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SUBJECT-INDEX**ADMINISTRATION OF JUSTICE:**

Criminal justice.

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ADMINISTRATIVE LAW:

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(ii) Judicial review.

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CENTRAL CIVIL SERVICES (FIXATION OF PAY OF RE-EMPLOYED PENSIONERS) ORDERS, 1986: Order 4.

(See under: Service Law) 853

CIRCULARS/GOVERNMENT ORDERS/ NOTIFICATIONS:

Circular issued by Department - Held: If departmental circular provides an interpretation which runs contrary to the provisions of law, such interpretation cannot bind the court - The 1979 circular falls in such category - Circular dated 28.4.1979 issued by the Ministry of Petroleum,

Chemicals and Fertilizers, Department of Chemicals and Fertilizers, Government of India - Interpretation of statutes - Contemporanea expositio.

*Glaxosmithkline Pharmaceuticals Limited (Formerly Known as Smithkline Beecham Pharmaceuticals (India) Limited) v.**Union of India & Ors.* 1120**CODE OF CRIMINAL PROCEDURE, 1973:**

(1) s.174 - Inquest report - Held: Neither inquest report nor post-mortem report can be termed as basic or substantive evidence - Any discrepancy occurring therein cannot be termed as fatal or suspicious circumstance which would warrant benefit of doubt to accused.

s.313 - Examination under - Obligation of accused - Held: It is obligatory on the part of accused while being examined u/s.313, to furnish some explanation with respect to incriminating circumstances associated with him - Court must take note of such explanation even in a case of circumstantial evidence, to decide whether or not the chain of circumstances is complete.

(Also see under: Evidence)

Madhu @ Madhuranatha & Anr. v. State of Karnataka 947

(2) ss. 320 and 482 - Power under - Distinction between - Discussed.

(Also see under: Penal Code, 1860)

State of Rajasthan v. Shambhu Kewat and Anr. 973

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(3) Chapters XII, XIV and XV; ss.154 and 190 - Case lodged by way of complaint before Magistrate [complaint case u/s.190] and case registered on basis of FIR u/s.154 before police - Distinction between - High Court upheld order passed by Addl. District & Sessions Judge, who had set aside order of Magistrate whereby he had permitted complainant/ informant to add additional Sections of IPC into charge-sheet submitted after police investigation on an FIR registered u/s.154 CrPC - Propriety - Held: Magistrate permitted addition of sections after submission of charge-sheet missing out that the matter did not arise out of a complaint case lodged before Magistrate u/s.190 but arose out of a police report/FIR in a Police Station based on FIR registered u/s.154 - However, High Court was duty bound in the interest of justice and fairplay to specify in clear terms that trial court would permit and consider the plea of addition of sections at the stage of framing of charge u/s.211 CrPC since matter emerged out of a police case and not a complaint case before Magistrate in which event Magistrate could exercise greater judicial discretion - Liberty granted by Supreme Court to appellant-State to raise all questions relating to additions of Sections on the basis of FIR and material collected during investigation at the time of framing of charges by trial court.

State of Gujarat v. Girish Radhakrishnan Varde 930

CONSTITUTION OF INDIA, 1950:

(1) Art.21 - Human Rights - Rights relating to life, liberty, equality and dignity of individual - Protest/

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agitation by petitioners at police station seeking registration of FIR in respect of an alleged occurrence of rape - Petitioners allegedly rounded up by policemen and mercilessly beaten by them - Injuries caused to petitioners - Petitioners seeking independent investigation by a Special Investigation Team (SIT) into the incident of alleged police atrocities - Held: The petitioners are ordinary persons with clean antecedents - The fact that the video footage recorded at the instance of the police does not show acts of rioting or any arms or brickbats in the hands of the protestors and the recording was stopped as soon as police started using lathis upon the protestors, make it clear, at least prima facie, that in the incident in question, peaceful protestors were subjected to beating by lathis etc. by the police force - Counter version of the respondents that petitioners indulged in rioting and damaged public property neither supported by photographs nor by video footage - Whole incident requires to be investigated/enquired by an independent agency or by a Special Investigation Team (SIT) - NHRC directed to enquire into the complaint of petitioners regarding violation of their fundamental rights particularly one u/Art. 21 - Protection of Human Rights Act, 1993 - s.12A, 13 & 14.

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(2) Art. 233. 985
(See under: Judicial Service)

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CRIMES AGAINST WOMEN:

(See under: Protection of Women from Domestic Violence Act, 2005) 914

DOCTRINES/PRINCIPLES:

(1) *Contemporanea expositio*.
(See under: Circulars/Government Orders/ Notifications) 1120

(2) Doctrine of occupied field.
(See under: Telecom Regulatory Authority of India Act, 1997) 999

DRUGS (PRICE CONTROL) ORDER, 1987:

Para 16(3).
(See under: Drugs (Prices Control) Order, 1995) 1120

DRUGS (PRICES CONTROL) ORDER, 1995:

Para 14 (1) and 16 - Fixation of price of bulk drug or formulation - Compliance of - Held: Once Government exercises power and fixes maximum sale price of bulk drugs specified in First Schedule, there is ban to sell a bulk drug at a price exceeding the maximum sale price so fixed plus local taxes, if any - True import of paragraph 14(1) is that once price notification is gazetted, it takes effect immediately though its enforcement is postponed by fifteen days to enable manufacturers and others to make suitable arrangements with regard to unsold stocks - During the period of fifteen days, it is not open to manufacturer to manufacture and clear bulk drug or formulation at pre-notification prices - Period of 15 days is simply a grace period or cooling period allowed to manufacturers to

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adjust their business in a manner where appropriate arrangements are made with regard to unsold stocks in distribution chain - Drugs (Price Control) Order, 1987 - Para 16(3).

Fixation of price of bulk drug or formulation - Nature and object of - Held: Price fixation by Central Government under DPCO is in the nature of legislative measure and dominant object and purpose of such price fixation is equitable distribution and availability of commodities at fair price.

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EVIDENCE:

(i) Circumstantial evidence - Appreciation of - Prosecution case that with the motive of committing robbery, three accused-appellants murdered the victim, robbed him, chopped off his head and buried the trunk of his body and threw the head and the weapon of offence in river - Courts below held that appellants had committed the crime - Conviction of appellants u/ss.364, 302, 201 r/w s.34 alongwith death sentence - Held: Conviction can be based solely on circumstantial evidence - On facts, no reason to interfere with concurrent findings of fact arrived at by courts below- Conviction upheld - However, the facts and circumstances involved do not meet the requirement of 'rarest of rare case' and it is not a fit case where death sentence awarded to appellants should be affirmed - Ends

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of justice would meet with awarded of sentence of 30 years without remission - Penal Code, 1860 - ss.364, 302, 201 r/w s.34.

(ii) Evidence - Discrepancies in depositions of witnesses - Held: While appreciating the evidence of a witness, minor discrepancies on trivial matters which do not affect the core of prosecution case must not prompt the court to reject evidence in its entirety - Court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to heart of matter, and shake basic version of prosecution witness.

(iii) Evidence - Last seen together theory - Held: In cases where accused was last seen with deceased just before incident, it becomes duty of accused to explain circumstances under which death of victim occurred.

Madhu @ Madhuranatha & Anr. v. State of Karnataka 947

INDUSTRIAL DISPUTES ACT, 1947:

s.2(s) - A medical professional, whether a workman - Held: A medical professional, treating patients and diagnosing diseases cannot be termed as 'workmen' within meaning of s.2(s).

E.S.I.C. Medical Officer's Association v. E.S.I.C. & Anr. 907

INTERPRETATION OF STATUTES:

(1) *Contemporanea expositio*.

(See under: Circulars/Government Orders/ Notifications) 1120

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(2) (See under: Telecom Regulatory Authority of India Act, 1997) 999

JUDICIARY:

Judicial Service - A.P. State Judicial Services - Appointment - To the post of District and Sessions Judge (Entry Level) - Eligibility - Absence of minimum age qualification - Effect - Appellant, though included in select list, not appointed as he had not completed 35 years of age at the time when the advertisement inviting applications for the post in question had been published - Held: Not justified - In the instant case, relevant Rules provide only for maximum age limit but do not say anything with regard to minimum age of a candidate to be selected to the post in question - In the circumstances, appellant, who had not completed 35 years of age at the relevant time could not have been denied appointment - High Court erred in giving undue weightage to recommendations made by Justice Shetty Commission, especially when the Rules did not provide for any minimum age for appointment to the post in question - Moreover, even Art. 233 of the Constitution is also silent about the minimum age for being appointed as a District judge - Andhra Pradesh State Judicial Service Rules, 2007 - Clause V - Constitution of India, 1950 - Art. 233.

Sasidhar Reddy Sura v. The State of Andhra Pradesh & Ors. 985

PENAL CODE, 1860:

(1) s.307 - Conviction by trial court - In appeal, offence compounded by High Court on the basis

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of compromise between parties on account of monetary compensation paid to victim - Held: Offence u/s.307 is non-compoundable - High Court compounded the offence by over-looking the 'nature and gravity of the crime' and 'the societal impact' - It accepted the compromise between parties without application of mind and wrongly took the view that it was a crime against 'an individual' and not 'the society at large' - Settlement by monetary compensation would not wipe off the crime against accused - Taking of levient view on serious offences, would defeat the objective of the criminal justice system - Matter remitted to High Court to decide the appeal on merit - Code of Criminal Procedure, 1973 - s.320 - Administration of Criminal Justice.

State of Rajasthan v. Shambhu Kewat and Another 973

(2) ss.364, 302, 201 r/w s.34.
(See under: Evidence) 947

PROTECTION OF HUMAN RIGHTS ACT, 1993:
s.12A, 13 and 14.
(See under: Constitution of India, 1950) 889

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005:
ss.2(g) 3, 18, 19, 20 and 22 - Petition under - Order of court directing the husband to allow the wife to reside in shared household - Defied by husband - Held: The act of husband comes squarely within the ambit of s.3 - In view of continued domestic violence by husband against wife, High

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Court made an apparent error in holding that conduct of parties prior to coming into force of the Act cannot be taken into consideration - Wife having been harassed, is entitled to protection orders and residence orders alongwith maintenance - In addition, she is also entitled for compensation and damages for injuries, including mental torture and emotional distress caused by acts of domestic violence by husband - Husband directed to pay compensation and damages of Rs.5 lakhs.

Saraswathy v. Babu 914

SENTENCE/SENTENCING:

Death sentence - When warranted - Held: Extreme penalty of death need not be inflicted except in gravest cases of extreme culpability - Life imprisonment is the rule and death sentence an exception - Balance sheet of aggravating and mitigating circumstances has to be drawn up - Condition of providing special reasons for awarding death penalty is not to be construed linguistically but it is to satisfy basic features of a reasoning supporting and making award of death penalty unquestionable - Circumstances and manner of committing crime should be such that it pricks judicial conscience of court to the extent that the only and inevitable conclusion should be awarding of death penalty.

(Also see under: Evidence)

Madhu @ Madhuranatha & Anr. v. State of Karnataka 947

SERVICE LAW:

(1) Pay - Pay-fixation of re-employed pensioners - Pay of re-employed ex-serviceman re-fixed finding that his initial pay fixation was wrong - Administrative Tribunal held that employer was right in rectifying the mistake - High Court held that re-fixation was wrong - Held: As per the provisions of order regulating fixation of pay of re-employed pensioners and as per option exercised by employee, his previous service would not be taken into account for the purposes of his pay fixation - So, re-fixation of his pay was justified - Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 - Order 4.

U.T. Chandigarh & Ors. v. Gurcharan Singh & Anr. 853

(2) Pension - Belated application for grant of opportunity to opt for pension scheme, after expiry of cut off date - Maintainability - Held: It cannot be laid down as a general rule that each and every circular/instruction issued by employer giving additional monetary benefits to retired employees must be published in newspapers and absence of such publication or personal communication to a retired employee would entitle him to seek intervention of court after lapse of many years - In the instant case, at the time of introduction of Pension Scheme, respondent was very much in service of appellant as a Class-I officer - Relevant circulars pertaining to Pension scheme were also issued during his service tenure - Therefore, it is not possible for any person of ordinary prudence

to believe that respondent was not aware of Pension Scheme and opportunities given to retired employees/officers to exercise option to switch over from CPF Scheme to Pension Scheme - Division Bench of High Court committed serious error in interfering with order of single Judge by entertaining the highly belated claim lodged by respondent - However, keeping in view peculiar facts of case, appellants directed to allow respondent to exercise option in terms of circular dated 19.2.1986.

Calcutta Port Trust and Others v. Anadi Kumar Das (Capt.) and Others 862

TELECOM REGULATORY AUTHORITY OF INDIA ACT, 1997:

s.36 - Power of Telecom Regulatory Authority of India (Authority) to frame regulations - Held: Under sub-s. (1) of s.36, Authority can make regulations to carry out purposes of the Act specified in various provisions including ss.11, 12 and 13 - Authority can make regulations which may empower it to issue directions of general character applicable to service providers and others and it cannot be said that by making regulations u/s 36(1), Authority has encroached upon the field occupied by s.12(4) and 13 - Power vested in Authority u/s 36(1) to make regulations is wide and pervasive - It is settled law that if power is conferred upon an authority/body to make subordinate legislation in general terms, the particularization of topics is merely illustrative and does not limit the scope of general power - Interpretation of Statutes - Delegated legislation - Doctrine of occupied field.

ss. 33, 36 and 37 - Power of Authority to frame regulations - Held: The power u/s 36 is legislative - This power is non-delegable - By virtue of s.37, regulations made under the Act are placed on par with rules which can be framed by Central Government u/s 35 and being in the nature of subordinate legislation, rules and regulations have to be laid before both Houses of Parliament which can annul or modify the same - Thus, regulations framed by Authority can be made ineffective or modified by Parliament and by no other body - Delegated legislation.

s.14(b)(as amended by Amendment Act, 2000) - Judicial review of regulations framed by Authority - Held: In exercise of power vested in TDSAT u/s 14(b), it does not have jurisdiction to entertain challenge to regulations framed by Authority u/s 36 - The amendment is intended to vest original jurisdiction of Authority in TDSAT and the same is achieved by s. 14(a) - Appellate jurisdiction exercisable by High Court is also vested in TDSAT by virtue of s.14(b) - Since High Court while hearing appeal did not have power of judicial review of subordinate legislation, transferee adjudicatory forum, i.e., TDSAT cannot exercise that power u/s 14(b) - Telecom Regulatory Authority of India (Amendment) Act, 2000.

Bharat Sanchar Nigam Limited v. Telecom Regulatory Authority of India and Ors. 999

TELECOM REGULATORY AUTHORITY OF INDIA (AMENDMENT) ACT, 2000:

(See under: Telecom Regulatory Authority of India Act, 1997) 999

WITNESSES:

Police witness - Held: No prohibition to the effect that a policeman cannot be a witness or that his deposition cannot be relied upon if it inspires confidence.

(Also see under: Evidence)

Madhu @ Madhuranatha & Anr. v. State of Karnataka 947

WORDS AND PHRASES:

(1) 'Domestic violence' - Meaning of, in the context of Protection of Women from Domestic Violence Act, 2005.

Saraswathy v. Babu 914

(2) 'Occupation' and 'profession' - Distinction between - Discussed.

E.S.I.C. Medical Officer's Association v. E.S.I.C. & Anr. 907