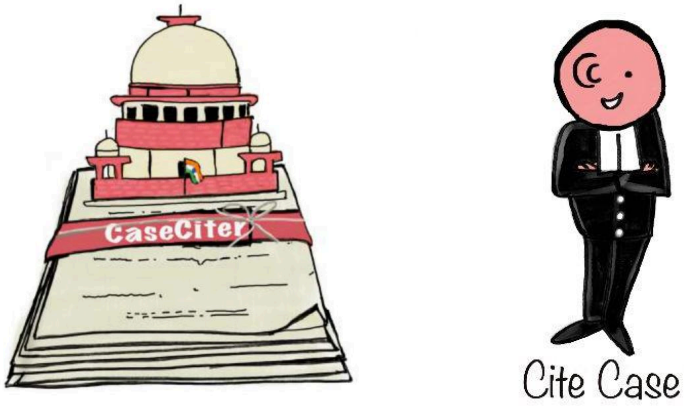

Notes On Supreme Court Judgments
May 2024 [2024 INSC 360-459]

Ram Balak Singh vs State Of Bihar 2024 INSC 360 – Bihar Consolidation of Upholdings and Prevention of Fragmentation Act, 1956

Bihar Consolidation of Upholdings and Prevention of Fragmentation Act, 1956; Section 37- A civil suit for declaration of rights in respect of land where the Consolidation Court has already passed an order recognizing the rights of one of the parties is not barred by Section 37 of the Consolidation Act and that the Civil Court is not competent to either ignore or reverse the order passed by the Consolidation Officer once it has attained finality - The bar of Civil Court imposed by Section 37 of the Consolidation Act is concerned, a plain reading of the said provision would reveal that the Civil Court is prohibited from entertaining any suit to vary or set aside any decision or order of the Consolidation Court passed under the Act in respect of the matter for which the proceedings could have or ought to have been taken under the Consolidation Act. 23. In the instant case, the plaintiff-appellant has not instituted any suit either to vary or set aside any decision or order passed by the Consolidation Court under the Consolidation Act. The plaintiff-appellant had simply filed a suit for recognising the rights which have been conferred upon him by the Consolidation Court and has not filed a suit challenging any order passed by the Consolidation Court under the Act. Therefore, the bar of jurisdiction of Civil Court imposed by Section 37 is not applicable to the present suit which is a simpliciter for declaration of

his rights over the suit land on the basis of the order of the Consolidation Court. (Para 12-25)

Revenue Authorities - Where the revenue authorities or the consolidation authorities are competent to determine the rights of the parties by exercising powers akin to the Civil Courts, any order or entry made by such authorities which attains finality has to be respected and given effect to. (Para 17)

Balveer Batra vs New India Assurance Company 2024 INSC 361 - Motor Vehicles Act- Jurisdiction

Motor Vehicles Act, 1988 - Code Of Civil Procedure, 1908; Section 21- Objection of lack of territorial jurisdiction in an appeal against an award granting compensation could not be entertained in the absence of consequent failure of justice- Though taking of an objection as to the lack of territorial jurisdiction before the Court of first instance at the earliest opportunity is a condition required to raise that objection before an appellate or revisional Court satisfaction of such condition by itself would not make an award granting compensation a nullity inasmuch as in such cases there would not be inherent lack of jurisdiction in Court in regard to the subject matter. Therefore, in such cases, correction by a Court is open, only if it occasions in failure of justice. The provision thus, reflects the legislative intention that all possible care should be taken to ensure that the time, energy and labour spent by a Court did not go in vain unless there has been a consequent failure of justice - Referred to Malati Sardar v. National Insurance Company Ltd. (2016) 3 SCC 43 and Mantoo Sarkar v. Oriental Insurance Company Ltd.(2009) 2 SCC 244 (Para 13-14)

Motor Vehicles Act, 1988; Section 166- Merely because the claimant made the application for compensation not to the Claims Tribunal having jurisdiction over the area in which the accident occurred or not to the Claims Tribunal within the local limits of whose jurisdiction he resides or carries on business, is no reason to dismiss the application provided it is filed before a Claims Tribunal where it is otherwise maintainable. (Para 17)

Motor Vehicles Act, 1988- Code Of Civil Procedure, 19008; Order XIV, Rule 2- The issues regarding territorial jurisdiction ought to be tried as primary issues but when it is evident that the issue could not be decided solely based on the pleadings in the plaint (here claim petition) and when parties are permitted to adduce evidence upon finding that it is a mixed question of law and facts there was absolutely no justification for not pronouncing an award on all the issues framed besides the one pertaining to its territorial jurisdiction. There cannot be any doubt with respect to the fact that when evidence was permitted to be let in, may be for such issues the possibility of reappreciation and consequent reversal of finding(s) of the Tribunal cannot be ruled out. But then, if the award was pronounced not at threshold, but after a very long lapse of time and confining consideration only on the issue of territorial jurisdiction and then, answering the other issues as well against the claimant without examining them on their own merits, but solely because of the negative finding on the issue of territorial jurisdiction, as occurred in the case on hand, it would defeat the very purpose of the benevolent legislation providing for grant of compensation under Section 166 of the M.V. Act. (Para 18)

Deependra Yadav vs State of Madhya Pradesh 2024 INSC 362 – Public Service Exams- Reservation

Public Service Examinations - Reservation - Candidates belonging to any of the vertical reservation categories would be entitled to be selected in the ‘open category’ and if such candidates belonging to reservation categories are entitled to be selected on the basis of their own merit, their selection cannot be counted against the quota reserved for the categories of vertical reservation that they belong to - Reservations, both vertical and horizontal, are methods of ensuring representation in public services and these are not to be seen as rigid ‘slots’, where a candidate’s merit, which otherwise entitles him to be shown in the open general category, is foreclosed- 'Open category’ is open to all and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type was available to him or her- Referred to Saurav Yadav v. State of U.P. (2021) 4 SCC 542. (Para 31)

Sharif Ahmed vs State Of Uttar Pradesh 2024 INSC 363 – S 156(3), 173(2), 200-205 CrPC – Ss 406,420,506 IPC

Code Of Criminal Procedure, 1973; Section 173(2)- It is the police report which would enable the Magistrate to decide a course of action from the options available to him. The details of the offence and investigation are not supposed to be a comprehensive thesis of the prosecution case, but at the same time, must reflect a thorough investigation into the alleged offence. It is on the basis of this record that the court can take effective cognisance of the offence and proceed to issue process in terms of Section 190(1)(b) and Section 204 of the Code. In case of doubt or debate, or if no offence is made out, it is open to the Magistrate to exercise other options which are available to him- The chargesheet is complete when it refers to material and evidence sufficient to take cognizance and for the trial. The nature and standard of evidence to be elucidated in a chargesheet should prima facie show that an offence is established if the material and evidence is proven. The chargesheet is complete where a case is not exclusively dependent on further evidence. The trial can proceed on the basis of evidence and material placed on record with the chargesheet. This standard is not overly technical or fool-proof, but a pragmatic balance to protect the innocent from harassment due to delay as well as prolonged incarceration, and yet not curtail the right of the prosecution to forward further evidence in support of the charge- (Para 3-32)

Code Of Criminal Procedure, 1973; Section 205- The observation that there is no provision for granting exemption from personal appearance prior to obtaining bail, is not correct, as the power to grant exemption from personal appearance under the Code should not be read in a restrictive manner as applicable only after the accused has been granted bail. (para 47)

Code Of Criminal Procedure, 1973; Section 156(3),204- Magistrate to be cautious in examining whether the facts of the case disclose a civil or a criminal wrong. Attempts at initiating vexatious criminal proceedings

should be thwarted early on, as a summoning order, or even a direction to register an FIR, has grave consequences for setting the criminal proceedings in motion- Any effort to settle civil disputes and claims which do not involve any criminal offence, by way of applying pressure through criminal prosecution, should be deprecated and discouraged. (Para 44)

Code Of Criminal Procedure, 1973; Section 204- Non-bailable warrants cannot be issued in a routine manner and that the liberty of an individual cannot be curtailed unless necessitated by the larger interest of public and the State- non bailable warrants should not be issued, unless the accused is charged with a heinous crime, and is likely to evade the process of law or tamper/destroy evidence. (Para 46)

Indian Penal Code, 1860; Section 406- An offence under Section 406 of the IPC requires entrustment, which carries the implication that a person handing over any property or on whose behalf the property is handed over, continues to be the owner of the said property. Further, the person handing over the property must have confidence in the person taking the property to create a fiduciary relationship between them. A normal transaction of sale or exchange of money/consideration does not amount to entrustment. (Para 36)

Indian Penal Code, 1860; Section 420-. The offence of cheating is established when the dishonest intention exists at the time when the contract or agreement is entered, for the essential ingredient of the offence of cheating consists of fraudulent or dishonest inducement of a person by deceiving him to deliver any property, to do or omit to do anything which he would not do or omit if he had not been deceived. (Para 37)

Indian Penal Code, 1860; Section 506- An offence of criminal intimidation arises when the accused intended to cause alarm to the victim, though it does not matter whether the victim is alarmed or not. The intention of the accused to cause alarm must be established by bringing evidence on record. The word ‘intimidate’ means to make timid or fearful, especially: to compel or deter by or as if by threats. The threat

communicated or uttered by the person named in the chargesheet as an accused, should be uttered and communicated by the said person to threaten the victim for the purpose of influencing her mind. The word 'threat' refers to the intent to inflict punishment, loss or pain on the other. Injury involves doing an illegal act.- This threat must be with the intent to cause alarm to the person threatened or to do any act which he is not legally bound to do, or omit to do an act which he is entitled to do. Mere expression of any words without any intent to cause alarm would not be sufficient to bring home an offence under Section 506 of the IPC. The material and evidence must be placed on record to show that the threat was made with an intent to cause alarm to the complainant, or to cause them to do, or omit to do an act- Referred to Manik Taneja v. State of Karnataka (2015) 7 SCC 423(Para 38-39)

Commissioner Of Trade & Taxes vs FEMC Pratibha Joint Venture 2024 INSC 364- Delhi Value Added Tax Act- Refund Timeline

Delhi Value Added Tax Act, 2004; Section 38(3) -Whether the timeline for refund under Section 38(3) must be mandatorily followed while recovering dues under the Act by adjusting them against the refund amount?- The language of Section 38(3) is mandatory and the department must adhere to the timeline stipulated therein to fulfil the object of the provision, which is to ensure that refunds are processed and issued in a timely manner - The contention that the purpose of the timeline provided under sub-section (3) is only for calculation of interest under Section 428 would defeat the object of the provision- Such an interpretation would effectively enable the department to retain refundable amounts for long durations for the purpose of adjusting them on a future date. This would go against the object and purpose of the provision.

RK Munshi vs Union Territory Of Jammu & Kashmir 2024 INSC 365 – House Rent Allowance

Summary: Appellant received a communication from the Director Police, Telecom regarding recovery of the outstanding rentals on account of

unauthorized drawals of House Rent Allowance. The said action was taken under Rule 6(h) of The Jammu and Kashmir Civil Services (House Rent Allowance and City Compensation Allowance) Rules, 1992- Writ petition challenging this was dismissed by the High Court - Dismissing Appeal, SC observed: the appellant being a Government employee, could not have claimed HRA while sharing rent free accommodation allotted to his father, a retired Government servant.

Shankar vs State Of Uttar Pradesh 2024 INSC 366 – S 319 CrPC- Higher Degree Of Satisfaction

Code Of Criminal Procedure, 1973; Section 319- The degree of satisfaction required to exercise power under Section 319 Cr.P.C. - The evidence before the trial court should be such that if it goes unrebutted, then it should result in the conviction of the person who is sought to be summoned- The degree of satisfaction that is required to exercise power under Section 319 Cr.P.C. is much stricter, considering that it is a discretionary and an extra-ordinary power. Only when the evidence is strong and reliable, can the power be exercised. It requires much stronger evidence than mere probability of his complicity- Referred to Hardeep Singh v. State of Punjab, (2014) 3 SCC 92. (Para 16)

Chaitra Nagammanavar vs State Of Karnataka 2024 INSC 367 – Service Law

Summary: HC set aside the appellant's selection and appointment on the ground that the university specifically declared in the advertisement that the 'Mode of Selection' shall be as per the Karnataka State Civil Services (Unfilled Vacancies Reserved For Persons Belonging to the SC's and ST's) (Special Recruitment) Rules, 2001 - Dismissing appeal, SC observed: The university is bound to comply with what is declared in its advertisement: the 2001 Rules will be the guiding principles for the selection in question.

Anees vs State Govt Of NCT 2024 INSC 368 – Public Prosecutor – Ss 106, 165,27 Evidence Act- Ss 162 CrPC

Public Prosecutor - There should not be any element of political consideration in the matters like appointment to the post of public prosecutor, etc. The only consideration for the Government should be the merit of the person. The person should be not only competent, but he should also be a man of impeccable character and integrity. He should be a person who should be able to work independently without any reservations, dictates or other constraints. The relations between the Public Prosecution Service and the judiciary are the very cornerstone of the criminal justice system. The public prosecutors who are responsible for conducting prosecutions and may appeal against the court decisions, are one of judges' natural counterparts in the trial proceedings and also in the broader context of management of the system of criminal law- The duty of the Public Prosecutor to cross-examine a hostile witness in detail and try to elucidate the truth & also establish that the witness is speaking lie and has deliberately resiled from his police statement recorded under Section 161 of the Cr.P.C. A good, seasoned and experienced Public Prosecutor will not only bring the contradictions on record, but will also cross-examine the hostile witness at length to establish that he or she had actually witnessed the incident as narrated in his/her police statement- It is not sufficient for the public prosecutor while cross-examining a hostile witness to merely hurl suggestions, as mere suggestions have no evidentiary value. (Para 67- 70)
Indian Evidence Act, 1872; Section 165 - Code Of Criminal Procedure, 1973; Section 311- If the questioning by the public prosecutor is not skilled, like in the case at hand, the result is that the State as a prosecuting agency will not be able to elicit the truth from the child witness. It is the duty of the court to arrive at the truth and subserve the ends of justice. The courts have to take a participatory role in the trial and not act as mere tape recorders to record whatever is being stated by the witnesses. The judge has to monitor the proceedings in aid of justice. Even if the prosecutor is remiss or lethargic in some ways, the court should control the proceedings effectively so that the ultimate objective that is the truth is arrived at. The court must be conscious of serious pitfalls and dereliction of duty on the part of the prosecuting agency.

Upon failure of the prosecuting agency showing indifference or adopting an attitude of aloofness, the trial judge must exercise the vast powers conferred under Section 165 of the Evidence Act and Section 311 of the Cr.P.C. respectively to elicit all the necessary materials by playing an active role in the evidence collecting process- The judge is expected to actively participate in the trial, elicit necessary materials from the witnesses in the appropriate context which he feels necessary for reaching the correct conclusion. The judge has uninhibited power to put questions to the witness either during the chief examination or cross-examination or even during re-examination for this purpose. If a judge feels that a witness has committed an error or slip, it is the duty of the judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. (Para 73-74)

Indian Penal Code, 1860; Section 300- The sine qua non for the application of an Exception to Section 300 always is that it is a case of murder but the accused claims the benefit of the Exception to bring it out of that Section and to make it a case of culpable homicide not amounting to murder. This plea, therefore, assumes that this is a case of murder. Hence, as per Section 105 of the Evidence Act, it is for the accused to show the applicability of the Exception-Four conditions must be satisfied to bring the matter within Exception 4: (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in the heat of passion; and; that (iv) the assailant had not taken any undue advantage or acted in a cruel manner. 80. On a plain reading of Exception 4, it appears that the help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or having acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4, all the ingredients mentioned in it must be found. (Para 78-80) - Where the offender takes undue advantage or has acted in a cruel or an unusual manner, the benefit of Exception 4 cannot be given to him. If the weapon used or the manner of attack by the assailant is disproportionate, that circumstance must be taken into consideration to decide whether undue advantage has been taken. (Para 83)

Indian Evidence Act, 1872; Section 106- Principles of law governing the applicability of Section 106 of the Evidence Act - Section 106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word "especially" means facts that are pre-eminently or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act. Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish the facts which are, "especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience"- The court should apply Section 106 of the Evidence Act in criminal cases with care and caution. It cannot be said that it has no application to criminal cases. The ordinary rule which applies to criminal trials in this country that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the provisions contained in Section 106 of the Evidence Act. Section 106 of the Evidence Act cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused-Section 106 of the Evidence Act

obviously refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is able to prove some other facts especially within his knowledge, which would render the evidence of the prosecution nugatory. If in such a situation, the accused offers an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But, if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him - But Section 106 of the Evidence Act has no application to cases where the fact in question, having regard to its nature, is such as to be capable of being known not only to the accused but also to others, if they happened to be present when it took place. The intention underlying the act or conduct of any individual is seldom a matter which can be conclusively established; it is indeed only known to the person in whose mind the intention is conceived. Therefore, if the prosecution has established that the character and circumstance of an act suggest that it was done with a particular intention, then under illustration (a) to this section, it may be assumed that he had that intention, unless he proves the contrary - Distinction between the burden of proof and the burden of going forward with the evidence - Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence, which if believed by the court, would convince them of the accused's guilt beyond a reasonable doubt, the accused, if in a position, should go forward with counter-vailing evidence, if he has such evidence. When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a prima facie case has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict. However, the accused's failure to present evidence on his behalf may be regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might arise

therefrom. Although not legally required to produce evidence on his own behalf, the accused may, therefore, as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution. (Para 25-48)

Indian Evidence Act, 1872; Section 8,27- The evidence of discovery would be admissible as conduct under Section 8 of the Evidence Act quite apart from the admissibility of the disclosure statement under Section 27 of the Evidence - However, conduct of the accused alone, though may be relevant under Section 8 of the Evidence Act, cannot form the basis of conviction. (Para 57-61)

Code Of Criminal Procedure, 1973; Section 161,162- Section 162 Cr.P.C. bars the use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated therein. The statement made by a witness before the police under Section 161(1) Cr.P.C. can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) Cr.P.C. The statements under Section 161 Cr.P.C. recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose: (i) of contradicting such witness by an accused under Section 145 of the Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and (iii) the re-examination of the witness if necessary- The court cannot suo motu make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words 'if duly proved' used in Section 162 Cr.P.C. clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway, nor can be looked into, but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the Investigating Officer. The statement before the Investigating Officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction. (Para 63-64)

Indian Evidence Act, 1872; Section 145 -When it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his crossexamination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need of further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter, when the Investigating Officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the Investigating Officer who, again, by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction (Para 66)

Achin Gupta vs State Of Haryana 2024 INSC 369 – S 498A IPC – S 482 CrPC

Indian Penal Code, 1860; Section 498A - Referred to Preeti Gupta v. State of Jharkhand 2010 Criminal Law Journal 4303 - We request the Legislature to look into the issue as highlighted above taking into consideration the pragmatic realities and consider making necessary

changes in Sections 85 and 86 respectively of the Bharatiya Nyaya Sanhita, 2023, before both the new provisions come into force.

Code Of Criminal Procedure, 1973; Section 482-Indian Penal Code, 1860; Section 498A- If the Court is convinced by the fact that the involvement by the complainant of her husband and his close relatives is with an oblique motive then even if the FIR and the chargesheet disclose the commission of a cognizable offence the Court with a view to doing substantial justice should read in between the lines the oblique motive of the complainant and take a pragmatic view of the matter -If the wife on account of matrimonial disputes decides to harass her husband and his family members then the first thing, she would ensure is to see that proper allegations are levelled in the First Information Report. Many times the services of professionals are availed for the same and once the complaint is drafted by a legal mind, it would be very difficult thereafter to weed out any loopholes or other deficiencies in the same. However, that does not mean that the Court should shut its eyes and raise its hands in helplessness, saying that whether true or false, there are allegations in the First Information Report and the chargesheet papers disclose the commission of a cognizable offence. (Para 31)
Indian Penal Code, 1860; Section 498A- In all cases, where wife complains of harassment or ill-treatment, Section 498A of the IPC cannot be applied mechanically. No FIR is complete without Sections 506(2) and 323 of the IPC. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. (Para 32)

Nirmala vs Kulwant Singh 2024 INSC 370 – Habeas Corpus – Child Custody Matters

Constitution of India, 1950; Article 226- Maintainability of the Habeas Corpus petition with regard to custody of the minor child - Habeas corpus is a prerogative writ which is an extraordinary remedy. It has been held that recourse to such a remedy should not be permitted unless the ordinary remedy provided by the law is either not available or is ineffective. It has been held that in child custody matters, the power of

the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. It has further been held that in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law- In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. -There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature- where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court- When a detailed enquiry including the welfare of the minor child and his preference is involved, such an exercise could be done only in a proceeding under the provisions of the Guardians and Wards Act, 1890. (Para 13-19)

A (Mother of X) vs State Of Maharashtra 2024 INSC 371 – MTP Act- Termination Of Pregnancy

Constitution of India, 1950; Article 21 - The right to choose and reproductive freedom is a fundamental right under Article 21 of the Constitution. Therefore, where the opinion of a minor pregnant person differs from the guardian, the court must regard the view of the pregnant person as an important factor while deciding the termination of the pregnancy. (Para 35)

Medical Termination of Pregnancy Act 1971 ; Section 3(2B)- The medical board, in forming its opinion on the termination of pregnancies must not restrict itself to the criteria under Section 3(2-B) of the MTP Act but must also evaluate the physical and emotional well being of the pregnant person (Para 37)- The medical board cannot merely state that the grounds under Section 3(2-B) of the MTP Act are not met. The exercise of the jurisdiction of the courts would be affected if they did not have the advantage of the medical opinion of the board as to the risk

involved to the physical and mental health of the pregnant person. Therefore, a medical board must examine the pregnant person and opine on the aspect of the risk to their physical and mental health. When a person approaches the court for permission to terminate a pregnancy, the courts apply their mind to the case and make a decision to protect the physical and mental health of the pregnant person. (Para 27)- [The provision Section 3(2B) is arguably suspect on the ground that it unreasonably alters the autonomy of a person by classifying a substantially abnormal fetus differently than instances such as incest or rape. This issue may be examined in an appropriate proceeding should it become necessary]

Medical Termination of Pregnancy Act 1971 ; Section 3(3)- The opinion of the pregnant person must be given primacy in evaluating the foreseeable environment of the person under Section 3(3) of the MTP Act- The medical board evaluating a pregnant person with a gestational age above twenty-four weeks must opine on the physical and mental health of the person by furnishing full details to the court. (Para 30) - When issuing a clarificatory opinion the medical board must provide sound and cogent reasons for any change in opinion and circumstances; and (iv)The consent of a pregnant person in decisions of reproductive autonomy and termination of pregnancy is paramount. In case there is a divergence in the opinion of a pregnant person and her guardian, the opinion of the minor or mentally ill pregnant person must be taken into consideration as an important aspect in enabling the court to arrive at a just conclusion. (Para 37)

Medical Termination of Pregnancy Act 1971 - The MTP Act protects the RMP and the medical boards when they form an opinion in good faith as to the termination of pregnancy. (Para 37)

Mahendra Nath Soral vs Ravindra Nath Soral 2024 INSC 372- Alternative Dispute Redressal Process

Alternative Dispute Redressal Process - The dispute relating to

partition/division amongst family members/coparceners /co-owners should normally be settled through Alternative Disputes Redressal (ADR) Process -The Courts are required to explore these methods for amicable settlement of family disputes - Referred to Afcons Infrastructure Limited vs. Cherian Varkey Construction Company Private Limited (2010) 8 SCC 24: 2010 INSC 431 -. It is 'properties' vs 'proper ties'. 'Short term gain' vs 'Long terms relations'. One can either get share in the properties that too by litigating or can maintain proper ties amongst the family members with little give and take, and not going to the extent of minute details. (Para 19-23.1)

TR Vijayaraman vs State Of Tamil Nadu 2024 INSC 373

Summary: Trial Court convicted accused under Sections 120-B, read with Section 420 IPC and Section 420 IPC- HC upheld it - Dismissing SLP, SC observed:All the accused in connivance with each other have cheated the bank, by submitting cheques of the accounts in which there was no balance, or without any submission thereof and entries by the bank officers in the books of account showing them to be pending for clearing and giving credit to the account holder/accused.

Kanihya @ Kanhi(D) vs Sukhi Ram 2024 INSC 374 – Civil Suit For Pre-Emption

Summary: Suit for pre-emption - Plaintiff was required to deposit a sum of ₹ 9,214/- minus 1/5th of the pre-emption amount already deposited, on or before 10.10.1988, failing which the suit shall stand dismissed- Plaintiff deposited amount - Later defendant filed an application seeking dismissal of the suit on account of non-compliance of the direction to deposit full amount within the time granted by the Trial Court. While the aforesaid application was pending, the plaintiff filed an application on 05.03.1991 seeking permission of the court to deposit deficit amount of ₹ 14/-He also filed application seeking condonation of delay in filing the application seeking permission to make good the deficiency in deposit of the amount - Application dismissed -Revision Petition filed against this order by Plaintiff was dismissed by High Court -Allowing appeal, SC permitted appellants to deposit a sum of ₹ 14/- to the court below on or

before 20.05.2024 - Appellants directed to pay a cost of ₹ 1,00,000/- to the respondents.

State Of UP vs Mohan Lal 2024 INSC 375

Summary: Application filed by State seeking condonation of delay of 1,633 days in filing the present petition -SLP dismissed.

Alauddin vs State Of Assam 2024 INSC 376 – Ss 161,162 CrPC – Ss 145,155 Evidence Act

Code Of Criminal Procedure, 1973; Section 161,162- Any statement made by a person to a police officer in the course of investigation, which is reduced in writing, cannot be used for any purpose except as provided in Section 162. The first exception incorporated in sub-Section (2) is of the statements covered by clause (1) of Section 32 of the Indian Evidence Act, 1872 (for short, 'Evidence Act'). Thus, what is provided in subSection (1) of Section 162 does not apply to a dying declaration. The second exception to the general rule provided in sub-Section (1) of Section 162 is that the accused can use the statement to contradict the witness in the manner provided by Section 145 of the Evidence Act. Even the prosecution can use the statement to contradict a witness in the manner provided in Section 145 of the Evidence Act with the prior permission of the Court. The prosecution normally takes recourse to this provision when its witness does not support the prosecution case. There is one important condition for using the prior statement for contradiction. The condition is that the part of the statement used for contradiction must be duly proved. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161 (1) or Section 164 of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161 (1) or Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his

evidence. The explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the crossexamination.

Indian Evidence Act, 1872; Section 145- The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be crossexamined by asking whether his prior statement exists -The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous statement is proved the contradictions can be said to be proved- The witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the crossexamination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act of confronting the witness by showing him the relevant part of his prior statement is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness. (Para 8)

Indian Evidence Act, 1872; Section 155- Every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her

testimony. A minor or trifle omission or contradiction brought on record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially. What is a material contradiction or omission depends upon the facts of each case. Whether an omission is a contradiction also depends on the facts of each individual case. (Para 9)

Chander Bhan (D) vs Mukhtiar Singh 2024 INSC 377 – Lis Pendens – TP Act

Transfer of Property Act, 1882; Section 52- Doctrine of lis pendens- Object underlying the doctrine of lis pendens is for maintaining status quo that cannot be affected by an act of any party in a pending litigation. The objective is also to prevent multiple proceedings by parties in different forums. The principle is based on equity and good conscience- Referred to Rajendra Singh v. Santa Singh, AIR 1973 SC 2537; Dev Raj Dogra v. Gyan Chand Jain, (1981) 2 SCC 675; Sunita Jugalkishore Gilda v. Ramanlal Udhoji Tanna, (2013) 10 SCC 258- Even if Section 52 of T.P Act is not applicable in its strict sense in the present case then too the principles of lis-pendens, which are based on justice, equity and good conscience, would certainly be applicable- Pendency of a suit shall be deemed to have commenced from the date on which the plaintiff presents the suit. Further, that such pendency would 14 extend till a final decree is passed and such decree is realised. (Para 16-18) - Subsequent purchasers will be bound by lis pendens and cannot claim they are bonafide purchasers because they were not aware of the injunction order (Para 22)

Smita Shrivastava vs State of Madhya Pradesh 2024 INSC 378

Summary: Illegal denial of appointment - Allowing appeal, SC observed:It is a glaring case wherein the adamant, arbitrary, mala fide and high-handed approach of the State Government and its officials has driven the appellant to a series of prolonged litigations which were evidently not out of her choice. The appellant deserves a direction for restitutive relief along with compensation for the misery piled upon her owing to the arbitrary and highhanded action of the State Government

and its officials.

Dr Ranbeer Bose vs Anita Das 2024 INSC 379

Constitution of India, 1950; Article 226- Writ petition raising issues of irregularity committed in the construction- The appropriate remedy is to approach the municipal authorities and if no proper response was forthcoming, then the civil Court was the appropriate forum for ventilating the grievances of the nature. (Para 9)

Prashant Singh vs Meena 2024 INSC 380 – U.P. Consolidation of Holdings Act, 1953

U.P. Consolidation of Holdings Act, 1953; Section 49 - Section 49 contemplates bar to the jurisdiction of the 5 Civil or Revenue Court for the grant of declaration or adjudication of rights of tenure holders in respect of land lying in an area for which consolidation proceedings have commenced. Section 49 of the 1953 Act is a provision of transitory suspension of jurisdiction of Civil or Revenue Court only during the period when consolidation proceedings are pending. Notably, such suspension of jurisdiction of these Courts through the non obstante provision is only with respect to the declaration and adjudication of rights of tenure holders. In other words, unless a person is a pre-existing tenure holder, Section 49 does not come into operation- the power under Section 49 of the 1953 Act cannot be exercised to take away the vested title of a tenure holder. No such jurisdiction is conferred upon a Consolidation Officer or any other Authority under the 1953 Act.2 The power to declare the ownership in an immovable property can be exercised only by a Civil Court save and except when such jurisdiction is barred expressly or by implication under a law. Section 49 of the 1953 Act does not and cannot be construed as a bar on the jurisdiction of the Civil Court to determine the ownership rights. (Para 9-12)

Abhimeet Sinha vs High Court of Judicature At Patna 2024 INSC 381- Judicial Service – Minimum Qualifying Marks In Viva Voce/ Interview

Judicial Service - Bihar Superior Judicial Service Rules, 1951 - Gujarat State Judicial Service Rules, 2005; Rule 8(3) - Rules stipulating minimum qualifying marks in the viva voce test as a part of the selection criteria for appointment to the District Judiciary - The Prescription of minimum qualifying marks for interview is permissible and this is not in violation of All India Judges (2002) which accepted certain recommendations of the Shetty Commission (Para 102)- Only the overriding weightage to the vivavoce segment has been frowned upon but the prescription of reasonable qualifying cut-off marks is not considered discriminatory- An interview unveils the essence of a candidate— their personality, passion, and potential. While the written exam measures knowledge, the interview reveals character and capability. Therefore, a person seeking a responsible position particularly as a judicial officer should not be shortlisted only by their performance on paper, but also by their ability to articulate and engage which will demonstrate their suitability for the role of a presiding officer in a court. In other words, the capability and potential of the candidate, to preside in Court to adjudicate adversarial litigation must also be carefully assessed during the interview. (Para 67)

Judicial Service - High Court should notify a designated authority for a given recruitment process with clearly defined roles, functions and responsibilities. The candidates can approach such a designated authority to seek clarification in case of any doubt and this would assuage the anxiety of the candidates to a considerable extent. Another such suggestion of providing a basic outline of the syllabus for the proposed test will also help candidates from diverse backgrounds to plan and prepare for the proposed examination even before the examination notification is released. The recruitment process must adhere to the timeline but if there is any special and unavoidable exigency, the stakeholders should be kept informed with due promptitude. (Para 100)

Constitution of India, 1950; Article 320(3) - Governor is under no compulsion to consult the Public Service Commission in case the Commission does not wish to be consulted. Such a course would be in consonance with the proviso to Article 320(3) of the Constitution. (Para 93)

Estoppel- Principle of estoppel cannot override the law (Para 19)

Constitution of India, 1950; Article 226 and 32 - Res Judicata -The principle of res judicata is one of universal application and since the final judgment is binding on the parties thereto, an applicant under Article 226 cannot apply on the same grounds under Article 32, without getting the adverse judgment set aside in appeal. However, a distinction was made between cases where the application under Article 226 has been dismissed on merits and cases where it is dismissed on a preliminary ground. It was further held that an Article 32 petition would not be maintainable on the same facts and the same ground - Referred to Daryao v State of UP AIR 1961 SC 14570- The above ratio cannot however be applied stricto sensu when it is not the same writ petitioner who has approached this Court under Article 32 of the Constitution. (Para 22-23)

Jatinder Kumar Sapra vs Anupama Sapra 2024 INSC 382 – Irretrievable Breakdown Of Marriage

Constitution of India, 1950; Article 142- Various factor(s) to be considered by this Court whilst exercising such jurisdiction Article 142 to pass decree of divorce on ground of irretrievable breakdown of marriage - Referred to Shilpa Sailesh v. Varun Sreenivasan, 2023 SCC Online SC 544. (Para 5)

Summary: The facts on record establish that the marriage between the parties has broken down and that there is no possibility that the parties would cohabit together in the future -The formal union between the parties is neither justified nor desirable- Court invoked Article 142(1) of the Constitution of India and passed a decree of divorce on the ground of irretrievable breakdown of marriage- Appellant to pay an amount of Rs. 50,00,000/- (Rupees Fifty Lakh Only) to the Respondent Wife as permanent alimony.

Amanatullah Khan vs Commissioner of Police 2024 INSC 383 – History Sheet

Summary: Some disturbing contents of the History Sheet to the extent it

pertained to the school going minor children of the appellant and his wife, against whom there was apparently no adverse material whatsoever for inclusion in the History Sheet - Amended Standing Order -The decision taken to the effect that History Sheet is only an internal police document and it shall not be brought in public domain, largely addresses the concern expressed by us in the beginning. Secondly, the extra care and precaution, to be now observed by a police officer while ensuring that the identity of a minor child is not disclosed as per the law too, is a necessary step to redress the appellant's grievances. It will surely prevent the undesirable exposure that has been given to the minor children in this case.

History Sheet - States and Union Territories may also consider the desirability of ensuring that no mechanical entries in History Sheet are made of innocent individuals, simply because they happen to hail from the socially, economically and educationally disadvantaged backgrounds, along with those belonging to Backward Communities, Scheduled Castes & Scheduled Tribes. While we are not sure about the degree of their authenticity, but there are some studies available in the public domain that reveal a pattern of an unfair, prejudicial and atrocious mindset. It is alleged that the Police Diaries are maintained selectively of individuals belonging to Vimukta Jatis, based solely on caste-bias, a somewhat similar manner as happened in colonial times. All the State Governments are therefore expected to take necessary preventive measures to safeguard such communities from being subjected to inexcusable targeting or prejudicial treatment. We must bear in mind that these pre-conceived notions often render them 'invisible victims' due to prevailing stereotypes associated with their communities, which may often impede their right to live a life with self-respect. (Para 14)
Constitution of India, 1950; Article 21 - The value for human dignity and life is deeply embedded in Article 21 of our Constitution. The expression 'life' unequivocally includes the right to live a life worthy of human honour and all that goes along with it. Self-regard, social image and an honest space for oneself in one's surrounding society, are just as significant to a dignified life as are adequate food, clothing and shelter.

(Para 15)

Jagvir Singh vs State Of UP 2024 INSC 384 – Murder Case- Acquitted

Summary: Concurrent murder conviction set aside

Sukhpal Singh vs NCT Of Delhi 2024 INSC 385 – S 299 CrPC

Code of Criminal Procedure, 1973; Section 299 (1)- The first part provides for proof of jurisdictional fact in respect of abscondence of an accused person and the second that there was no immediate prospect of arresting him. In the event, an order under the said provision is passed, deposition of any witness taken in the absence of an accused may be used against him if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without any amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable - Referred to Nirmal Singh v. State of Haryana (2000) 4 SCC 41 re: Under what circumstances and by what method, the statement of a witness under Section 299 of CrPC could have been tendered in the case for being admissible. (Para 31-32)

Shripal vs Karnataka Neravari Nigam Ltd. 2024 INSC 386 – Land Acquisition

Summary: Allowing appeal seeking enhancement of compensation pursuant to acquisition of their lands by the respondents for the purpose of construction of canals under the Hippargi Barrage project , SC observed: The ends of justice would be met if the market value of the lands acquired from the appellants is fixed at Rs. 4,50,000/- per acre by modifying the order dated 2nd February, 2018 passed by the High Court.

Child In Conflict With Law Through His Mother vs State Of Karnataka 2024 INSC 387 – Ss 14,15,101 Juvenile Justice Act – Children's Court

Juvenile Justice (Care and Protection of Children) Act, 2015; Section 14,15 - The provision of Section 14(3) of the Act, providing for the period of three months for completion of a preliminary assessment under

Section 15 of the Act, is not mandatory. The same is held to be directory. The period can be extended, for the reasons to be recorded in writing, by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate. (Para 18)

Juvenile Justice (Care and Protection of Children) Act, 2015- The words 'Children's Court' and 'Court of Sessions' in the Act and the 2016 Rules shall be read interchangeably. Primarily jurisdiction vests in the Children's Court. However, in the absence of constitution of such Children's Court in the district, the power to be exercised under the Act is vested with the Court of Sessions. (Para 18)

Juvenile Justice (Care and Protection of Children) Act, 2015; Section 101- Appeal, under Section 101(2) of the Act against an order of the Board passed under Section 15 of the Act, can be filed within a period of 30 days. The appellate court can entertain the appeal after the expiry of the aforesaid period, provided sufficient cause is shown. Endeavour has to be made to decide any such appeal filed within a period of 30 days. (Para 18)

Practice and Procedure - Wherever lacking, in all orders passed by the Courts, Tribunals, Boards and the quasi-judicial authorities, the names of the Presiding Officers or the Members be specifically mentioned in the orders when signed, including the interim orders. If there is any identification number given to the officers, the same can also be added. - In many of the orders the presence of the parties and/or their counsels is not properly recorded. Further, it is not evident as to on whose behalf adjournment has been sought and granted. It is very relevant fact to be considered at different stages of the case and also to find out as to who was the party delaying the matter. At the time of grant of adjournment, it should specifically be mentioned as to the purpose therefor. This may be helpful in imposition of costs also, finally once we shift to the real terms costs. (Para 17)

Legal Maxims-The rule of causus omissus i.e. 'what has not been provided in the Statute cannot be supplied by the courts' in the strict rule of interpretation- However, there are certain exceptions thereto- Referred to Surjit Singh Kalra vs. Union of India (1991) 2 SCC 87: 1991

INSC 36: (1991) 1 SCR 364 and Rajbir Singh Dalal (Dr.) vs. Chaudhari Devi Lal University, Sirsa (2008) 9 SCC 284: 2008 INSC 913: (2008) 11 SCR 992. (Para 9.24)

National Highways Authority of India vs Hindustan Construction Company Ltd. 2024 INSC 388 – S 34 Arbitration Act

Arbitration And Conciliation Act, 1996; Section 34,37 -The jurisdiction of the Court under Section 34 is relatively narrow and the jurisdiction of the Appellate Court under Section 37 of the Arbitration Act is all the more circumscribed - Referred to UHL Power Company Ltd. v. State of Himachal Pradesh (2022) 4 SCC 116- As far as the construction of the terms of a contract is concerned, it is for the Arbitral Tribunal to adjudicate upon. If, after considering the material on record, the Arbitral Tribunal takes a particular view on the interpretation of the contract, the Court under Section 34 does not sit in appeal over the findings of the arbitrator. (Para 9-13)

All India Bank Officers' Confideration vs Regional Manager, Central Bank Of India 2024 INSC 389 – Income Tax – Perquisites – Interpretation Of Statutes

Income Tax Act, 1961; Section 17(2)(viii) - Income Tax Rules, 1962; Rule 3(7)(i) - Rule 3(7)(i) posits SBI's rate of interest, that is the PLR, as the benchmark to determine the value of benefit to the assessee in comparison to the rate of interest charged by other individual banks. The fixation of SBI's rate of interest as the benchmark is neither an arbitrary nor unequal exercise of power- the enactment of subordinate legislation for levying tax on interest free/concessional loans as a fringe benefit is within the rulemaking power under Section 17(2)(viii) of the Act. Section 17(2)(viii) itself, and the enactment of Rule 3(7)(i) is not a case of excessive delegation and falls within the parameters of permissible delegation. Section 17(2) clearly delineates the legislative policy and lays down standards for the rule-making authority. Accordingly, Rule 3(7)(i) is intra vires Section 17(2)(viii) of the Act. (Para 31-34)

Interpretation of Statutes- While enacting laws, the legislature can and does delineate the meaning of terms through explicit definitions. Specific meanings are assigned for precision, to distinguish words/expressions from loose or popular meanings, expand or restrict the scope of words or expressions, or to designate 'terms of art', that is, words or phrases with specialized meanings. Explicit definitions are useful, but it is wrong to state that all words or expressions must be explicitly defined. Defining each word or expression that is part of normal or commercial vocabulary is neither possible nor expedient. It would be a superfluous exercise, and make statutes voluminous. Instead, popular meaning makes the statute simpler and easier for the common people. After all, it is the common person who is concerned with the ramifications of a statute, and thus, the common man's understanding is the definitive index of the legislative intent- The legislature is assumed to be aware of the well-understood meaning attributed to the word/expression, and by necessary implication the legislature by not prescribing a fixed and exact definition, ascribes the prevalent meaning assigned to the word/expression in common parlance or commercial usage. This would include meaning assigned to technical words in a particular trade, business or profession, etc. when the legislation is concerning a particular trade, business or transaction. This rule equally applies to construing words or expressions in a taxation statute. (Para 13)
Income Tax Act, 1961; Section 17(2)- 'Perquisite' is a fringe benefit attached to the post held by the employee unlike 'profit in lieu of salary', which is a reward or recompense for past or future service. It is incidental to employment and in excess of or in addition to the salary. It is an advantage or benefit given because of employment, which otherwise would not be available. From this perspective, the employer's grant of interest-free loans or loans at a concessional rate will certainly qualify as a 'fringe benefit' and 'perquisite'- (Para 18-19)

Legislation - Legislature must retain with itself the essential legislative function. 'Essential legislative function' means the determination of the legislative policy and its formulation as a binding rule of conduct. Therefore, once the legislature declares the legislative policy and lays

down the standard through legislation, it can leave the remainder of the task to subordinate legislation. In such cases, the subordinate legislation is ancillary to the primary statute. It aligns with the framework of the primary legislation as long as it is made consistent with it, without exceeding the limits of policy and standards stipulated by the primary legislation. The test, therefore, is whether the primary legislation has stated with sufficient clarity, the legislative policy and the standards that are binding on subordinate authorities who frame the delegated legislation- Referred to Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi (1968) SCC OnLine SC 13. (Para 22)

Hanna vs State Of Uttar Pradesh 2024 INSC 390 – Murder Case- Acquitted

Summary: SC allowed accused's appeal against concurrent conviction in murder case

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Sheikh Noorul Hassan vs Nahakpam Indrajit Singh 2024 INSC 391 – RP Act- Election Petition – Rejoinder

Representation of Peoples Act, 1951; Section 87(1) -Code of Civil Procedure, 1908; Order VIII Rule 9 - High Court, acting as an Election Tribunal, subject to the provisions of the 1951 Act and the rules made thereunder, is vested with all such powers as are vested in a civil court under the CPC. Therefore, in exercise of its powers under Order VIII Rule 9 of the CPC, it is empowered to grant leave to an election petitioner to file a replication- However, such leave is not to be granted mechanically. The Court before granting leave must consider the averments made in the plaint/election petition, the written statement and the replication. Upon consideration thereof, if the Court feels that to ensure a fair and effective trial of the issues already raised, the plaintiff/election petitioner must get opportunity to explain/clarify the facts newly raised or pleaded in the written statement, it may grant leave upon such terms as it deems fit. Further, while considering grant of leave, the Court must bear in mind that,— (a) a replication is not needed to merely traverse

facts pleaded in the written statement; (b) a replication is not a substitute for an amendment; and (c) a new cause of action or plea inconsistent with the plea taken in original petition/plaint is not to be permitted in the replication. (Para 20-21)

Code of Civil Procedure, 1908; Order VI Rule 1 and Order VIII Rule 9 - Replication, though not a pleading as per Rule 1 of Order VI, is permissible with the leave of the Court under Order VIII Rule 9 of the CPC, which gives a right to file a reply in defence to set-off or counter-claim set up in the written statement. However, if filing of replication is allowed by the Court, it can be utilised for the purposes of culling out issues. But mere non-filing of a replication would not mean that there has been admission of the facts pleaded in the written statement (see K. Laxmanan v. Thekkayil Padmini (2009) 1 SCC 354. (Para 16)

Union Of India vs Santosh Kumar Tiwari 2024 INSC 392 – CRPF Act – Compulsory Retirement As Punishment

Central Reserve Police Force Act, 1949 ; Section 11- CRPF Rules; Rule 27- Punishment of compulsory retirement prescribed by Rule 27 is intra vires the CRPF Act and is one of the punishments imposable -To keep the Force efficient, weeding out undesirable elements therefrom is essential and is a facet of control over the Force, which the Central Government has over the Force by virtue of Section 8 of the CRPF Act. Thus, to ensure effective control over the Force, if rules are framed, in exercise of general rule-making power, prescribing the punishment of compulsory retirement, the same cannot be said to be ultra vires Section 11 of the CRPF Act (Para 33)

Compulsory Retirement - Compulsory retirement is a well-accepted method of removing dead wood from the cadre without affecting his entitlement for retirement benefits, if otherwise payable. It is another form of terminating the service without affecting retirement benefits. Ordinarily, compulsory retirement is not considered a punishment. But if the service rules permit it to be imposed by way of a punishment, subject to an enquiry, so be it. (Para 33)

Legislation -Intention of the legislature, as indicated in the enabling Act, must be the prime guide to the extent of delegate's power to make rules. However, the delegate must not travel wider than the object of the legislature rather it must remain true to it. (Para 24)

Selvamani vs State 2024 INSC 393 – Criminal Trial – Hostile Witness – Gangrape case

Criminal Trial -The evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him- The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof - Referred to Khujji @ Surendra Tiwari v. State of Madhya Pradesh (1991) 3 SCC 627 : 1991 INSC 153 and C. Muniappan and Others v. State of Tamil Nadu (2010) 9 SCC 567 : 2010 INSC 553 [In this case, SC upheld a gang rape conviction observing thus: It appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused. However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under Section 164 CrPC and the evidence of the Medical Expert (PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her.]

Vijay Laxman Bhawe (D) vs P & S Nirman Pvt. Ltd. 2024 INSC 394 – Delay Condonation Application By Stranger

Limitation Act, 1963; Section 5- The application seeking condonation of delay filed at the behest of the stranger, who is not a party to the proceedings, is totally illegal- [Allowing appeal against the HC order upholding the order allowing the application seeking condonation of delay by the Trial Court, SC observed: Entertaining an application filed at the behest of a stranger for condonation of delay in filing an application for restoration of the subject suit is totally unsustainable in law. Admittedly, respondent No.1 has not even been impleaded in the subject

suit. As such, the application filed at the behest of the stranger, who is not a party to the proceedings, is totally illegal. If the approach as adopted by the trial court is approved, any Tom, Dick and Harry would be permitted to move an application for condonation of delay in filing an application for restoration of the suit even if he is not a party to the subject suit.]

Bhumikaben N. Modi vs Life Insurance Corporation 2024 INSC 395 – NCDRC – Revision -Ex Gratia

Consumer Protection Act, 1986; Section 21 - NCDRC's revisional powers are very limited. The Section provides power to call for the records from the State Commission and to set aside its order issued sans jurisdiction vested in it by law or if the State Commission failed to exercise a jurisdiction so vested or if the State Commission has acted in exercise of its jurisdiction illegally or with material irregularity - Referred to Kongaraananthram v. Telecom Distt. Engineer 1990 SCC OnLine NCDRC 24. (Para 10)
Words and Phrases - Ex gratia- An act of gratis and it got no connection with the liability of the State under law and the very nature of the relief and its dispensation by the State could not be governed by directions in the nature of mandamus unless, of course, there is an apparent discrimination in the manner of grant of such relief -Sudesh Dogra v. Union of India (2014) 6 SCC 486. (Para 11-12)

Life Insurance Corporation Act, 1956- Before the year 1956, life insurance business was in the hands of private companies which were operating mostly in urban areas. The avowed objects and reasons of the Life Insurance Corporation Act, 1956 would reveal that the main object and reason is to ensure absolute security to the policy-holder in the matter of his life insurance protection. (Para 28)

Summary: A man submitted a proposal form for LIC policy.- After his death, a claim was raised before LIC which was repudiated on the ground that proposal submitted by the deceased was not accepted. 1997-2010: Consumer complaint filed before District Forum- District Forum allows

complaint-SCDRC dismisses LIC's appeal- NCDRC allows LIC's Revision Petition setting aside the SCDRC/District Forum orders (however directs ex-gratia payment of 1L) 2011-2024: SLP filed before #SupremeCourt - SC sets aside NCDRC order .

K.P. Khemka vs Haryana State Industrial and Infrastructure Development Corporation Limited 2024 INSC 396 – SFC Act – Reference To Larger Bench

State Financial Corporations Act, 1951 ; Section 32G-The Section confers a right of recovery on the financial corporation, without prejudice to any other mode of recovery which includes the right to file a suit. The conferment of such a right to recover an 'amount due' as arrears of land revenue, notwithstanding any other remedy, is for a public purpose and in public interest- While the process of filing a civil suit may be barred because of the statute of limitation, the power to recover vested through Section 32-G of the State Financial Corporations Act read with Section 2(c) and Section 3 of the Recovery of Dues Act is a distinct power which continues notwithstanding that another mode of recovery through a civil suit is barred- There is an additional right to enforce the claims of the financial corporations notwithstanding the bar of limitation. (Para 18) - Referred to three judges Bench in view of decision in State of Kerala and Others vs. V.R. Kalliyanikutty & Anr. (1999) 3 SCC 657.

Col Ramneesh Pal Singh vs Sugandhi Aggarwal 2024 INSC 397 – Parental Alienation Syndrome

Parental alienation syndrome- PAS is a thoroughly convoluted and intricate phenomenon that requires serious consideration and deliberation. In our considered opinion, recognising and appreciating the repercussions of PAS certainly shed light on the realities of longdrawn and bitter custody and divorce litigation(s) on a certain identified sect of families, however, it is equally important to remember that there can no straitjacket formula to invoke the principle- Courts ought not to prematurely and without identification of individual instances of 'alienating behaviour', label any parent as propagator and /

or potential promoter of such behaviour. The aforesaid label has far-reaching implications which must not be imputed or attributed to an individual parent routinely- Courts must endeavour to identify individual instances of ‘alienating behaviour’in order to invoke the principle of parental alienation so as to overcome the preference indicated by the minor children. [In this case, while allowing an appeal SC observed: High Court failed to appreciate the aforesaid nuance and proceeded on an unsubstantiated assumption i.e., that allegations of parental alienation could not be ruled out, despite the stark absence of any instances of 'alienating behaviour' having been identified by any Court.]

Municipal Comittee Katra vs Ashwani Kumar 2024 INSC 398 – Writ Jurisdiction

Constitution of India, 1950; Article 226 - Disputes arising out of purely contractual obligations cannot be entertained by the High Court in exercise of the extra ordinary writ jurisdiction. In the case of Union of India and Ors. v. Puna Hinda (2021) 10 SCC 690 - In this case, the relief which was sought by the writ petition was purely by way of damagessuch relief could have been subject matter of extra ordinary writ jurisdiction of the High Court under Article 226 of the Constitution of India. The quantification of the damages would require entering into disputed questions of facts and hence, the High Court ought to have relegated the writ petitioner to the competent Court for claiming damages, if so advised. (Para 22-23)

Legal Maxim- Nullus commodum capere potest de injuria sua propria - No one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing from being done shall not avail himself of the nonperformance he has occasioned. To put it differently, ‘a wrong doer ought not to be permitted to make profit out of his own wrong’- Referred to Union of India v. Maj. Gen. Madan Lal Yadav (1996) 4 SCC 127. (Para 18-19)

Tapas Guha vs Union of India 2024 INSC 399 – Silchar Greenfield Airport – Environmental Clearance

Environment Law - Greenfield airport at Silchar- Environmental regulations are in place precisely to ensure that developmental projects, such as the establishment of airports, are undertaken in a manner that minimizes adverse ecological impacts and safeguards the well-being of both the environment and local communities. While acknowledging the importance of infrastructure development, it is paramount that such projects proceed in harmony with environmental laws to prevent irreparable damage to ecosystems and biodiversity. The requirement for Environmental Clearance serves as a crucial safeguard against unchecked exploitation of natural resources and helps uphold the principles of sustainable development- which safeguards the interests of both present and future generations. Therefore, while the decision to establish an airport may serve broader policy objectives, it must be executed within the confines of legal frameworks designed to protect the environment and ensure responsible resource management. Failure to adhere to these norms not only undermines the integrity of environmental governance but also risks long-term environmental degradation and societal discord- when the law prescribes specific norms for carrying out activities requiring an Environmental Clearance, those provisions have to be strictly complied with- Directed that absolutely no activity shall be carried out in breach of the provisions of the Notification dated 14 September 2006 at the site of the proposed greenfield airport at Silchar.

Arvind Kejriwal vs Directorate Of Enforcement 2024 INSC 400 – Interim Bail – Elections

Interim Bail -While examining the question of grant of interim bail/release, the courts always take into consideration the peculiarities associated with the person in question and the surrounding circumstances- the power to grant regular bail includes the power to grant interim bail, particularly in view of Article 21 of the Constitution of India. (Para 8-10)

Summary: Arvind Kejriwal Case - Power to grant interim bail is commonly exercised in a number of cases. Interim bail is granted in the facts of each case. This case is not an exception- General Elections to Lok Sabha is the most significant and an important event this year, as it should be in a national election year. Between 650-700 million voters out of an electorate of about 970 million will cast their votes to elect the government of this country for the next five years. General Elections supply the vis viva to a democracy. Given the prodigious importance, we reject the argument raised on behalf of the prosecution that grant of interim bail/release on this account would be giving premium of placing the politicians in a benefic position compared to ordinary citizens of this country. While examining the question of grant of interim bail/release, the courts always take into consideration the peculiarities associated with the person in question and the surrounding circumstances- more holistic and libertarian view is justified, in the background that the 18th Lok Sabha General Elections are being held - Rejected the argument that the reasoning recorded results in grant of privilege or special status to politician - Interim Bail Granted - Conditions imposed.

Mrugendra Indravadan Mehta vs Ahmedabad Municipal Corporation 2024 INSC 401 – O XLI R 31 CPC

Code Of Civil Procedure,1908; Order XLI Rule 31 - The mere omission to frame the points for determination would not vitiate the judgment of the first appellate Court, provided that the first appellate Court recorded its reasons based on the evidence adduced by both parties - Even if the first appellate Court does not separately frame the points for determination arising in the first appeal, it would not prove fatal as long as that Court deals with all the issues that actually arise for deliberation in the said appeal. Substantial compliance with the mandate of Order 41 Rule 31 CPC in that regard is sufficient- Referred to G. Amalorpavam and others vs. R.C. Diocese of Madurai (2006) 3 SCC 224 and Laliteshwar Prasad Singh vs. S.P. Srivastava (D) (2017) 2 SCC 415. (Para 29-30)

Gujarat Town Planning and Urban Development Act, 1976 - a plot owner who has surrendered his original land for the purposes of the

Town Planning Scheme is not even assured of allotment of a reconstituted plot in lieu thereof. In such an event, he is entitled only to compensation. Therefore, there is no guaranteed right vesting in a plot owner who surrendered his land in accordance with the Town Planning Scheme that he would be allotted another plot of land in lieu thereof, much less, a plot of the same area - The preparation or variation of a Town Planning Scheme, the rights in the earlier plots of land would stand extinguished. That being so, such rights, if any, which have become extinct cannot be the basis for a later cause of action- Further reduction of a plot notified in the original Town Planning Scheme is implicit in the general power of variation vesting in the authority under Section 71 of the Act of 1976. (Para 32-38)

State Of Orissa vs Santi Kumar Mitra 2024 INSC 402 – Lease

Summary: Trial Court dismissed the suit of the plaintiffs by arriving at a conclusion that plaintiffs had not applied for the renewal of the lease within three months before the expiry of the lease period; that the plaintiffs had not kept the building in proper repair; and all the lessees had not applied for the renewal of the lease except one - First Appellate Court allowed appeal and decreed the suit - Second Appeal was dismissed by the High Court - Supreme Court allowed appeal and restored Trial Court judgment.

Shriram Chits (India) Private Limited vs Raghachand Associates 2024 INSC 403 – Consumer Protection Act -Consumer – Onus Of Proof

Consumer Protection Act, 1986; Section 2(1)(7)(c)- Definition of consumer has three parts- The first part sets out the jurisdictional prerequisites for a person to qualify as a consumer – there must be purchase of goods, for consideration. The second part is an 'exclusion clause' ['carve out'] which has the effect of excluding the person from the definition of a consumer. The carve out applies if the person has obtained goods for the purpose of 'resale' or for a 'commercial purpose'. The third part is an exception to the exclusion clause – it relates to Explanation (a) to Section 2(7) which limits the scope of 'commercial purpose'- The expression 'commercial purpose' does not include

persons who bought goods ‘exclusively for the purpose of earning his livelihood, by means of self-employment’ - The onus of proving the first part i.e. that the person had bought goods/availed services for a consideration, rests on the complainant himself. The carve out clause, in the second part, is invoked by the service providers to exclude the complainants from availing benefits under the Act. The onus of proving that the person falls within the carve out must necessarily rest on the service provider and not the complainant.Since it is always the service provider who pleads that the service was obtained for a commercial purpose, the onus of proving the same would have to be borne by it- A negative burden cannot be placed on the complainant to show that the service available was not for a commercial purpose- The standard of proof has to be measured against a ‘preponderance of probabilities’. The test to determine whether service obtained qualified as a commercial purpose - Referred to Leelavathi Kirtilal Medical Trust v. Unique Shanti Developers – (2020) 2 SCC 265-If and only if, the service provider discharges its onus of showing that the service was availed, in fact for a commercial purpose, does the onus shift back to the complainant to bring its case within the third part, i.e. the Explanation (a) to Section 2(7) – To show that the service was obtained exclusively for the purpose of earning its livelihood by means of self-employment - The question of inquiring into the third part will only arise if the service provider succeeds in crossing the second part by discharging its onus and proving that the service obtained was for a commercial purpose. Unless the service provider discharges its onus, the onus does not shift back to the complainant to show that the service obtained was exclusively for earning its livelihood through the means of self-employment. (Para 15, 20-23)

Pleadings - A plea without proof and proof without plea is no evidence in the eyes of law. (Para 23)

Union Of India vs Mrityunjay Kumar Singh @ Mrityunjay @ Sonu Singh 2024 INSC 404 – Bail

Bail - Dismissing appeal filed by Union of India against bail granted to an accused in UAPA case, SC observed: An accused cannot be detained under the guise of punishing him by presuming the guilt and in Vaman Narain

Ghiya v. State of Rajasthan, (2009) 2 SCC 28 - The broad probability of accused being involved in the committing of the offence alleged will have to be seen. This Court in NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 - Referred to Himanshu Sharma v. State of Madhya Pradesh, 2024 SCC OnLine SC 187- Considerations for grant of bail and cancellation of bails are different and if conditions of bail is flouted or the accused had misused the liberty granted or bail was granted in ignorance of statutory provisions or bail was obtained by playing fraud then bail granted to the accused can be cancelled- In the absence of their being a strong prima facie case on the conditions of the bail having been violated, it would not be appropriate for the said order being reversed or set aside after a lapse of fifteen (15) months- In fact, the apprehension of the Union of India that respondent is likely to pose threat to the witnesses and there was a threat posed to the complainant, Mr. Sanjay Kumar Tiwari, would not be a ground to set aside the impugned order enlarging the respondent on bail in as much in the case referred against the respondent for the said offence he has been granted bail. That apart we are of the considered view that there are no other overwhelming material on record to set aside the order granting bail which out weighs the liberty granted by the High Court under the impugned order.

Sant Bhagwan Baba Shikshan Mandal vs Gunwant 2024 INSC 405 – Service Law

Summary: Writ Petition filed by the respondent praying inter alia for being appointed to the post of Shikshan Sevak in the appellant School was allowed by the High Court and the appellants were directed to ensure that he is appointed to the subject post on or before 31st December, 2009, in accordance with law - Disposing appeal, SC moulded relief and directed appellants to to pay a consolidated sum of ₹.10,00,000/- (Rupees Ten Lakhs) to the respondent on account of the financial loss incurred by him and for his non-appointment to the subject post.

Indian Medical Association vs Union Of India 2024 INSC 406 – Advertisement – Right Of Consumer

Advertisement - Before an advertisement is printed/aired/displayed, a

Self declaration shall be submitted by the advertiser/advertising agency on the lines contemplated in Rule 7 of the Cable Television Networks Rules, 1994 - The Self-declaration shall be uploaded by the advertiser/advertising agency on the Broadcast Sewa Portal run under the aegis of the Ministry of Information and Broadcasting. As for the advertisements in the Press/Print Media/Internet, the Ministry is directed to create a dedicated portal within four weeks from today. Immediately on the portal being activated, the advertisers shall upload a Self-declaration before any advertisement is issued in the Press/Print Media/Internet. Proof of uploading the Self-declaration shall be made available by the advertisers to the concerned broadcaster/printer/publisher/T.V. Channel/electronic media, as the case may be, for the records. No advertisements shall be permitted to be run on the relevant channels and/or in the print media/internet without uploading the selfdeclaration as directed above. (Para 24)

Guidelines for Prevention of Misleading Advertisements and Endorsements of Misleading Advertisements, 2022
-Advertisers/advertising agencies and endorsers are equally responsible for issuing false and misleading advertisements. Such endorsements that are routinely made by public figures, influencers, celebrities etc. go a long way in promoting a product. It is imperative for them to act with a sense of responsibility when endorsing any product and take responsibility for the same, as reflected in Guideline No.8 of the Guidelines, 2022 that relates to advertisements that address/target or use children for various purposes and Guideline No.12 that lays down the duties of manufacturers, service providers, advertisers and advertising agencies to ensure that the trust of the consumer is not abused or exploited due to sheer lack of knowledge or inexperience. Guideline No.13 requires a due diligence to be undertaken for endorsement of advertisements and requires a person who endorses a product to have adequate information about, or experience with a specific good, product or service that is proposed to be endorsed and ensure that it must not be deceptive.
Constitution of India,1950; Article 21 -Fundamental right to health encompasses the right of a consumer to be made aware of the quality of

products being offered for sale by manufacturers, service providers, advertisers and advertising agencies. (Para 23)

Shento Varghese vs Julfikar Husen 2024 INSC 407 – S 102(3) CrPC – Non- Reporting Of Seizure Forthwith

Code Of Criminal Procedure, 1973; Section 102(3)- Non reporting of the seizure forthwith by the police officer to the jurisdictional court would not vitiate the seizure order- But it does not mean that there would be no consequence whatsoever as regards the police officer, upon whom the law has enjoined a duty to act in a certain way- in deciding whether the police officer has properly discharged his obligation under Section 102(3) Cr.P.C., the Magistrate would have to, firstly, examine whether the seizure was reported forthwith- The meaning of the word 'forthwith' discussed- In doing so, it ought to have regard to the interpretation of the expression, 'forthwith'-If it finds that the report was not sent forthwith, then it must examine whether there is any explanation offered in support of the delay. If the Magistrate finds that the delay has been properly explained, it would leave the matter at that. However, if it finds that there is no reasonable explanation for the delay or that the official has acted with deliberate disregard/ wanton negligence, then it may direct for appropriate departmental action to be initiated against such erring official- However, the act of seizure would not get vitiated by virtue of such delay. (Para 16-23)

Code Of Criminal Procedure, 1973; Section 482- if delay in registration of FIR is no ground to quash the FIR, then delay in forwarding such FIR to the Magistrate can also afford no ground for nullification of the FIR- Unless serious prejudice is demonstrated to have been suffered as against the accused, mere delay in sending the FIR to the Magistrate by itself will not have any deteriorating effect on the case of the prosecution- If prejudice is demonstrated and the prosecution fails to explain the delay, then, at best, the effect of such delay would only be to render the date and time of lodging the FIR suspect and nothing more. (Para 16)

Words and Phrases - Forthwith- The expression 'forthwith' means 'as soon as may be', 'with reasonable speed and expedition', 'with a sense of

urgency', and 'without any unnecessary delay'. In other words, it would mean as soon as possible, judged in the context of the object sought to be achieved or accomplished- The interpretation of the word 'forthwith' would depend upon the terrain in which it travels and would take its colour depending upon the prevailing circumstances which can be variable. (Para 22-23)

Embio Limited vs Director General Of Foreign Trade 2024 INSC 408 – Foreign Trade (Development and Regulation) Act

Foreign Trade (Development and Regulation) Act, 1992; Section 11- Writ petition challenging the order imposing a penalty of Rs. 23,38,882/— under the provisions of Section 11(2) was dismissed by High Court- Allowing appeal, SC observed: There is no allegation against the appellant or its predecessor of making an export or import in contravention of the export and import policy. Section 11 (2) is a penal provision. It must be strictly construed. Thus, the demand for penalty cannot be sustained.

Union Of India vs Dr Asket Singh 2024 INSC 409 – Requisitioning and Acquisition of Immovable Property Act – Compensation

Requisitioning and Acquisition of Immovable Property Act, 1952 - Compensation must be paid to the owner of the acquired property within a reasonable time from the date on which the acquired property vested in the acquiring body. The requirement of making payment of compensation within a reasonable time from the date of vesting must be read into the 1952 Act. In fact, such a long delay of 12 years even in offering compensation will attract arbitrariness which is prohibited by Article 14 of the Constitution of India. (Para 9)

Bar Of Indian Lawyers vs D.K. Gandhi PS National Institute Of

Communicable Diseases 2024 INSC 410 – Consumer Complaint Against Advocates Not Maintainable

Consumer Protection Act, 2019; Section 2 (42) - A complaint alleging "deficiency in service" against Advocates practising Legal Profession would not be maintainable - A service hired or availed of an Advocate is a service under "a contract of personal service," and therefore would fall within the exclusionary part of the definition of "Service" contained in Section 2 (42) - The Legal Profession is sui generis i.e. unique in nature and cannot be compared with any other Profession. (Para 42)

Consumer Protection Act, 1986 - Indian Medical Association *Vs.* V.P. Shantha [1995] Supp. (5) S.C.R. 110- the wide amplitude of the definition of 'service' in the main part of Section 2(1)(o) would cover the services rendered by Medical Practitioners within the said Section 2(1)(o) -The said decision deserves to be revisited having regard to the history, object, purpose and the scheme of the CP Act- Neither the "Profession" could be treated as "business" or "trade" nor the services provided by the "Professionals" could be treated at par with the services provided by the Businessmen or the Traders, so as to bring them within the purview of the CP Act . (Para 21-24)

Relationship between an Advocate and his Client: Advocate can act for any person in any Court only when he is appointed by such person by executing the document called "Vakalatnama." Such Advocate has certain authorities by virtue of such "Vakalatnama" but at the same time has certain duties too, i.e. the duties to the courts, to the client, to the opponent and to the colleagues as enumerated in the Bar Council of India Rule-Unique attributes 1) Advocates are generally perceived to be their client's agents and owe fiduciary duties to their clients. 2) Advocates are fastened with all the traditional duties that agents owe to their principals. For example, Advocates have to respect the client's autonomy to make 41 decisions at a minimum, as to the objectives of the representation. 3) Advocates are not entitled to make concessions or give any undertaking to the Court without express instructions from the Client. 4) It is the solemn duty of an Advocate not to transgress the authority conferred on him by his Client. 5) An Advocate is bound to seek

appropriate instructions from the Client or his authorized agent before taking any action or making any statement or concession which may, directly or remotely, affect the legal rights of the Client. 6) The Advocate represents the client before the Court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore, his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment- Thus, a considerable amount of direct control is exercised by the Client over the manner in which an Advocate renders his services during the course of his employment. (Para 40-41)
Consumer Protection Act, 2019; Section 2 (42) -The question as to whether a given relationship should be classified as a contract 'for services' as opposed to a contract 'of service' [i.e. contract 'of personal service'] is a vexed question of law and is incapable of being answered with exactitude without reference to the underlying facts in any given case.- The greater the amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger would be the grounds for holding it to be a "contract of service.

Consumer Protection Act, 2019- The very purpose and object of the CP Act 1986 as re-enacted in 2019 was to provide protection to the consumers from the unfair trade practices and unethical business practices only. There is nothing on record to suggest that the Legislature ever intended to include the Professions or the Professionals within the purview of the Act- If the services provided by all the Professionals are also brought within the purview of the Act, there would be flood-gate of litigations in the commissions/forums established under the Act, particularly because the remedy provided under the Act is inexpensive and summary in nature-We do not propose to say that the professionals could not be sued or held liable for their alleged misconduct or tortious or criminal acts. In the process of overall depletion and erosion of ethical values and degradation of the professional ethics, the instances of professional misconduct are also on the rise. Undoubtedly, no professional either legal, medical or any other professional enjoys any immunity from being sued or from being held liable for his professional or otherwise misconduct or other misdeeds causing legal, monetary or other injuries to his clients or the persons hiring or availing his services.

The fact that professionals are governed by their respective Councils like Bar Councils or Medical Councils also would not absolve them from their civil or criminal liability arising out of their professional misconduct or negligence. (Para 18-20)

Bhikchand vs Shamabai Dhanraj Gugale ((D) 2024 INSC 411 – S 144 CPC – Restitution – Auction Sale

Code Of Civil Procedure, 1908; Section 144 -Section 144 CPC statutorily recognises a pre-existing rule of justice, equity and fair play - Even away from Section 144 the court has inherent jurisdiction to order restitution so as to do complete justice between the parties- The factor attracting applicability of restitution is not the act of the court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned- The obligation for restitution arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the Court in making restitution is bound to restore the parties, so far as they can be restored to the same position they were in at the time when the Court by its erroneous action had displaced them from- Where the decree holder is himself the auction purchaser, the sale cannot stand, if the decree is subsequently set aside-(Para 11-14) [In this case, the decree passed by the Trial Court was varied by the appeal court - However, in the meantime, the decree was executed by sale of the judgment debtor's property on in favour of the decree holders-After the decree was varied by the Appellate Court, the appellant/judgment debtor applied for restitution by invoking Section 144 CPC. The Trial Court, Appellate Court and the second Appellate Court rejected the application for restitution inter alia on the ground that the original decree was modified to the extent of interest payable and the judgment debtor not having deposited any amount in the court after the original decree and the property was put in auction, is not entitled to

restitution- Allowing appeal, SC held: the appellants' application under Section 144 CPC is allowed and the sale of the attached properties belonging to the judgment debtor is set aside and the parties are restored back to the position where the execution was positioned before the attachment of the immovable properties of the judgment debtor- Referred to Padanathil Rugmini Ama Vs. P.K. Abdulla (1996) 7 SCC 668.]

Code Of Civil Procedure, 1908; Order XXI Rule s 54, 66 - The object of attachment of immovable property in course of execution of decree is for realisation of the decretal amount by way of the sale of the attached property under Order XXI Rule 66 CPC - The sale proclamation should mention the estimated value of the property and such estimated value can also be given under Rule 54 Order XXI CPC. The fact that the Court is also entitled to enter in the proclamation of sale its own estimate of the value of the property clearly demonstrates that whenever the attached immovable property is to be sold in public auction the value thereof is required to be estimated. In between Rule 54 to Rule 66 of Order XXI CPC, there is no other provision requiring assessment of value of the property to be sold in auction -The provisions contained in Rule 54(1) Order XXI read with Rule 66 of Order XXI CPC wherein it is provided that either whole of the attached property or such portion thereof as may seem necessary to satisfy the decree shall be sold in auction. If there is no valuation of the property in the attachment Panchanama and there being no separate provision for valuation of the property put to auction, it is to be understood that the valuation of the property mentioned in attachment Panchanama prepared under Rule 54 can always provide the estimated value of the property otherwise the provisions enabling the court to auction only a part of the property which would be sufficient to satisfy the decree would be unworkable or redundant-When only one of the attached properties was sufficient to satisfy the decree there was no requirement for effecting the sale of the entire attached properties. (Para 20-22) - The court's power to auction any property or part thereof is not just a discretion but an obligation imposed on the Court and the sale held without 31 examining this aspect and not in conformity with this mandatory requirement would be illegal and without jurisdiction- The execution of a decree by sale of the entire immovable property of the judgment debtor is not to penalise him but the same is provided to grant

relief to the decree holder and to confer him the fruits of litigation. However, the right of a decree holder should never be construed to have bestowed upon him a bonanza only because he had obtained a decree for realisation of a certain amount. A decree for realisation of a sum in favour of the plaintiff should not amount to exploitation of the judgment debtor by selling his entire property. (Para 25- 27)

Divisional Forest Officer, Munnar, Kerala vs P.J. Antony 2024 INSC 412-S 69 Kerala Forest Act – Presumption

Kerala Forest Act, 1961; Section 69- Presumption under Section 69 of the Forest Act is a remarkable one and the burden of proving the foundational facts, which would give rise to the presumption, would be upon the prosecution - whenever a statute provides for 'reason to believe', either the reasons should appear on the face of the notice or they must be available in the materials which are placed before the authority-Even though the formation of an opinion as to the expression 'reason to believe', may be subjective, it must be based on material on the record and cannot be arbitrary, capricious or whimsical. (Para 11-2)

Kerala Forest Act, 1961; Section 52,61A - When it is an admitted fact that the offence, if any, committed by accused in relation to the movement of the fallen and dried sandalwood, so as to stack it at one place, it would be relatable to the Kerala Preservation of Trees Act, 1986 and would not constitute an offence under the Forest Act. (Para 10)

Rajendra Bhagwanji Umraniya vs State of Gujarat 2024 INSC 413 – S 357 CrPC – Victim Compensation -Sentencing

Code Of Criminal Procedure, 1973; Section 357- Payment of victim compensation cannot be a consideration or a ground for reducing the sentence imposed upon the accused as victim compensation is not a punitive measure and only restitutory in nature and thus, has no bearing with the sentence that has been passed which is punitive in nature - . In criminal proceedings the courts should not conflate sentence with compensation to victims. Sentences such as imprisonment and / or fine are imposed independently of any victim compensation and thus, the

two stand on a completely different footing, either of them cannot vary the other. Where an accused is directed to pay compensation to victims, the same is not meant as punishment or atonement of the convict but rather as a step towards reparation to the victims who have suffered from the offence committed by the convict- If payment of compensation becomes a consideration for reducing sentence, then the same will have a catastrophic effect on the criminal justice administration. It will result in criminals with a purse full of money to buy their way out of justice, defeating the very purpose of criminal proceedings. (Para 23-26)
Code Of Criminal Procedure, 1973; Section 357- The sole factor for deciding the compensation to be paid is the victim's loss or injury as a result of the offence, and has nothing to do with the sentence that has been passed. Section 357 of CrPC is intended to reassure the victim that he/she is not forgotten in the criminal justice system. It is a constructive approach to crimes based on the premise that mere punishment of the offender may not give solace to the victim or its family- when deciding the compensation which is to be paid to a victim, the only factor that the court may take into consideration is the convict's capacity to pay the compensation and not the sentence that has been imposed. (Para 24-25)
- The idea of victim compensation is based on the theory of victimology which recognizes the harsh reality that victims are unfortunately the forgotten people in the criminal justice delivery system. Victims are the worst sufferers. Victims‟ family is ruined particularly in cases of death and grievous bodily injuries. This is apart from the factors like loss of reputation, humiliation, etc. Theory of Victimology seeks to redress the same and underscores the importance for criminal justice administration system to take into consideration the effect of the offence on the victim's family even though human life cannot be restored but then monetary compensation will at least provide some solace. (Para 22)

Prabir Purkayastha vs State (NCT Of Delhi) 2024 INSC 414 – Article 22(1) Constitution – Written Grounds Of Arrest – UAPA

Constitution of India, 1950; Article 22(1) - Any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as, this information would be the only effective means for the arrested person to consult his Advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India. (Para 20)- The requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be (Para 30)- Mere fact that a charge sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused. (Para 22)- - Difference in the phrase ‘reasons for arrest’ and ‘grounds of arrest' - The ‘reasons for arrest’ as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the ‘grounds of arrest’ would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he

was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the 'grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature. (Para 49)

Unlawful Activities(Prevention) Act, 1967; Section 43B(1) -The interpretation of statutory mandate laid down in the case of Pankaj Bansal vs Union of India on the aspect of informing the arrested person the grounds of arrest in writing has to be applied pari passu to a person arrested in a case registered under the provisions of the UAPA. (Para 19)
Code Of Criminal Procedure, 1973; Section 154- FIR is not an encyclopaedia and is registered just to set the process of criminal justice in motion. The Investigating Officer has the power to investigate the matter and collect all relevant material which would form the basis of filing of charge sheet in the Court concerned. (Para 41)
Constitution of India, 1950; Article 141 - once this Court has interpreted the provisions of the statute in context to the constitutional scheme and has laid down that the grounds of arrest have to be conveyed to the accused in writing expeditiously, the said ratio becomes the law of the land binding on all the Courts in the country by virtue of Article 141 of the Constitution of India. (Para 46)

Dharnidhar Mishra (D) vs State of Bihar 2024 INSC 415- Ss 300A Constitution – Right To Property – Land Acquisition – Writ Petition – Delay & Latches

Constitution of India, 1950; Article 300A - The right to property ceased to be a fundamental right by the Constitution (Forty-Fourth Amendment) Act, 1978, however, it continued to be a human right in a welfare State, and a constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not

expressly included in Article 300- A, can be inferred in that Article- Referred to K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1. (Para 18)

Constitution of India, 1950; Article 226 - Delay and Latches delay and laches cannot be raised in a case of a continuing cause of action or if the circumstances shock the judicial conscience of the court. The condition of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of the case - It would depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice- Referred to Vidya Devi v. The State of Himachal Pradesh (2020) 2 SCC 569. (Para 25)

C Subbiah @ Kadambur Jayaraj vs Superintendent Of Police 2024 INSC 416 – Benami – IPC

Benami Transactions (Prohibition), Act 1988; Section 4(1)- Since by virtue of the provisions contained in Sections 4(1) and 4(2) of the Benami Act, the complainant is prohibited from suing the accused for a civil wrong, in relation to these benami transactions, as a corollary, allowing criminal prosecution of the accused in relation to the self-same cause of action would be impermissible in law. (Para 36)

Indian Penal Code, 1860; Section 294(b)- The complainant alleged that the accused abused him by using profane language. Section 294(b) IPC would clearly not apply to such an act. (Para 44)

Summary: Madras- HC dismissed plea seeking quashing of proceedings for offences punishable under Sections 420 read with Section 120B, Section 294(b), Section 506(ii) read with Section 114 IPC - Allowing appeal, SC observed: The necessary ingredients of the offences punishable under Section 406 and Section 420 IPC are not made out against the accused - In view of the clear bar contained in Section 4 of the Benami Act, the complainant could not have sued the accused

appellants for the same set of facts and allegations which are made the foundation of the criminal proceedings. Since, if such allegations do not constitute an actionable civil wrong, in such circumstances, allowing the prosecution of the accused appellants for the very same set of facts, would tantamount to abuse of the process of law.

Dasari Srikanth vs State Of Telangana 2024 INSC 417 – Ss 354D, 506 IPC – Conviction Quashed As Accused-Complainant Married

Indian Penal Code, 1860; Section 354D and 506- Appeal by accused against High Court judgment upholding his conviction for offences under Sections 354D and 506-Part I of the Indian Penal Code, 1860 - Allowing appeal, SC observed: The offences under Section 354D IPC and Section 506 IPC are personal to the complainant and the accused appellant. The fact that the appellant and the complainant have married each other during the pendency of this appeal gives rise to a reasonable belief that both were involved in some kind of relationship even when the offences alleged were said to have been committed - Since, the appellant and the complainant have married each other, the affirmation of the judgment rendered by the High Court would have the disastrous consequence on the accused appellant being sent to jail which in turn could put his matrimonial relationship with the complainant in danger - Invoked Article 142 to quash the conviction.

Dinesh vs State Of Madhya Pradesh 2024 INSC 418 – Land Acquisition – RFCTLARR

RFCTLARR Act, 2013 ; Section 3(e)-The Collector would be deemed to be the "appropriate Government" under the proviso to Section 3(e) of the Act of 2013 only when a land acquisition notification is issued by the appropriate Government that is the State Government indicating the limits of the area to be acquired for a public purpose and appointing the Collector as the authority empowered to acquire that particular area of

land ‘in the district’ over which the officer holds jurisdiction. Hence, this proviso requires notification by the State Government of a particular area within the district to be acquired for public purpose and only for such limited area, the Collector would be authorised by deeming fiction to act as the appropriate Government - [In this case, neither was the land acquisition notification issued by the District Collector nor was the acquisition limited to a particular district. Hence, the District Collector could not have exercised the powers of the appropriate Government by virtue of the proviso to Section 3(e) of the Act of 2013 which authority continued to vest in the State Government.] (Para 20-21)

Shivendra Pratap Singh Thakur @ Banti vs State Of Chhattisgarh 2024 INSC 419 -Criminal Proceedings Quashed

Summary: Appeal against HC judgment that dismissed plea for quashing criminal proceedings in relation to offences punishable under Sections 447, 427, 294, 506 read with Section 34 IPC - Allowing appeal, SC observed: The FIR which was lodged after 39 days of the incident, does not indicate the date or time, when the accused trespassed into the house of the complainant and caused damage to his property and committed the other offences for which the FIR came to be registered. The impugned FIR seems to be nothing but a tool to wreak vengeance against the appellant herein- Criminal proceedings quashed.

S Nitheen vs State Of Kerala 2024 INSC 420 – S 494 IPC – Bigamy

Indian Penal Code, 1860; Section 494- The essential ingredients of this offence are: (1) that the accused spouse must have contracted the first marriage (2) that while the first marriage was subsisting the spouse concerned must have contracted a second marriage, and (3) that both the marriages must be valid in the sense that the necessary ceremonies required by the personal law governing the parties had been duly performed - Referred to Gopal Lal v. State of Rajasthan (1979) 2 SCC 170-

no person other than the spouse to the second marriage could have been charged for the offence punishable under Section 494 IPC simplicitor (Para 15-16)

State of Himachal Pradesh vs Raghubir Singh 2024 INSC 421 – S 313 CrPC

Indian Penal Code, 1860; Section 375,376 -Absence of injuries on the person of the prosecutrix is by itself no ground to infer consent on the part of the prosecutrix. (Para 6)
Code Of Criminal Procedure, 1973; Section 313- The conviction cannot be based solely on the statements made by an accused under sub-section (1) of Section 313 of the Cr. PC. The statements of the accused cannot be considered in isolation but in conjunction with the evidence adduced by the prosecution. The statements may have more relevance when under a statute, an accused has burden of discharge. When the law requires an accused to discharge the burden, the accused can always do so by a preponderance of probability. But, while considering whether the accused has discharged the burden, the court can certainly consider his statement recorded under Section 313. (Para 6)
Summary: Appeal against HC judgment that convicted accused for the offence punishable under clause (g) of sub-section (2) of Section 376 of the Indian Penal Code, 1860 - Dismissed appeal.

Rajendra vs State Of Maharashtra 2024 INSC 422 – S 32 Evidence Act – Dying Declaration

Indian Evidence Act, 1872; Section 32- Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration. However, before accepting such a dying declaration, court must be satisfied that it was rendered voluntarily, it is consistent and credible and that it is devoid of any tutoring. Once such a conclusion is

reached, a great deal of sanctity is attached to a dying declaration and as said earlier, it can form the sole basis for conviction. (Para 25) - when there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated independently on their own merit as to the evidentiary value of each. One cannot be rejected merely because of certain variations in the other. (Para 34)

Solapur Municipal Corporation vs Shankarrao Govindrao Patil 2024 INSC 423

Summary: Employment status of the respondents herein in the service of Majarewadi Gram Panchayat - Matter remanded to High Court for reconsideration

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Karnail Singh vs State Of Haryana 2024 INSC 424 – Review Powers – Precedent

Precedent- Ignoring the law laid down by the Constitution Bench of this Court in Bhagat Ram and taking a view totally contrary to the same itself would amount to a material error, manifest on the face of the order. Ignoring the judgment of the Constitution Bench, in our view, would undermine its soundness. (Para 58)

Constitution of India, 1950; Article 137 - Review Jurisdiction- Review would be permissible only if there is a mistake or error apparent on the face of the record or any other sufficient reason is made out. We are also equally aware of the fact that the review proceedings cannot be equated with the original hearing of the case. The review of the judgment would be permissible only if a material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. We are also aware that such an error should be an error apparent on the face of the record and should not be an error which has to be fished out and searched - Referred to Kamlesh Verma vs. Mayawati (2013) 8 SCC 320

RS Madireddy vs Union Of India 2024 INSC 425 – Writ Petition Not Maintainable Against Air India

Constitution of India, 1950; Article 12,226- Whether Air India Limited after having been taken over by a private corporate entity could have been subjected to writ jurisdiction of the High Court? AIL, the erstwhile Government run airline having been taken over by the private company Talace India Pvt. Ltd., unquestionably, is not performing any public duty inasmuch as it has taken over the Government company Air India Limited for the purpose of commercial operations, plain and simple, and thus no writ petition is maintainable against AIL. - The question of issuing a writ would only arise when the writ petition is being decided. Thus, the issue about exercise of extra ordinary writ jurisdiction under Article 226 of the Constitution of India would arise only on the date when the writ petitions were taken up for consideration and decision (Para 37-38)-The subsequent event i.e. the disinvestment of the Government company and its devolution into a private company would make the company immune from being subjected to writ jurisdiction under Article 226 of the Constitution of India, even if the litigant had entered the portals of the Court while the employer was the Government. (Para 29)

TN Godavarman Thirumulpad vs Union of India (In Re: Shewalkar Developers Ltd) 2024 INSC 426

Summary: Applicant preferred an application to the CEC seeking permission to construct the health/eco-resort (nearby Pachmarhi Wildlife Sanctuary)- Allowing application, SC observed: The applicant is justified in claiming that its proprietary rights guaranteed under Article 300A of the Constitution of India cannot be infringed merely on account of the pending writ appeal before the Madhya Pradesh High Court- application filed by the applicant for raising construction on plot Nos.

14/3 and 14/4 shall be decided objectively by the CEC/Competent Authority of the local body keeping in view the location of the land with reference to the notified boundaries of the ESZ.

S Shivraj Reddy (D) vs S Raghuraj Reddy 2024 INSC 427 – Limitation – Partnership

Limitation Act, 1963; Section 3-Even if the plea of limitation is not set up as a defence, the Court has to dismiss the suit if it is barred by limitation- V.M. Salgaocar and Bros. v. Board of Trustees of Port of Mormugao (2005) 4 SCC 613 and Narne Rama Murthy v. Ravula Somasundaram (2005) 6 SCC 614 (Para 15-16, 18)

Partnership Act, 1932; Section 42 - In terms of Section 42(c) of the Act, the partnership stands dissolved upon the death of the partner - Referred to Davesh Nagalya(Dead) and Ors. v. Pradeep Kumar(Dead) (2021) 9 SCC 796- Unless and until there was a contract between the remaining partners of the firm to the contrary, the business activities even if carried on by the remaining partners of the firm after the death of the partner, would be deemed to be carried in their individual capacity. (Para 19)

Mukatlal vs Kailash Chand (D) 2024 INSC 428 -S 14(1) Hindu Succession Act

Hindu Succession Act, 1956; Section 14(1)- For establishing full ownership on the undivided joint family estate under Section 14(1) of the Succession Act the Hindu female must not only be possessed of the property but she must have acquired the property and such acquisition must be either by way of inheritance or devise, or at a partition or "in lieu of maintenance or arrears of maintenance" or by gift or be her own skill or exertion, or by purchase or by prescription. (Para 24)

Lehna Singh (D) vs Gurnam Singh (D) 2024 INSC 429 – Punjab Courts Act – Second Appeal

Punjab Courts Act, 1918; Section 41- Code of Civil Procedure, 1908; Section 100- The provision contained in Section 41 of the Punjab Act, as reproduced above, does not mandate framing of a substantial question of law for entertaining the second appeal. Therefore, a second appeal under Section 41 of Punjab Act can be entertained by the Punjab and Haryana High Court even without framing a substantial question of law - Referred to Pankajakshi (Dead) v. Chandrika (2016) 6 SCC 157. (Para 10)
Code of Civil Procedure, 1908; Section 96- The requirement of exercise of jurisdiction by the First Appellate Court under Section 96 of CPC - Referred to Chintamani Ammal vs. Nandagopal Gounder (2007) 4 SCC 163, Jagannath v. Arulappa (2005) 12 SCC 303, H.K.N. Swami v. Irshad Basith (D) (2005) 10 SCC 243- It would be wholly improper to allow first appeal without adverting to the specific findings of the trial court and that the First Appellate Court is required to address all the issues and determine the appeal upon assignment of cogent reasons. (Para 24-25)

Shyamo Devi vs State Of UP 2024 INSC 430 – UPZALR Act

Uttar Pradesh Zamindari Abolition and Land Reforms Act; Section 122-C- The power of the Collector is available to initiate suo moto action for cancellation of allotment under sub-section (6) of Section 122-C in case of fraud and such foundational facts would disclose the same, it would suffice to initiate the proceedings as fraud vitiates. (Para 17)

United India Insurance Co. Ltd. vs Hyundai Engineering & Construction Co. Ltd 2024 INSC 431 – Insurance – Exclusion

Insurance Law- Insurance is a contract of indemnification, being a contract for a specific purpose, which is to cover defined losses. The courts have to read the insurance contract strictly. Essentially, the insurer cannot be asked to cover a loss that is not mentioned. Exclusion clauses in insurance contracts are interpreted strictly and against the insurer as they have the effect of completely exempting the insurer of its liabilities-the burden of proving the applicability of an exclusionary clause lies on the insurrer- But such a clause cannot be interpreted so

that it conflicts with the main intention of the insurance. It is, therefore, the duty of the insurer to plead and lead cogent evidence to establish the application of such a clause. The evidence must unequivocally establish that the event sought to be excluded is specifically covered by the exclusionary clause. (Para 16-17)

Mahendra Kaur Arora vs HDFC Bank Ltd 2024 INSC 432 – Article 227 Constitution – Intra Court Appeal Maintainability

Constitution of India, 1950; Article 227 - No intra-court appeal could have been preferred against an order passed by the Single Judge on a petition filed under Article 227 of the Constitution of India. (Para 11)

Dani Wooltex Corporation vs Sheil Properties Pvt. Ltd. 2024 INSC 433 – S 32 Arbitration Act – Termination Of Proceedings

Arbitration and Conciliation Act, 1996; Section 32-The power to terminate proceedings under Section 32(2)(c) of the Arbitration Act can be exercised only if, for some reason, the continuation of proceedings has become unnecessary or impossible. Unless the Arbitral Tribunal records its satisfaction based on the material on record that proceedings have become unnecessary or impossible, the power under clause (c) of subsection (2) of Section 32 cannot be exercised. If the said power is exercised casually, it will defeat the very object of enacting the Arbitration Act;-It is the Arbitral Tribunal's duty to fix a meeting for hearing even if parties to the proceedings do not make such a request. It is the duty of the Arbitral Tribunal to adjudicate upon the dispute referred to it. If, on a date fixed for a meeting/hearing, the parties remain absent without any reasonable cause, the Arbitral Tribunal can always take recourse to the relevant provisions of the Arbitration Act, such as Section 25;- The failure of the claimant to request the Arbitral Tribunal to fix a date for hearing, per se, is no ground to conclude that the proceedings have become unnecessary; - The abandonment of the claim by a claimant can be a ground to invoke clause (c) of subsection (2) of Section 32. The abandonment of the claim can be either express or implied. The abandonment cannot be readily inferred. There is an

implied abandonment when admitted or proved facts are so clinching that the only inference which can be drawn is of the abandonment. Only if the established conduct of a claimant is such that it leads only to one conclusion that the claimant has given up his/her claim can an inference of abandonment be drawn. Even if it is to be implied, there must be convincing circumstances on record which lead to an inevitable inference about the abandonment. Only because a claimant, after filing his statement of claim, does not move the Arbitral Tribunal to fix a date for the hearing, the failure of the claimant, per se, will not amount to the abandonment of the claim.

Tarsem Lal vs Directorate Of Enforcement 2024 INSC 434 – PMLA – Arrests – S 200-204, 88 CrPC

Prevention of Money Laundering Act, 2002; Section 19- After cognizance is taken of the offence punishable under Section 4 of the PMLA based on a complaint under Section 44 (1)(b), the ED and its officers are powerless to exercise power under Section 19 to arrest a person shown as an accused in the complaint; and j) If the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, the ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the Court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when the ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled.

Prevention of Money Laundering Act, 2002; Section 44(1)(b) -Code of Criminal Procedure, 1973; Sections 70,88, 200-205- a) Once a complaint under Section 44 (1)(b) of the PMLA is filed, it will be governed by Sections 200 to 205 of the CrPC as none of the said provisions are inconsistent with any of the provisions of the PMLA; b) If

the accused was not arrested by the ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(b), as a normal rule, the Court should issue a summons to the accused and not a warrant. Even in a case where the accused is on bail, a summons must be issued; c) After a summons is issued under Section 204 of the CrPC on taking cognizance of the offence punishable under Section 4 of the PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88 of the CrPC; d) In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205 of the CrPC; e) If the accused does not appear after a summons is served or does not appear on a subsequent date, the Special Court will be well within its powers to issue a warrant in terms of Section 70 of the CrPC. Initially, the Special Court should issue a bailable warrant. If it is not possible to effect service of the bailable warrant, then the recourse can be taken to issue a nonbailable warrant (f) A bond furnished according to Section 88 is only an undertaking by an accused who is not in custody to appear before the Court on the date fixed. Thus, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail; g) In a case where the accused has furnished bonds under Section 88 of the CrPC, if he fails to appear on subsequent dates, the Special Court has the powers under Section 89 read with Sections 70 of the CrPC to issue a warrant directing that the accused shall be arrested and produced before the Special Court; If such a warrant is issued, it will always be open for the accused to apply for cancellation of the warrant by giving an undertaking to the Special Court to appear before the said Court on all the dates fixed by it. While cancelling the warrant, the Court can always take an undertaking from the accused to appear before the Court on every date unless appearance is specifically exempted. When the ED has not taken the custody of the accused during the investigation, usually, the Special Court will exercise the power of cancellation of the warrant without insisting on taking the accused in custody provided an undertaking is furnished by the accused to appear regularly before the Court. When the Special Court deals with an

application for cancellation of a warrant, the Special Court is not dealing with an application for bail. Hence, Section 45(1) will have no application to such an application; h) When an accused appears pursuant to a summons, the Special Court is empowered to take bonds under Section 88 of the CrPC in a given case. However, it is not mandatory in every case to direct furnishing of bonds. However, if a warrant of arrest has been issued on account of nonappearance or proceedings under Section 82 and/or Section 83 of the CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88 of the CrPC, and the accused will have to apply for cancellation of the warrant.

Kolkata Municipal Corporation vs Bimal Kumar Shah 2024 INSC 435 – Constitutional Right To Property – Sub-Rights

Constitution of India, 1950; Article 300A - Right To Property -The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands. Seven such sub-rights can be identified, albeit non-exhaustive. These are: i) duty of the State to inform the person that it intends to acquire his property – the right to notice, ii) the duty of the State to hear objections to the acquisition – the right to be heard, iii) the duty of the State to inform the person of its decision to acquire – the right to a reasoned decision, iv) the duty of the State to demonstrate that the acquisition is for public purpose – the duty to acquire only for public purpose, v) the duty of the State to restitute and rehabilitate – the right of restitution or fair compensation, vi) the duty of the State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings – the right to an efficient and expeditious process, and vii) final conclusion of the proceedings leading to vesting – the right of

conclusion-These seven sub-rights may be procedures, but they do constitute the real content of the right to property under Article 300A, noncompliance of these will amount to violation of the right, being without the authority of law- The Right to notice: (i) A prior notice informing the bearer of the right that the State intends to deprive them of the right to property is a right in itself; a linear extension of the right to know embedded in Article 19(1)(a). The Constitution does not contemplate acquisition by ambush. The notice to acquire must be clear, cogent and meaningful - The Right to be heard: (i) Following the right to a meaningful and effective prior notice of acquisition, is the right of the property-bearer to communicate his objections and concerns to the authority acquiring the property. This right to be heard against the proposed acquisition must be meaningful and not a sham- The Right to a reasoned decision: i) That the authorities have heard and considered the objections is evidenced only through a reasoned order. It is incumbent upon the authority to take an informed decision and communicate the same to the objector- The Duty to acquire only for public purpose: (i) That the acquisition must be for a public purpose is inherent and an important fetter on the discretion of the authorities to acquire. This requirement, which conditions the purpose of acquisition must stand to reason with the larger constitutional goals of a welfare state and distributive justice- The Right of restitution or fair compensation: (i) A person's right to hold and enjoy property is an integral part to the constitutional right under Article 300A. Deprivation or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. Compensation has always been considered to be an integral part of the process of acquisition - The Right to an efficient and expeditious process: (i) The acquisition process is traumatic for more than one reason. The administrative delays in identifying the land, conducting the enquiry and evaluating the objections, leading to a final declaration, consume time and energy. Further, passing of the award, payment of compensation and taking over the possession are equally time consuming. It is necessary for the administration to be efficient in concluding the process and within a reasonable time. This obligation must necessarily form part of Article 300A- The Right of conclusion: (i) Upon conclusion of process of acquisition and payment of

compensation, the State takes possession of the property in normal circumstances. The culmination of an acquisition process is not in the payment of compensation, but also in taking over the actual physical possession of the land. If possession is not taken, acquisition is not complete. With the taking over of actual possession after the normal procedures of acquisition, the private holding is divested and the right, title and interest in the property, along-with possession is vested in the State. Without final vesting, the State's, or its beneficiary's right, title and interest in the property is inconclusive and causes lot of difficulties. The obligation to conclude and complete the process of acquisition is also part of Article 300A. (Para 26-31)

Ravikumar Dhansukhlal Maheta vs High Court Of Gujarat 2024 INSC 436 – Gujarat Judicial Service Rules – Merit cum Seniority & Seniority cum Merit

Service Law - Principles of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' summarized- The principle of 'Seniority-cum-Merit' postulates that: - i. Minimum requirement of merit and suitability which is necessary for the higher post can be prescribed for the purpose of promotion. ii. Comparative Assessment amongst the candidates is not required. iii. Seniority of a candidate is not a determinative factor for promotion but has a predominant role. iv. Upon fulfilling the minimum qualifications, promotions must be based on inter-se seniority - The principle of 'Merit-cum-Seniority' postulates that: - i. Merit plays a predominant role in and seniority alone cannot be given primacy. ii. Comparative Assessment of Merit is a crucial, though not a mandatory, factor. iii. Only where merit is equal in all respects can inter-se seniority be considered. Meaning that a junior candidate can be promoted over the senior if the junior is more meritorious- Merit-cum-Seniority' or 'Seniority-cum-Merit' are flexible in nature and do not prescribe any fixed or strait-jacket definitions. These definitions take character and substance from the context in which they are employed. Their full import and nuances only become visible when they are exposed to the guiding light of the overall promotional policy of the organisation.(Para 130)

Constitution of India, 1950; Article 235- When it comes to promotion of judicial officers of the District Judiciary, the control vests with the High Court under Article 235 of the Constitution. The High Court being the sole authority in this regard can clearly lay down rules and policies pertaining to promotions which includes the power to specify the criteria and parameters it deems most suitable and appropriate for the purpose of promotion and the manner in which promotion is to be made as long as it is within the contours of what has been laid down in All India Judges' Association (3) - (Para 119)

Constitution of India, 1950; Article 32- The availability of an alternative remedy does not in any manner affect the maintainability of the writ petition under Article 32 of the Constitution. The rule behind relegating a party to first avail the alternative remedy before knocking the doors of this Court is a rule of selfrestraint that is exercised by this Court as a matter of convenience. Further, wherever the facts of the case are not in dispute, and the issue involves the interpretation of rules which are of significant importance having a far-reaching effect, it would be a fit case for this Court to exercise its discretion and entertain the writ petition under Article 32 even if there is an alternative remedy available. (Para 40-41)

Constitution of India, 1950; Article 226 -High Court on its judicial side can always review any decision or action taken by it on its administrative side. It would be erroneous to say that if any decision taken by the High Court on its administrative side is ultimately challenged on any legal ground on its judicial side, then the High Court may not undertake judicial review of such administrative decision dispassionately. (Para 42)

Gujarat State Judicial Service Rules, 2005 -Suggestions By SC: (i) Apart from the four components included in the Suitability Test, an additional fifth component in the form of an Interview or Viva Voce should also be included in order to assess the ability and knowledge of the candidates. (ii) The High Court may consider enhancing the minimum specified threshold of marks as prescribed in the suitability test and each of its component. (iii) The evaluation of judgments delivered by the judicial

officer being considered for promotion should be of the last two years instead of one year. (iv) Instead of seniority being considered at the very last stage of the process, some marks may be allocated for seniority at the stage of suitability test and thereafter, the final select list may be prepared on the basis of total marks. (Para 140)

Summary: Writ petition contended that the High Court of Gujarat erroneously applied the principle of 'Seniority-cum-Merit' in the recruitment undertaken by it in the year 2022 for promotion of Civil Judges (Senior Division) to the post of Additional District Judge against 65% quota, though Rule 5(1) of the 2005 Rules stipulates that the promotion shall be based on the principle of 'Merit-cumSeniority' - It was contended that the High Court wrongly subjected all eligible candidates in the feeder cadre i.e., Civil Judge (Senior Division) to a process of assessment of a specified level of minimum merit and then proceeded to prepare the final Select List strictly in accordance with the seniority of the candidates. This according to the petitioners is nothing but 'Seniority-cum Merit' - Dismissing WP, SC held: Select List dated 10.03.2023 is not contrary to the principle of 'Merit-cum-Seniority' as stipulated in Rule 5(1)(I) of the 2005 Rules- What has been conveyed, in so many words, by this Court in All India Judges' Association (3) v. Union of India & Ors. reported in (2002) 4 SCC 247 is that the suitability of each candidate should be tested on their own merit. The aforesaid decision does not speak about comparative merit for the 65% promotional quota. In other words, what is stipulated is the determination of suitability of the candidates and assessment of their continued efficiency with adequate knowledge of case law. (B) For the 65% promotional quota this Court in All India Judges' Association (3) (supra) did not state that after taking the suitability test, a merit list should be prepared and the judicial officers should be promoted only if they fall in the said merit list. It cannot be said to be a competitive exam. Only the suitability of the judicial officer is determined and once it is found that candidates have secured the requisite marks in the suitability test, they cannot be thereafter ignored for promotion. (C) However, we clarify that for the 65% promotional quota, it is for a particular High Court to prescribe or lay down its own minimum standard to judge the suitability of a judicial officer, including the requirement of comparative assessment, if

necessary, for the purpose of determining merit to be objectively adjudged keeping in mind the statutory rules governing the promotion or any promotion policy in that regard -Promotion process adopted by the High Court of Gujarat as the same fulfills the twin requirements stipulated in paragraph 27 of All India Judges' Association (3) (supra) being: - (I) The objective assessment of legal knowledge of the judicial officer including adequate knowledge of case law and; (II) Evaluation of the continued efficiency of the individual candidates. (Para 141)

Priti Agarwalla vs State Of GNCT Of Delhi 2024 INSC 437 -Ss 3,4 SC-ST Act- S 156(3) CrPC

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989; Section 3(1)(r) and 3(1)(s)- Intentional insult or abuse coupled with the humiliation is made in any place within public view. The expression "in any place within public view" has an important role to play in deciding whether the allegation attracts the ingredients of an offence or not- An important test for "in any place within public view" is within the view of persons other than the complainant. (Para 19-22)
Code Of Criminal Procedure, 1973; Section 156(3)- The Magistrate, under section 156(3) of the CrPC, asks himself a question: whether the complaint, as presented, makes out a case for directing the registration of an FIR or calls for inquiry or report from the jurisdictional police station. The inner and outer limit of the exercise of this jurisdiction is on a case-to-case basis dependent on the complaint, nature of allegations and offence set out by such a complaint- The Magistrate does not act mechanically and exercises his discretion judiciously by applying mind to the circumstances complained of and the offence alleged against the accused for taking one or the other step- To cause or register an FIR and consequential investigation based on the same petition filed under section 156(3) of the CrPC, the complaint satisfies the essential ingredients of the offences alleged. In other words, if such allegations in the petition are vague and do not specify the alleged offences, it cannot lead to an order for registration of an FIR and investigation. (Para 14-18)

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989; Section 4- The commission or omission of any of the duties by the

public servant becomes a cognizable offence against the public servant only on the recommendation of the administrative enquiry, for in law, an offence means any act or omission made punishable by any law for the time being in force. A combined reading of sub-sections (1), (2) and (3) of section 4, would demonstrate that the commission or omission by a public servant has penal consequences and the willful neglect is recommended by an administrative enquiry and the cognizance can be taken thereafter. The recommendation of administrative enquiry on alleged failure of duty or function by a public servant would make the neglect of an offence clear and the cognizance of such an offence is legal. The competent court can take cognizance of the commission or omission of any duty specified under sub-section (2) of section 4 when made along with the recommendation and direct legal proceedings. Therefore, to constitute a prima facie case of negligence of duty, the proviso to subsection (2) of section 4 contemplates an administrative enquiry and recommendations- the purpose of an administrative enquiry is to find out the conduct of a public servant against whom allegations of failure of duty or function are made and the omission or commission is bonafide or willful. (Para 13.4)

Interpretation of Statutes- A proviso is a clause that introduces a condition by the word 'provided'. The main function of a proviso is to put a qualification and to attach a condition to the main provision. It indicates the exceptions to the provision but may aid in explaining what is meant to be conveyed by its part. A proviso is "introduced to indicate the effect of certain things which are within the statute but accompanied by the peculiar conditions embraced within the proviso". A proviso is enacted to modify the immediately preceding language. (Para 13.4)

Ajwar vs Waseem 2024 INSC 438 – Bail

Bail- While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of

the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail- bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order (Para 26-27) -The considerations that weigh with the appellate Court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused. (Para 28- 29)

Sundew Properties Limited vs Telangana State Electricity Regulatory Commission 2024 INSC 439 – Electricity Act

Electricity Act, 2003; Section 14- Andhra Pradesh Electricity Regulatory Commission (Distribution Licence) Regulations, 2013- Whether the designation of an entity as a SEZ developer by the MoCI ipso facto qualifies the entity to be a deemed distribution licensee, obviating the

need for an application under section 14 of the Electricity Act?- Being a SEZ developer in terms of the 2010 Notification does not ipso facto confer upon the appellant the status of a deemed licensee without any scrutiny and without being under any requirement to apply; it is required to make an application in accordance with the 2013 Regulations Whether regulation 12 of the 2013 Regulations, and by implication rule 3(2) of the 2005 Rules, are applicable to a SEZ developer recognised as a deemed distribution licensee under the proviso to section 14(b) of the Electricity Act read with regulation 13 of the 2013 Regulations?- he condition stipulated in rule 3(2) of the 2005 Rules, as imposed by the TSERC with a direction to infuse an additional capital of Rs. 26.90 crore is not justified and contrary to the statutory scheme. (Para 37)

Interpretation of Statutes- Reading down and reading up - Reading down refers to the practice of interpreting a statute narrowly, limiting its scope or application to specific situations or individuals. This approach is commonly employed when the language of a statute is ambiguous or when there is a need to avoid potential conflicts with other laws or constitutional provisions. For example, if a law is unclear about whether it applies to certain types of businesses, a court may choose to read down the statute to only include those businesses explicitly mentioned in the text -Reading up involves interpreting a statute broadly, extending its scope or application beyond what is expressly stated in the text. Reading up is a concept that is invoked with great caution within our legal framework because it can lead to judicial activism or judicial overreach, where courts expand the reach of laws beyond what the legislature intended. (Para 30) - The practice of reading up a provision can only be justified when it aligns with legislative intent, maintains the fundamental character of the law, and ensures that the resulting interpretation remains consistent with the original context to which the law applies. This holds especially true for subordinate legislation, which require greater scrutiny in this regard. Reading up a provision of subordinate legislation in a manner that it militates against the primary legislation is not permissible. (Para 32)

Chief Secretary Government Of Odisha vs Bharat Process & Mechanical Engineers Limited 2024 INSC 440 – Mining Lease

Summary: Appeal against HC judgment which upholds the directions given by the Company Judge, that the Central Government in consultation with the Government of Odisha and the Odisha Mineral Development Company Ltd shall form a High Powered committee of not more than three members representing the interests of the three stakeholders to take a decision by a reasoned order with regard to the renewal of mining leases-Allowing appeal, SC set aside the HC judgment.

Employees State Insurance Corporation Ltd. vs Nagar Nigam Allahabad 2024 INSC 441 – ESI Act

Employees' State Insurance Act, 1948- Appeal against HC judgment raised these issues (i) Whether the workshop of respondent-Nagar Nigam was indulged in manufacturing process while carrying out repairs and maintenance of the tractors, trailers, loaders belonging to the respondent-Nagar Nigam by employing more than 20 workmen? (ii) Whether the workshop of respondent-Nagar Nigam was covered under the definition of 'factory' within the meaning of Act of 1948? Allowing appeal, SC observed: High Court clearly erred in entertaining the writ petition and interfering with the recovery notice - it was a fit case wherein, rather than interfering in the matter in exercise of the writ jurisdiction, the respondent-Nagar Nigam should have been relegated by the learned Single Judge to approach the Insurance Court by filing an application under Section 75(1)(g) of the Act of 1948.

Maharashtra State Electricity Distribution Co. Ltd. vs JSW Steel Ltd. 2024 INSC 442- Electricity

Summary: Appellate Tribunal for Electricity set aside the Maharashtra Electricity Regulatory Commission order imposing a reliability charge payable by all the consumers in the Pen Circle area - Appeal dismissed by SC.

Bano Saiyed Parwaz vs Chief Controlling Revenue Authority 2024 INSC 443 – Maharashtra Stamp Act

Summary: Writ Petition for refund of Stamp Duty paid towards an un-executed conveyance deed dismissed by HC - Allowing appeal SC observed: When the State deals with a citizen it should not ordinarily rely on technicalities, even though such defences may be open to it-The case of the appellant is fit for refund of stamp duty in so far as it is settled law that the period of expiry of limitation prescribed under any law may bar the remedy but not the right and the appellant is held entitled to claim the refund of 10 stamp duty amount on the basis of the fact that the appellant has been pursuing her case as per remedies available to her in law and she should not be denied the said refund merely on technicalities as the case of the appellant is a just one wherein she had in bonafide paid the stamp duty for registration but fraud was played on her by the Vendor which led to the cancellation of the conveyance deed.

Maharashtra Stamp Act, 1958; Section 47- The evidence required and enquiry to be made in terms of Section 47 of the Act is a separate process altogether and apropos circumstances for refund under Section 47 (c) [1] & [5] of the Act, evidence is not required to be filed along with the application- either the online application or separately on the same day by way of hard copy. (Para 38)

Rajesh Kumar vs Anand Kumar 2024 INSC 444 – Specific Relief Act -Power Of Attorney Holder – Readiness & Willingness

Specific Relief Act, 1963,Section 12- In a suit for specific performance wherein the plaintiff is required to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract, a Power of Attorney Holder is not entitled to depose in place and instead of the plaintiff (principal). In other words, if the Power of Attorney Holder has rendered some 'acts' in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the act done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have personal knowledge and in respect of which the principal is entitled to be cross-examined. If a

plaintiff, in a suit for specific performance is required to prove that he was always ready and willing to perform his part of the contract, it is necessary for him to step into the witness box and depose the said fact and subject himself to cross-examination on that issue. A plaintiff cannot examine in his place, his attorney holder who did not have personal knowledge either of the transaction or of his readiness and willingness. The term 'readiness and willingness' refers to the state of mind and conduct of the purchaser, as also his capacity and preparedness, one without the other being not sufficient. Therefore, a third party having no personal knowledge about the transaction cannot give evidence about the readiness and willingness. (Para 12)
Specific Relief Act, 1963 - The effect of filing a suit for specific performance after long delay, may be at the fag end of period of limitation- The courts will also frown upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for one or two years to file a suit and obtain specific performance [In this case, the suit having been preferred after a long delay, the plaintiff was held not entitled for specific performance on this ground also.] (Para 14-18)

Bijay Kumar Manish Kumar HUF vs Ashwin Bhanulal Desai 2024 INSC 445 – Eviction Mesne Profit

Tenancy - Mesne Profit -The decree of eviction stands passed and the same having been stayed, gives rise to the question of payment of mesne profit- While the above-stated position is generally accepted, it is also within the bounds of law, that a tenant who once entered the property in question lawfully, continues in possession after his right to do so stands extinguished, is liable to compensate the landlord for such time period after the right of occupancy expires.

Tamil Nadu Medical Services Corporation Limited vs Tamil Nadu Medical Services Corporation Employees Welfare Union 2024 INSC 446 – Labour Law

Summary: Appeal from HC judgment raised inter alia this issue: Whether

the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 would apply to the parties? Dismissing appeal, SC observed: Both requirements, of the establishment being covered under the definition of industrial establishment as provided and that of the employee having uninterruptedly continued in service for 480 days or more for 24 months, having been met we have no hesitation in holding that the Act would apply to the parties to the present dispute

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National Investigation Agency vs Owais Amin @ Cherry 2024 INSC 447 – J & K Reorganisation Act

Jammu & Kashmir Reorganisation Act, 2019 - Jammu and Kashmir Reorganisation (Removal of Difficulties) Order, 2019- CrPC, 1973 would govern the field only from the appointed day and consequently the CrPC, 1989 stands repealed- It would come into effect only from the appointed day, and therefore has got no retrospective application. To make this position clear, the CrPC, 1973 shall be pressed into service from 31.10.2019 onwards, and thus certainly not before the appointed day. (Para 18-20) - There is nothing to infer either from the Act, 2019 or the Order, 2019 that CrPC, 1973 will have a retrospective application- While an investigation could continue after its initiation under the CrPC, 1989, by way of the application of the CrPC, 1973, it cannot be stated that even for a case where there was a clear non-compliance of the former, it can be ignored by the application of the latter.

Sunita Devi vs State Of Bihar 2024 INSC 448 – Speedy Trial – Sentencing – CrPC

Criminal Trial - Sentencing -There is a crying need for a clear sentencing policy, which should never be judge-centric as the society has to know the basis of a sentence- Sentencing shall not be a mere lottery. It shall also not be an outcome of a knee-jerk reaction.- The Government of India represented by the Secretary for the Ministry of Law and Justice shall file an affidavit on the feasibility of introducing a comprehensive sentencing policy and a report thereon, within a period of six months from today. (Para 32,33, 58)

Code of Criminal Procedure, 1973; Sections 207,238 - An accused shall be put to notice on the incriminating materials leading to the charges framed against him. As stated, the obligation so imposed is not only on the supply of the relevant documents, but such compliance should be at the appropriate stage so that it does not brook any delay. The idea is to enable an accused to face the trial by thoroughly understanding the case stated against him. However, a mere non-supply of a part of the documents would not lead to the trial being vitiated, unless an accused substantiates before the Court that it has caused prejudice to him. Obviously, it is ultimately for the Court to come to an appropriate conclusion by an adequate assessment of facts placed before it. (Para 16) -The right of an accused would arise, in getting the documents relied upon by the prosecution, after taking cognizance and before framing of the charges. Therefore, between taking cognizance and framing of charges, an accused should have sufficient window to go through the documents supplied to him as he is entitled to be heard at a later stage. (Para 17)

Code of Criminal Procedure, 1973; Section 227 - Before the stage of framing of charges, the Judge is expected to discharge an accused, if he is of the considered view that there is no sufficient ground to proceed against the accused. This being a judicial exercise, his discretion must be supported by adequate reasons. In discharge of his powers, he has to consider the records and documents submitted by the prosecution vis-àvis the arguments adduced by both sides. The words "after hearing the submissions of the accused" would imply an effective and meaningful hearing. It is not a mere procedural compliance. A Judge has to satisfy himself that the accused had reasonable time to ponder over and prepare his arguments before seeking a discharge. At this stage, an accused gets a substantive right as there is a window of opportunity for him to get discharged, instead of facing a prolonged trial. Such an opportunity can only be exercised by not only supplying the documents needed, but also giving adequate and sufficient time to the defence to place its case. Granting time for the aforesaid purpose is the sole discretion of the Court - The duty of the Court is to see as to whether the materials produced by the prosecution are reasonably related to the

offence attributed against the accused. What is to be seen is the existence of a prima facie case. The case is at a pre-framing stage and therefore, it cannot be a full-fledged pretrial. Adequacy and sufficiency are the relevant factors to be seen. The test is one of the degree of probability. .Section 227 of the CrPC, 1973, in fact, is a provision which gives effect to Article 22 of the Constitution of India, 1950. The right of an accused to be heard is inalienable. For exercising this right, there has to be due consultation. Such a right can never be termed as a procedural one. It would be a ground to challenge the proceeding at that stage, but the same would not vitiate the trial. Suffice it is to reiterate that it is the duty of the court to ensure that the accused is given sufficient opportunities to consult his lawyer. (Para 18-20)

Code of Criminal Procedure, 1973; Section 228 -The Judge, while framing any charge, is ordained to read and explain it to the accused. Thereafter, the accused shall be asked as to whether he pleads guilty of the offence charged or claims to be tried. As a matter of routine, video conferencing must be avoided, unless there are compelling reasons to do so. This is an occasion where the Judge avoids the lawyer and keeps in touch with the accused directly. He records the response of the accused. Under those circumstances, unless a situation so warrants otherwise, the presence of the accused shall be ensured. (Para 21)

Code of Criminal Procedure, 1973; Sections 230,231 - To ensure fair play, as a normal practice, the Court has to fix a date for the examination of the witnesses. The idea is to complete the examination-inchief and cross examination, both at the same time. While fixing the date, the Court is expected to take into consideration the relative convenience of the parties, though the discretion lies with it. Sub-section (1) of Section 231 of the CrPC, 1973 fixes a responsibility on the Court, the prosecution and the defence to go ahead with the examination of witnesses on the date so fixed. Therefore, even for this reason, the Court shall ascertain and then decide a convenient date for both sides, while being conscious about any attempt to drag the trial. Completion of such examination is a matter of rule as any deferment can at best be an exception, to the discretion of the Court. Obviously, the use of such a discretion, being judicial in nature, has to be on a case-to-case basis. Suffice it is to state

that a balance has to be struck between the competing interests. (Para 22)

Code of Criminal Procedure, 1973; Section 354- Section 354 of the CrPC, 1973 though merely deals with the language and contents of judgment, also sheds light on the fact that a judgment contains two distinct parts, wherein the first part deals with the conviction and the second deals with the sentence. Sub-section (1)(c) of the aforesaid provision has to be understood to mean that a Judge is expected to consider the aggravating and mitigating circumstances. In such view of the matter, sub-section (3) of the aforesaid provision is more clarificatory, keeping in mind the nature of the offence committed. As a convict is heard on sentence, it follows that any decision on sentence has to indicate the reasons for exercise of judicial discretion by the Judge. (Para 42)

Code of Criminal Procedure, 1973; Section 233- If the accused applies for the issue of process to compel the attendance of any witnesses or production of document, the Judge shall issue such process. It is only when he comes to the conclusion, that an application filed for the aforesaid purpose on behalf of the defence is vexatious or filed to delay the proceedings or for defeating the ends of justice, it has to be refused. We have no hesitation in holding that when an application is moved invoking Section 233 of the CrPC, 1973 the Judge is duty bound to issue process, unless he is satisfied on the existence of the three elements as aforesaid. Any denial would be an affront to the concept of a fair trial.
Code of Criminal Procedure, 1973; Section 309 -This section places emphasis on the continuation of the trial as any obstruction and delay would hamper the process of justice. In a criminal trial, continuity is of utmost importance, as it not only helps the court to concentrate, but ensures quality justice. However, the courts are not powerless in granting adjournments if the circumstances so warrant. Therefore, despite a bar under the second and fourth proviso to Section 309, an adjournment can be granted, provided the party who seeks so, satisfies the court. After all, a speedy trial enures to the benefit of the accused- (Para 24)
Code of Criminal Procedure, 1973; Section 465 - This provision is meant to uphold the decision of the trial court, even in a case where there is an

apparent irregularity in procedure. If the evidence available has been duly taken note of by the Court, then such a decision cannot be reversed on account of a mere technical error. This is based on the principle that a procedural law is the handmaid of justice. However, the ultimate issue is as to whether such an error or omission has constituted a failure of justice, which is one of fact, to be decided on the touchstone of prejudice- If the Appellate Court is of the view that there is a continued noncompliance of the substantial provisions of the CrPC, 1973 then the rigour of Section 465 of the CrPC, 1973 would not apply and, in that case, an order of remand would be justified. (Para 25-26)

Code of Criminal Procedure, 1973; Section 386- An Appellate Court has got ample power to direct re-trial. However, such a power is to be exercised in exceptional cases. The irregularities found must be so material that a re-trial is the only option. In other words, the failure to follow the mandate of law must cause a serious prejudice vitiating the entire trial, which cannot be cured otherwise, except by way of a retrial. Once such a re-trial is ordered, the effect is that all the proceedings recorded by the court would get obliterated leading to a fresh trial, which is inclusive of the examination of witnesses. (Para 27)

Code Of Criminal Procedure, 1973; Section 360- Probation of Offenders Act, 1958; Sections 3,4,6- A trial court is duty bound to comply with the mandate of Section 360 of the CrPC, 1973 read with Sections 3, 4 and 6 of the Act, 1958 before embarking into the question of sentence. In this connection, we may note that sub-section (10) of Section 360 of the CrPC, 1973 makes a conscious effort to remind the Judge of the rigour of the beneficial provisions contained in the Act, 1958. (Para 28)

Rules for Video Conferencing for Courts, 2020 -Under Rule 11, an act of securing the presence of an accused through video conferencing at the time of judicial remand for the first time or police remand, is not a matter of course and, therefore, it is to be exercised only in exceptional circumstances for the reasons to be recorded in writing. Similar is the case qua recording of the statement of an accused under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "CrPC, 1973"), in which case, it is obligatory on the part of the Court to

make sure that the accused is free from any form of coercion, threat or undue influence. (Para 4)

Criminal Trial - Fair Trial -The right to fair hearing is a part of Article 21 of the Constitution of India, 1950. A trial should be a real one and, therefore, not a mere pretence. There shall never be an impression over the decision of a Court that it has predetermined and pre-judged a case even before starting a trial, or else, such a trial would become an empty formality. (Para 7-10)- Speedy Trial -While a speedy trial is in the best interest of everyone, including the society, the pace can only be set through the procedural mechanism, and it cannot be done at the mere dictate of the Court in ignorance of the procedural law. At the same time, care has to be taken with the aid of the law, to prevent the miscarriage of justice, when the delay is caused on purpose. Thus, a speedy trial, being a facet of fair trial, cannot be permitted to destroy the latter by its recklessness. Any anxiety on the part of the Court, either to expedite the trial in contravention of law, or delay it unnecessarily, would seriously impede fair trial. In such a case, either the prosecution or the defence would bear the consequences.

Hindustan Petroleum Corporation Limited vs Dharamnath Singh 2024 INSC 449

Summary: The High Court set aside the action of the HPCL in terminating the license of the respondent- Allowing appeal, SC observed: the appeals are allowed keeping in view that the termination of the agreement inter se the parties was only based on the contravention of the terms of the dealership agreement.

Trisha Singh vs Anurag Kumar 2024 INSC 450 – Marriage Dissolved- Wife Conduct – Resiling From Settlement

Summary: SC dissolves marriage taking note of wife's conduct -[the petitioner-wife having taken advantage of the settlement executed before the Mediator has managed to get the matrimonial case instituted by the respondent-husband withdrawn. She has also accepted a sum of

Rs.50 lakhs from the respondent-husband towards part payment of the permanent alimony and thereafter, she is trying to resile from the settlement without any justification. The conduct of the petitioner-wife is clearly, recalcitrant inasmuch as she has disregarded the terms and conditions agreed before the Mediator in the settlement proceedings which were undertaken pursuant to the directions of this Court. Not only this, because of her conduct, the respondenthusband has been put to grave disadvantage inasmuch as he has withdrawn the matrimonial case and has also paid a significant proportion of the permanent alimony to the petitioner-wife in terms of the settlement agreement.]

Shaji Poulose vs Institute Of Chartered Accountants Of India 2024 INSC 451 – Chartered Accountants Act- Restriction On Number Tax Audits

Chartered Accountants Act, 1949 - Guideline restricting the number of tax audits that a Chartered Accountant could carry out which was initially thirty and later raised to forty-five and thereafter to sixty in an assessment year- Clause 6.0, Chapter VI of the Guidelines dated 08.08.2008 and its subsequent amendment is valid and is not violative of Article 19(1)(g) of the Constitution as it is a reasonable restriction on the right to practise the profession by a Chartered Accountant and is protected or justifiable under Article 19(6) of the Constitution- However, the said clause 6.0, Chapter VI of the Guidelines dated 08.08.2008 and its subsequent amendment is deemed not to be given effect to till 01.04.2024- The Council of the Institute having the legal competence to frame the Guidelines, the breach of which would result in professional misconduct.
Constitution of India, 1950; Article 19- A right to practice a profession is indeed an acknowledged fundamental right, but not unrestricted and is subject to any law imposing regulatory measures aiming to ensure standards of the profession and nature of public interest involved in the practice of the profession. (Para 12.1)

Union of India vs Barakatullah 2024 INSC 452 -S 18 UAPA – Bail – CrPC

Unlawful Activities (Prevention) Act, 1957; Section 18- For the purpose of considering the offence under Section 18, the commission of terrorist

act as contemplated in Section 15 of UAPA is not required to be made out. What Section 18 contemplates is that whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of a terrorist act or any act preparatory to the commission of a terrorist act would be punishable under the said provision. Hence, if there is any material or evidence to show that the accused had conspired or attempted to commit a terrorist act, or committed any act preparatory to the commission of a terrorist act, such material evidence would be sufficient to invoke Section 18. For attracting Section 18, the involvement of the accused in the actual commission of terrorist act as defined in Section 15 need not be shown. (Para 18)

Code Of Criminal Procedure, 1973; Section 173(2)- Chargesheet need not contain detailed analysis of the evidence- It is for the concerned court considering the application for bail to assess the material/evidence presented by the investigating authority along with the report under Section 173 Cr.P.C. in its entirety, to form its opinion as to whether there are reasonable grounds for believing the accusation against the accused is prima facie true or not. (Para 13)

Unlawful Activities (Prevention) Act, 1957; Section 43(D)(5) -the question of discarding the material or document at the stage of considering the bail application of an accused, on the ground of being not reliable or inadmissible in evidence, is not permissible. The Court must look at the contents of the documents and take such documents into account as it is and satisfy itself on the basis of broad probabilities regarding the involvement of the accused in the commission of the alleged offences for recording whether a prima facie case is made out against the accused. (Para 19)

Unlawful Activities (Prevention) Act, 1957- Counter terrorism enactments are to strike a balance between the civil liberties of the accused, human rights of the victims and compelling interest of the state- National security is always of paramount importance and any act in aid to any terrorist act – violent or non-violent is liable to be restricted. The UAPA is one of such Acts which has been enacted to provide for effective prevention of certain unlawful activities of

individuals and associations, and to deal with terrorist activities, as also to impose reasonable restrictions on the civil liberties of the persons in the interest of sovereignty and integrity of India. (Para 23)

Ali Hossain Mandal vs West Bengal Board Of Primary Education 2024 INSC 453 – WB Primary School Teachers Recruitment Rules

West Bengal Primary School Teachers Recruitment Rules 2016- Allowing appeal against Calcutta HC judgment, SC observed: The manner of shortlisting candidates for appointment as suggested by the Division Bench in the impugned judgments is inconsistent with the procedure laid down under Rule 8 of the Recruitment Rules, 2016, and those, cannot be sustained - The Panel or Merit List as notified on 15.02.2021 stood extinguished after expiry of one year i.e., on 15.02.2022, as per Rule 12 of the Recruitment Rules, 2016 - No extension by any competent authority was granted to the 15.02.2021 Panel and therefore no relief can be granted to candidates who approached the court in May 2022, i.e., long after the panel stood extinguished- No further appointments is permissible from the recruitment process initiated on 23.12.2020 when a fresh recruitment process has commenced.

Govt. Of NCT Of Delhi vs KL Rathi Steels Limited 2024 INSC 454 – Review Jurisdiction

Code of Civil Procedure, 1908; Section 114 & Order XLVII - No review is available upon a change or reversal of a proposition of law by a superior court or by a larger Bench of this Court overruling its earlier exposition of law whereon the judgment/order under review was based- The subsequent overruling of a decision and even its recall, for that matter, would not afford a ground for review within the parameters of Order XLVII of the CPC

Code of Civil Procedure, 1908; Section 114 & Order XLVII - Review power under section 114 read with Order XLVII, CPC is available to be exercised on setting up by the review petitioner any of the following grounds: (i) discovery of new and important matter or evidence; or (ii) mistake or

error apparent on the face of the record; or (iii) any other sufficient reason. 40. Insofar as (i) (supra) is concerned, the review petitioner has to show that such evidence (a) was actually available on the date the court made the order/decree, (b) with reasonable care and diligence, it could not be brought by him before the court at the time of the order/decree, (c) it was relevant and material for a decision, and (d) by reason of its absence, a miscarriage of justice has been caused in the sense that had it been produced and considered by the court, the ultimate decision would have been otherwise- Regarding (ii) (supra), the review petitioner has to satisfy the court that the mistake or error committed by it is self-evident and such mistake or error can be pointed out without any long-drawn process of reasoning; and, if such mistake or error is not corrected and is permitted to stand, the same will lead to a failure of justice. There cannot be a fit-inall definition of "mistake or error apparent on the face of the record" and it has been considered prudent by the courts to determine whether any mistake or error does exist considering the facts of each individual case coming before it- With regard to (iii) (supra), we can do no better than refer to the traditional view in Chhajju Ram (supra), a decision of a Bench of seven Law Lords of the Judicial Committee of the Privy Council. It was held there that the words "any other sufficient reason" means "a reason sufficient on grounds at least analogous to those specified immediately previously", meaning thereby (i) and (ii) (supra). (Para 39-42)
Code of Civil Procedure, 1908; Section 151- Inherent powers of the court under section 151, CPC cannot be invoked if there exists a remedy made available by the CPC itself. (Para 96)

Government Of NCT Of Delhi vs BSK Realtors LLP 2024 INSC 455 – Article 142 and Doctrine Of Merger – Res Judicata

Constitution of India, 1950; Article 142- Doctrine Of Merger- The doctrine of merger is not of universal or unlimited application and that the nature of jurisdiction exercised by the superior forum and the content or subject matter of challenge laid or which could have been laid shall have to be kept in view. The exception that has been carved out in Kunhayammed and others. V. State of Kerala (2000) 6 SCC 359, will only

be permissible in the rarest of rare cases and such a deviation can be invoked sparingly only- Among such exceptions, the extraordinary constitutional powers vested in this Court under Article 142 of the Constitution of India, which is to be exercised with a view to do complete justice between the parties, remains unaffected and being an unfettered power, shall always be deemed to be preserved as an exception to the doctrine of merger and the rule of stare decisis. (Para 33)

Res Judicata- Res judicata, as a technical legal principle, operates to prevent the same parties from relitigating the same issues that have already been conclusively determined by a court. However, it is crucial to note that the previous decision of this Court in the first round would not operate as res judicata to bar a decision on the lead matter and the other appeals; more so, because this rule may not apply hard and fast in situations where larger public interest is at stake. In such cases, a more flexible approach ought to be adopted by courts, recognizing that certain matters transcend individual disputes and have far-reaching public interest implications. (Para 25)

Practice and Procedure- Supression of Fact- The fact suppressed must be material in the sense that it would have an effect on the merits of the case. The concept of suppression or non-disclosure of facts transcends mere concealment; it necessitates the deliberate withholding of material facts—those of such critical import that their absence would render any decision unjust. Material facts, in this context, refer to those facts that possess the potential to significantly influence the decision-making process or alter its trajectory. This principle is not intended to arm one party with a weapon of technicality over its adversary but rather serves as a crucial safeguard against the abuse of the judicial process. (Para 30)

Delhi Development Authority vs Tejpal 2024 INSC 456 – Condonation Of Delay – Limitation – Subsequent Change Of Law

Limitation Act, 1963; Section 5-If subsequent change of law is allowed as a valid ground for condonation of delay, it would open a Pandora's Box where all the cases that were subsequently overruled, or the cases that had relied on the judgements that were subsequently overruled, would approach this Court and would seek a relief based on the new

interpretation of law. There would be no finality to the proceedings and every time this Court would reach a different conclusion from its previous case, all such cases and the cases relying on it would be reopened. A lis will have to be decided as per the new interpretation if during its pendency, the law has been construed in a different manner by a subsequent judgement -subsequent change of law will not be attracted unless a case is pending before the competent court awaiting its final adjudicatio- If a case has already been decided, it cannot be re-opened and re-decided solely on the basis of a new interpretation given to that law (Para 22-32)- Mere good cause is not sufficient enough to turn back the clock and allow resuscitation of a claim otherwise barred by delay. The court ought to be cautious while undertaking such an exercise, being circumspect against condoning delay which is attributable to the applicant. Although the actual period of delay might be instructive, it is the explanation for the delay which would be the decisive factor - . The court must also desist from throwing the baby out with the bathwater. A justice-oriented approach must be prioritized over technicalities, as one motivation underlying such rules is to prevent parties from using dilatory tactics or abusing the judicial process. Pragmatism over pedanticism is therefore sometimes necessary – despite it appearing liberal or magnanimous. The expression 'sufficient cause' should be given liberal construction so as to advance substantial justice- In addition to "sufficient cause", Section 5 also requires that such cause must be shown within the prescribed period. To satisfy the latter condition, the applicant must show sufficient cause for not filing the appeal/application on the last day of the prescribed period and explain the delay made thereafter. Causes arising after the culmination of the limitation period, despite being sufficient in substance, would not suffice for condonation given this second prong of Section 5 of the Limitation Act. However, the applicant shall not be required to prove each day's delay till the date of filing such appeal/application. (Para 12-14) - If delay were to be condoned merely on the basis of a broad general assertion of bureaucratic indifference, without requiring demonstration of bona fide or an act of mala fide on the part of specific individuals, it would create an artificial distinction between the private parties and the government entities vis-à-vis the law of limitation. This would not be in conformity with the spirit of equality before law as

guaranteed under our Constitution. Allowing such latitude would further distort incentives for the government and encourage more laxity by the bureaucracy in its general functioning, thereby undermining quality governance. (Para 39)

Res Judicata- Even an erroneous decision operates as res judicata between the parties. (Para 29)

Alifiya Husenbhai Keshariya vs Siddiq Ismail Sindhi 2024 INSC 457 -CPC – Indigent Appeal

Code Of Civil Procedure, 1908; Order XXXIII -(i) It is an enabling provision for filing of a suit by an indigent person without paying the court fee at the initial stage. (ii) If the suit is decreed for the plaintiff, the court fee would be calculated as if the plaintiff had not originally filed the suit as an indigent person. The said amount is recoverable by the State in accordance with who may ordered to pay the same in the decree. (iii) Even when a suit is dismissed, the court fee shall be recoverable by the State in the form of first charge on the subject-matter of the suit- there is only a provision for the deferred payment of the court fees and this benevolent provision is intended to help the poor litigants who are unable to pay the requisite court fee to file a suit because of their poverty- Referred to Union Bank of India v. Khader International Construction (2001) 5 SCC 22- They exemplify the cherished principle that lack of monetary capability does not preclude a person from knocking on the doors of the Court to seek vindication of his rights. (Para 10-11)

Summary:Whether person who is entitled to receive compensation by way of a claim before the Motor Accident Claims Tribunal can be said to have given up its status as an 'indigent person', by virtue of the amount slated to be received. In other words, whether a person being an award holder, of monetary compensation without actual receipt thereof, would be disentitled from filing an appeal seeking enhanced compensation as an indigent? - Allowing appeal, SC permitted the appellant to file appeal against MACT order as an indigent person observing thus: She had not

yet received the money and, therefore, at the time of filing the appeal she was arguably indigent; and second, that the statutory requirement under the C.P.C., as described above, was not met – the order of the learned Single Judge has to be set aside.

Subodh Singh vs Union of India 2024 INSC 458

Summary: Writ Petition filed by the appellant herein praying inter alia for issuing directions to the respondents to pay additional compensation for the entire land area, subject matter of the Notification dated 12th December, 2008, issued under Section 20(E)(1) of the Indian Railways Act , 1989, at the rate higher than 5% per month – In appeal, SC observed: Appellant would be entitled to additional compensation for the delay in making the award @ not less than 5% of the value of the award for each month's delay- The appellant is held entitled to additional compensation for the left out portion of land at least @ 5% of the value of the award for a period spreading over 84 months.

Varad Balwant Vasant vs Union of India 2024 INSC 459 - CA Exams

Summary: The Chartered Accountant Examination for the Intermediate and final course is due to commence on 2 May 2024 and end on 17 May 2024- Phase-wise polling during the General Elections is scheduled to take place on 7 May and 13 May 2024 - The petitioners allege that the convening of the examination on the above two days (one day after the phasewise polling) will cause severe hardship to candidates- Dismissing writ petition, SC observed: such a course of action would not be fair because it will allow some students to opt out of certain papers and take them in the ensuing examination. This will cause prejudice to those students who have to be assessed on the basis that they have taken all the papers at one and the same time.

Compiled by: Advocate Ashok Kini M.