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SUBJECT-INDEX**ADMINISTRATIVE LAW:**

(1) (i) Delegated legislation - r.41 of Border Security Force Rules, 1969 - Held is not in conflict with provisions of s.80 of the Act - Border Security Force Act, 1969 - s.80.

(ii) Delegated legislation - Exercise of power - Extent of - Held: When the power is conferred in general and thereafter in respect of enumerated matters, as in the instant case, the particularisation in respect of specified subject is construed as merely illustrative and does not limit the scope of general power.

(Also see under: Border Security Force Rules, 1968)

State of J & K v. Lakhwinder Kumar & Ors. 1070

(2) (i) Policy of Foreign Direct Investment in Multi-Brand Retail Trading - Held: Under Constitution of India, executive has been accorded primary responsibility for formulation of governmental policy - Executive function comprises both determination of policy as well as carrying it into execution - If Government after due reflection, consideration and deliberation feels that by allowing FDI up to 51% in Multi-Brand Retail Trading, country's economy will grow and it will facilitate better access to market for producer of goods and will enhance employment potential, then, it is not open for Court to go into merits and demerits of such policy - On matters of policy, Court does not interfere unless the policy is unconstitutional or contrary to statutory provisions or arbitrary or irrational or in abuse of power - Impugned policy that allows FDI up to 51% in Multi-Brand Retail Trading does not appear to

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suffer from any of these vices.

(ii) Policy of FDI - Competence of Central Government - Held: Department of Industrial Policy and Promotion is empowered to make policy pronouncements on FDI - Competence of Central Government to formulate a policy relating to investment by a non-resident entity/person resident outside India, in the capital of an Indian company is beyond doubt - Reserve Bank of India is empowered to prohibit, restrict or regulate various types of foreign exchange transactions, including FDI, in India by means of necessary regulations - RBI Regulates foreign investment in India in accordance with Government of India's policy - Allocation of Business Rules, 1961 - Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 - Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Third Amendment) Regulations, 2012 - Foreign Exchange Management Act, 1999 - ss. 6(3) and 47.

(iii) Policy of FDI in Multi-Brand Retail Trading - Held: impugned policy is only an enabling policy and State Governments/Union Territories are free to take their own decisions in regard to implementation of policy in keeping with local conditions - It is, thus, left to choice of State Governments/Union Territories whether or not to implement the policy to allow FDI up to 51% in Multi-Brand Retail Trading.

(iv) Policy of FDI in Multi-Brand Retail Trading - Objectives of - Discussed.

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CODE OF CRIMINAL PROCEDURE, 1973: (1) s.157 - Sending of special report to Magistrate - Held: When there is delayed dispatch of FIR, it is necessary on the part of prosecution to give an explanation for delay - However, if court is convinced as to truthfulness of prosecution version and trustworthiness of its witnesses, delay in dispatch of FIR may not be regarded as detrimental to prosecution case - In the case at hand, evidence cannot be thrown overboard as version of witnesses deserves credence. <i>Rattiram & Ors. Etc. v. State of M.P. Through Inspector of Police etc.</i> 1003
(2) s. 309(2) Proviso 4 (as inserted by s. 21(b) of Act 5 of 2009); ss. 293, 207 and 24. (See under: Constitution of India, 1950) 899
(3) s. 354. (See under: Penal Code, 1860) 1095
(4) s. 378 - Appeal against acquittal - Interference with - Power of High Court - Scope of - Held: High Court, as an appellate court, even while dealing with an appeal against acquittal, entitled to re- appreciate entire evidence - Appeal. (Also see under: Penal Code, 1860) <i>Mookkiah v. State, rep. by the Inspector of Police, Tamil Nadu</i> 881
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of inherent powers of High Courts u/s.482 CrPC - Duty of courts to encourage genuine settlements of matrimonial disputes - Held: High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice - s.320 does not limit or affect powers of High Court u/s.482.

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CONSTITUTION OF INDIA, 1950:

(1) Arts.12 and 226 - Writ petitions before High Court by employees of VSNL (renamed TCL) challenging termination of their services - Held: Are not maintainable - Government of India holding only 26.12% shares of TCL, would not be in control of affairs of TCL - TCL cannot be said to be 'other authority' within Art.12 - Merely because TCL is performing the functions which were initially performed by OCS would not be sufficient to hold that it is performing a public function - Therefore, High Court of Delhi and High Court of Bombay were fully justified in rejecting claim of appellants that TCL would be amenable to writ jurisdiction of High Court by virtue of 'other authority' within the purview of Art. 12 - Human Rights Act, 1998 - s.6(3)(b).

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(2) Arts. 32, 21 and 141 - Prosecution of accused for an offence under NDPS Act - Bail denied - Accused languishing in jail for 12 years awaiting commencement of trial - Supreme Court granting bail - Directions and guidelines issued as regards trial of NDPS Act cases to curb adjournments, for setting up of Special Courts for NDPS cases, to

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open more CFSs, to appoint Nodal Officers and Pairvi Officers, Special Public Prosecutors; to simplify the procedure of filing charge-sheet and supply of documents in electronic form; and suggestion made to bring a provision analogous to s.22 (c) of Prevention of Corruption Act, in NDPS Act also and to bring notification as mentioned in fourth proviso to s.309(2) CrPC - Narcotic Drugs and Psychotropic Substances Act, 1985 - Code of Criminal Procedure, 1973 - s. 309(2) Proviso 4 (as inserted by s. 21(b) of Act 5 of 2009); ss. 293, 207 and 24 - Prevention of Corruption Act, 1988 - s. 22(c) - Legislation.

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(3) Art. 137 - Review Petition - Held: Review proceedings are not by way of an appeal - They have to be strictly confined to scope and ambit of O.47, r.1 CPC - In the instant case, error contemplated in impugned judgment is not one which is apparent on the face of record, rather dispute is wholly founded on interpretation and applicability of ss. 11(2) and 11(4) of MMDR Act - In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same - However, misquoted portion of Report, owing to clerical mistakes, deleted from the judgment - Code of Civil Procedure, 1908 - O.47, r.1 - Supreme Court Rules. 1966 - O.40 - Mines and Minerals (Development and Regulation) Act, 1957 - ss. 11(2) and 11(4) - Delay/Laches.

Union of India v. Sandur Manganese & Iron Ores Ltd. and Ors.

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CONSUMER PROTECTION ACT, 1986:

s.2 (1) (d) - 'Consumer' - Members of Co-operative Group Housing Society - Challenging action of Society terminating their membership by refunding

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their money - Held: Members of Society are 'consumer' within the meaning of s.2 (1) (d) - Further, action of Society even if approved by authorities under Co-operative Societies Act, cannot deprive members of their legitimate right to seek remedy under Consumer Protection Act which is in addition to other remedies available to them under Cooperative Societies Act - State Commission directed to decide appeals filed by complainants on merits - Haryana Co-operative Societies Act, 1984.

Virender Jain v. Alaknanda Cooperative Group Housing Society Limited and Others 1058

CRIMES AGAINST WOMEN:

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(2) (i) Sexual assault cases - Sensitivity to be shown by prosecution and trial court - Directions given by Supreme Court in *Delhi Domestic Working Women's Forum's* case, reiterated - Further directions given - Director General of Police and Home Ministry of the State to issue proper guidelines and instructions to authorities as to how to deal with such cases and the kind of treatment to be given to prosecutrix.

(ii) Sexual assault - Age of prosecutrix - Relevancy of number of teeth.

(Also see under: Penal Code, 1860)

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(3) Sexual assault - Sensitiveness to be shown by courts while dealing with the case - Penal Code, 1860.

(Also see under: Penal Code, 1860)

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DELAY / LACHES:

(1) Delay in sending special report to Magistrate.

(i) (See under: Penal Code, 1860) 1107

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(3) Evidence as regards age.
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FOREIGN EXCHANGE MANAGEMENT ACT, 1999: ss. 6(3) and 47.

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INDUSTRIAL DISPUTES ACT, 1947:

(i) s. 33-A read with s.33 - Complaint by a daily wagger-bus conductor who had been dismissed from service after an inquiry - Industrial Tribunal holding the charge proved, but directing reinstatement of workman without back wages - Held: When respondent had indulged into a misconduct within a very short span of service which had been duly proved, there was no occasion to pass the award of reinstatement with continuity in service - Complaint shall stand dismissed.

(ii) ss.33 and 33-A - Nature and scope of, explained - Held: Once complaint u/s 33A is decided, there is no question of granting any liberty to apply u/s 33 of the Act.

Rajasthan State Road Transport Corporation and Another v. Satya Prakash 939

INVESTIGATION:

Inquest - Purpose of - Explained.

(Also see under: Penal Code, 1860)

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PENAL CODE, 1860:

(1) ss.148 and 302/149- Double murder - Conviction of one accused only by trial court for causing death of one of deceased - High Court convicting appellant and four others - Held: High Court has correctly appreciated the evidence rendered by witnesses and has rightly held appellant guilty u/s 302 r/w s.148 and awarded him sentence of life imprisonment - Evidence - Evidence of related witnesses - Investigation - Delay in dispatch of special report to Magistrate. *Guiram Mondal v. State of West Bengal* 1107

(2) s.302 - Accused committing 5 murders including of three children - Circumstantial evidence - Held: Deaths established as homicidal in nature, evidence of witnesses, extra-judicial confession, absconding of accused, his conduct at the time of his arrest, recoveries of incriminating articles made pursuant to disclosure statement, motive, and statement of accused u/s 313 CrPC, all connect him to crime and establish his guilt - Judgment of High Court affirming the conviction and commuting death sentence to imprisonment for 20 years with a further direction that accused be not granted any remission meanwhile, upheld - Sentence/Sentencing - Evidence - Circumstantial evidence - Extra judicial confession.

(Also see under: Sentence/Sentencing)

Sahib Hussain @ Sahib Jan v. State of Rajasthan 1019

(3) s. 302/34 - Acquittal by trial court - Conviction by High Court - Held: Evidence of eye-witnesses and medical evidence support the prosecution case

- There was no delay in lodging FIR or dispatching the report to Magistrate - FSL report not doubtful
 - High Court rightly reversed order of acquittal and convicted accused.

Mookkiah v. State, rep. by the Inspector of Police, Tamil Nadu 881

(4) s.302/149 - Victim stated to have been assaulted by a number of accused resulting in his death - Conviction - Held: Evidence establishes that five of the accused assaulted deceased - One of them died before filing of appeals - Conviction and sentence of life imprisonment of remaining four upheld - As far other accused persons are concerned, there are contradictory statements leading to a reasonable doubt with regard to their presence at place of occurrence and assaulting the deceased - They are, accordingly, acquitted - Evidence - Contradictory statements of witnesses.

Rattiram & Ors. Etc. v. State of M.P. Through Inspector of Police etc. 1003

(5) s.304 (part-II)/34 - Accused causing injuries to victim - Death of victim on the following day - Conviction u/s 302/34 and sentence of life imprisonment, affirmed by High Court - Held: The instant case falls u/s 304(part-II) - Although appellants had no intention to cause death but it can safely be inferred that they knew that such bodily injury was likely to cause death - Therefore, appellants are guilty of culpable homicide not amounting to murder - Accordingly, judgments of courts below are modified and conviction u/s 302 is converted to 304(part-II) - Appellants sentenced to ten years' imprisonment.

Litta Singh & Anr. v. State of Rajasthan 1118

(6) ss.304-B, 498A and 306 - Suicide by married

woman - Conviction of appellants (husband and in-laws) - Held: Not justified - Letter allegedly written by victim to her brother was the only evidence produced by the prosecution to prove that appellants had subjected her to harassment and cruelty in connection with demand for dowry - But since there were grave doubts as to whether the said letter was actually written by the victim or not, conviction of appellants only on the basis of said letter would be unsafe - Prosecution unable to prove beyond reasonable doubt that appellants subjected the victim to cruelty or harassment - It cannot be held that appellants had in any way abetted the suicide by the victim - Conviction set aside.

Indrajit Sureshprasad Bind & Ors. v. State of Gujarat 931

(7) ss. 376, 363, 148, 323, 149, 342 and 506 - Accused persons including father and son stated to have beaten, raped and tortured a labourer - Acquittal by trial court, affirmed by High Court - Held: A judgment must show proper application of mind by Presiding Officer of court, and that conclusion is based on appreciation/ evaluation of evidence - Every court is duty bound to state reasons for its conclusions - In the instant case, trial court did not decide the case giving adherence to provisions of s. 354 CrPC - It did not record any sound reasoning for acquittal, though it had been the case of prosecutrix that she remained hospitalized - Courts below have dealt with the matter in a very summary fashion - The view taken by courts below is manifestly unreasonable and has resulted in miscarriage of justice - The Court is not in a position to judge the correctness, legality and propriety of findings recorded by courts below - Judgments of courts below are set aside and the case is remanded to trial court to decide it afresh

on the basis of evidence on record - Code of Criminal Procedure, 1973 - s/354 - Judgments.

Prem Kaur v. State of Punjab and Ors. 1095

(8) ss. 376 and 450 - Rape of a minor girl - Acquittal by trial court holding that prosecutrix was not below 16 years of age and it was a case of consent - Conviction by High Court with 7 years RI - Held: Evidence of father of prosecutrix, doctor who medically examined and teacher of night school, and school register clearly establish the age of prosecutrix to be 14 years at the time of occurrence - Besides, doctor found that prosecutrix had only 28 teeth, 14 in each jaw, which further indicates that she was 14 years of age - Therefore, question of consent becomes totally irrelevant - There is no reason to interfere with judgment of High Court - Sexual assault - Age of prosecutrix - Relevancy of number of teeth.

Dilip v. State of Madhya Pradesh 957

PREVENTION OF CORRUPTION ACT, 1988:

s. 22(c).

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SENTENCE / SENTENCING:

Sentence for a fixed term with a further embargo on remissions - Death sentence awarded by trial court to accused found guilty of causing death of five persons including of three children - Commuted by High Court to imprisonment for 20 years with a further direction that accused be not granted any remissions - Held: Decision of High Court cannot be faulted with in the light of judgments of Supreme Court - Penal Code, 1860 - s.302.

(Also see under: Penal Code, 1860)

Sahib Hussain @ Sahib Jan v. State of Rajasthan 1019

SERVICE LAW:

Appointment / Recruitment - Fixing of minimum qualifying marks subsequent to advertisement - Held: Rule does not mandate the Commission to fix and to disclose minimum qualifying marks in Preliminary Examination and Main Examination either in advertisement or before conducting the examination - After the two examinations, Commission is empowered to shortlist candidates and to summon them for an interview for personality and other tests - Power exercised by Commission under r.11 fixing qualifying marks in written examination in process of conducting recruitment test cannot be interfered with by court - However, Rule does not empower Commission to fix qualifying marks in viva voce test which has rightly not been done by it - Arunachal Pradesh Public Service Combined Competitive Examination Rules, 2001 - r.11 r/w r. 12.

Arunachal Pradesh Public Service Commission & Anr. v. Tage Habung & Ors. 1134

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WITNESSES:

Related witness - Evidentiary value - Held: Merely because a witness is related, his evidence cannot be eschewed - However, it is duty of court to analyze the same cautiously and scrutinize it with other corroborative evidence.

(Also see under: Penal Code, 1860)

Mookkiah v. State, rep. by the Inspector of Police, Tamil Nadu 881

WORDS AND PHRASES:

Expression, 'maro maro' - Connotation of.

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