with interest thereon as calculated in accordance with clauses (a) and (b) of sub-s. (1) of s.244A - In calculating the interest payable, the section provides for different dates from which the interest is to be calculated - Interest payment to assessee is a statutory obligation and non-discretionary in nature - S. 244-A grants substantive right of interest and is not procedural.

(ii) s.244-A - Entitlement of resident/deductor to interest on refund of excess deduction or erroneous deduction of tax at source u/s 195 - Held: Object behind insertion of s.244A, is that an assessee is entitled to payment of interest for money remaining with the Government which would be refunded - There is no reason to restrict the same to an assessee only without extending the similar benefit to a resident/ deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/ foreign company - The obligation to refund money received and retained without right implies and carries with it the right to interest - Resident/deductor is entitled not only the refund of tax deposited u/s 195(2), but has to be refunded with interest from the date of payment of such tax.

(iii) Circulars issued by Central Board of Direct Taxes - Held: Circulars issued by the Board in exercise of its powers u/s 119 of the Act would be binding on the income tax authority

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deviate from the provisions of the Act, so long as they seek to mitigate the rigour of a particular Section for the benefit of the assessee.

(iv) Tax refund - Held: A "tax refund" is a refund of taxes when the tax liability is less than the tax paid - When the said amount is refunded it should carry interest in the matter of course - Awarding interest is a kind of compensation of use and retention of the money collected unauthorisedly by Department - When the collection is illegal, there is corresponding obligation on the revenue to refund such amount with interest in as much as they have retained and enjoyed the money deposited.

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Interest for the amount withheld by the railway administration - Grant of.

(See under: Arbitration and Conciliation Act, 1996) 535

INTERPRETATION OF STATUES:

(1) Golden rule - Held: It is cardinal principle of interpretation of statutes that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning unless such construction leads to some absurdity or unless there is something in the context or in the object of the Statute to the contrary - The golden rule is that the words of a statute must prima facie be given their ordinary meaning - It is yet another rule of construction that when the words of a statute are clear, plain and unambiguous, then courts are bound to give effect to that meaning irrespective

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of the consequences.

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Claim of juvenility - Offences punishable u/ss. 376 and 302/201 IPC - Trial court holding the accused not a juvenile and the school certificate produced by him, as forged - High Court on the basis of medical report holding him as juvenile - Held: Record of two schools produced by complainant and Principals of two schools before Supreme Court, established that accused was not a juvenile on the date of occurrence - Order of High Court set aside and that of trial court restored - Penal Code, 1860 - s. 376 and 302/201 - Evidence.

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LAND ACQUISITION ACT, 1894:

Compensation - Award of compensation in respect of comparable lands - High Court enhanced market value of land, on the basis of comparable lands in other land acquisition case considering the geographical situation of the land - High Court adopted the method of 10 per cent increase every

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year in market value of land and used the exemplar to conclude that appellant could not be permitted to acquire land of respondents at the price lesser than the market value of their land - Land in question had a potential value on the date of preliminary Notification as was evident from oral evidence adduced before reference court - No dispute that the land which was subject matter of another case and lands in question were in contiguous and same geographical situation - Held: Award of compensation justified.

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NARCOTIC DRUGS AND PSYCHOTROPIC
SUBSTANCES ACT, 1985:

s.50 - Non-compliance of - Respondents-accused caught carrying opium which was recovered from the bag in the hands of one of them - Respondents given a written common notice that they had a right to be searched before a nearest Gazetted Officer, or a Magistrate or before the Superintendent of raiding party - One of them signed for both agreeing to be searched by the Superintendent - Held: Bag of one of the respondents was searched and opium was recovered - His personal search was also carried out - Personal search of other respondent was carried out - Therefore, s.50 will have application - Accused persons must be communicated individually of their right - It was

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improper to tell the respondents that a third alternative was available and they could be searched before the Superintendent who was part of the raiding party - He could not be called an independent officer - Thus, breach of s.50 vitiated the search - Conviction of respondents illegal.

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(2) ss.279, 304A - Rash and negligent driving resulting in death of 2 year old child - Magistrate acquitted the appellant holding that there was no impeachable and clinching evidence to show the appellant was the driver at the relevant point of time and that the accident happened due to the rash and negligent act on his part - High Court held that the appellant was liable to be convicted u/ss.279 and 304A - Held: Not justified - There was no direct evidence with regard to the ingredients of ss.279 and 304A - High Court, on re-appreciation of the evidence took another view so as to convict the appellant - No finding in the impugned judgment by the High Court that the conclusions drawn by trial court were perverse so as to mean that the same was against the weight of evidence.

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(3) s. 300, Exception 4 and s. 304 (Part I) - Dispute between rival groups over a land dispute, turned into sudden fight resulting into death of one person on complainant's side - High Court converting conviction u/s 302 to one u/s 304(Part II) - Held: Out of 9 injuries on deceased only one was held to be grievous in nature which was sufficient in ordinary course of nature to cause the death - In heat of passion upon a sudden quarrel accused caused injuries on deceased - Act was done by accused person with intention of causing such bodily injury as was likely to cause the death - Offence squarely fell within s.304 (Part I) - Conviction and sentence u/s 304 (Part II) set aside and appellants convicted u/s 304 (Part I) and sentenced to 7 years RI each - Appellants not entitled to be released on probation - Probation of Offenders Act, 1958.

Nanak Ram v. State of Rajasthan 326

(4) ss. 302 r/w120B - Nine murders - Circumstantial evidence - Accused meticulously planned murders by inducing innocent persons in the name of "money showers" (multiplying cash money), took money from them, killed them and looted their cash and jewellery - Conviction and death sentence to all four accused - Confirmed by High Court - Held: On the basis of the evidence brought by the prosecution it has been conclusively established that the death of all the deceased persons was homicidal in nature and that dead bodies recovered were of the deceased, as claimed by the prosecution - Conviction of all four accused u/s 302 and 120-B upheld - Evidence.

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(1)(See under: Contempt of court) 374

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PREVENTION OF CORRUPTION ACT, 1988:

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Issue as regards right to die with dignity a fundamental right.

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SALES TAX:

Inclusion of sales tax in transaction value.
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SENTENCE/SENTENCING:

Criminal acts of accused result of a carefully planned scheme - Crimes committed over a period of nearly two months in three different episodes - Assaults on some of the victims were merciless and gruesome - Some of the victims were young and hapless children - At the same time, all the four accused were young in age at the time of commission of offence - They belong to economically, socially and educationally deprived section of population - They were living in acute poverty - Materials show that while in custody all the accused had enhanced their educational qualifications - There is no material or information to show any condemnable or reprehensible conduct on the part of any of accused during their period of custody - All the circumstances point to possibility of accused being reformed and living a meaningful and constructive life if they are to be given a second chance - Balancing two sets of circumstances i.e. one favouring commutation and the other favouring upholding death penalty, option of life sentence is not "unquestionably foreclosed" - Thus, sentence of death awarded to accused commuted to life imprisonment - Their custody for rest of their lives will be subject to remissions, if any, which will be strictly subject to the provisions of ss. 432 and 433-A, Cr.P.C.

(Also See under: Penal Code, 1860)

Mahesh Dhanaji Shinde v. State of Maharashtra 406

SERVICE LAW:

(1) Appointment as Anganwadi worker - Income tax certificate issued to the appellant to the effect that her income was less than Rs.12000 p.a. making her eligible for appointment as Anganwadi worker - Cancellation of appointment by placing reliance on the report of Tehsildar that the appellant was owner of 1-19 Bighas of land which was in addition to her father's ownership of 6 Bighas of land - High Court also accepted the report without hearing the appellant - Held: High Court has acted upon this one sided or unilateral Report of the Tehsildar in arriving at the conclusion that the appellant indeed had an income in excess of Rs. 12000 p.a. and, accordingly, was ineligible for appointment as an Anganwadi Worker - Before arriving at any decision which has serious implications and consequences to any person, such person must be heard in his defence - High Court did not notice the violation and infraction of this salutary principle of law - Accordingly, on this short ground, the impugned judgment is set aside - Matter remanded to the Divisional Commissioner for taking a fresh decision after giving due notice to the appellant and affording her an opportunity of being heard - Rule of natural justice.

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(2) Promotions made according to Rules prior to its publication in Official Gazette - Held: Such promotions could not have been effected in the

absence of publication of the Rules in Official Gazette - However, keeping in view the fact that promotions of employees concerned and retiral and other consequential benefits would be adversely impacted by the judgment, it is directed that the promotion effected prior to the date of publication of Rules in Official Gazette and consequential retiral and other benefits should not be altered to their detriment - Mumbai Municipal Corporation Act, 1888 - ss.55 and 80B - Bombay General Clauses Act, 1904 - s.23.

Municipal Corporation of Greater Mumbai, through Commissioner v. Anil Shantaram Khoje & Ors.

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(3) Punishment - Respondent senior manager in the bank - Allegation of purchasing third party cheques and drafts of huge amounts beyond his authority of lending - Inquiry report - Correspondence of bank with Central Vigilance Commission (CVC) - Respondent's request for furnishing of papers exchanged with the CVC declined - Imposition of punishment of reduction of two stages in pay scale on advise of CVC - Request of Vigilance Officer of the bank to the CVC that the penalty imposed to be modified to a minor penalty - Not accepted - Writ petition by respondent seeking quashing of order of punishment and direction to consider him for further promotion, allowed - Held: There were serious allegations against the respondent, and such acts could not be condoned - At the same time, the Bank itself had taken the view in the initial stage that the action did not require a major penalty - High Court was also informed at the stage of review

that the Bank was considering imposition of a minor penalty - As the advise from CVC was sought, it could not be said that this additional material was not part of their decision making process - When this report was not made available to the respondent, it is difficult to rule out the apprehension about the decision having been taken under pressure - Any material, which goes into the decision making process against an employee, cannot be denied to him - Therefore part of judgment interfering with the punishment is sustained - As regards issue of promotion, the respondent had previous adverse entry in his record - Inasmuch as the record of respondent was not satisfactory, there was no occasion for High Court to give any such direction on the footing that the respondent was denied the consideration only because he had suffered a punishment - Direction to consider him for promotion, and give him benefits on that footing set aside - Natural justice.

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Expression 'Store' - Meaning.

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