

CONTENTS

Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota v. Mohan Lal	.....	91
Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others	.....	1
Fiona Shrikhande v. State of Maharashtra and Anr.	.....	240
In Re: Rameshwar Prasad Goyal, Advocate	.....	212
Kamlesh Prabhudas Tanna & Anr. v. State of Gujarat	.....	257
Pepsu Road Transport Corporation v. National Insurance Company	.....	266
Prabhudas Damodar Kotecha & Ors. v. Manhabala Jeram Damodar & Anr.	.....	52
Raja @ Sasikumar & Anr. v. State through Inspector of Police	.....	230
Rajasthan Agriculture University, Bikaner v. State of Rajasthan & Ors.	.....	276
Rajendran (K.V.) (Prof.) v. Superintendent of Police, CBCID South Zone, Chennai & Ors.	.....	199

Ram Tawakya Singh (Dr.) v. State of Bihar and Others	.....	117
State of Orissa v. Khaga @ Khageswar Naik & Ors.	.....	249
Venkatesan v. Rani & Anr.	.....	105

APPEAL:
 Criminal appeal.
 (See under: Code of Criminal Procedure, 1973) 257

BIHAR STATE UNIVERSITIES ACT, 1976:
 ss.10 and 12.
 (See under: Universities) 117

BOMBAY RENTS, HOTEL AND LODGING HOUSE RATES (CONTROL) ACT, 1947:
 ss. 5(4-A) and 15-A - 'Licensee' - Held: Under sub-s. (4A) of s. 5, "licensee" means a person who is in occupation of the premises or such part as the case may be, under a subsisting agreement for licence given for a "licence fee or charge" - The definition of "licensee" under sub-s. (4A) of s. 5 is both exhaustive as well as inclusive - But licensee under sub-s. (4A) must be a licensee whose licence is supported by material consideration meaning thereby a gratuitous licensee is not covered under the definition of 'licensee' under sub-s. (4A) of s. 5.
 (Also see under: Presidency Small Cause Courts Act, 1882; and Interpretation of Statutes)
Prabhudas Damodar Kotecha & Ors. v. Manhabala Jeram Damodar & Anr. 52

CIRCULARS/GOVERNMENT ORDERS/ NOTIFICATIONS:
 Notification No. Pension/RAJAU/C/91/F-75/3668-768 dated 17.8.1991.
 (See under: Service Law) 276

CODE OF CRIMINAL PROCEDURE, 1973:
 (1) ss. 173(2) and 173(8).
 (See under: Investigation) 199

(2) s. 202 - Complaint - Order of Magistrate taking cognizance and issuing process against accused - Challenged - Held: Scope of enquiry u/s 202 is extremely limited in the sense that Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of allegations made in complaint - He is not expected to embark upon a detailed discussion of merits or demerits of case, but only to consider inherent probabilities apparent on the statement made in complaint - Once Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for higher courts to substitute its own discretion for that of Magistrate - In the instant case, complaint discloses a prima facie case made out for initiating proceedings for offence punishable u/s 504 IPC - Penal Code, 1860 - s.504.

Fiona Shrikhande v. State of Maharashtra and Another 240

(3) ss.397 and 401 - Revision against order of acquittal - Scope of - High Court held that order of acquittal deserved reversal and remitted the matter to trial court for decision afresh - Held: Revisional jurisdiction of High Court, while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the trial court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice - Further, re-appreciation of evidence is not to be made - In the instant case, the view taken by trial court in acquitting the accused cannot be held to be a view impossible of being reached - Keeping in mind limited jurisdiction for a scrutiny of foundation of order of acquittal passed by trial court, reversal ordered by High Court cannot be

(v)

sustained.

(Also see under: Penal Code, 1860)

Venkatesan v. Rani & Anr. 105

(4) Appeal - High Court affirming the conviction - Held: It is the sacrosanct duty of appellate court, while sitting in appeal against judgment of trial court, to be satisfied that guilt of accused has been established beyond all reasonable doubt - Appreciation of evidence and proper re-assessment to arrive at the conclusion is imperative in a criminal appeal - In the instant case, High Court, while dealing with statutory appeal has failed to appreciate and scrutinize the evidence in proper perspective, and reasons ascribed by it for accepting the evidence and concurring with the view of trial court is not supported by any acceptable reason - There is total lack of deliberation and proper ratiocination - Judgment of High Court set aside and matter remitted to it for disposal of appeal afresh.

Kamlesh Prabhudas Tanna & Another v. State of Gujarat 257

CONSTITUTION OF INDIA, 1950:

(1) Art. 14.

(See under: Universities) 117

(2) Art.136 - Appeal by State Government challenging order of High Court after the Chancellor initiated process of making appointments of Vice-Chancellors and Pro Vice-Chancellors pursuant to order of High Court - Maintainability of - Discussed. (Also see under: Universities)

Dr. Ram Tawakya Singh v. State of Bihar and Others 117

(3) Arts. 136 and 226.

(See under: Investigation) 199

(vi)

CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860) 105

EASEMENTS ACT, 1882:

s.52.

(See under: Presidency Small Cause Courts Act, 1882) 52

FIR:

Contents of FIR - Witnesses not named in complaint - Held: There is no need to mention all the details graphically in complaint and it depends upon so many factors such as condition of injured etc.

(Also see under: Penal Code, 1860)

Raja @ Sasikumar & Anr. v. State through Inspector of Police 230

INDUSTRIAL DISPUTES ACT, 1947:

(1) s.11-A - Back wages.

(See under: Service Law) 1

(2) s.25-F.

(See under: Labour Law) 91

INTERPRETATION OF STATUTES:

(1) (i) *Contemporena expositio* - Held: Is a recognized rule of interpretation - Concept of licence and lease were dealt with by contemporary statutes: Easements Act, Transfer of Property Act and s. 41 of PSCC Act - Therefore, s. 41(1) of PSCC Act could not have contemplated any other meaning of the term "occupation with permission" but only the permission as contemplated by s.52 of Easements Act.

(ii) Provisions '*pari materia*' - Held: Bombay Rent Act, 1947 and Chapter VII of PSCC Act cannot be said to be *pari pateria* statutes - s.5(4-A) of Bombay Rent Act and s.52 of Easements Act

(vii)

reflecting the expression 'licensee' are not *pari materia*.

(iii) *Noscitur a sociis* - Held: When the intention of legislature in using the expression 'licensee' in s. 41(1) of the PSCC Act is clear and unambiguous, the principle of *noscitur a sociis* is not to be applied.

(iv) Statement of objects and Reasons - Relevance of interpreting a provision - Explained.

(Also see under: Presidency Small Cause Courts Act, 1882)

Prabhudas Damodar Kotecha & Ors. v. Manhabala Jeram Damodar & Anr. 52

(2) *Ejusdem generis* - Term, 'otherwise' occurring in r.8A of Supreme Court Rules, 1966 - Held: Should be construed as *ejusdem generis* and must be interpreted to mean some kind of legal obligation or some transaction enforceable in law. (Also see under: Supreme Court Rules, 1966)

In Re: Rameshwar Prasad Goyal, Advocate 212

INVESTIGATION:

Transfer of investigation to CBI - Held: Supreme Court or High Court can exercise its constitutional powers for transferring an investigation from State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases - Where investigation has already been completed and charge sheet has been filed, ordinarily, superior courts should not reopen the investigation and it should be left open to the court, where charge-sheet has been filed, to proceed with the matter in accordance with law - In the instant case, facts and circumstances do not present special features warranting transfer of investigation to CBI - Besides, incident occurred 15 years back and final report u/s 173(2) Cr.P.C.

(viii)

has already been submitted before competent criminal court - It is open to Magistrate to accept the final report or to reject the same and to direct further investigation u/s 173(8) Cr.P.C. - Constitution of India, 1950 - Arts. 136 and 226 - Code of Criminal Procedure, 1973 - ss. 173(2) and 173(8).

Prof. K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai & Ors. 199

LABOUR LAW:

(1) (See under: Service Law) 1

(2) Termination of services of workman - Industrial dispute raised belatedly - No objection as to delay raised - Reinstatement ordered by Labour Court holding that termination was in violation of s.25-F of ID Act - Held: Delay in raising industrial dispute is an important circumstance which Labour Court must keep in view, notwithstanding whether or not such objection has been raised - Legal position to be followed in case of non-compliance of s.25-F, emphasized - In the instant case, workman worked as a work-charged employee for 286 days - Labour Court did not keep in view admitted delay of 6 years in raising industrial dispute by him - Judicial discretion exercised by Labour Court is, thus, flawed and is unsustainable - In the circumstances, in lieu of reinstatement, compensation of Rs.1 lac shall be paid by employer to workman - Industrial Disputes Act, 1947 - s.25-F.

Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota v. Mohan Lal 91

LOCUS STANDI:

Appointment of Vice Chancellors and Pro Vice-Chancellors - Writ petition by a Professor and Head

(ix)

of Department in a University, in the State, challenging the appointments, though he was not a candidate for such appointments - Held: Maintainable - Further, even assuming that writ petitioner does not have any direct personal interest in such appointments, High Court could have suo motu taken cognizance of the issues raised by him and treated his petition as one filed in public interest and decided the same on merits - Public interest litigation.

(Also see under: Universities)

Dr. Ram Tawakya Singh v. State of Bihar and Others 117

MAHARASHTRA EMPLOYEES OF PRIVATE SCHOOLS (CONDITIONS OF SERVICE) ACT, 1977:

Objects of the Act - Explained.

(Also see under: Service Law)

Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. 1

MAHARASHTRA EMPLOYEES OF PRIVATE SCHOOLS (CONDITIONS OF SERVICE) RULES, 1981:

r.34 - Suspension of employee - Entitlement to subsistence allowance - Discussed.

(Also see under: Service Law)

Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. 1

MOTOR VEHICLES ACT, 1988:

s.149(2)(a)(ii) - Plea of fake driving licence raised by insurer - Held: Onus is on the insurer to establish the defence - As far as owner of vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence - Thereafter he has to satisfy himself as to

(x)

competence of driver - If that is done, it can be said that owner had taken reasonable care in employing a person who is qualified and competent to drive vehicle - He is not expected to verify genuineness of driving licence with licensing authority - In the instant case, driver had been put to a driving test and had also been imparted training by employer - In view of the evidence of licensing authority, it cannot be absolutely held that the licence to the driver had not been issued by the said authority and it was fake - Insurer is liable to indemnify the insured.

Pepsu Road Transport Corporation v. National Insurance Company 266

NALANDA OPEN UNIVERSITY ACT, 1995:

ss.11 and 13.

(See under: Universities) 117

PATNA UNIVERSITY ACT, 1976:

ss. 11 and 14.

(See under: Universities) 117

PENAL CODE, 1860:

(1) s. 302/34 - Murder - Conviction of 3 out of 7 accused - Appeal by two of the convicts - Held: In a case of several accused persons, on the same set of evidence, if it is possible to remove the chaff from the grain, then the court would not be committing any mistake in sustaining the prosecution case against whom the evidence is shown to be intact - In the instant case, testimonies of PWs are acceptable insofar as involvement of appellants in the crime is concerned - The conclusion arrived at by High Court is concurred with.

Raja @ Sasikumar & Anr. v. State through Inspector of Police 230

(xi)

(2) s.302/34 and s.300, Exception 4 - Ingredients of - Explained - Held: Evidence discloses that when victim abused the accused, two of them brought weapons and lathi and attacked the victim - Thus, accused had sufficient time to cool down and, therefore, it cannot be said that the crime was committed in a heat of passion - Further, deceased being an old man had merely abused the accused, verbal abuses are not fight - Therefore, this ingredient is also not satisfied - High Court erred in holding the convicts guilty u/s.304 (Part-II) - Judgment of High Court, in so far as it altered the conviction of respondents from s.302/34 to that of s.304/34, is set aside and conviction as recorded by trial court, restored.

State of Orissa v. Khaga @ Khageswar Naik & Ors. 249

(3) ss. 498-A, 304-B and 302 - Death of a married woman by burn injuries - Acquittal of husband by trial court - Set aside by High Court with a direction for decision afresh - Held: The investigation and the evidence of prosecution witnesses do not reveal any harassment and ill-treatment to deceased by accused prior to her death and, as such, no case u/s 304-B as well as u/s 498-A is made out against accused - Insofar as offence u/s 302 is concerned, there is no eye-witness to occurrence - By the time witnesses reached the place of occurrence, deceased was already engulfed in flames - There are contradictions in depositions of prosecution witnesses - Further, evidence of doctor of Government Hospital that deceased herself had stated that she had been injured due to bursting of stove while she was cooking, casts a doubt on the prosecution story - Order of High Court set aside, and that of trial

(xii)

court restored.

Venkatesan v. Rani & Anr. 105

(4) s.504 - Intentional insult with intent to provoke breach of peace - Ingredients - Explained. (Also see under: Code of Criminal Procedure, 1973)

Fiona Shrikhande v. State of Maharashtra and Another 240

PRESIDENCY SMALL CAUSES COURTS ACT, 1882:

(i) s.41(1) - Suits or proceedings between licensors and licensees - Suit for eviction of gratuitous licensee - Held: Is maintainable before Small Causes Court - Expression 'licensee' used in PSCC Act is a term of wider import intended to bring in a gratuitous licensee as well and is used in general sense of term as defined in s. 52 of Easements Act - It does not derive its meaning from the expression 'licensee' as used in sub-s. (4A) of s. 5 of Rent Act - Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 - ss. 5(4-A) and 15-A - Interpretation of statutes - Contemporenea exposition - Easements Act, 1882 - s.52 - Transfer of Property Act, 1882.

(ii) s.41(1) - Suits or proceedings between licensors and licensees and landlord and tenant - Jurisdiction - Held: s.41(1) confers jurisdiction on Small Causes Court to entertain and try all suits and proceedings between a "licensor" and a "licensee" relating to recovery of possession of any immovable property or relating to recovery of licence fee - High Court has correctly noticed that the clubbing of the expression "licensor and licensee" with "landlord and tenant" in s. 41(1) and clubbing of causes relating to recovery of licence fee is only with a view to bring all suits between "landlord and tenant"

and "licensor and licensee" whether under Rent Act or under PSCC Act under one umbrella to avoid unnecessary delay, expenses and hardship. (Also see under: Interpretation of Statutes)

Prabhudas Damodar Kotecha & Ors. v. Manhabala Jeram Damodar & Anr. 52

PUBLIC INTEREST LITIGATION:

(See under: Locus Standi) 117

SERVICE LAW:

(1) (i) Back wages on reinstatement - Suspension and termination of services of school teacher - Declared by Tribunal as illegal - Reinstatement - Award of full back wages, set aside by High Court - Held: High Court committed grave error by interfering with the order passed by Tribunal for payment of back wages, ignoring that the charges levelled against appellant were frivolous and inquiry was held in gross violation of rules of natural justice - Impugned order set aside and order passed by Tribunal restored - Management shall pay full back wages to appellant.

(ii) Award of back wages, when termination of employee found to be illegal - Principles culled out - Labour law - Industrial Disputes Act, 1947 - s.11-A - Back wages.

Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. 1

(2) Retiral benefits - CPF Scheme and Pension Scheme - Belated option of employee for CPF scheme accepted by employer - After getting retiral benefits accordingly, employee claiming benefit of Pension Scheme - Held: A special favour was done to respondent by appellant University by accepting his option even after the prescribed period was over and, therefore, he cannot be permitted to take

undue advantage of the same - Notification No. Pension/RAJAU/C/91/F-75/3668-768 dated 17.8.1991.

Rajasthan Agriculture University, Bikaner v. State of Rajasthan & Ors. 276

SUPREME COURT RULES, 1966:

(i) O. 4, r.8A r/w r.6 - Advocate on Record - Misconduct - AOR lending his signatures in large number of cases, but not appearing in Court, inspite of Court's directions - Show cause notice issued - AOR tendered absolute and unconditional apology and promised not to repeat such misconduct - Held: Rule 8A enables the Court to deal with a situation where an AOR commits misconduct or he/she conducts himself/herself in a manner unbecoming of an AOR - The Court is competent to proceed against an AOR suo motu, without any complaint from any person, if prima facie it is of the opinion that the AOR is guilty of misconduct or of conduct unbecoming of an AOR - Though the conduct of the noticee-AOR, has been reprehensible and not worth pardoning, considering the fact and circumstances, his conduct is censured and he is warned not to behave in future in such manner.

(ii) O.4, rr.4 and 6 - Advocate-on-Record - Role and duty - Misconduct - AsOR lending their signatures in large number of cases and not appearing in Court - Held: In case an AOR is only lending his signatures without taking any responsibility for conducting the case, the very purpose of having the institution of AsOR stands defeated - In such a fact-situation, lending of signatures for consideration would amount to misconduct of his duty towards Court and such an attitude tantamounts to cruelty in the most crude form towards the innocent litigant - Conduct of such

an AOR is unbecoming of an AOR - An AOR is the source of lawful recognition through whom the litigant is represented - As per the Rules, no unauthorised person can deal with the Registry and it must strictly adhere to the Rules.

In Re: Rameshwar Prasad Goyal, Advocate 212

TRANSFER OF PROPERTY ACT, 1882:

(See under: Presidency Small Cause Courts Act, 1882) 52

UNIVERSITIES:

(i) Appointment of Vice-Chancellors and Pro-Vice-Chancellors - 'Consultation with State Government' - Expression 'consultation' - Connotation of - Explained - Held: Though, the final decision is with the consulter, he cannot generally ignore the advice of the consultee except for good reasons - There should be meeting of minds between the parties involved in the process of consultation on material facts and points involved - Consultation is not complete or effective unless parties thereto make their respective points of view known to the other and discuss and examine relative merit of their views.

(ii) Appointment of Vice-Chancellors and Pro Vice-Chancellors - Notifications dated 9.2.2013, 19.2.2013 and 14.3.2013 issued for appointment of candidates as Vice-Chancellors and Pro Vice-Chancellors of different Universities in State of Bihar - Held: As regards the instant matters, Chancellor has been consistently flouting the mandate of law and making appointments completely disregarding the requirement of academic excellence and experience and without effectively consulting the State Government - He selected for appointment some persons who were facing prosecution under various criminal laws and/

or involved in financial irregularities - The mechanism adopted by Chancellor in making appointments is blatantly violative of the scheme of the BSU Act and the PU Act and also Art. 14 of the Constitution - Impugned Notifications are quashed - Consequential directions issued - Bihar State Universities Act, 1976 - ss.10 and 12 - Patna University Act, 1976 - ss. 11 and 14 - Nalanda Open University Act, 1995 - ss.11 and 13 - Constitution of India, 1950 - Art. 14.

(iii) Vice-Chancellors and Pro Vice-Chancellors - Appointment to the offices of - Held: Relevant statutory provisions prescribe the qualification of academic excellence as a condition precedent for appointment to these posts - Candidate must be a person reputed for his scholarship and academic interest or eminent educationist having experience of administering the affairs of any University, and selection of such a person is possible only if a transparent method is adopted and efforts are made to reach out to people across the country - Art. 14 of the Constitution which mandates that every action of State authority must be transparent and fair has to be read in the language of these provisions.

(Also see under: Constitution of India, 1950)

Dr. Ram Tawakya Singh v. State of Bihar and Others 117

WORDS AND PHRASES:

'Reinstatement' in the context of termination of service of an employee - Connotation of - Explained.

Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. 1