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(ii) s. 57(2) – Persons engaged in supply and distribution of spurious liquor – Held: It is established that the accused used to take delivery of the liquor manufactured by the main accused and supply and distribute the same further – They did not seem to have taken care that the liquor was not mixed with methyl alcohol – The words “omits to take reasonable precaution” would cast a duty on them to see that the liquor that they sell is not mixed with poisonous substance – Again, under sub-s.(5) of s.57A, they were bound to prove that they had taken reasonable precaution, as contemplated in sub-s.(2) – No evidence that the

accused discharged their burden in any manner – Therefore, their conviction for offence punishable u/s.57A(2) is justified – However, as they have already undergone more than 10 years of imprisonment, their sentence brought down to the period already undergone.

(iii) s.57A – Illicit liquor trade – Burden of proof – Held: The prosecution has the initial burden to suggest that the accused was involved in the business of illicit liquor and that he knew the nature thereof – It is only then that the burden would shift to the accused to prove that he had no means to know about the nature of the business or the fact that the liquor was being mixed with noxious substance – On facts, the prosecution had discharged its primary burden – The accused persons, did not offer any evidence so as to discharge the burden put against them – Evidence – Burden of proof.

(iv) s.57A – Mixing of noxious substance with liquor – Liability u/s.57A – Held: s.57-A is extremely general – Offence thereunder is not limited to licence holders, but refers to anybody who mixes or permits to be mixed any noxious substance or any substance which is likely to endanger human life with any liquor – In addition to the mixing or permitting to be mixed, sub-s.(2) of s.57A brings in the dragnet of the offence, a person who omits to take reasonable precaution to prevent the mixing of any noxious substance – For being convicted u/s.57A, it is not necessary that the person concerned must himself do the mixing. (Also see under: Penal Code, 1860).

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(iii) Public Authority – Obligation of the State or its instrumentality – Public Trust Doctrine – Held: Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance – In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it

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(2) Memorandum “DoPT OM NO.12/1/88-Estt (Pay-I) dated 28.2.1992.
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(3) Government of India Letter NO. 1(1)/81/
(PEN)/C/Vol. II dated 27.10.1998.
(See under: Service Law) 258

CODE OF CIVIL PROCEDURE, 1908:

(1) (i) s.2(2) – Decree – Essential requirements for an order to be treated as decree – Discussed.

(ii) ss.2(2), 96, 104, 115, O.43 r.1 – Decree and appealable order – Distinction between – Held:

Where the order is a ‘decree’ as defined u/s.2(2), an appeal would lie u/s.96 (with a provision for a second appeal u/s.100) – When the order is not a ‘decree’, but is an order which is one among those enumerated in s.104 or r.1 of O.43, an appeal would lie u/s.104 or u/s.104 r/w O.43, r.1 (without any provision for a second appeal) – If the order is neither a ‘decree’, nor an appealable ‘order’ enumerated in s.104 or O.43 r. 1, a revision would lie u/s.115, if it satisfies the requirements of that Section.

(iii) s.115; O.22 r.3 – Death of sole plaintiff – Application by appellant u/O.22 r.3, for being added as a party to the suit as legal representative of the deceased plaintiff – Rejected by trial court and consequently suit dismissed in the absence of any legal heir – Remedy available to the appellant – Held: Remedy available with the appellant was to file a revision and not an appeal – An order u/ O.22 rr.3 and 5 is not appealable u/ s.104 or O.43 r.1 – Trial court's order is neither a ‘decree’ appealable u/s.96 nor an order appealable u/s.104 and O.43 r. 1 and, therefore, remedy of the appellant was to file a revision – Revision.

(iv) O.22 r.9(2) – Application u/O.22, r.9(2) can be filed only if there is abatement or dismissal u/ O.22 on account of no application being made – When an order is passed u/O.22 rr.3 and 5 dismissing an application by a person claiming to be a legal representative on the ground that he is not a legal representative and consequently dismissing the suit, it will not be a dismissal u/ r.9(2) of O.22 which is amenable for an appeal u/ s.104 r/w O.43 r.1(k) – It, therefore, follows that an

order u/O.22 rr.3 and 5 is not appealable u/s.104 or O.43 r. 1.

(v) O.22 r.3 – Death of sole plaintiff – Effect on continuation of suit when right to sue survives and when the right to sue does not survive – Discussed.

(vi) O.22 r.3 – Remedies available to an applicant whose application u/O.22 r. 3, for being added as a party to the suit as legal representative of the deceased plaintiff is rejected – Discussed.

(vii) O.22 r.3 – Death of sole plaintiff – Application by appellant for being added as a party to the suit as legal representative of the deceased plaintiff on the basis of will – Trial court held that will was not proved – But appellate court held that appellant duly proved the execution of the will – Appellate court gave cogent reasons for accepting the appellant to be the legal representative of the deceased plaintiff, in pursuance of the will – High Court failed to consider all the facts and circumstances considered by the appellate court – Having held that the appellate court could not have entertained the appeal, High Court was not required to examine the matter on merits – If it chose to do so, it ought to have done it thoroughly, which it did not – Will.

Mangluram Dewangan v. Surendra Singh and Ors.

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(2) s.115 – Revision – Eviction decree – Upheld by appellate court but set aside by High Court in exercise of its revisional jurisdiction – Held: On facts, High Court committed a mistake in interfering with and setting aside the findings of fact properly arrived at by the courts below –

Judgment of High Court set aside and the decree passed by the trial court as affirmed by the appellate court restored.

(Also see under: Rent Control and Eviction).

V. Sumatiben Maganlal Manani (dead) by L.R. v. Uttamchand Kashiprasad Shah and Anr. 943

(3) ss. 151, 152 and 153.
(See under: Hindu Succession Act, 1956) 55

(4) O. 6, r. 16 and O. 7, r. 1.
(See under: Representation of the People Act, 1951) 154

(5) (i) O. 41, r. 22 – Interpretation of – Service of notice of hearing of appeal – Filing of cross-objections – Period of limitation – Commencement of – Condonation of delay – Held: The limitation of one month for filing cross-objection as provided under O. 41, r. 22 commences from the date of service of notice on the respondent in the appeal or his pleader – Courts would normally condone the delay in the interest of justice unless and until the cross-objector is unable to furnish a reasonable or sufficient cause for seeking the leave of the court to file cross-objections beyond the statutory period of one month – In the instant case, the cross-objectors were able to show sufficient/reasonable cause for grant of further time to file the cross-objections beyond the period of one month in terms of O. 41 r. 22 – Delay in filing the cross-objections, condoned.

(ii) O. 41, r.22 – Cross-objections – Nature of – Held: Cross-objections within the scheme of O. 41, r.22 are to be treated as separate appeal and must be disposed of on same principles in

accordance with the provisions of O. 41.

(iii) s.148 A – Rights of a caveator – Held: The rights of a caveator are different from that of cross-objectors per se – A caveator has a right to be heard mandatorily for the purposes of passing of an interlocutory order – A caveator is to be heard by the court before any interim order can be passed against him.

Mahadev Govind Gharge & others v. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka 829

(6) (i) Framing of issues – Duty of the court – Held: Framing of issues is a very important stage in the civil litigation – Due care, caution, diligence and attention must be bestowed by the Presiding Judge while framing of issues – On facts, the trial court ought not to have framed an issue on a point which was finally determined upto Supreme Court – The same was exclusively barred by the principles of res judicata – Doctrines/Principles – Practice and Procedure.

(ii) Costs – Actual or realistic costs – Determination of – Held: Pragmatic realities are to be taken into consideration and courts have to be realistic to what the defendants or the respondents had to actually incur in contesting the litigation before different courts – Prevalent fee structure of the lawyers and other miscellaneous expenses are to be taken into consideration – It is to be seen that for how long the defendants or respondents were compelled to contest and defend the litigation in various courts – On facts, appellants harassed the respondents for four decades in a totally frivolous and dishonest litigation in various courts – They also wasted

judicial time of the various courts for the last 40 years – Thus, the appeals are dismissed with costs, quantified at Rs.2,00,000/- alongwith the costs imposed by the High Court (Rs. 75,000/-) payable by the appellants to the respondents – Costs.

(Also see under: Administration of Justice; and Interim Injunctions)

Rameshwari Devi & Ors. v. Nirmala Devi & Ors. 992

CODE OF CRIMINAL PROCEDURE, 1973:

(1) s.53A – Allegation of rape – Effect of incorporation of s.53A – Held: After incorporation of s.53A w.e.f. 23.06.2006, it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused – In the instant case, in the undergarments of the prosecutrix, male semen were found but these were not sent for analysis in the forensic laboratories which could have conclusively proved, with regard to the commission of offence by the accused-appellant – This lacuna on the part of the prosecution goes in favour of the accused-appellant – Medical Jurisprudence.

Krishan Kumar Malik v. State of Haryana 774

(2) ss.468-471 and 473 – Delay in launching criminal prosecution – Held: Cannot itself be a ground for dismissing the complaint, but may be a circumstance to be taken into consideration in arriving at a final decision – More so, the issue of limitation has to be examined in the light of the gravity of the charge – Delay/Laches – Limitation.

Noida Entrepreneurs Association v. Noida & Ors. 25

(3) s.482 – FIR – Quashing of – Complaint regarding non-payment to cable operators by a TV Channel – FIR against appellant complaining that he had committed offences punishable u/ ss.406, 420 and 506(1) of IPC –Held: The matter appears to be purely civil in nature – There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant –There was no cause of action to even lodge an FIR against the appellant as neither the complainant had to receive the money nor was he in any way instrumental to telecast “God TV” in the areas stated – He appears to be totally a stranger to the same – The prosecution of the appellant for commission of the alleged offences would be clear abuse of the process of law – FIR – quashed and all criminal proceedings emanating therefrom also stand quashed – Penal Code, 1860 – ss.406, 420 and 506(1).

Joseph Salvaraj A. v. State of Gujarat & Ors.

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(4) (i) s.482 – Inherent powers of the High Court – Scope and ambit of – Held: Section 482 envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely: (a) to give effect to an order under CrPC.; (b) to prevent an abuse of the process of court; and (c) to otherwise secure the ends of justice – Although the power is very wide but it has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists – The inherent powers should not be exercised to stifle a legitimate prosecution.

(ii) s.482 – Criminal proceedings for forgery/

fabrication of documents with the intention of defrauding the bank as well as the exchequer – Charge-sheet against appellant and other directors of a company for offences punishable u/ ss. 120B, 420, 409, 468 and 471 of IPC – Chief Metropolitan Magistrate took cognizance of the offences and summoned the appellant to stand trial – Appellant filed petition u/s.482 CrPC – High Court declined to quash the charge-sheet – Held: Justified – On a conspectus of the factual scenario, prima facie, the charge-sheet does disclose commission of offences by the appellant u/ss. 120B, 420, 409, 468 and 471 of IPC – Having regard to the modus operandi adopted by the accused, as projected in the charge-sheet, it is not a fit case for exercise of jurisdiction by the High Court u/s. 482 CrPC as also by Supreme Court under Article 142 of the Constitution – Merely because the dues of the bank have been paid up, the accused-appellant cannot be exonerated from the criminal liability – Penal Code, 1860 – ss. 120B, 420, 409, 468 and 471. (Also see under: Penal Code, 1860; and Precedent)

Sushil Suri v. C.B.I. & Anr.

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CONSTITUTION OF INDIA, 1950:

(1) Arts. 12, 32, 226, 227.

(See under: Memorandum and Rules and Regulations of BCCI, 2008)

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(2) Art. 14.

(See under: Administrative Law)

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(3) Arts. 14 and 16(1) – Held: Complexity of a decision making process cannot be a defence when a grievance is made before the court by a citizen that his right to equality has been violated

– When such a grievance is made before the court, the authorities have to justify their decision by placing the relevant material before the court – The constitutional principle of equality is inherent in the rule of law – However, its reach is limited because its primary concern is not with the content of the law but with its enforcement and application – The rule of law is satisfied when laws are applied or enforced equally, that is, even-handedly, free of bias and without irrational distinction – Administrative Law – Rule of law.

(Also see under: Indian Police Service (Cadre) Rules, 1954)

C. M. Thri Vikrama Varma v. Avinash Mohanty and Ors. 212

(4) Arts. 14 and 16(1) – Held: A member appointed to the All India Service has no right to be allocated to a particular State cadre or Joint cadre, but he has a right to a fair and equitable treatment in the matter of allocation under Articles 14 and 16(1) of the Constitution.

C. M. Thri Vikrama Varma v. Avinash Mohanty and Ors. 212

(5) Arts. 14, 19(1)(g), 21.

(See under: Prevention of Food Adulteration Rules, 1955) 680

(6) Arts. 14 and 21 – Public interest litigation – Counter-insurgency operations launched by the State of Chhattisgarh against Maoist/Naxalites extremists – Violation of human rights of people of Dantewada District and its neighbouring areas in the State – Writ Petition – Allegation that the State Government was actively promoting criminal activities of Salwa Judum, or Koya Commandos

– Appointment of barely literate tribal youth as Special Police Officers (SPO) also questioned – Held: Involving ill-equipped barely literate youngsters in counter-insurgency activities cannot be said to be creating livelihood for them and would endanger their lives too – It has endangered and will necessarily endanger the human rights of the others in the society – It is violative of Article 21 and 14 – Central Bureau of Investigation directed to immediately take over the investigation as also take appropriate legal action against all individuals responsible for the incidents – State of Chhattisgarh directed to immediately cease and desist from using SPOs in controlling, countering, mitigating or eliminating Maoist/Naxalite activities in the State and take necessary measures to protect those who had been employed as SPOs – Union of India also not to use any of its funds in supporting the recruitment of SPOs – Human rights – Public Interest Litigation.

(Also see under: Administrative Law; and Chhattisgarh Police Act, 2007).

Nandini Sundar and Ors. v. State of Chhattisgarh 1028

(7) Arts. 14 and 21.

(See under: Administrative Law and Prevention of Corruption Act, 1988) 25

(8) Article 15(3).

(See under: Hindu Succession Act, 1956) 55

(9) Art. 16.

(See under: Service Law) 242

(10) (i) Art. 32 – Writ Petition – Allegation regarding transfers and accumulation of unaccounted monies by many individuals and other

legal entities in foreign banks – At the insistence and intervention of Supreme Court, during custodial interrogation many names of important persons, including corporate leaders, political people, and international arms dealers cropped up – Supreme Court proposed to the Union of India that the High Level Committee constituted by it be converted into a Special Investigation Team, headed by two retired judges of the Supreme Court of India – Union of India to issue appropriate notification and publish the same forthwith.

(ii) Article 32 – Writ petition – Double taxation avoidance agreement – Allegation regarding transfer, and accumulation of monies, which are unaccounted for by many individuals and legal entities of the country, in foreign banks – Disclosure sought by the petitioners of certain documents relied upon by the Government – Stand taken by the Government that the names of the tax evaders was a “secret” and could not be revealed under the Indo German Double Taxation Avoidance Agreement – Disapproved – Held: In fact, the “information” that is referred to in Article 26 is that which is “necessary for carrying out the purposes of the Indo-German DTAA – Instead, the agreement specifically provides that the information may be disclosed in court proceedings – The proceedings in the instant matter relate both to the issue of tax collection with respect to unaccounted monies deposited into foreign bank accounts, as well as with issues relating to the manner in which such monies were generated, which may include activities that are also criminal in nature – Therefore, the information sought does not fall within the ambit of this provision.

(iii) Art. 32 and 21 – Writ petition –Petitioner seeking certain documents referenced by the Union of India in the writ proceeding – Held: Constitution guarantees the right, pursuant to Clause (1) of Article 32, to petition to the Supreme Court on the ground that the rights guaranteed under Part III of the Constitution have been violated – This provision is a part of the basic structure of the Constitution – Clause (2) of Article 32 empowers the Supreme Court to issue “directions or orders or writs, for the enforcement of any of the rights conferred by” Part III – This is also a part of the basic structure of the Constitution – The State has the duty, generally, to reveal all the facts and information in its possession to the Court, and also provide the same to the petitioners – However, revelation of details of bank accounts of individuals, without establishment of prima facie grounds to accuse them of wrong doing, would be a violation of their rights to privacy, which is an integral part of right to life – The rights of citizens, to effectively seek the protection of fundamental rights, under Clause (1) of Article 32 have to be balanced against the rights of citizens and persons under Article 21 –There is no presumption that every account holder in banks of Liechtenstein has acted unlawfully – In these circumstances, it would be inappropriate to order disclosure of such names, even in the context of proceedings under Clause (1) of Article 32.

(Also see under: Governance; and Vienna Convention of the Law of Treaties, 1969)

Ram Jethmalani and Ors. v. Union of India and Ors. 725

(11) Art. 136.
(See under: Land Acquisition Act, 1894) 1088

(12) Art. 142 – Held: Vests unfettered independent jurisdiction to pass any order in public interest to do complete justice, if exercise of such jurisdiction is not contrary to any express provision of law – Prevention of Food Adulteration Rules, 1955 – r.44-I – Prevention of Food Adulteration Act, 1954. (Also see under: Prevention of Food Adulteration Act, 1954; and Prevention of Food Adulteration Rules, 1955)

Academy of Nutrition Improvement and Ors. v. Union of India 680

(13) (i) Art. 226 and 300A – Acquisition of land – Invocation of s.17(1) and/or 17(4) of Land Acquisition Act – Writ petition filed by landowner – Held: While examining the land owner’s challenge to the acquisition of land in a petition filed under Article 226, the High Court should not adopt a pedantic approach – It should decide the matter keeping in view the constitutional goals of social and economic justice and the fact that even though the right to property is no longer a fundamental right, the same continues to be an important constitutional right and in terms of Article 300-A, no person can be deprived of his property except by authority of law – Procedure to be adopted by High Court in cases where the acquisition is made by invoking s.4 read with s.17(1) and/or 17(4) – Explained – Land Acquisition Act, 1894 – ss. 17(1) and (4) and 5-A.

(ii) Article 14.

(Also see under: Land Acquisition Act, 1894).

Sri Radhy Shyam (D) Through Lrs. & Ors. v. State of U.P. & Ors. 359

CONSTITUTIONAL LAW:

Separation of powers.

(See under: Service Law) 242

CONTEMPT OF COURTS ACT, 1971:

(i) s.15 – Contempt by advocate – Advocate abused the Judge in most filthy words when the Judge alleged the involvement of the advocate in the impersonification of the person who came to surrender before the court – Conviction of advocate for contempt of court – Held: The case of impersonification of a person to be surrendered is serious – If any issue was raised in this regard by the court, it was the duty of the advocate to satisfy the court and establish the identity of the person concerned – The conduct of the advocate in abusing the Judge was in complete violation and in contravention of the “standard of professional conduct and etiquette” laid in s.1 of Chapter 2 (Part-VI) of the Bar Council of India Rules – The charge stood proved against the advocate – In such a fact-situation the apology tendered by him, being not bona fide, is not acceptable – Bar Council of India Rules, Chapter 2 (Part-VI), r.1.

(ii) Contempt: Nature of – Held: It is the seriousness of the irresponsible acts of the contemnor and degree of harm caused to the administration of justice, which decisively determine whether the matter should be tried as a criminal contempt or not – The court has to examine whether the wrong is done to the judge personally or it is done to the public – The act will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing

complete reliance upon the court's administration of justice or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties – Administration of justice.

(iii) Apology tendered by contemnor – Acceptance of – Held: Can be accepted in case the conduct for which the apology is given is such that it can be “ignored without compromising the dignity of the court”, or it is intended to be the evidence of real contrition – Apology tendered is not to be accepted as a matter of course and the court is not bound to accept the same and can impose the punishment recording reasons for the same – In the instant case, apology was not tendered at the earliest opportunity, rather tendered belatedly just to escape the punishment for the grossest criminal contempt committed – There was no repent or remorse on the part of the appellant at the initial stage – Such attitude has a direct impact on the court's independence, dignity and decorum – In order to protect the administration of public justice, action has to be taken against the appellant as his conduct and utterances cannot be ignored or pardoned – Thus, the apology tendered by the appellant had neither been sincere nor bona fide and thus, not worth acceptance.

(Also see under: Administration of Justice; and Jurisdiction)

Vishram Singh Raghubanshi v. State of U.P.

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CONTRACT:

(1) (i) Principle, “time is not of the essence of the contracts relating to immovable properties” – Relevance of – Need for legislation – Held: Judicial notice is taken of the comparative

purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now – The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance – A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and ‘non-readiness’ – The precedents from an era, when high inflation was unknown, holding that time is not the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein was unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist – Legislation – Specific relief – Equity.

(ii) Agreement of Sale – Suit by purchaser for permanent injunction to protect possession – Held: As per the terms of contract, the purchaser was only entrusted with the suit properties as a caretaker until possession is given on receipt of the entire sale consideration – As neither the entire sale consideration was paid nor possession delivered, the plaintiff remained merely a caretaker and on cancellation of the agreement of sale by the defendants, the plaintiff became liable to leave the suit properties as the possession continued to be with the defendants – Since the plaintiff never had ‘possession’ she was not entitled to seek a permanent injunction to protect her possession – Deeds and documents – Suit –

Possession.

Mrs. Saradamani Kandappan v. Mrs. S. Rajalakshmi & Ors. 874

(2) Breach of a condition of contract – Right to adjudication – Held: The question whether the other party committed breach cannot be decided by the party alleging breach – A contract cannot provide that one party will be the arbiter to decide as to whether who committed the breach – That question can be decided by only an adjudicatory forum, that is, a court or an Arbitral Tribunal – Arbitration.

(Also see under: Arbitration and Conciliation Act, 1996)

M/s. J.G. Engineers Pvt. Ltd. v. Union of India and Anr. 486

CONTRACT ACT, 1872:

(i) s.55 – Effect of failure to perform within a fixed time, in contracts where time is essential – Held: In a contract relating to sale of immovable property if time is specified for payment of sale consideration but not in regard to the execution of sale deed, time will become the essence only with reference to payment of sale consideration but not in regard to execution of sale deed – Failure of the plaintiff to pay the balance consideration clearly amounted to breach since time for such payment was the essence of the contract – The defendants were justified in determining the agreement of sale – However, there was no provision in the agreement for forfeiture of the amounts already paid, even in the event of breach by the purchaser – On the other hand, it provided that if the vendors did not satisfy the purchaser in regard to their title, the amounts received would

be refunded – Though the plaintiff is not entitled to the relief of specific performance, he was entitled to recover the amounts paid by her.

(ii) s.54 – Reciprocal promises – In the instant case, agreement of sale of immovable property contained an unconditional promise to pay the balance consideration in three instalments and the said promise by the purchaser was not made dependent upon performance of any obligation by vendors – The sale deed was not required to be executed within any specific period – The purchaser had to fulfil her obligation in regard to payment of price and thereafter vendors were required to perform their reciprocal promise of executing the sale deed, whenever required by the purchaser – The sale deed had to be executed only after payment of complete sale consideration within the time stipulated.

(Also see under: Contract and Specific Relief).

Mrs. Saradamani Kandappan v. Mrs. S. Rajalakshmi & Ors. 874

CO-OPERATIVE SOCIETIES:

Employees of co-operative societies – Held: Are not Government employees.

(Also see under: Service Law)

Union of India & Anr. v. Ram Singh Thakur & Ors. 242

COSTS:

(See under: Code of Civil Procedure, 1908) 992

CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860)... 83,
234, 239 and 774

CRIMINAL TRIAL:

(See under: Evidence; and Abkari Act) 273

CUSTOMS ACT, 1962:

(1) s.130 – Statutory appeal against the order of Customs Appellate Tribunal – Held: While dealing with an appeal u/s.130, the High Court must examine each question formulated in the appeal with reference to the material taken into consideration by the Tribunal in support of its finding thereon and give its reasons for holding that the question is not a substantial question of law.

Chandna Impex Pvt. Limited v. Commissioner of Customs, New Delhi 1102

(2) Classification – Adhesives – Demand of duty on import of Butyl Acrylate Monomer(BAM) – Invocation of extended period of limitation – Held: The word “adhesive” was mentioned in the ex-Bond B/E inasmuch as the appellant sought release of goods under advance licences allowing adhesive as duty free import –Therefore, decision of the Tribunal upheld – Also the demand is hit by the bar of limitation – In the instant case the appellant had declared the goods as Butyl Acrylate Monomer with correct classification of the same and the word ‘adhesive’ was added in the ex-bond bill as per the appellant’s understanding that BAM is an adhesive – If the Revenue has changed their opinion as regards the adhesive character of BAM, extended period cannot be invoked against them – As such the demand of duty in respect of the consignments is also barred by limitation.

Commissioner of Customs, Calcutta v. G.C. Jain and Anr. 798

DECREE:

Amendment of decree.
(See under: Hindu Succession Act, 1959) 55

DEEDS AND DOCUMENTS:

Agreement of sale.
(See under: Contract) 874

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(See under: Code of Criminal Procedure, 1973) 25

DOCTRINES/PRINCIPLES:

(1) Audi Alteram partem.
(See under: Land Acquisition Act, 1894) 520

(2) (i) Principle of legitimate expectation.
(ii) Public trust doctrine.
(See under: Administrative Law; and Prevention of Corruption Act, 1988) 25

(3) Principle of *Res judicata*.
(See under: Code of Civil Procedure, 1908) 992

ELECTION LAWS:

(See under: Representation of the People Act, 1951) 154

ENCUMBERANCE:

(See under: Contract) 874

ENGLISH ARBITRATION ACT, 1996:

ss.3 and 53.
(See under: Arbitration and Conciliation Act, 1996) 569

ENTITLEMENT RULES, 1982:

Para 12(d).
(See under: Armed Forces; and Service Law) 258

EQUITY:

(See under: Contract; and Specific Relief) 874

EVIDENCE:

(1) (i) Burden of proof.

(ii) Evidence of accomplice – Admissibility – Held: The evidence of an accomplice is admissible subject to the usual caution – On facts, even if the prosecution did not prosecute the close relative of the accused, and used his evidence only as an accomplice, it was perfectly legal – His evidence was most natural and was not shaken in any manner in his cross-examination – Criminal Trial. (Also see under: Abkari Act; and Penal Code, 1860).

Chandran @ Manichan @ Maniyan v. State of Kerala 273

(2) (i) Circumstantial evidence.

(ii) Extra-judicial confession.
(See under: Penal Code, 1860) 83

(3) Defendants – Examination of – Held: When one of the defendants who was conversant with the facts has given evidence, it was not necessary for the other defendants to be examined as witnesses to duplicate the evidence – Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by the agent, necessarily the agent alone can give evidence in regard to the transaction and he has to be examined.

Mrs. Saradamani Kandappan v. Mrs. S. Rajalakshmi & Ors. 874

EVIDENCE ACT, 1872:

s.6 – Res gestae witness – Held: The statements said to be admitted as forming part of res gestae must have been made contemporaneously with the act or immediately thereafter.

(Also see under: Penal Code, 1860; and Code of Criminal Procedure, 1973)

Krishan Kumar Malik v. State of Haryana 774

GOVERNANCE:

Concept of a “soft state” – Held: Is a broad based assessment of the degree to which the State, and its machinery, is equipped to deal with its responsibilities of governance – The more soft the State is, greater the likelihood that there is an unholy nexus between the law maker, the law keeper, and the law breaker – The issue of unaccounted monies held by nationals, and other legal entities, in foreign banks, is of primordial importance to the welfare of the citizens – The quantum of such monies may be rough indicators of the weakness of the State, in terms of both crime prevention, and also of tax collection – Depending on the volume of such monies, and the number of incidents through which such monies are generated and secreted away, it may very well reveal the degree of “softness of the State.” (Also see under: Constitution of India, 1950; and Vienna Convention of the Law of Treaties, 1969)

Ram Jethmalani and Ors. v. Union of India and Ors. 725

GOVERNMENT CONTRACTS:

(See under: Arbitration and Conciliation Act, 1996) 486

GUIDELINES:

Procedure for granting interim injunctions, delineated.

(See under: Interim injunctions) 992

HINDU LAW:

(See under: Hindu Succession Act, 1956) 55

HINDU SUCCESSION ACT, 1956:

s.6A – Hindu Succession (Karnataka Amendment) Act, 1990 [Karnataka Act No.23 of 1994] – Preamble and ss.1 and 2 – Modification of preliminary decree in final decree proceedings – Scope – Joint family property – Suit for partition – Preliminary decree confirmed by first appellate court and High Court – Final decree proceedings instituted – Meanwhile the Karnataka legislature made a State amendment in the Hindu Succession Act by Karnataka Act No.23 of 1994 by inserting s.6A whereby unmarried daughters were given equal rights in co-parcenary property – Daughter filed application u/ss.151,152 and 153 of CPC for amendment of the preliminary decree and for grant of declaration that in terms of s.6A she was entitled to 2/7th share (higher share) in the suit property, claiming that she had not married till the enforcement of the Karnataka Act No.23 of 1994 – Trial Court dismissed the application holding that amendment made in the Act cannot be relied upon for amending the decree, which had become final – High Court upheld the order of trial court – Held: By the preliminary decree, shares of the parties were determined but the actual partition/division had not taken place – Therefore, the proceedings of the suit cannot be treated to have become final so far as the actual partition of the joint family properties is concerned

and it was open to the daughter to claim enhancement of her share in the joint family properties because she had not married till the enforcement of the Karnataka Act No.23 of 1994 – Therefore, the daughter had every right to seek enlargement of her share and there is no reason why the court should hesitate in giving effect to an amendment made by the State legislature in exercise of the power vested in it under Article 15(3) of the Constitution – Consequently, the application filed by the appellant u/ss.151, 152 and 153 CPC is allowed – Code of Civil Procedure, 1908 – ss. 151, 152 and 153 – Constitution of India, 1950 – Article 15(3) – Hindu Law.

Prema v. Nanje Gowda and Ors. 55

HUMAN RIGHTS:

Violation of human rights of people of Dantewada District and its neighbouring areas in the State of Chhattisgarh – Approach of lawless violence(counter-insurgency operations) in response to violence by Maoist/Naxalite insurgency in State of Chhattisgarh – Held: Has not, and will not, solve the problems, and instead it would only perpetuate the cycles of more violent, both intensive and extensive, insurgency and counter-insurgency.

(Also see under: Constitution of India,1950)

Nandini Sundar and Ors. v. State of Chhattisgarh 1028

INDIAN POLICE SERVICE (CADRE) RULES, 1954:

rr.3 and 5 – Allocation of members of the IPS to home State cadre – Respondent challenged allocation of appellant, an OBC candidate to State

cadre on the ground that it was arbitrary and in place of appellant, respondent should have been allocated to the State cadre – High Court quashing the allocation of appellant to State cadre with direction to Union of India to reconsider allocation of respondent and appellant in accordance with law – Correctness of – Held: Correct – Broad principles to be followed for allocation are indicated in Para 3 of the letter dated 31.05.1985 issued by the Secretary, Government of India, Ministry of Personnel and Training – Admittedly, respondent had secured a higher rank than the appellant in the Civil Services Examination, 2004 and both were insiders – Therefore, respondent was required to be considered for allocation to the State cadre if he had given his willingness for being allocated to his home State, Andhra Pradesh, before the appellant could be considered for such allocation – If, however, the vacancy for which consideration was being made was a vacancy for an insider OBC candidate in the 30 point roster, the appellant would have preference over respondent – Service Law.

(Also see under: Constitution of India, 1950)

C.M. Thri Vikrama Varma v. Avinash Mohanty and Ors. 212

INTERIM INJUNCTIONS:

(1) *Ex-parte ad interim* injunctions – When to be granted – Held: The court should grant interim injunction or stay only after hearing the defendants or the respondents – In case the court has to grant *ex-parte* injunction in exceptional cases, then it must record in the order that if the suit is eventually dismissed, the plaintiff or the petitioner would pay full restitution, actual or realistic costs and *mesne*

profits – If an *ex-parte* injunction order is granted, then the court should dispose of the application for injunction as expeditiously as possible, as soon as the defendant appears in the court – It should be granted only for a short period – If party obtains an injunction based on false averments and forged documents, he should be prosecuted. (Also see under: Code of Civil Procedure, 1908).

Rameshwari Devi & Ors. v. Nirmala Devi & Ors. 992

(2) (See under: Memorandum and Rules and Regulations of BCCI, 2008) 445

INTERNATIONAL LAW:

Double Tax Avoidance Agreement.
(See under: Administrative Law; and Vienna Convention of the Law of Treaties, 1969) 725

INTERPRETATION OF STATUTES:

(See under: Procedural Law) 829

INVESTIGATION:

Investigation in rape cases – DNA test.
(See under: Code of Criminal Procedure; Penal Code 1860; and Evidence Act, 1872) 774

JUDICIAL NOTICE:

(See under: Contract)
Mrs. Saradamani Kandappan v. Mrs. S. Rajalakshmi & Ors. 874

JURISDICTION:

(1) Contempt jurisdiction – Scope and purpose – Held: Contempt jurisdiction is to uphold majesty and dignity of the law courts – The superior courts have a duty to protect the reputation of judicial

officers of subordinate courts, taking note of the growing tendency of maligning the reputation of judicial officers by unscrupulous practising advocates who either fail to secure desired orders or do not succeed in browbeating for achieving ulterior purpose – Such an issue touches upon the independence of not only the judicial officers but brings the question of protecting the reputation of the Institution as a whole – The dangerous trend of making false allegations against judicial officers and humiliating them requires to be curbed with heavy hands, otherwise the judicial system itself would collapse – The Bench and the Bar have to avoid unwarranted situations that hamper the cause of justice and are in the interest of none. (Also See under: Contempt of Courts Act, 1971; and Administration of Justice)

Vishram Singh Raghubanshi v. State of U.P. 105

(2) Jurisdiction for entertaining petition u/s.9. of Arbitration and Conciliation Act, 1996. (See under: Arbitration and Conciliation Act, 1996) 569

(3) (See under: Arbitration and Conciliation Act, 1996) ... 486

LAND ACQUISITION ACT, 1894:

(1) ss. 17(1) and (4) and 5-A – Acquisition of land – Power of eminent domain – Power conferred upon the State to acquire private property – Invocation of urgency clause and dispensing with enquiry as envisaged under u/s.5-A – When permissible – Principles re-stated – Writ petition filed by appellants questioning the acquisition of their land for planned industrial development by

invoking s.17(1) and 17(4) of the Act, as amended by Uttar Pradesh Act No.8 of 1974 – Plea of appellants that there was no justification to invoke the urgency clause and to dispense with the inquiry envisaged u/s.5-A – High Court dismissed the writ petition – Held: The appellants had succeeded in making out a strong case for deeper examination of the issues raised in the writ petition and High Court committed serious error by summarily non-suiting them – The acquisition was primarily meant to cater private interest in the name of industrial development of the district – Even otherwise, there was no urgency which could justify the exercise of power by the State Government u/ s.17(1) and 17(4) – There was no warrant to exclude the application of s.5-A which represent the statutory embodiment of the rule of *audi alteram partem* – Acquisition also challenged as violative of Article 14 of the Constitution for adopting policy of pick and choose – The Court cannot refuse to protect the legal and constitutional rights of the appellants merely because some other landowners did not come forward to challenge the illegitimate exercise of power by the State Government – State Government directed to pay cost of Rs.5,00,000/- to the appellants for forcing unwarranted litigation on them – However, the respondents shall be free to proceed from the stage of s.4 notification and take appropriate action after complying with s.5-A(1) and (2) – Constitution of India, 1950 – Article 14 – Doctrines/Principles – *Audi Alteram partem*.

Sri Radhy Shyam (D) Through Lrs. & Ors. v. State of U.P. & Ors. 359

(2) (i) ss.23 and 24 – Fair market value of the acquired land – Determination of – Land

Acquisition Officer applied the belting system and categorizing the land into three different categories awarded the compensation accordingly – Reference court held that the land as a whole was similarly placed and was to be used for one purpose, thus there was no question of applying the belting system and accordingly awarded uniform compensation to all the claimants – This finding of reference court upheld by High Court – Held: The concurrent finding recorded by the courts below having remained unchallenged, need not be interfered with.

(ii) Fair market value of the acquired land – Determination of – Sale instances (exemplars) – Claimants placed reliance upon two sale instances and sought compensation on that basis – Reference court declined to consider the said sale instances – Held: Justified – The said two sale instances were sham, collusive, lacked bona fides and were executed with the intention to raise the price of the land in question with the pretence of it being actual market value – Decision of reference court rightly upheld by High Court.

(iii) Determination of market value of acquired land – Principles of deduction in land value covered by a comparable sale instance – Explained – Held: In the instant case, there is evidence on record to show that plotting was done only on part of the acquired land and the land is surrounded by colonies but, there is no evidence to show that the acquired land itself is developed and is having all the required facilities and amenities – It may be a case where less deduction may be applied but certainly it is not a case of ‘no deduction’ – No infirmity in the approach of the High Court in applying the principle of deduction – Deduction of

10% from the market value on account of development charges and other possible expenditures was justifiable.

(iv) Determination of compensation – Application of principle of guesstimate for determining the amount of compensation – Held: More often than not, it is not possible to fix the compensation with exactitude or arithmetic accuracy – Depending on the facts and circumstances of the case, the court may have to take recourse to some guesswork while determining the fair market value of the land and the consequential amount of compensation that is required to be paid to the persons interested in the acquired land – ‘Guesstimate’ is an estimate based on a mixture of guesswork and calculations and it is a process in itself – ‘Guesstimate’ is with higher certainty than mere ‘guess’ or a ‘conjecture’ per se – However, principle of some guesswork would have hardly any application in a case of no evidence – Discretion of the court in applying guesswork to the facts of a given case is not unfettered but has to be reasonable and should have a connection to the data on record produced by the parties by way of evidence – Further, this entire exercise has to be within the limitations specified u/ss.23 and 24 of the Act and cannot be made in detriment thereto.

Trishala Jain and Anr. v. State of Uttaranchal and Anr.

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(3) (i) Compensation – Determination of market value of land – Comparative sales method – High Court relied upon an exemplar relating to a small piece of land to determine the market value of the land – Held: It is not an absolute rule that when

the acquired land is a large tract of land, sale instances relating to smaller pieces of land cannot be considered – The market value of the land acquired in the instant case is much better reflected by the exemplar, which relates to sale of land just 2 kms. away from the acquired land and is a little over a year before the issuance of the s.4 notification in the present case – It was rightly relied upon by High Court in determining compensation – However, deduction of 50% made by the High Court is increased to 60%, which would be fair, just and reasonable in the circumstances.

(ii) Nature of acquired land – Held: That the land had ceased to be agricultural land and was capable of being used as a residential or industrial site is a concurrent finding of fact by both the courts below and is amply supported by the evidence on record – Appellant did not file any appeal impugning the finding of the reference court that the land could not be treated as agricultural land – It was not open to the appellant to question the finding of the High Court that the land is not agricultural land – Otherwise also, the land in question situated by the side of a residential locality and in the midst of a highly developed industrial locality, was capable of being used for non-agricultural purposes and should be considered as non-agricultural land in determination of compensation – Constitution of India, 1950 – Article 136 – Practice and Procedure.

Special Land Acquisition Officer and Anr. v. M.K. Rafiq Saheb 1088

LEGISLATION:

(1) r.44-I of Prevention of Food Adulteration Rules, 1955 – Held, as ultra vires the Act.
(See under: Prevention of Food Adulteration Rules, 1955) 680

(2) Updation of statutory provisions – Held: Laws, which may be reasonable and valid when made, can, with passage of time and consequential change in circumstances, become arbitrary and unreasonable – There is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices – Contract Act, 1872.

(Also see under: Contract; and Specific Relief).

Mrs. Saradamani Kandappan v. Mrs. S. Rajalakshmi & Ors. 874

LIMITATION:

(See under: Code of Criminal Procedure, 1973) 25

LIQUOR:

Spurious liquor trade – Role of the State – State Government to take definite steps for overhauling the system, by weeding out the corrupt by punishing them.

(Also see under: Abkari Act; and Penal Code, 1860).

Chandran @ Manichan @ Maniyan v. State of Kerala 273

LOCUS STANDI:

(See under: Memorandum and Rules and Regulations of BCCI, 2008) 445

MAXIMS:

Maxim – “*quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud*” – Meaning of – Held: Whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance.

Noida Entrepreneurs Association v. Noida & Ors. 25

MEDICAL JURISPRUDENCE:

Rape cases – DNA test – Necessity for. (See under: Code of Criminal Procedure, 1973) 774

MEMORANDUM AND RULES AND REGULATIONS OF BCCI, 2008:

Clauses 1(n), 6.2.4 – Suit by past President of BCCI for injunction on the ground that second respondent being office bearer of BCCI and also having commercial interests in a private company was disqualified to participate in the auction held for owning Indian Premier League (IPL) in which he was declared successful bidder and thus came to own Chennai Super King – Just a few days after filing of the said suit, the BCCI introduced an amendment to Clause 6.2.4 carving out an Exception – Amendment challenged by the past president in a second suit wherein two applications were filed seeking temporary injunction restraining the BCCI from permitting the second respondent to participate in the General Body Meeting and injunction against the amendment introduced by pleading to put it under

suspension – High Court dismissed the applications on the ground that appellant had no locus standi to question the Regulations and the court also cannot interfere with the internal management of the society – Held: There being difference of opinion on the issue whether High Court should have refused temporary injunction, matter referred to larger bench – Reference to larger bench – Constitution of India, 1950 – Articles 12, 32, 226, 227 – Locus standi.

A.C. Muthiah v. Board of Control for Cricket in India and Anr. 445

NEW OKHLA INDUSTRIAL DEVELOPMENT AREA (PREPARATION AND FINALISATION OF PLAN) REGULATIONS 1991:

(See under: Prevention of Corruption Act, 1988) 25

PENAL CODE, 1860:

(1) (i) ss.120A and 120B – Offence of “criminal conspiracy” – Essential ingredients of, discussed.

(ii) s.463 – Forgery – Definition of – Held: Is very wide – Basic elements of forgery stated.

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

Sushil Suri v. C.B.I. & Anr. 1

(2) s.120B – Spurious liquor trade involving mixing of noxious substance (methyl alcohol) with liquor – Leading to death of 31 persons and blindness and grievous injuries to several persons – Allegations of conspiracy against accused-appellants – Held: On facts, it may not have been a conspiracy to mix the noxious substance but the fact of the matter is that in order to succeed in the business which itself was a conspiracy the

accused mixed or allowed to be mixed methanol and used it so freely that ultimately 31 persons lost their lives – The prosecution clearly proved that there was a noxious substance which was likely to endanger the human life – It was further proved that the substance was mixed, was permitted to be mixed and was being regularly mixed with liquor – It was also proved that the persons mixing had the knowledge that methanol was a dangerous substance – Lastly, it is proved that as a result of consuming the liquor mixed with methanol as many as 31 persons lost their lives and number of others suffered grievous injuries. (Also see under: Abkari Act).

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(3) ss. 302 and 201 – Murder and causing disappearance of evidence of offence – Prosecution case that before committing murder, the accused tried to commit rape and on being resisted by the victim, the accused assaulted her on her head with spade and murdered and buried her in the graveyard – Conviction and sentence u/ ss. 302 and 201 by the courts below – Held: Circumstances not established – Accused was convicted on a mere superfluous approach without in-depth analysis of the relevant facts – No evidence that the victim and the appellant were seen together at the place of occurrence or nearby in close proximity of time – Theory of extra-judicial confession revealed by the maternal uncle of the victim not corroborated from the statement of PW-13 or any other independent witness or police personnel – No evidence of sexual assault on victim – Mere abscondance of accused cannot be taken as a circumstance giving rise to adverse

inference against him – Also, spade recovered by Investigating Officer not sent for chemical analysis – Accused given benefit of doubt and acquitted of the charges of offences punishable u/ss. 302 and 201.

SK. Yusuf v. State of West Bengal

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(4) s.304, (Part-I), s.300, Exception 4; s.302 – Conviction on the basis of dying declaration – Allegation that accused-husband came home in drunken state and started abusing victim-wife and hit her on knee with brass pot and thereafter threw burning kerosene lamp on her – Victim got engulfed in flames – In her dying declaration, she stated that accused had tried to douse the fire – Courts below convicted accused u/s.302 and awarded life imprisonment – Held: On facts and in view of evidence on record, Exception 4 to s.300 is attracted – There was sudden fight between accused and his wife and the act of throwing burning kerosene lamp was without premeditation – The evidence did not show the intention on part of accused to cause death or such bodily injury so as to result in the death of his wife – The burning seemed to be more out of the fact that at the time of incident, the victim was wearing nylon sari and had she not been wearing a nylon sari, she would not have been burnt to the extent of 70% – Conviction of accused altered from s.302 to s.304 Part-I and sentence modified to period already undergone.

Sayaji Hanmat Bankar v. State of Maharashtra

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(5) ss. 376 (2) and 302 – Rape and murder of a young girl aged ten years – Trial court convicted appellant-accused u/ss. 376(2) and 302 and

sentenced him to imprisonment for life with further clarification that the sentence would continue for the remaining period of his entire life – Order upheld by the High Court – Interference with – Held: Not called for since the evidence against the appellant appears to be fully credible – However, direction issued that the appellant would serve out the sentence of imprisonment upto the end of his life subject to any remissions which the Government may choose to give to the appellant – Sentence/Sentencing.

Chhotelal v. State of M. P. 239

(6) ss.376(2)(g) and 366 – Abduction of prosecutrix from her aunt's house and subsequent gang-rape – Eight accused – Solitary evidence of the prosecutrix – Six accused convicted u/s.366 while accused-appellant and another accused convicted under both s.366 and s.376(2)(g) – Conviction of appellant – Held: Not justified – The evidence of the prosecutrix did not inspire confidence – There were several significant variations in material facts in the s.164 statement of the prosecutrix, her s.161 statement, FIR and deposition in court – The mother and sister of the prosecutrix were not examined, even though their evidence would have been vital as contemplated u/s.6 of the Evidence Act as they would have been *res gestae* witnesses – Appellant is a physically handicapped person to the extent of 55% – This handicap would have been much better identification of the appellant, which the prosecutrix did not mention at all – There were various shortcomings, irregularities and lacunae on the part of the prosecution – Appellant, accordingly, acquitted – Crime against women.
(Also see under: Evidence Act, 1872;

and Code of Criminal Procedure, 1973)

Krishan Kumar Malik v. State of Haryana 774

PENSION REGULATIONS OF THE ARMY (PART-I), 1961:

Reg. 179.

(See under: Service Law) 258

PLEADINGS:

Plea of fraud – Held: Whenever a party wants to put forth a contention of fraud, it has to be specifically pleaded and proved – In the instant case, plaintiff did not allege any fraud by the defendants – From the evidence on record, as rightly held by the courts below, it was not possible to make out either any fraud or any suppression or failure to disclose facts on the part of the respondents.

(Also see under: Contract; Contract Act, 1872; and Legislation).

Mrs. Saradamani Kandappan v.

Mrs. S. Rajalakshmi & Ors. 874

PORTS:

Private monopolisation of port activities – Prevention of – Power of the Central Government to alter its policies for benefit of the public at large – Held: The Central Government is within its powers to strike a balance with regard to the control of the port facilities so that the same does not come to be concentrated in the hands of one private group or consortium – A change in policy by the Government can have an overriding effect over private treaties between the Government and a private party, provided the same was in the general public interest and such change in policy was guided by reason – Under the revised policy,

the appellant was entitled to participate in the alternate bids – The appellant having been excluded from participating in the bid for the Third Container Terminal on the basis of an existing policy, could not be debarred from participating in the next bid, by taking recourse to a different yardstick – Such a course of action would be contrary to public policy – Authorities directed to allow the appellant to continue to participate in the tender process for the Fourth Container Terminal.

APM Terminal B.V. v. Union of India & Anr. 599

POSSESSION:

(See under: Contract) 874

PRACTICE AND PROCEDURE:

(1) (See under: Land Acquisition Act, 1894) 1088

(2) (See under: Procedural Law). 829

(3) Framing of issues.
(See under: Code of Civil Procedure, 1908) 992

PRECEDENT:

(1) Decision of superior court – Held: A decision is an authority for what it actually and explicitly decides and not for what logically flows from it. (Also see under: Excise Act, 1944 and Circulars/Government Orders/Notifications)

Central Commissioner of Central Excise, Nagpur v. S. Gurukripa Resins Pvt. Ltd. 178

(2) Ratio decidendi – Held: While applying ratio, the court may not pick out a word or sentence from the judgment divorced from the context in which the said question arose for consideration –

Even one additional or different fact may make a world of difference between the conclusions in two cases and blindly placing reliance on a decision is never proper.

(Also see under: Code of Criminal Procedure, 1973 and Penal Code, 1860)

Sushil Suri v. C.B.I. & Anr. 1

(3) Precedents with regard to transactions in immovable properties – Delay in execution of sale deeds — Held: Precedents from an era, when high inflation was unknown, holding that time is not the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein was unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist – Legislation.

(Also see under: Contract; and Contract Act, 1872)

Mrs. Saradamani Kandappan v. Mrs. S. Rajalakshmi & Ors. 874

PREVENTION OF CORRUPTION ACT, 1988:

s.13 – Criminal misconduct by public servant – Land scam – Respondent no.4 was CEO, NOIDA – Allegation that he committed acts of misconduct allotting contracts worth Rs.10 crores to different contractors on selection basis without inviting tenders; caused financial loss to NOIDA by not paying conversion charges with respect to the plot allotted to him; and at his instance a 13 hectare City Park was destroyed and by changing the land use, a new residential Sector in violation of the Master Plan was carved out – Held: The allegations being of a very serious nature and as alleged, the respondent no.4 having passed orders in colourable exercise of power favouring himself

and certain contractors, require investigation – CBI directed to have preliminary enquiry and in case the allegations are found having some substance warranting further proceeding with criminal prosecution, it may proceed in accordance with law – U.P. Industrial Area Development Act, 1976 – ss.6(2)(b) & 6(2)(c), 8, 9, 12, 14, 17, 18, 19 – U.P. Urban Planning and Development Act, 1973 – ss. 30, 32, 40 to 47, 49, 50, 51, 53 and 58 – New Okhla Industrial Development Area (Preparation and Finalisation of Plan) Regulations 1991.

Noida Entrepreneurs Association v. Noida & Ors.

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PREVENTION OF FOOD ADULTERATION ACT, 1954:

(i) Object and purpose of the Act – Discussed.

(ii) s.7 whether a source of power to make r.44-I – Held: s.7 relates to prohibition of manufacture for sale, storage, or distribution of ‘objectionable’ food, that is adulterated food, misbranded food, unlicensed food, food injurious to public health – s.7 does not relate to rule making and is not a source of power to make r.44-I – Prevention of Food Adulteration Rules, 1955 – r.44-I.

(iii) s.23(1A) – Whether r.44-I is beyond the rule making power of the Central Government – Held: r.44-I is not a rule made or required to be made to carry out the provisions of the Act, having regard to its object and scheme – It has nothing to do with curbing of food adulteration or to suppress any social or economic mischief.

(Also see under: Prevention of Food Adulteration Rules, 1955; and

Administrative Law)

Academy of Nutrition Improvement and Ors. v. Union of India

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PREVENTION OF FOOD ADULTERATION RULES, 1955:

(1) (i) r.44-I – Constitutionality of – r.44-I providing for restriction on sale of non-iodised common salt for human consumption – Writ petitions challenging the compulsory iodisation of salt for human consumption – Held: r.44-I is stated to be in implementation of a policy decision regarding public health – The material on record is not sufficient to hold that the reason for the ban is erroneous and that r.44-I is unreasonable and arbitrary – Therefore, the provision placing a ban on sale of non-iodised salt for human consumption resulting in compulsory intake of iodised salt cannot be said to be arbitrary and violative of Article 14 or injurious to the health of general populace and violative of Article 21 – There was also no material to show that any monopoly is sought to be created in favour of a chosen few companies or MNCs – Therefore, contention that Article 19(1)(g) is violated is also liable to be rejected – Constitution of India, 1950 – Articles 14, 19(1)(g), 21.

(ii) r.44-I – Whether r.44-I is inconsistent with the Prevention of Food Adulteration Act – Held: If the object sought to be achieved is to persuade the people to use iodised salt or to ensure that people use iodised salt, recourse cannot be by making a rule banning sale of common salt for human consumption under the Act – The Act cannot be used to make a rule intended to achieve an object wholly unrelated to the Act – r. 44-I is wholly

outside the scope of the Act and is ultra vires the Act and therefore, not valid – To do complete justice between the parties in the interest of public health, in exercise of jurisdiction u/Article 142, the ban contained in r.44-I for a period of six months is continued – Meanwhile, Central Government would thoroughly review the compulsory iodisation policy (universal salt iodisation for human consumption) with reference to latest inputs and research data and if after such review, is of the view that universal iodisation scheme requires to be continued, bring appropriate legislation or other measures in accordance with law to continue the compulsory iodisation programme – Prevention of Food Adulteration Act, 1954.

(Also see under: Prevention of Food Adulteration Act; and Administrative Law)

Academy of Nutrition Improvement and Ors. v. Union of India 680

(2) Prohibition on sale and manufacture of common salt.

Swadesi Jagaran Manch v. State of Orissa & Anr. 723

PROCEDURAL LAW:

(i) Hearing of appeal – Stages of – Held: Hearing of appeal can be classified in two different stages; one at the admission stage and the other at the final stage.

(ii) Date of hearing – Held: Date of hearing has normally been defined as the date on which the court applies its mind to the merits of the case – In a criminal matter the hearing of the case is said to be commenced by the court only when it applies its mind to frame a charge etc. – Similarly,

under civil law it is only when the court actually applies its mind to averments made by party/ parties, it can be considered as hearing of the case – The date of hearing must not be confused with the expression ‘step in the proceedings’ – These are two different concepts of procedural law and have different connotation and application – What may be a ‘step in the proceeding’, essentially, may not mean a ‘hearing’ by the court – Necessary ingredients of ‘hearing’ thus are application of mind by the court and address by the party to the suits.

(iii) Purpose and interpretation of procedural law – Held: Justice between the parties to a case is the essence of procedural law – Unless the statute expressly prohibits or puts an embargo, the courts would interpret the procedural law so as to achieve the ends of justice – Strict construction of a procedural law is called for where there is complete extinguishment of rights, as opposed to the cases where discretion is vested in the courts to balance the equities between the parties to meet the ends of justice which would invite liberal construction – The provisions of procedural law which do not provide for penal consequences in default of their compliance should normally be construed as directory in nature and should receive liberal construction – Interpretation of Statutes.

Mahadev Govind Gharge & others v. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka 829

PUBLIC HEALTH:

Sale of iodised salt.

(See under: Prevention of Food Adulteration Rules, 1955)	680
PUBLIC INTEREST LITIGATION:		
(1) (See under: Administrative Law)	653
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REFERENCE TO LARGER BENCH:		
Auction as regards Indian Premier League – Suit – Temporary injunction – Whether rightly declined by High Court – Matter referred to larger Bench. (See under: Memorandum and Rules and Regulations of BCCI, 2008)	445
RELIEF:		
(See under: Code of Civil Procedure, 1908)	129
REMEDY:		
(See under: Code of Civil Procedure, 1908)	129
RENT CONTROL AND EVICTION:		
(i) Eviction – On the ground of sub-letting – Held: Plaintiff's case of subletting of the shop by defendant no.1 to defendant no.2 was greatly supported by the report prepared by the Court Commissioner who had visited the suit shop – The defendant no.1 not only fabricated evidence but also abused the process of the court by filing a separate suit and getting a Court Commissioner appointed in that suit for the discovery of the fake sweet boxes – The appellate court rightly held that the suit premises were in fact in the use and occupation of defendant no.2.		
(ii) Suit for eviction – On the ground of non-user of premises – Decree passed by trial court –		

Affirmed by appellate court – High Court in revision, set aside the findings of fact arrived at by the courts below – Held: Not justified – High Court took a rather perfunctory view of the matter – The appellate court did not arrive at its finding on a juxtaposition of segregated pieces of fact but took into consideration the overall picture emerging from all the material facts and circumstances relating to the case – High Court overlooked that the tenant had resorted to many falsehoods in his attempt to wriggle out of facts and circumstances established by the plaintiff-landlady's evidence. (Also see under: Code of Civil Procedure, 1908).		
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THE

SUPREME COURT REPORTS

Containing Cases Determined by the Supreme Court of India

**VOLUME INDEX
[2011] 8 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)

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