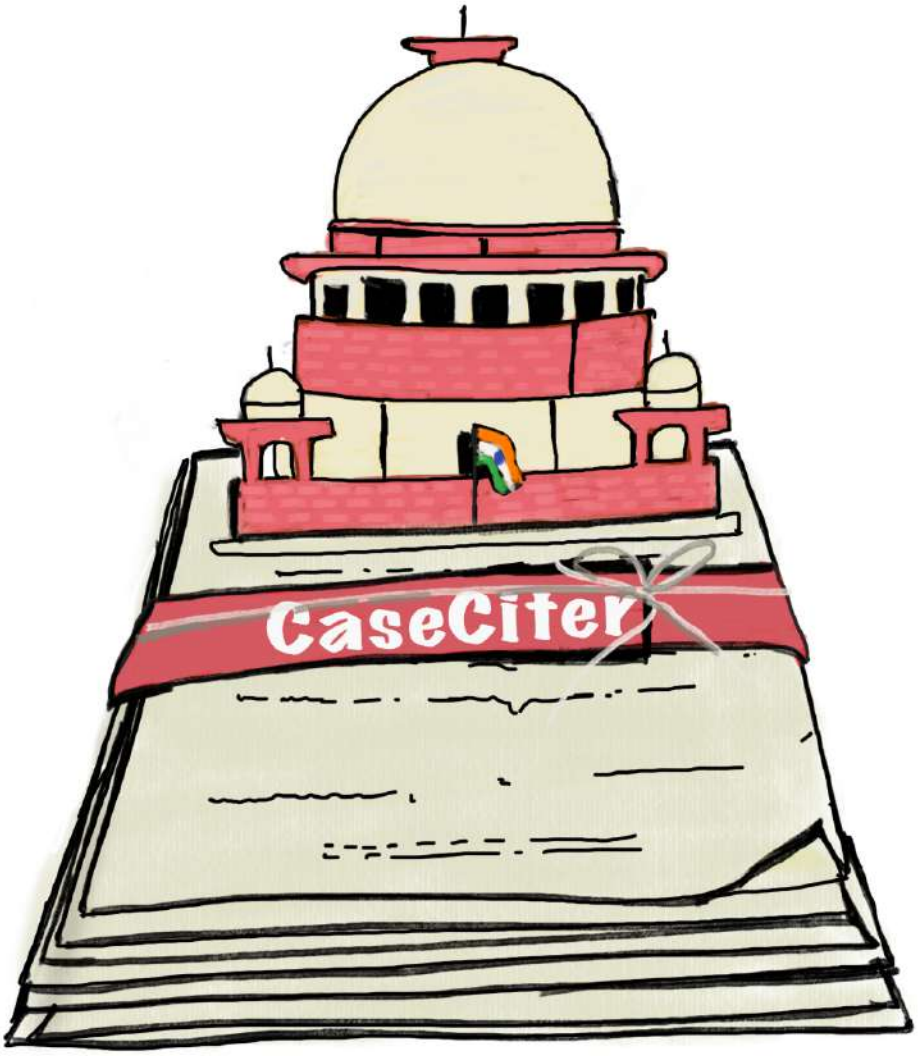

SUPREME COURT WEEKLY DIGEST

September 30, 2023

Case Wise Index

Act Wise Index

EDITOR'S NOTE

We are happy and proud to inform you that we have mailed our first Supreme Court weekly digest to about 600 lawyers/ law students who had expressed their interest to access it. We have got a lot of good feedback and suggestions. We thank each and everyone for supporting and trusting us.

We have fixed ₹10 per weekly digest as subscription charges so that all lawyers and law students can access this. We are also willing to send this for free to lawyers and law students who cannot afford this subscription charge if they request us to waive it.

This Weekly digest contains all Supreme Court judgments delivered and uploaded between 23- 30 September 2023. It also contains judgments and orders that were delivered in previous weeks but were uploaded in the Supreme Court website only recently.

We have given links to pdf files of each judgment mentioned in this digest. To access them, you have to click on the corresponding Neutral Citation (2023 INSC XXX).

Ashok Kini M.
Advocate

Paul Rubber Industries Private Limited vs Amit Chand Mitra

2023 INSC 854

Registration Act, 1908 ; Section 49 - A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act. - Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49. -A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration. - A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards. -If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose. -Expression "collateral purpose"implies that content of such a document can be used for purpose other than for which it has been executed or entered into by the parties or for a purpose remote to the main transaction -Nature and character of possession contained in a flawed document (being unregistered) can form collateral purpose when the "nature and character of possession" is not the main term of the lease and does not constitute the main dispute for adjudication by the Court. When, the nature and character of possession constitutes the primary dispute and hence the Court is excluded by law from examining the unregistered deed for that purpose.

Transfer of Property Act; 1882 ; Section 106,107 - Registration Act, 1908 ; Section 17,49 - Trial Court decreed the suit for recovery of possession filed by landlady against tenant - High Court affirmed the decree - Before the Apex

Court, tenant contended premises were let out for manufacturing purpose and in terms of Section 106 of the TP Act, a clear six months' notice was required to be given - Section 106 provides that a lease of immovable property for agricultural or manufacturing purpose shall be deemed to be a lease from year to-year terminable by six months' notice. In other cases, termination would require fifteen days' notice- The Supreme Court held - the agreement itself provides a five year duration, and hence ex-facie becomes a document that requires compulsory registration- Thus the the requirement to give six months' notice does not arise in this case - Burden of proving that the lease was for manufacturing purpose lies on the party who claims it to be so. In the present appeal, it would have been for the defendant (appellant) to discharge this burden - there must be pleading supported by evidence to prove that the lease was for manufacturing purpose - A mere statement by the defendant or the purpose of lease as specified in the lease agreement would not be sufficient to demonstrate the purpose of lease to be for manufacturing. This could be proved by explaining what kind of work was being carried on in the factory shed. In such a situation also, the registration of the deed would have been necessary. In absence of such registration, tenancy would have been of "month to month" character.

Coram: Aniruddha Bose J and Vikram Nath J

Kotak Mahindra Bank Limited vs Commissioner of Income Tax

2023 INSC 855

Income Tax Act, 1961 ; Section 245C and Section 245H - An assessee seeking to settle a case with the Department is required under Section 245C to make a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived and the additional tax payable on such income - Section 245H bestows upon the

Settlement Commission, discretion to grant immunity to an applicant from prosecution for any offence under the Act or under the Indian Penal Code, or from the imposition of any penalty under the Act, with respect to the case covered by the settlement. The grant of such immunity is subject to such conditions which the Commission may think it fit to impose. The precondition for granting immunity is that the applicant must have co-operated in the proceedings before the Commission and made a 'full and true disclosure' of his income and the manner in which such income has been derived.

Income Tax Act, 1961 ; Section 245C and Section 245H - Even if the pre-conditions prescribed under Section 245C are to be read into Section 245H, it cannot be said that in every case, the material "disclosed" by the assessee before the Commission must be something apart from what was discovered by the Assessing Officer - What is of relevance is that the assessee offered to tax, income, in addition to the income recorded in the return of income. Section 245C read with Section 245H only contemplates full and true disclosure of income to be made before the Settlement Commission, regardless of the disclosures or discoveries made before/by the Assessing Officer - The Order passed by Assessing Officer based on any discovery made, is not the final word, for, it is appealable. However, the assessee may accept the liability, in whole or in part, as determined in the assessment order. In such a case, the assessee may approach the Settlement Commission making 'full and true disclosure' of his income and the manner in which such income has been derived. Such a disclosure may also include the income discovered by the Assessing Officer - To say that in every case, the material "disclosed" by the assessee before the Commission must be something apart from what was "discovered" by the Assessing Officer seems to be an artificial requirement/

Income Tax Act, 1961 ; Section 245H - Whether immunity from prosecution and penalty should be granted in a given case, has to be decided by the Commission

by exercising its discretion, in the light of the facts and circumstances of each case. There is no straight jacket formula that would universally apply in every case. Where the Commission is satisfied that the applicant (a) has made full and true disclosure of his income and the manner in which such income was derived, and (b) has 34 co-operated with the Commission in the proceedings before it, immunity under Section 245H may be granted.

Constitution of India, 1950 ; Article 32, 136, 226 - Income Tax Act, 1961 ; Section 245H - Supreme Court/ High Court while exercising powers under Articles 32, 226 or 136 of the Constitution of India, as the case may be, may not interfere with an order of the Commission, passed in exercise of its discretionary powers, except on the ground that the order contravenes provisions of the Act or has caused prejudice to the opposite party. Interference may also be open on the grounds of fraud, bias or malice - Sufficiency of the material and particulars placed before the Commission, based on which the Commission proceeded to grant immunity from prosecution and penalty as contemplated under Section 245H of the Act, are beyond the scope of judicial review, except under the circumstances set out above - Frequent interference with the orders or proceedings of the Settlement Commission should be avoided. We have already indicated the limited grounds on which an order or proceeding of the Settlement Commission can be judicially reviewed. The High Court should not scrutinize an order or proceeding of a Settlement Commission as an appellate court. Unsettling reasoned orders of the Settlement Commission may erode the confidence of the bonafide assessees, thereby leading to multiplicity of litigation where settlement is possible. This larger picture has to be borne in mind.

Coram: **BV Nagarathna J** and Ujjal Bhuyan J

Sita Soren vs Union of India

2023 INSC 856

Constitution of India, 1950 ; Article 105(2) and 194(2) - Decision of the majority in PV Narasimha Rao Vs State (CBI/SPE) (1998) 4 SCC 626 requires to be reconsidered by a larger Bench. Reasons prima facie (i) Firstly, the interpretation of Article 105(2) and the corresponding provisions of Article 194(2) of the Constitution must be guided by the text, context and the object and purpose underlying the provision. The fundamental purpose and object underlying Article 105(2) of the Constitution is that Members of Parliament, or as the case may be of the State Legislatures must be free to express their views on the floor of the House or to cast their votes either in the House or as members of the Committees of the House without fear of consequences. While Article 19(1)(a) of the Constitution recognises the individual right to the freedom of speech and expression, Article 105(2) institutionalises that right by recognising the importance of the Members of the Legislature having the freedom to express themselves and to cast their ballots without fear of reprisal or consequences. In other words, the object of Article 105(2) or Article 194(2) does not prima facie appear to be to render immunity from the launch of criminal proceedings for a violation of the criminal law which may arise independently of the exercise of the rights and duties as a Member of Parliament or of the legislature of a state; (ii) Secondly, in the course of judgment in PV Narasimha Rao, Justice S.C. Agarwal noted a serious anomaly if the construction in support of the immunity under Article 105(2) for a bribe taker were to be accepted: a member would enjoy immunity from prosecution for such a charge, if the member accepts the bribe for speaking or giving their vote in Parliament in a particular manner and in fact speaks or gives a vote in Parliament in that manner. On the other hand, no immunity would attach, and

the member of the legislature would be liable to be prosecuted on a charge of bribery, if they accept the bribe for not speaking or for not giving their vote on a matter under consideration before the House but they act to the contrary. This anomaly, Justice Agarwal observed, would be avoided if the words "in 15 respect of" in Article 105(2) are construed to mean 'arising out of'. In other words, in such a case, the immunity would be available only if the speech that has been made or the vote that has been given is an essential and integral part for the cause of action for the proceedings giving rise to the law; and (iii) Thirdly, the judgment of Justice SC Agarwal has specifically dwelt on the question as to when the offence of bribery would be complete. The judgment notes that the offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the bribe would be treated to have committed the offence even when he fails to perform the bargain underlying the tender and acceptance of the bribe. This aspect bearing on the constituent elements of the offence of a bribe finds elaboration in the judgment of Justice Agarwal but is not dealt with in the judgment of the majority- The view of the majority has serious ramifications for the polity and the preservation of probity in public life.

Precedent - Only a bench of coequal strength may express an opinion doubting the correctness of a view taken by an earlier Bench of coequal strength-If such a doubt is expressed, the matter may be placed before a Bench consisting of a quorum larger than the one which the pronounced the decision in challenge.

Coram: **CJI Dhananjaya Y Chandrachud ,** AS Bopanna J, MM Sundresh J, JB Pardiwala J and Manoj Misra J

A vs Commanding Officer

2023 INSC 857

Constitution of India, 1950; Article 32,226- Writ Jurisdiction and Questions of fact - Court's ability and jurisdiction to appreciate facts, really is uncontestable; even in writ proceedings, the so-called "hands off" bogey of "disputed questions of fact" which ordinarily constrain the courts, under Articles 32 and 226 from exercising jurisdiction, are to be seen in the context of the facts of each case - Usually the courts would not primarily exercise jurisdiction to enter into the arena of disputed facts. Yet, on occasions, the court has underlined that such an approach is dictated by considerations of convenience, rather than a rigid rule calling for universal application.

Medical Negligence - Bolam Test - Medical negligence is said to have been established by an aggrieved plaintiff or complainant when it is shown that the doctor or medical professional was in want of, or did not fulfil the standard of care required of her or him, as such professional, reasonably skilled with the science available at the relevant time. In other words, a doctor is not negligent if what he has done would be endorsed by a responsible body of medical opinion in the relevant speciality at the material time. This test is known as the Bolam test and has gained widespread acceptance and application in Indian jurisprudence - Though Bolam has been the bulwark principle in deciding medical (and professional negligence) cases, it must adapt and be in tune with the pronouncements relating to Article 21 of the Constitution and the right to health in general.

Legal Maxims - Res ipsa loquitur - The thing speaks for itself - In a case where negligence is evident, the principle of res ipsa loquitur operates and the complainant does not have to prove anything as the thing (res) proves itself'. In

such a case it is for the respondent to prove that he has taken care and done his duty to repel the charge of negligence.

HIV and AIDS (Prevention and Control) Act, 2017 ; Section 34 - Imposes obligations upon courts to anonymise the name of the individual concerned affected by HIV positive or AIDS, and also expedite legal proceedings. (Para 86)

HIV and AIDS (Prevention and Control) Act, 2017 - HIV Act addresses stigma and discrimination and aims at the creation of an environment enabling or enhancing access to services - Directives to Central and State Governments for effective implementation of the Act. (Para 85-87,93)

Medical Negligence - Indian Air Force and Indian Army jointly and vicariously held liable for medical negligence - The appellant contracted HIV during a blood transfusion at a military hospital while falling sick on duty- Awarded compensation amounting to t ₹ 1,54,73,000.

Coram : S Ravindra Bhat J and Dipankar Datta J

HD Sundara vs State Of Karnataka

2023 INSC 858

Code of Criminal Procedure, 1973 ; Section 378 - Principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of Cr.P.C -The acquittal of the accused further strengthens the presumption of innocence;- The Appellate Court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence;- The Appellate Court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the Trial Court is a possible view which could have been taken on the basis of

the evidence on record; If the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible; The Appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.- The Appellate Court cannot overturn acquittal only on the ground that after re-appreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. Only by recording such a conclusion an order of acquittal cannot be reversed unless the Appellate Court also concludes that it was the only possible conclusion.- Trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour. While deciding about the reliability of the version of prosecution witnesses, their demeanour remains in the back of the mind of the Trial Judge. The demeanour of a witness frequently furnishes a clue to the weight of his testimony. This aspect has to be borne in mind while dealing with an appeal against acquittal.

Coram : Abhay S Oka J and Sanjay Karol J

Commanding Officer, Railway Protection Special Force, Mumbai vs Bhavnaben Dinahbhai Bhabhor

2023 INSC 859

Employees Compensation Act, 1923 ; Section 2(1)(n) - Railway Protection Force Act, 1957 ; Section 3 - Whether a Constable of a Railway Protection Force (RPF) can be treated as a “Workman” under Section 2(1)(n) of the 1923 Act even though, by virtue of amended Section 3 of the 1957 Act, he is a member of the Armed Forces of the Union? Despite declaring Railway Protection Force(RPF) as armed force of the Union, the legislative intent was not to take it out of the purview of the 1923 Act.

Employees Compensation Act, 1923 - Railways Act, 1989 ; Section 124,124A,128 - Whether, on account of availability of alternative remedy to apply for compensation under Sections 124 and 124-A of the 1989 Act, a claim under the 1923 Act is maintainable? - The application under the 1923 Act not barred on account of there being an alternative remedy under the Railways Act, 1989.

Coram: BV Nagarathna J and **Manoj Misra J**

Malik Mazhar Sultan vs U P Public Service Commission [In the matter of : State of Haryana]

2023 INSC 860

Judicial Service - *High Court is best situated to understand the needs of the judicial service. Judges of the High Court who participate in the selection process have domain knowledge both of the subject and of the nature of the service*" - Dismissed Haryana Govt. plea seeking permission to conduct the entire selection process of judicial officers through the Public Service Commission.

Coram : CJI Dhananjaya Y Chandrachud, JB Pardiwala J and Manoj Misra J

Rahimal Bathu vs Ashiyal Beevi

2023 INSC 861

Code of Civil Procedure, 1908 ; Section 115 and Order XLVII- Where an appealable decree has been passed in a suit, no revision should be entertained under Section 115 of the CPC against an order rejecting on merits a review of that decree. The proper remedy for the party whose application for review of an appealable decree has been rejected on merits is to file an appeal against that

decree and if, in the meantime, the appeal is rendered barred by time, the time spent in diligently pursuing the review application can be condoned by the Court to which an appeal is filed.

Code of Civil Procedure, 1908 ; Section 115 - The expression "case" used in Section 115 of the CPC is of wide amplitude. It includes civil proceedings other than suits, and is not restricted to the entirety of the proceeding in a civil court.

Code of Civil Procedure, 1908 ; Section 115 - Exercise of revisional powers cannot be claimed as of right. It is a discretionary power. The revisional Court is not bound to interfere merely because any of the three conditions, as laid down in Section 115 of the CPC for exercise of such power, is satisfied. Rather, the Court, exercising revisional powers, must bear in mind, inter alia, whether it would be appropriate to exercise such power considering the interlocutory character of the order, the existence of another remedy to an aggrieved party by way of an appeal, from the ultimate order or decree in the proceeding, or by a suit, and the general equities of the case.

Code of Civil Procedure, 1908 ; Order XLVII Rule 7- An order rejecting a review application is not appealable but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.

Coram: PS Narasimha J and **Manoj Misra J**

Rajnish Kumar Rai vs Union of India

2023 INSC 862

Precedents- In Union of India vs. Sanjiv Chaturvedi [(2023) 2 SCR 59] , the point of law laid down in Union of India -vs- Alapan Bandyopadhyay [(2022) 3 SCC 133] has been referred to a larger Bench - But so far as this Bench is concerned, we do not think judicial propriety permits ignoring the ratio laid down by the coordinate Bench in the case of Alapan Bandyopadhyay (supra) as no decision has come as yet from the larger Bench on the point of territorial jurisdiction of the High Court in a similar context. If we were to take a different view, the only course open for us would have been to refer the petition to the Hon'ble the Chief Justice for being adjudicated by a larger Bench, as has been done in the case of Sanjiv Chaturvedi (supra). No argument has been raised before us that the decision in the case of Alapan Bandyopadhyay (supra) is per incuriam.

Coram: Aniruddha Bose J and Bela M. Trivedi J

Phulel Singh vs State of Haryana

2023 INSC 863

Indian Evidence Act, 1872; Section 32 - Dying Declaration - Conviction can be solely recorded on the basis of dying declaration. However, for doing so, the court must come to a conclusion that the dying declaration is trustworthy, reliable and one which inspires confidence. In this case,

Indian Penal Code, 1860 ; Section 304B - Dowry death case of the year 1991 - Trial Court convicted the accused- husband in 1999 under Section 304B IPC. High court upheld his conviction against which he filed an appeal before the Apex Court in the year 2009. Yesterday (27 September 2023), he was acquitted by the Supreme Court. Reasons: (1)There is no evidence to prove beyond

reasonable doubt that the deceased was harassed on account of non-fulfillment of demand of dowry (2) it cannot be said that the dying declaration is free from doubt.

Coram: **BR Gavai J**, Pamidighantam Sri Narasimha J, Prashant Kumar Mishra J

BTL EPC Ltd vs Macawber Beekay Pvt Ltd

2023 INSC 864

Constitution of India, 1950 ; Article 226,32- Scope of Judicial Review in contractual/ tender matters - In contracts involving complex technical issues, the Court should exercise restraint in exercising the power of judicial review. - Even if a party to the contract is 'State' within the meaning of Article 12 of the Constitution, and as such, is amenable to the writ jurisdiction of the High Court or the Supreme Court, the Court should not readily interfere in commercial or contractual matters. -The Court ought to defer to the discretion of the tender inviting authority which, by reason of having authored the tender documents, is best placed to interpret their terms - The Courts ought not to sit as courts of appeal but review the decision-making process and examine arbitrariness or mala fides, if any. (Para 35-36)

Constitution of India, 1950 ; Article 226 - In a writ appeal, the Division Bench would ordinarily not interfere with the judgment of a Single Judge unless it suffers from perversity or error. (Para 37)

Coram: **CJI Dhananjaya Y Chandrachud,** JB Pardiwala J and Manoj Misra J

Supreme Court Orders

Bhaskar Raju and Brothers vs Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram Other Charities

CuPC 44/2023

Yet another issue reaches before a seven judges bench of the Supreme Court. This is on the enforceability of Arbitration clause in an unstamped Agreement. Earlier this year, in *N.N. Global Mercantile Pvt. Ltd. v. M/s. Indo Unique Flame Ltd. 2023 INSC 423*, a five judges bench (3:2 majority), had held that the same is not enforceable. Justices KM Joseph, Aniruddha Bose and CT Ravikumar were in majority, and Justices Ajay Rastogi and Hrishikesh Roy dissented. [See pic] Now, while considering a curative petition, a five judges bench has doubted the correctness of it.

Linguistic Forum of Tamil Nadu vs State of Tamil Nadu

CA 744-745/2023

"*India is a vast country with many diversities including languages. There are sentiments involved in respect of preserving one's mother tongue i.e. the native language spoken by the people of the States. Persons whose mother tongue is different from the language of the State also reside in that State but would like to maintain their culture and language.*" - Supreme Court observed that in order to suitably protect the interests of the linguistic minority institutions and the linguistic minorities in Tamil Nadu, while proficiency in Tamil and English is required, they must be incentivised to have a similar proficiency in their mother tongue, albeit, as an optional subject -"*The medium of instructions in linguistic minority institutions is also the mother tongue and thus, proficiency in that language is necessary for the basic educational purposes.*", the court said.

P Vs M

Transfer Petition (Civil) No. 2154 Of 2023

No order for transfer ought to be passed on mere assumptions and apprehensions of the parties." The Supreme Court dismissed a transfer petition filed by a wife. In this case, the wife sought transfer of proceedings instituted by the husband under Guardians and Wards Act, 1890 from a court in Chandigarh to a Court in New Delhi. Husband entered appearance and opposed the plea and stated that their child is presently in the custody of the wife and he has been residing with her in Chandigarh; and, without caring for the interest of the child, she is seeking to have the proceedings transferred from a Court which is 2 kms away from his (child's) residence to a Court which is 250 kms away. "*As at present, Panchkula remains to be the place of office of the wife and it is also not in dispute that Chandigarh is the place of her residence as well as that of the child. The interest of the child being of paramount importance, at this stage, this Court finds no reason to grant the prayer for transfer*", the court said.

Ram Singh vs State of Kerala

SLP(CRL.) NO(S). 8670 OF 2023

"*It is the duty of the High Court to re-appreciate the entire evidence in the appeal against conviction.*" - Supreme Court quashed a Kerala HC judgment in a criminal appeal and directed it to consider it afresh. This is after it noticed that there is no consideration of the evidence of the prosecution witnesses in the HC judgment *The High Court has not done its duty while dealing with an appeal against conviction*, the court said.

Sheikh Wahid Sheikh Hamid vs State of Maharashtra

CrA 1907 OF 2011

Indian Evidence Act, 1872 - Section 106 ; The prosecution can invoke Section 106 of the Evidence Act when it succeeds in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. In a case based on circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, the falsity of his defence is no ground to hold the accused guilty. -

Summary: Supreme Court acquits accused who was concurrently convicted for murder of his wife - The prosecution has failed to established the guilt of the appellant beyond a reasonable doubt

Kushal Pal Singh vs State of Uttar Pradesh

CrA 2898 of 2023

Can bail be granted to accused-appellant only on the premise that the hearing of the appeal in the near future is not possible? Supreme Court, in an order passed last week, observed that this ground itself could not form the basis of the bail order considering the period undergone. (In this case, the accused has been in custody for only four years and three months in a conviction under Section 302, IPC) "*We are conscious of the fact that the detailed judgment is not to be pronounced in a bail matter but some reflection of the mind of the Court is necessary, however brief it may be. That is completely absent*",

Sunil Ahya vs Election Commission of India

WP(C) 826 of 2023

The Supreme Court dismissed a plea seeking a direction to the Election Commission of India to conduct an independent audit of the source code governing the Electronic Voting Machines, applying a particular standard, namely, IEEE 1028. The court said that the Election Commission is a constitutional entity entrusted under Article 324 of the Constitution with superintendence and control over the conduct of the elections. It noted that the petitioner has placed no actionable material on the record of the Court to indicate that the Election Commission has acted in breach of its constitutional mandate. "*Ultimately, the manner in which the source code should be audited and the way the audit should be dealt with bears on sensitive issues pertaining to the integrity of the elections which are conducted under the superintendence of the Election Commission. On such a policy issue, we are not inclined to issue a direction as sought by the petitioner. There is no material before this Court, at this stage, to indicate that the Election Commission is not taking suitable steps to fulfill its mandate.*", the bench led by CJI DY Chandrachud observed.

Ram Prakash Choudhary vs State

SLP(*Diary*) 35848/2023

If a single bench discharges an accused in a contempt case, is it appealable under Section 19 of the Contempt of Courts Act, 1971? the Supreme Court upheld the Delhi HC view that an appeal only lies when the Court exercised its power to have held a contemnor guilty of contempt or when such contemnor has been punished.

K Madalaimuthu vs P Senthilkumar

SLP(Diary) 22476/2023

Unless there was an intentional breach of the order of the High Court, no case for invoking the contempt jurisdiction would be established.

Lok Prahari vs Union of India

WP(C) 1096/2020

The Supreme Court dismissed a PIL challenging constitutional validity of Paragraphs 4 and 6 of the Tenth Schedule to the Constitution. Para 4 provides that disqualification on ground of defection not to apply in case of merger and Para 6 is about the role of Speaker/Chairman to take decision on disqualification on ground of defection. The court noted that in *Kihoto Hollohan* Vs *Zachillhu* 1992 *Supp* (2) SCC 651, the Constitution Bench had upheld these paragraphs of 10th Schedule. [Only Para 7 (on Bar of jurisdiction of courts) was declared invalid for want of ratification in accordance with the proviso to Article 368(2)] According to the petitioner (Lok Prahari), the judgment in Kihoto Hollohan has not dealt with the issues which are raised in the present PIL. "*Once the constitutional validity of the same provision which is impugned in the present case has been upheld, a petition under Article 32 of the Constitution cannot be entertained. Sitting in a Bench of three Judges, this Court is bound by the law which has been laid down by the Constitution Bench.*", the court observed.