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SUBJECT-INDEX

ADMINISTRATIVE LAW:

(i) Departmental notings - Held: A higher civil servant normally has varied experience and Ministers ought not to treat his opinion with scant respect - If Ministers want to take a different view, there must be compelling reasons, and the same must be reflected on the record - In the instant case, Secretaries had given advice in accordance with statute and yet Minister has given a direction to act contrary thereto and permitted the sale which is clearly in breach of statute.

(ii) Land policy - Held: Considering the scheme of the Act, process of industrialization must take place in accordance therewith - If the law requires a particular thing should be done in a particular manner it must be done in that way and none other - State Government cannot ignore the policy intent and procedure contemplated by statute.

(iii) Power of statutory authority - Exercise of by Government - Minister permitting further sale - Held: Under s. 89A(3), Government is appellate authority where Collector does not grant a certificate for purchase of bonafide industrial purpose - Thus, powers of statutory authority have been exercised by Government which is an appellate authority - Minister's direction clearly

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indicates an arbitrary exercise of power - Orders passed by Government cannot therefore be sustained.

(Also see under: Gujarat Tenancy and Agricultural Lands (Vidarbha Region and Kutch Areas) Act, 1958).

Dipak Babaria & Anr. v. State of Gujarat & Ors. 71

BAIL:

Anticipatory bail.

(See under: Code of Criminal Procedure, 1973) 287

CODE OF CIVIL PROCEDURE, 1908:

O. 7, r.11 - Suit for partition and rendition of accounts on the basis of a will - Application for rejection of plaint - Held: For deciding an application under O.7, r. 11, one has to look at the plaint and decide whether it deserved to be rejected for the ground raised -The issue of limitation is always a mixed question of facts and law and, therefore, it could not be held that no case was made out for proceeding for a trial.

Surjit Kaur Gill & Anr. v. Adarsh Kaur Gill & Anr. 167

CODE OF CRIMINAL PROCEDURE, 1973:

(1) (i) s.319 - Power to proceed against other person appearing to be guilty of offence - Stage of exercise of power - Held: Power u/s 319(1) can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment - s. 319 uses the expressions 'inquiry' and 'trial' - Stage of inquiry commences, insofar as the court is concerned, with filing of charge-sheet and

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consideration of material collected by prosecution, that is mentioned in the charge-sheet for the purpose of trying the accused - As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry - Inquiries u/ss 200, 201, 202 and u/s 398 are species of the inquiry contemplated by s. 319 - The view that in a criminal case, trial commences on cognizance being taken, is not approved - Maxims 'judex damnatur cum nocens absolvitur' and 'a verbis legis non est recedendum' - Interpretation of statutes.

(ii) s.319 r/w s. 227 - 'Evidence' for the purpose of s.319 - Connotation of - Held: For exercise of power u/s 319, 'evidence' means material that has come before court during an inquiry or trial by it and not otherwise - It is only such evidence that can be taken into account by Magistrate or court to decide whether power u/s 319 is to be exercised and not on the basis of material collected during investigation.

(iii) s.319 - Exercise of power u/s 319 on the basis of examination-in-chief - Held: Once examination-in-chief is conducted, the statement becomes part of record - It is evidence as per law, though, it may be rebuttable - Power u/s 319 can be exercised at the stage of completion of examination-in-chief and court need not wait till cross examination - Evidence Act, 1872 - s.3.

(iv) s.319 - Nature of satisfaction required to invoke power u/s 319 - Held: Though only a prima facie case is to be established from the evidence led

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before court not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of complicity person concerned - The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction - In the absence of such satisfaction, court should refrain from exercising power u/s 319.

(v) s.319 - Power to proceed against other person - Scope of - Held: s.319 is an enabling provision - A person whose name does not appear even in FIR or in the charge-sheet or whose name appears in FIR and not in the main part of the charge-sheet but in Column 2 and has not been summoned as an accused in exercise of powers u/s 193, can still be summoned, provided the court is satisfied that conditions provided stand fulfilled.

(vi) s.319 r/w ss.398, 300(5) and 258 - Power to proceed against a person who has been discharged - Held: A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted - Such a person has stood the stage of inquiry before the court and upon judicial examination of material collected during investigation, court had come to conclusion that there was not even a prima facie case to proceed against such person - If after such careful examination of evidence, court is of opinion that there does exist evidence to proceed against

the person so discharged, it may take steps but only in accordance with s. 398 without resorting to the provision of s. 319 directly.

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(2) s.438 - Anticipatory bail - Complaint u/s.3 of SC/ST Act and ss.147, 148, 149, 323, 448,IPC - Anticipatory bail granted by High Court - Held: Scope of s.18 of SC/ST Act r/w s.438, Cr.P.C. is such that it creates a specific bar to grant anticipatory bail - No court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out - In the light of order of Sessions judge and statutory provision, High Court has committed error in granting anticipatory bail - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - s.3.

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(3) s.482 - Quashing of proceedings - Published in a German magazine - Article published with a picture reproduced in Indian magazine and newspaper - Criminal proceedings u/ss.292, IPC and u/ss. 3, 4 and 6 of Indecent Representation of Women (Prohibition) Act against editor and publisher of magazine and newspaper - High Court declining to quash the proceedings - Held: While judging as to whether a particular photograph, an article or book is obscene, regard must be had to the contemporary values and national standards and not the standard of a group of susceptible or sensitive persons - Obscenity has to be judged from point of view of an average person, by applying

contemporary community standards - The message, the publication conveyed was to eradicate evil of racism and apartheid in society and promote love and marriage between white skinned man and a black skinned woman and, as such, the publication cannot be said to be objectionable so as to initiate proceedings u/s.292 IPC or u/s.4 of 1986 Act - Criminal proceedings initiated against appellants set aside - Indecent Representation of Women (Prohibition) Act, 1986 - ss.3, 4, 6 - Penal Code, 1860 - s.292.

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CONSTITUTION OF INDIA, 1950:

Art.142.

(See under: Gujarat Tenancy and Agricultural Lands (Vidarbha Region And Kutch Areas) Act, 1958) 71

CRIMINAL LAW:

Motive.

(See under: Penal Code, 1860) 155

ENVIRONMENT PROTECTION ACT, 1986:

(See under: Prevention of Cruelty to Animals (Slaughter House) Rules, 2000) 200

EVIDENCE:

Exaggeration in deposition - Held: If exaggeration does not change prosecution story or convert it into an altogether new story, allowance can be made for it.

(Also see under: Penal Code, 1860).

Sheesh Ram and Ors. v. The State of Rajasthan

EVIDENCE ACT, 1872:

s.3.

(See under: Code of Criminal Procedure,
1973)

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FOREST ACT, 1927:

(i) s.35(3) - Held: Mere issuance of a notice u/s.35(3) is not sufficient for any land being declared a "private forest" within the meaning of that expression as defined in s.2(f)(iii) of Maharashtra Private Forests (Acquisition) Act - s.35(3) is not intended to end the process with mere issuance of a notice but it also requires service of a notice on owner of forest - In the absence of any time period having been specified for deciding a show cause notice issued u/s.35, it must be presumed that it must be decided within a reasonable time - In the instant case, notice issued u/s.35(3) after its publication in the Gazette was not acted upon - Admittedly, no attempt was made by State to take over possession of disputed land at any point of time - On the contrary, permissions were granted from time to time for construction of buildings on disputed land - Thus, it cannot be said that any of disputed lands were 'forest' within the primary meaning of that word, or even within the extended meaning given in s.2(c-i) of Private Forests Act - Maharashtra Private Forests Acquisition Act, 1975 - s.2(c-i), 2(f)(iii).

(ii) s.35(3) - Service of notice - Notice was issued to appellant in 1957 but no decision was taken thereon till 1975 - Said notice must, for all intents and purposes be treated as having become a dead

letter - State cannot be allowed to demolish the massive constructions made over the last half a century.

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GUJARAT TENANCY AND AGRICULTURAL LANDS (VIDARBHA REGION AND KUTCH AREAS) ACT, 1958:

s.89-A - Sale of agricultural land for industrial purpose - No industry set up - Minister permitting further sale of land for industrial purpose - Held: Where purchaser fails to start industrial activity, s. 89A (5) requires Collector to hold an enquiry and pass an order that land shall vest in Government - Then land shall be disposed of by Government having regard to use of land - In the instant case, Collector did not take any steps - Instead Minister granted permission for sale of land in favour of further purchaser - This is clearly a case of dereliction of duties by Collector and dictation by Minister - Direction of State Government and consequent order issued by Collector are arbitrary, and bad in law for being in violation of scheme and provisions of ss. 89 and 89A - Directions given - Constitution of India, 1950 - Art.142.

Dipak Babaria & Anr. v. State of Gujarat & Ors.

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INCOME TAX ACT, 1961:

(i) ss. 139 and 276 CC - Income-tax return - Non-filing of - Prosecution - Held: s.139 as it stood at the relevant time, states that it is mandatory on the part of assessee to file return before due date.

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(ii) s.144 r/w ss.139 and 276 - Best judgment assessment - Effect of, on liability of assessee to file return - Held: The firm is independently required to file return and merely because there has been a best judgment assessment u/s 144 would not nullify liability of firm to file return as per s. 139(1).

(iii) s.276CC r/w ss.142 and 148 - Held: Offence u/s 276CC is attracted on failure to comply with provisions of s. 139(1) or failure to respond to notice issued u/s 142 or s. 148 of the Act within time limit specified therein.

(iv) s.276CC - Prosecution - Pendency of appeal - Effect of - Held: Pendency of appellate proceedings cannot be said to be a relevant factor for not initiating prosecution u/s 276CC - Interpretation of statutes.

(v) s.278E - Non-filing of return - Presumption - Held: Court in a prosecution of offence, like s. 276CC has to presume existence of mens rea and it is for accused to prove contrary and that too beyond reasonable doubt - Appellants have to prove circumstances which prevented them from filing returns as per s.139(1) or in response to notices u/ss 142 and 148.

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INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986:

ss.3, 4, 6.

(See under: Code of Criminal Procedure, 1973) 263

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INTERPRETATION OF STATUTES:

(1) Literal interpretation or contextual interpretation - Held: Words in a statute must be interpreted literally - But at the same time if context in which a word is used and provisions of a statute inexorably suggest a subtext other than literal, then context becomes important - It is true that ordinary rule of construction is to assign the word a meaning which it ordinarily carries - But subject of legislation and context in which a word or expression is employed may require a departure from rule of literal construction.

(Also see under: Forest Act, 1927; and Maharashtra Private Forests Acquisition Act, 1975)

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(2) (See under: Income Tax Act, 1961) 175

LAND LAWS:

(See under: Gujarat Tenancy and Agricultural Lands (Vidarbha Region and Kutch Areas) Act, 1958) 71

LIMITATION ACT, 1963:

Article 55.

(See under: State Financial Corporations Act, 1951) 138

MAHARASHTRA PRIVATE FORESTS ACQUISITION ACT, 1975:

s.2(f)(iii) - Service of notice - Word "issued" in s.2(f)(iii) of the Act, 1975 r/w s.35 of Forest Act, 1927 - Interpretation of - Held: It must be given a broad meaning in the surrounding context in which

it is used - Scheme of s.35 of Forest Act needs to be kept in mind while considering "issued" in s.2(f)(iii) of Private Forests Act - A notice u/s.35(3) of Forest Act is intended to give an opportunity to owner of a forest to show cause why, inter alia, a regulatory or a prohibitory measure be not made in respect of that forest - Such a notice presupposes existence of a forest - The owner of the forest is expected to file objections within a reasonable time and is also given an opportunity to lead evidence and is entitled to a hearing on the objections - s.2(f)(iii) of Private Forests Act is not intended to apply to notices that had passed their shelf-life and that only 'pipeline notices' issued in reasonably close proximity to the coming into force of Private Forests Act are 'live' and could be acted upon.

(Also see under: Forest Act, 1927)

Godrej & Boyce Mfg. Co. Ltd. & Anr. v. State of Maharashtra & Ors. 203

MAXIMS:

'falsus in uno falsus in omnibus' - Held: Has no application in India - It is merely a rule of caution.

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OBSCENE PUBLICATION:

(See under: Code of Criminal Procedure, 1973) 263

PENAL CODE, 1860:

(1) s.292.
(See under: Code of Criminal Procedure, 1973) 263

(2) s.302 r/w s.34 - Murder - Brutal murder of one person and serious injury to another - Conviction by courts below - Held: Injured witness narrated the incident and defence could not point out any dent in his evidence - Corroboration by prosecution witnesses - There was strong motive to commit murder, i.e. previous enmity - No interference called for with the conviction.

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PREVENTION OF CRUELTY TO ANIMALS (SLAUGHTER HOUSE) RULES, 2000:

By Orders dated 23.8.2012 and 10.10.2012, Supreme Court directed constitution of State Committees for supervising and monitoring the implementation of the provisions of the statutes - By Order dated 27.8.2013, State Committees directed to file Action Taken Report - Held : Action taken Reports indicated that in many States, slaughter houses have been functioning without any licence and even licenced slaughter houses are also not following various provisions as well as guidelines issued by MoEF - There is no periodical supervision or inspection of slaughter houses functioning in various parts of country - Directions given for appointment of experienced Judicial Officer in State Committees to function as its Convener - Prevention of Cruelty to Animals (Establishment and Registration of Societies for Prevention of Cruelty to Animals) Rules, 2000 - Solid Waste (Management and Handling) Rules, 2000 - Environment Protection Act, 1986.

(See under: Prevention of Cruelty to Animals
(Slaughter House) Rules, 2000).

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and others* 200

SCHEDULED CASTES AND SCHEDULED TRIBES
(PREVENTION OF ATROCITIES) ACT, 1989:

s.3.
(See under: Code of Criminal Procedure,
1973) 287

SOLID WASTE (MANAGEMENT AND HANDLING)
RULES, 2000:

(See under: Prevention of Cruelty to Animals
(Slaughter House) Rules, 2000) 200

STATE FINANCIAL CORPORATIONS ACT, 1951:

s.29 - Right to sue under contract of indemnity -
Limitation period - Held: When the Corporation
takes steps for recovery of amount by resorting to
provisions of s.29, limitation period for recovery of
balance amount would start only after adjusting the
proceeds from sale of assets of industrial concern,
as Corporation would be in a position to know if
there is a shortfall or there is excess amount
realised, only after sale of mortgage/hypothecated
assets - The instant case would fall under Article
55 of the Limitation Act - Right to sue on a contract
of indemnity/guarantee arises when contract is
broken - Therefore, period of limitation is to be
counted from the date when assets of Company
were sold and not when recall notice was given -
Limitation Act, 1963 - Article 55.

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Industrial Development Corporation Limited* 138

WITNESSES:

Related/Interested witness - Evidentiary value of
his deposition - Held: Evidence of interested
witness is not always a suspect - It has to be
scrutinized with caution and can be accepted if it
is found reliable.

(Also see under: Penal Code, 1860).

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WORDS AND PHRASES:

Words, 'course', 'inquiry' and 'trial' as occurring in
s. 319 Cr.P.C. - Connotation of.

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