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ADMINISTRATION OF JUSTICE:

(1) Abuse of process of law - Watchman of suit property - Claiming possession of the property by filing suit - Held: The claimant is guilty of misuse of process of law - It is an example of delayed administration of civil justice in the courts as the matter took 17 years to be finally decided by High Court - The claimant is guilty of suppressing material facts and introducing false pleas and irrelevant documents to mislead the court - The court should, in addition to full restitution, impose appropriate costs - Costs.

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(2) Criminal justice - In appeal accused acquitted - Extension of benefit of acquittal order to non-appellant accused - Held: If accused is unable to file appeal, it would amount to denial of access to justice to such accused - Where the court disbelieves the entire occurrence or where role of the non-appellant accused is identical to that of the appellant accused or where the ends of justice demand, the court will be well within its jurisdiction to return the finding of acquittal and even *suo motu* extend the benefit to the non-appellant accused - Powers of Supreme Court under Arts.136, 142 and rights of the accused under Art. 21 are wide enough to do complete justice to the parties - Constitution of India, 1950 - Arts.136, 142 and 21.

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(1) (i) Bias

(ii) Natural justice

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(2) Judicial review of awarding of contract - Scope of - Held: The findings recorded by High Court with regard to the requirements as per the notice inviting tenders and the eligibility and experience of the successful bidder, are in no way irrational or absurd - Besides, the Municipal Council had the advantage of aid and advice of an empanelled consultant, a technical hand, who could well appreciate the significance of the tender condition regarding the bidder executing the single integrated water supply scheme and fulfilling that condition of tender by reference to the work undertaken by them - It is not a fit case for interference - Tenders - Award of construction contract.

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(1) Arbitral award - Challenge to - Allegation of bias against the arbitrator - Plea that bias on the part of the arbitrator was also reflected from the post arbitral conduct of the arbitrator inasmuch as he contested instant appeal (against the arbitral award being made rule of the court) and filed affidavit in opposition - Held: Not tenable, since



the arbitrator had been personally impleaded as respondent in the appeal and the allegations of bias were made against him, therefore, he filed the affidavit.

*M/s. Ladli Construction Co. (P) Ltd. v. Punjab Police Housing Corpn. Ltd. and Ors.* .... 780

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#### ARBITRATION ACT, 1940:

ss. 5, 11, 12 and 30 - Arbitral award - Challenge to - Allegation of bias against the arbitrator - Arbitrator proceeded with the arbitration ex parte and passed the award - Appellant submitted objections u/s.30 alleging misconduct on the part of the arbitrator - Award, made rule of the court and decree passed in terms thereof - Held: Reasons to ask the arbitrator to recuse are not stated by the appellant - The award passed by the arbitrator also does not show that he misconducted the proceedings in any manner- He gave full opportunity to the appellant to appear and put forth its case but the appellant failed to avail of that opportunity - Since the parties entered into a contract knowing the role, authority or power of the Chief Engineer in the affairs relating to the contract but nevertheless agreed for him to be arbitrator and named him in the agreement to adjudicate the dispute/s between the parties, they stood bound by it unless a good or valid legal ground was made out for his exclusion - The test of reasonable apprehension of bias in the mind of a reasonable man was not satisfied in the factual situation - A fanciful apprehension of bias was not enough - No reason for interference under Art.136 of the Constitution - Natural Justice - Bias.

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#### ARBITRATION AND CONCILIATION ACT, 1996:

ss. 11(5) and (9) - Appointment of arbitrator - Sale-purchase contract - Goods supplied found defective and of poor quality - Held: The applicant has raised bona fide disputes arising out of or relative to the construction of the contract which contains the arbitration clause - The petition can not be said to be belated - Sole Arbitrator appointed and all the disputes and differences that have arisen between the parties, referred to arbitration - Delay/Laches.

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s.27(3) - Vires of - Mandatory death penalty as imposed u/s.27(3) - Held: s.27(3) is *ultra vires* the Constitution and is void - In s.27(3), the provision of mandatory death penalty is more unreasonable inasmuch it provides whoever uses any prohibited arms or ammunition or acts in contravention of s.7 and if such use or act results in the death of any other person then that person guilty of such use or acting in contravention of s.7 shall be punishable with death - The word 'use' has not been defined in the Act - Both the words 'use' and 'result' are very wide - Such a law is neither just, reasonable nor is it fair and falls out of the 'due process' test - The concepts of 'due process' and the concept of a just, fair and reasonable law has been read by the Court into the guarantee u/Arts. 14 and 21 of the Constitution - s.27(3) is thus violative of Arts. 14 and 21 of the Constitution - s.27(3) is in clear contravention of Part III rights - It also deprives the judiciary from discharging its Constitutional duties of judicial

review whereby it has the power of using discretion in the sentencing procedure - Constitution of India, 1950 - Arts.13, 14 and 21. (Also see under: Penal Code, 1860)

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ss. 122 and 52(f) - Court martial - Trial if barred by limitation - Allegation that appellant, an Officiating Commandant at Central Ordnance Depot, caused wrongful loss to the Government in the process of procurement of stores through local purchase - Direction for the General Court Martial to re-assemble for his trial - Held: The General Officer Commanding-in-Chief, Central Command was in knowledge of the offence and the identity of the appellant as one of the alleged offenders on May 7, 2007 - Reckoning from that date, the order passed by the General Officer Commanding, Madhya Bharat Area to convene the General Court Martial on August 23/26, 2010 was clearly beyond the period of three years and, therefore, barred in terms of s.122 - Direction for reassembly of the General Court Martial accordingly quashed.

*Rajvir Singh v. Secretary, Ministry of Defence & Others* .... 718

BANGALORE DEVELOPMENT AUTHORITY ACT, 1976:

(i) s.32 (5A) - Vesting the Bangalore Development Authority (BDA) with the power to call upon the applicants desirous of forming new extensions or layouts or private streets to pay a specified sum in addition to the sums referred to in s.32(5) to meet a portion of the expenditure incurred for the

execution of any scheme or work for augmenting water supply, electricity, roads, transportation and other amenities within the Bangalore Metropolitan area - Constitutional validity of - Held: A statutory provision is presumed to be constitutionally valid unless proved otherwise and burden lies upon the person who alleges discrimination to lay strong factual foundation to prove that the provision offends the equality clause enshrined in the Constitution - No factual foundation was laid in support of the plea - Constitution of India, 1950 - Art. 14.

(ii) s.32 (5A) - Challenge to, on the ground of excessive delegation - Held:s.32(5A) does not suffer from the vice of excessive delegation and the legislative guidelines can be traced in the Preamble of the 1961 and 1976 Acts and the object and scheme of the two legislations - Mysore Town and Country Planning Act, 1961.

(iii) s.32(5A) - Conditions incorporated in orders passed by Bangalore Development Authority (BDA) sanctioning residential layout plans or work orders requiring the house building societies and the allottees of sites of the layouts to pay/deposit various charges/sums for augmentation of water supply, electricity, transport within the Bangalore Metropolitan area - Held: Charges demanded by the BDA u/s.32(5A) cannot be termed as tax and declared unconstitutional on the ground that the same are not sanctioned by the law enacted by competent legislature - Constitution of India, 1950 - Art. 265.

(iv) s.32(5A) - Charges demanded by BDA

challenged being totally disproportionate to its contribution towards Cauvery Water Supply Scheme, construction of Ring Road, Mass Rapid Transport System, etc. - Held: The ends of justice will be served by directing the State Government to take appropriate decision in the light of its communication dated 03.05.2005 (whereby BDA was directed to stop collection of Cauvery Water Cess and Ring Road Cess and MRTS Cess) - So far as levy of supervision charges, improvement charges, examination charges, slum clearance development charges and MRTS cess is concerned, High Court has not assigned any reason for declaring the levy of these charges to be illegal - Therefore, that part of the impugned order cannot be sustained - Nevertheless, the State Government should take appropriate decision in the matter of levy of these charges as well and determine whether the same were disproportionate to the expenses incurred by it, the BDA or any other agency/instrumentality of the State - Town Planning.

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#### BAR ASSOCIATIONS:

Supreme Court Bar Association - Eligibility of the members to contest and vote at the election to the Executive Committee - Directions given by Supreme Court in its judgment dated 26.9.2011 - Implementation Committee carrying out the exercise to identify the regular practitioners in Supreme Court - Propriety of General Body Meeting held on 16.1.2012 and its resolutions - Held: Although the General Body Meeting had been convened to consider the implications of the

judgment dated 26.9.2011, what transpired later is a complete departure therefrom - All the Resolutions purported to have been adopted in the General Body Meeting of the SCBA held on 16.1.2012, and the meeting of the Executive Committee being in flagrant violation of the judgment delivered by the Court on 26.9.2011 are held to be invalid and are set aside - Consequently, the composition of the Office Bearers of the SCBA prior to the adoption of the alleged resolutions of 16.1.2012, stands restored - Further directions given - Rules and Regulations of the Supreme Court bar Association - r.18.

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(2) s.144 r/w s.134 and the Delhi Police Standing Order 309 - Public agitation - Police crackdown at midnight on members of sleeping congregation - *Suo motu* proceedings by Supreme Court - Action against erring police officials - Compensation to victims - Held: In the facts of the case, the State and the Police could have avoided this tragic incident by exercising greater restraint, patience and resilience - The orders were passed by the authorities in undue haste and were executed with force and overzealousness, as if an emergent situation existed - The decision to forcibly evict the innocent public sleeping on the Ramlila Maidan in the midnight whether taken by the police independently or in consultation with the Ministry of Home Affairs was amiss and suffered from element of arbitrariness and abuse of power to some extent - Disciplinary action directed to be taken against erring police officers/ personnel who indulged in brick-batting, resorted to lathi charge and excessive use of tear gas shells upon the crowd or did not help in transportation of sick and injured people to the hospitals - Direction for registration of criminal cases against police personnel as also members of the gathering at the Ramlila Maidan who indulged in damage to

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(4) s.313 - Statement of the accused who died during pendency of proceedings - Held: The part of the statement that supports the case of the prosecution as well as statements of other witnesses can be relied upon by the prosecution to a limited extent - The statement may not be used against the other accused as such, but the fact that the statement supports the case of the prosecution cannot be wiped out from the record and would have its consequences in law.

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(5) s. 406 - Transfer of proceedings - Petitioners seeking transfer of proceedings from the court of the Special Judicial Magistrate (CBI), Ghaziabad, U.P., to a court of competent jurisdiction in Delhi - Held: Inconvenience of traveling a distance of

merely 52 Kms. from Delhi to Ghaziabad would not be such as can be the basis for seeking transfer - Jurisdiction of a court to conduct criminal prosecution is based on the provisions of Code of Criminal Procedure - It is also not possible to accept that the physical assault on the petitioner at the hands of a psychopath can be a valid basis for transfer of the proceedings - In view of the measures adopted by the Sessions Judge, the CBI and the State Administration towards security arrangements in the court-premises generally, and also, the special arrangements which the respondents have undertaken to make, with particular reference to the petitioners, justice would be dispensed to the petitioners in an atmosphere shorn of any fear or favour - Order passed by the Special Judicial Magistrate (CBI), Ghaziabad, U.P. that during the proceedings no person shall be allowed to enter in the court room except for the parties to the case and their respective counsel to be enforced in letter and spirit - The majesty of law must be maintained at all costs -Petitioners are cautioned from making any irresponsible insinuations with reference to court-proceedings - It cannot be concluded that the petitioners would be deprived of a free and fair trial at Ghaziabad - Transfer petition.

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(3) Arts. 16(1), 16(4), 16(4A) and 16(4B) - Reservation in promotion - Consequential/ Accelerated seniority - Principles emerging from *M. Nagraj* - Culled out - Held: Arts. 16(4A) and 16(4B) are enabling provisions and the State can make provisions for the same on certain basis or foundation - In the instant case, the conditions precedent have not been satisfied - No exercise as per decision in *M. Nagraj* has been undertaken - Therefore, s.3(7) of the 1994 Act and r.8-A of the Rules are ultra vires as they run counter to the dictum in *M. Nagraj* - Uttar Pradesh Public Servants (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994 - s. 3(7) - Uttar Pradesh Government Servants Seniority Rules, 1991 - r.8-A as inserted by Uttar Pradesh Government Servants Seniority (Third Amendment) Rules, 2007.

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- (7) Arts.136, 142 and 21  
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- (8) Art. 142 r/w. Art.141 - Expression 'matter pending before it' occurring in Art. 142 - Held: Would include matters in which orders of Supreme Court were yet to be implemented when, particularly, such orders were necessary for doing complete justice to the parties to the proceedings - When a judgment has been delivered by Supreme Court, it is the obligation of all citizens to act in aid thereof and to obey the decision and the directions contained therein, in view of the provisions of Art. 141 until and unless the same are modified or recalled - It is the duty of all the members of the SCBA to abide by and to give effect to the judgments of the Court and not to act in derogation thereof.  
(Also see under: Bar Associations)  
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- (9) Art. 226 - Writ of Habeas Corpus - Maintainability - Matrimonial dispute between wife and husband - Both of them living separately - Husband filing writ of Habeas Corpus, for

producing the child before the Court - High Court issued non-bailable warrant against the wife - Held: No case made out to entertain a writ of Habeas Corpus - Husband filed the case with wrong address to mislead the High Court - The allegation by the husband that the son has been illegally detained by his mother is wrong as the son has been residing with his mother since his birth - A writ of Habeas Corpus is not to be issued as a matter of course, specially when the writ is sought against a parent for the custody of a child - Writs.

*Rashmi Ajay Kr. Kesharwani & Anr. v. Ajay Kr. Kesharwani and Ors.* .... 1153

(10) Art. 254 (1), Seventh Schedule, List III, Entry 7 - Central Law and State Law - Repugnancy of State Law - Relevant date - Held: Repugnancy arises on the making of the law i.e. when the Central Act received the assent of the President and not on its commencement/enforcement - The Central Law though not brought in force in the State concerned, is still a law made, which is alive as an existing Law - In the instant case, the Central Act covered the entire area of 'chits' under entry 7 of List III of VII Schedule and, therefore, the State Act on account of repugnancy became void and stood impliedly repealed - On making of the Central Act, the State Act ceased to operate except to the extent of s. 6 of General Clauses Act, 1897 - State Legislature could not have amended the State Act after enactment of the Central Act save and except under Art. 254(2) - Chit Funds Act, 1988 - Kerala Chitties Act, 1975

- General Clauses Act, 1897 - s. 6.

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(11) Art. 265.

(See under: Town Planning) .... 881

#### CONSUMER PROTECTION ACT, 1986:

s.2(1)(o) - 'Service' - Activities of appellant-company involving offer of plots for sale to its customers with assurance of development of infrastructure/amenities, lay-out approvals etc. - Held: Constituted 'service' within the meaning of the Act - Any deficiency or defect in such service would make it accountable before the competent consumer forum at the instance of purchasers. (Also see under: Penal Code, 1860; and Code of Criminal Procedure, 1973)

*M/s. Narne Construction P. Ltd. Etc. Etc. v. Union of India and Ors. Etc.* .... 574

#### CONTRACT:

Work contract - Payment of service tax - Liability of - Held: Service provider under contractual obligation was liable to pay the service tax - Availer of service became the assessee after amendment by Finance Act 2000 - The liability arose out of the services rendered prior to 2000 amendment when the liability was on the service provider - Even when the service availer becomes liable to pay the service tax after 2000 amendment there is no bar from entering into an agreement and passing on the tax liability on the service provider - Arbitration - Finance Act, 1994 - s. 65 - Finance Act, 2000 - s. 116.

*Rashtriya Ispat Nigam Ltd. v. M/s. Dewan Chand Ram Saran* .... 1

#### COPYRIGHT ACT, 1957:

s. 31(1)(b) - Powers under - Scope of - Power of Copyright Board - To pass ad interim order - In a pending complaint u/s. 31 - Held: Section 31 contemplates final relief - The statute does not vest the Copyright Board with the power to grant interim order - To grant interim compulsory licence during the pendency of the complaint would amount to final relief at the interim stage - Interim orders.

*Super Cassettes Industries Ltd. v. Music Broadcast Pvt. Ltd.* .... 209

#### COSTS:

(See under: Administration of Justice) .... 74

#### CRIMINAL LAW:

(1) Accused not named in FIR - Conviction of - Held: An accused who has not been named in the FIR, but to whom a definite role is attributed in the commission of the crime and when such role is established by cogent and reliable evidence and the prosecution is also able to prove its case beyond reasonable doubt, such an accused can be punished in accordance with law, if found guilty - In the instant case, a definite role has been attributed to the accused concerned by two prosecution witnesses and it was on his disclosure statement that the motorcycle used by him to facilitate the crime was recovered.

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(2) Motive - Existence of a motive for committing a crime is not an absolute requirement of law but it is always a relevant factor, which will be taken into consideration by the courts as it will render assistance to the courts while analysing the

prosecution evidence and determining the guilt of the accused.

(Also see under: Penal Code, 1860)

*Alagupandi @ Alagupandian v. State of Tamil Nadu* .... 342

#### CUSTOMS DUTY:

DEPB scheme - Nature and objective of - Held: The objective of DEPB scheme is to neutralize the incidence of customs duty on the import content of the export products - It has direct nexus with the cost of the imports made by an exporter for manufacturing the export products - The neutralization of the cost of customs duty under the DEPB scheme, however, is by granting a duty credit against the export product and this credit can be utilized for paying customs duty on any item which is freely importable - DEPB is issued against the exports to the exporter and is transferable by the exporter - Hand Book on DEPB issued by the Government of India - Paragraphs 4.37 and 4.42 - Export and Import Policy, 1997-2002 as notified by the Central Government in the Notification No.1(RE-99)/ 1997-2202 dated 31st March, 2000 - Paragraphs 7.14, 7.15, 7.16 and 7.38.

(Also see under: Income Tax Act, 1961)

*M/s Topman Exports v. Commissioner of Income Tax, Mumbai* .... 684

#### DELAY/LACHES:

(1) Delay in filing FIR - Held: Cannot be a ground by itself for throwing away the entire prosecution case - Court has to seek an explanation for delay and check the truthfulness of the version put forward

- In the instant case, keeping in view the circumstances in which the witnesses informed police, some delay in registering the FIR was inevitable and it is not such inordinate delay which could be construed as a ground for acquittal of the accused, as the prosecution has been able to prove its case beyond reasonable doubt.

(Also see under: Penal Code, 1860)

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(2) (See under: Arbitration and Conciliation Act, 1996) .... 397

#### DOCTRINES / PRINCIPLES:

(1) Doctrine of contra proferentem - Applicability of.

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(2) 'Due process test'.  
(See under: Arms Act, 1959) .... 608

#### ELECTION LAWS:

(1) Election petition - Pleadings - Held: In an election petition, one has to plead the material facts at the outset, and the failure to plead the same is fatal to the election petition - Besides, no evidence can be led on a plea which is not raised in the pleadings and no amount of evidence can cure the defect in the pleadings.

(Also see under: Representation of the People Act, 1951)

*Markio Tado v. Takam Sorang & Ors.* .... 661

(2) (See under: Representation of the People Act, 1951) .... 56



## ENVIRONMENTAL LAWS:

(1) Mining lease - Necessity of proper environmental assessment plan - Government of Haryana issued auction notices dated 3.6.2011 and 8.8.2011 proposing to auction extraction of minor mineral boulder, gravel and sand quarries etc. - Held: There are no materials to come to the conclusion that the removal of minor mineral boulder, gravel, sand quarries etc. covered by the auction notices dated 3.6.2011 and 8.8.2011, in the places notified therein and also in the river beds would not cause environmental degradation or threat to the biodiversity, destroy riverine vegetation, cause erosion, pollute water sources etc. - The auction notices were issued without conducting any study on the possible environmental impact on/in the river beds and elsewhere - Direction to all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines, within a period of six months and submit their compliance reports - Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules 2010 at the earliest - In the meanwhile, leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from the MoEF - Mines and Minerals (Development & Regulation) Act 1957 - s.15 - Constitution of India, 1950 - Arts. 48A, 51A(g) r/w 21.

*Deepak Kumar etc. v. State of Haryana and Ors. etc.* ....

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(2) Public health - Bio-safety concern - Release

of Genetically Modified Organisms (GMOs) - PIL - Prayer for issuance of direction to Union of India to stop release of GMOs into the environment by way of import, manufacture, use or any other manner and to prescribe protocol, to which all GMOs released would be subjected and for framing rules in that regard - Direction issued for constituting of Technical Expert Committee - Committee directed to submit its report.

*Aruna Rodrigues and Ors. v. Union of India and Ors.* ....

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## EVIDENCE:

(1) (i) Evidence of sole witness - Held: Court can record a finding of guilt while entirely or substantially relying upon the statement of the sole witness, provided his statement is trustworthy, reliable and finds corroboration from other prosecution evidence.

(ii) Circumstantial evidence.

(Also see under: Penal Code, 1860)

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(2) (i) Circumstantial Evidence - Theory of last seen together - Evidentiary value - Held: The theory can raise the suspicion, but independently, it is not sufficient to lead to a finding of guilt - The theory should be applied taking the prosecution case into consideration in its entirety.

(ii) Extra-judicial Confession - Evidentiary value - Held: It is a weak piece of evidence - In circumstantial evidence when prosecution relies on extra-judicial confession, court should examine

it with greater degree of care and caution - Principles which would make it an admissible piece of evidence capable of forming the basis of conviction - Explained.

(Also see under: Penal Code, 1860)

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(3) Minor discrepancies in evidence and recording of FIR - Effect of.

(See under: Penal Code, 1860) .... 560

#### EVIDENCE ACT, 1872:

(1) s.27 - Disclosure statement of accused while in police custody leading to recovery of weapon of crime - Accused also stating that he stabbed her step mother - Held: Except the part of the disclosure statement of the accused which led to the recovery of the knife, the rest of the statement of the accused would be inadmissible in evidence as per s. 27.

(Also see under: Penal Code, 1860)

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(2) s.27 - Disclosure statement - Admissibility of - Held: The part of the disclosure statement cannot be taken to be confession of the accused in relation to commission of the crime, but the other part by which the motor cycle which was used by the accused in facilitating the crime was recovered, would be the portion admissible in evidence.

(Also see under: Penal Code, 1860)

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(3) s. 27 - Recovery statement - Admissibility in

evidence - Explained.

(Also see under: Penal Code, 1860)

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#### EXPORT AND IMPORT POLICY, 1997-2002:

(See under: Customs) .... 684

#### FINANCE ACT, 1994:

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#### FINANCE ACT, 2000:

s. 116.

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#### GENERAL CLAUSES ACT, 1897:

s. 6.

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#### HIGH COURT:

(See under: Judicial discipline) .... 118

#### HUMAN RIGHTS:

Right to sleep.

(See under: Code of Criminal Procedure, 1973) .... 971

#### INCOME TAX ACT, 1961:

(1) ss. 28(iiiib), (iiid) and 80HHC - Assessment Year 2002-2003 - Amount received by an assessee on sale of Duty Entitlement Pass Book ('DEPB') - Held: DEPB is "cash assistance" receivable by a person against exports under the scheme of the Government of India and falls under clause (iiiib) of s.28 and is chargeable to income tax under the head "Profits and Gains of Business or Profession" even before it is transferred by the assessee - Under clause(iiid) of s.28, any profit

on transfer of DEPB is chargeable to income tax under the head "Profits and Gains of Business or Profession" as an item separate from cash assistance under clause (iiib) - While the face value of the DEPB will fall under clause (iiib) of s.28, the difference between the sale value and the face value of the DEPB will fall under clause (iiid) of s.28 - Where an assessee has an export turnover exceeding Rs.10 crores and has made profits on transfer of DEPB under clause (d) of s.28, he would not get the benefit of addition to export profits under third or fourth proviso to sub-s.(3) of s.80HHC, but he would get the benefit of exclusion of a smaller figure from "profits of the business" under explanation (baa) to s.80HHC - Well-settled principle of statutory interpretation of a taxing statute that a subject will be liable to tax and will be entitled to exemption from tax according to the strict language of the taxing statute and if as per the words used in explanation (baa) to s.80HHC read with the words used in clauses (iiid) and (iiie) of s.28, the assessee was entitled to a deduction u/s.80HHC on export profits, the benefit of such deduction cannot be denied to the assessee - Interpretation of Statutes - Exemption provision.

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(2) (i) ss. 36(1)(vii) and 36(1)(viii) r/w s.36(2) - Interpretation of - Scope and ambit of the proviso to clause (vii) of sub-s.(1) of s.36 - Discussed - Held: The provisions of s.36(1)(vii) and s.36(1)(viii) are distinct and independent items of deduction and operate in their respective fields - Scheduled commercial banks would get the full

benefit of the write off of the irrecoverable debt(s) u/s.36(1)(vii) in addition to the benefit of deduction for the provision made for bad and doubtful debt(s) u/s.36(1)(viii).

(ii) s.119 - Circulars issued by Central Board of Direct Taxes (CBDT) - Effect of - Discussed.

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#### INTEREST:

Interest on solatium.  
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#### INTERIM ORDERS:

(1) (See under: Copyright Act, 1957) .... 209  
(2) (See under: Monopolies and Restrictive Trade Practices Act, 1969) .... 280

#### INTERPRETATION OF STATUTES:

(1) Exemption provision.  
(See under: Income Tax Act, 1961) .... 684  
(2) (See under: Motor Vehicles Rules, 1989) .... 35

#### JUDICIAL DISCIPLINE:

High Court - Co-ordinate Bench taking contrary view - Held: When a co-ordinate Bench was apprised about the number of matters pending before the other Bench and filed earlier in point of time which were being part heard and the hearing was in continuum, it would have been advisable to wait for the verdict of that Bench or to bring it to the notice of the Chief Justice about the similar matters being instituted at both the places - The judicial courtesy and decorum warranted such

discipline which was expected from the Judges - Similarly, the Division Bench erroneously treated the verdict of the other Division Bench as per incurium or not a binding precedent - Judicial discipline commands in such a situation when there is disagreement, to refer the matter to a larger Bench - Precedent.

(Also see under: Constitution of India, 1950)

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#### JUDICIAL REVIEW:

(See under: Arms Act, 1959) .... 608

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#### KERALA CHITTIES ACT, 1975:

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#### KERALA GENERAL SALES TAX ACT, 1963:

s.2 (xxvii).

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#### KERALA GENERAL SALES TAX RULES, 1963:

r.9(a) - Trade discount - Eligibility for exemption - Held: Exemption is allowable subject to two conditions; first, the discount is given in accordance with the regular practice in the trade, and secondly, the accounts should show that the purchaser had paid only the sum originally charged less the discount - Nothing in r. 9(a) to read it in the restrictive manner to mean that a discount in order to qualify for exemption under its provision must be shown in the invoice itself - Kerala

General Sales Tax Act, 1963 - s.2(xxvii).

*M/s. IFB Industries Ltd. v. State of Kerala* .... 802

#### LAND ACQUISITION ACT, 1894:

(1) Compensation - Interest on solatium and additional market value - Sale exemplars - Annual increase - Deduction - Held: When there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied that it is a bona fide transaction, has to be considered and accepted - It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation - Sale exemplar being of 2½ years prior to s.4 Notification in the instant case, annual increase is fixed at 12% - However, the exemplar being of a smaller plot, a 20% deduction will be allowed from the market value - Compensation awarded accordingly - Claimant shall also be entitled to other statutory benefits including interest on solatium and additional market value.

*Mehrawal Khewaji Trust (Regd.), Faridkot & Ors. v. State of Punjab & Ors.* .... 24

(2) Interest on solatium - Entitlement to - Reference court awarded solatium as provided under the Act - But did not award interest on the amount of solatium - Claim by landowners for interest on solatium during execution proceedings - Held: Tenable - Respondents directed to make payment of interest on solatium as per the law laid down in Gurpreet Singh's case.

*Chhanga Singh and Anr. v. Union of India and Anr.* .... 275

## LAND LAWS:

Recovery of possession - Building structure standing on landed premises leased out by respondent in favour of appellant - After expiry of lease period, suit by respondent for recovery of vacant possession - Appellant filed Application under O. 41, r.27 CPC seeking to raise plea that respondents were Thika tenants of the suit premises under the State of West Bengal and appellant had become "Bharatia"(sub-tenant) of the demised structure under the respondents - High Court rejected the application and decreed the suit - Held: Having been granted a lease for a period of twenty one years in respect of the building standing on the suit premises, in which a Cinema theatre was located, appellant could never claim to be a Thika Tenant in respect of the suit premises as defined either under the 1949 Act, the 1981 Act as well as the 2001 Act - Provisions of the 1956 Tenancy Act not applicable to appellant, whose lease stood excluded from the operation of the said Act u/s.3 thereof - Order of High Court accordingly upheld - West Bengal Premises Tenancy Act, 1956 - ss.3 and 13 - Calcutta Thika Tenancy Act, 1949 - Calcutta Thika and Other Tenancies and Land (Acquisition and Regulation) Act, 1981 - West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001.

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## LEASE:

Recovery of possession after expiry of lease period.

(See under: Land laws) .... 583

## MEDICAL JURISPRUDENCE:

Time of death and contents of stomach - Held: Judging the time of death from the contents of the stomach, may not always be the determinative test - It will require due corroboration from other evidence - If the prosecution is able to prove its case, including the time of death, beyond reasonable doubt and the same points towards the guilt of the accused, then it may not be appropriate for the court to wholly reject the case of the prosecution and to determine the time of death with reference to the stomach contents of the deceased.

(Also see under: Penal Code, 1860)

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## MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT 1957:

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## MINOR MINERALS CONSERVATION AND DEVELOPMENT RULES, 2010:

(See under: Environmental laws) .... 819

## MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT,1969:

s. 13(2) - Allotment of plot - Possession not given - Allottee's complaint to MRTP Commission - Commission, by interim order dated 13.9.2007 directing to handover possession to the allottee - Review application by the opposite party - Commission recalled the order dated 13.9.2007 - Held: There is no infirmity in the order of the Commission whereby it recalled the direction to

handover possession to allottee on the ground that the direction could be considered at the stage of final adjudication - The order dated 13.9.2007 was not a consent order, and being an interim order could have been modified or revoked - Commission has power u/s. 13 (2) to amend or revoke any order at any time, therefore, it is not barred by limitation - Review - Interim Orders.

*M/s. A.B.N.A. And Ors. v. The Managing Director, M/s. U.P.S.I.D.C. Limited, Kanpur & Anr.* ....

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#### MOTOR VEHICLES RULES, 1989:

(i) r.100 - Black films on safety glass of the windscreen and windows of motor vehicles - Held: Alteration to the conditions of the vehicle in a manner contravening the Motor Vehicles Act is not permissible in law - On the plain reading of r.100, it is clear that car must have safety glass having VLT at the time of manufacturing 70% for windscreen and 50% for side windows - It should be so maintained in that condition thereafter - The Rule and the explanation do not contemplate or give any leeway to the manufacturer or user of the vehicle to, in any manner, tamper with the VLT - If the glass so manufactured already has the VLT as specified, then the question of further reducing it by any means shall be in clear violation of r.100 as well as the prescribed IS - Motor Vehicles Act, 1988 - ss.52, 53, 190.

(ii) r.100 - Interpretation of - Ban on use of black films on glass of the windscreen and windows of motor vehicle - Held: r.100 has to be interpreted in such a manner that it serves the legislative intent and the object of framing such rules, in preference to one which would frustrate the very purpose of

enacting the Rules as well as undermining the public safety and interest - On the plain reading of r.100, it is clear that use of black films on the glasses of vehicles is prohibited - The private interest would stand subordinate to public good - The Rules are mandatory - Interpretation of statutes.

(iii) Use of black films on vehicles of certain VIPs/VVIPs for security reasons - Permissibility - Held: Although this practice is not supported by law, as there is no notification by the competent authority giving exemption to such vehicles from the operation of r.100 or any of its provisions, the cases of the persons who have been provided with Z and Z+ security category may be considered by a Committee consisting of the Director General of Police/Commissioner of the Police and the Home Secretary of the State/Centre - The appropriate government is free to make any regulations that it may consider appropriate in this regard.

(iv) r.100 - Tinted glass and glass coated with black film - Distinction between.

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#### MYSORE TOWN AND COUNTRY PLANNING ACT, 1961:

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#### NATURAL JUSTICE:

(See under: Arbitration Act, 1940) .... 780

#### PENAL CODE, 1860:

(1) (i) ss. 2, 403, 405, 415, 418, 420 and 423

r/w ss. 120B and 34 - Territorial jurisdiction of courts in India - Agreement between intermediary buyer (based abroad) and seller (based in India) to purchase certain products which were to be further transferred by the intermediary buyer to ultimate beneficiary (foreign company, based in Dubai) - Ultimate beneficiary not honouring its commitment under the bill of exchange - Criminal complaint by seller u/ss. 403, 405, 415, 418, 420 and 423 r/w ss. 120B and 34 before the jurisdictional Magistrate in India against appellants-the ultimate beneficiary and the foreign parties (officials allegedly connected with the offence) - Held: The competent court in India has the jurisdiction to entertain the complaint u/s. 179, 181(4) and 182 Cr.P.C. - The factum of supply of goods from India to Dubai as an essential component of the offences allegedly committed by the accused, is relatable to the words "anything which has been done" used in s.179 - Since the complainant-seller allegedly held the bill of exchange in India, the consequence emerging out of the said denial of encashment of the bill of exchange, 'ensued' in India - Thus, it cannot be said that the actions attributed by the seller to the appellants have no connectivity to territorial jurisdiction in India -They would not be protected u/s. 2 - Code of Criminal Procedure, 1973 - ss. 179, 181 and 182 - Jurisdiction.

(ii) Summoning order u/ss. 403, 405, 420 and 423 r/w ss. 120B and 34 - Challenge to - On the ground that the appellants- ultimate beneficiary and the foreign parties (officials allegedly connected with the offence) were not privy to contract/ agreement thus, could not be proceeded against for breach of the agreement - Held: Pleadings

prima facie demonstrate connectivity of the appellants with the foundational basis expressed in the complaint - One of the accused also supported the accusation - Thus, at this stage it is not desirable to exculpate the appellants from proceedings initiated by the complainant before the Magistrate - Said issue may be re-agitated after production of evidence by rival parties before the trial court.

(iii) Summoning order u/ss. 403, 405, 420 and 423 r/w ss. 120B and 34 - Challenge to - Held: Statement of the complainant u/s. 200 Cr.P.C. categorically asserted that the appellants were jointly and severally liable to honour the bill of exchange endorsed in the favour of the buyer - Acts of omission and commission presented by the complainant specific and categoric - Allegations leveled by the complainant fully incorporate all the basic facts necessary to make out the offences whereunder the summoning order was passed - Also, instant case does not suffer from any of the impairments referred in Iridium Telecom Limited's case - Appellants granted liberty to raise the legal issues before the trial court.

(iv) Complaint for dishonour of bill of exchange by the accused - Order of summoning - Civil suit already filed at the behest of the complainant, based on the alleged breach of the agreement - Maintainability of the criminal proceedings - Held: In offences of the nature contemplated under the summoning order, there can be civil liability coupled with criminal culpability - It cannot be said

that since a civil claim has been raised by the complainant it can be prevented from initiating proceedings for penal consequences for the alleged offences committed by the accused under the Penal Code.

*Lee Kun Hee & Ors. v. State of U.P. & Ors.* ....

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(2) ss. 120-B and 302/34 IPC - Murder - Victim strangled to death by father-in-law, brother-in-law and others - Evidence of the brother and the husband of the victim - Disclosure statement of one of the accused - Out of 5 accused, 4 convicted and sentenced by trial court u/ss 120-B and 302/34 and the fifth convicted u/s 120B and also sentenced to imprisonment for life - Held: The prosecution has been able to establish its case beyond reasonable doubt by ocular, documentary and medical evidence - The judgment of the High Court under appeal does not call for any interference - Once the court finds an accused guilty of s.120B, where the accused had conspired to commit an offence and actually committed the offence with other accused with whom he conspired, they all shall individually be punished for the offence for which such conspiracy was hatched - There is no error in the judgment of the trial court in convicting the accused u/s 120B read with s.302.

(Also see under: Code of Criminal Procedure, 1973)

*Jitender Kumar v. State of Haryana* ....

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(3) s. 300, Exception 4 and s. 304(Part-I) - Scuffle between accused and Head Constable of police

in order to release the dinghy from the police - Accused causing head injury to Head Constable and pushing him into the sea - Dead body of victim recovered from the sea - Held: Pushing a person into the sea with a bleeding head injury may not have been with the intention to kill, but it would certainly show the "intention of causing a bodily injury as was likely to cause death", within the meaning of s. 300 and secondly s. 304(Part-I) - The act of the accused is more appropriately punishable u/s 304 (Part-I) - Conviction u/s 302 set aside - Instead accused convicted u/s 304 (Part-I) and sentenced to 8 years RI - Evidence.

*Abdul Nawaz v. State of West Bengal* ....

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(4) s.302 - Accused committing murder of his step mother - Conviction and sentence of life imprisonment awarded by trial court, affirmed by High Court - Held: Prosecution case is to a very limited extent, based upon circumstantial evidence and largely there exists ocular and documentary evidence to support the case - The evidence of the brother of the deceased, whose presence in the house was natural, supported by evidence of the witnesses, medical evidence, the recovery of weapon of crime made on disclosure statement of accused, the serological reports and the motive for the crime, lead to the irresistible conclusion that the accused had committed the crime - There is no reason to interfere with the findings of fact recorded by the courts below - Circumstantial evidence.

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(5) s. 302 - Murder - Circumstantial evidence - Witnesses had allegedly last seen the deceased with accused - Extra-judicial confession - Recovery of articles at the instance of accused - Conviction by courts below - Appeal by two of the three accused - Held: Prosecution failed to prove the case beyond reasonable doubt - There are contradictions in the statement of witnesses - Confessional statements not worth credence - Last seen theory not proved - Time of death of deceased not established - Motive not proved - Conviction set aside - Benefit of the judgment extended to the non-appellant accused as he had been attributed the same role as the appellants - Constitution of India, 1950 - Arts.136, 142 and 21 - Administration of Justice.

(Also see under: Administration of Justice)

*Sahadevan & Anr. v. State of Tamil Nadu* .... 366

(6) (i) ss. 302, 302/149, 307 and 307/149 - Five accused attacking two brothers and their sister with various weapons - One of the brothers died - Conviction and sentence of life imprisonment awarded to all the five accused by trial court - Affirmed by High Court - Held: The presence of the two injured eye-witnesses at the place of occurrence has been established beyond reasonable doubt - They are reliable witnesses and worthy of credence - They have stated that all the accused caused injuries to the deceased - The motive has also been brought out - The fact that the injuries were inflicted by a collective offence upon the deceased and the injured witnesses, is duly demonstrated not only by the

medical report, but also by the statements of the doctors - Prosecution has been able to establish its case.

(ii) s. 300, '3rdly' - Murder - Held: If there is an intention to kill and with that intent, injury is caused which is sufficient to cause death in the ordinary course of nature, then the offence would clearly fall within the ambit of para '3rdly' of s. 300 and, therefore, would be culpable homicide amounting to murder - In the instant case, the said ingredients have been established.

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(7) ss. 302 and 307 - Acquittal of accused by High Court on ground of benefit of doubt - Accused CRPF constable, stated to have opened fire from a self-loading rifle causing bullet injuries to two officers - One of them died - Conviction by trial court u/ss. 302 and 307 - High Court found irreconcilable inconsistencies in the prosecution case relating to: a) deposition of witnesses, and b) number of cartridges fired and recovered, and acquitted the accused by giving him benefit of doubt - Held: In the facts and circumstances of the case, it cannot be said that the order of the High Court was either perverse or not based on proper appreciation of evidence - No interference called for u/Art.136 of the Constitution.

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THE  
**SUPREME COURT REPORTS**

*Containing Cases Determined by the Supreme Court of India*

**VOLUME INDEX**  
**[2012] 4 S.C.R.**

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PUBLISHED UNDER THE AUTHORITY OF THE SUPREME COURT OF INDIA  
BY THE CONTROLLER OF PUBLICATIONS, DELHI

(Also available on [www.supremecourtindia.nic.in](http://www.supremecourtindia.nic.in))

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\* Resigned on 27.04.2012 to join the International Court of Justice, the Hague.

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(From 19.01.2012 to 10.05.2012)

Hon'ble Mr. Justice A.K. Patnaik, Judge, Supreme Court of India was on leave for three day w.e.f. 01.05.2012 to 03.05.2012, on full allowances.

Hon'ble Mr. Justice Dalveer Bhandari, Judge, Supreme Court of India was on leave for four days w.e.f. 24.04.2012 to 27.04.2012, on full allowances.