

CONTENTS

Arun Bhandari v. State of U.P. and Others 961
I.C.D.S. Ltd. (M/s.) v. Commissioner of Income Tax, Mysore & Anr. 1082
Justice Chandrashekaraiiah (Mr.) (Retd.) v. Janekere C. Krishna & Ors. etc. 987
Noor Mohammed v. Jethanand and Another 1146
Rishipal v. State of Uttarakhand 917
Ropan Sahoo & Another v. Ananda Kumar Sharma & Others 1129
Shaji (R.) v. State of Kerala 1172
State Bank of India and Ors. v. Narendra Kumar Pandey 1109
Udai Shankar Awasthi v. State of U.P. & Anr. 935

SUBJECT-INDEX

(iv)

ADMINISTRATION OF JUSTICE:

(1) Criminal justice - Abuse of process of Court.
(See under: Code of Criminal Procedure,
1973) 935

(2) Adjournments in pending matters.
(See under: Code of Civil Procedure, 1908) 1146

APPEAL:

Criminal appeal - Plea for withdrawal of rejected.
(See under: Penal Code, 1860) 917

CODE OF CIVIL PROCEDURE, 1908:

s. 100 - Second appeal - Abuse of process of court - Delayed delineation of controversy - Procrastination on account of frequent adjournments - Non-demonstration of due diligence to deal with the matter - Deprecated - Held: Dispensation of expeditious justice is the constitutional command - Delayed delineation of a controversy in a court of law creates a dent in the normative dispensation of justice - In the instant case, High Court should not have shown indulgence of such magnitude by adjourning the matter when counsel for appellant was not present nor should have it directed fresh notice to appellant when there was nothing suggestive for passing of such an order - The counsel sought adjournment after adjournment in a nonchalant manner and the same were granted in a routine fashion - Duty of the counsel as the officer of the court to assist the court in a properly prepared manner and not to seek unnecessary adjournments - All involved in the justice dispensation system, which includes the Judges, the lawyers, the judicial officers who work in courts, the law officers of the State, the Registry and the litigants, have to show dedicated diligence so that a controversy is put to rest - Chief Justice of High Courts to conceive and adopt a

(iii)

mechanism, regard being had to the priority of cases, to avoid inordinate delays in matters which can really be dealt with in an expeditious manner - Judiciary.

Noor Mohammed v. Jethanand and Another 1146

CODE OF CRIMINAL PROCEDURE, 1973:

(1) ss.161 and 164 - Statements u/s.161 and u/s.164 - Difference - Held: Statements u/s.161 can be used only for the purpose of contradiction - Statements u/s.164, however, can be used for both corroboration and contradiction - Evidence Act, 1872 - s.157.

(ii) s.164 - Object of - Discussed.
(Also see under: Penal Code, 1860)

R. Shaji v. State of Kerala 1172

(2) (i) s.482 - Termination of contract between a proprietary firm and a company - Initiation of arbitration proceedings - Three complaints by the proprietors of the firm dismissed - One complaint entertained by the Magistrate - Petition for quashing of criminal proceedings - Dismissed by High Court - Held: The criminal proceedings were abuse of the process of the court - Complaint case was not maintainable.

(ii) ss.468, 469, 472 and 473 - Termination of contract between proprietary firm and company - Complaint by the proprietor of the firm against officials of the company after a period of 15 years - Held: Limitation for taking cognizance is 3 years - In the fact situation of the case, the offence alleged is not a continuing offence, even though the effect caused by it may be continuous - Limitation.

(iii) s.202 (as amended by Amendment Act, 2005) - It is mandatory for the court to postpone the issue of process, if the accused falls outside the territorial jurisdiction of the court - In the instant case, the

(v)

Magistrate was wrong in issuing summons as accused were outside his territorial jurisdiction.

Udai Shankar Awasthi v. State of U.P. & Anr. 935

CONSTITUTION OF INDIA, 1950:

(1) Art. 226 - Commercial transaction - Subsequently, purchaser filed criminal case against the sellers u/ss.406 and 420 IPC - Police report that the case was of civil nature and no criminal offence made out - In protest petition by the complainant, CJM took cognizance of the case - Writ petition against order of CJM - High Court quashed the criminal case in respect of one of the accused - Held: A case which may apparently look to be of civil nature may also contain ingredients of criminal offences - The facts of the instant case show that it was not purely civil in nature - Neither the FIR nor the protest petition was mala fide, frivolous or vexatious - Thus, interference of High Court in exercise of its jurisdiction u/Art.226 was not justified - Prima facie case is made out against accused that they had the intention to cheat - Penal Code, 1860 - ss.406 and 420.

Arun Bhandari v. State of U.P. and Others 961

(2) Art.226.

(See under: State Bank of India Officers' Service Rules) 1109

CRIMINAL JURISPRUDENCE:

Law does not prohibit second complaint even on the same facts, if the earlier complaint was decided on the basis of insufficient material, or the order was passed without understanding the nature of complaint, or complete facts could not be placed, or where certain material facts came to knowledge of the complainants after disposal of the first complaint - Where earlier complaint is decided on merits after full consideration of the case, second

(vi)

complaint is not maintainable.

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

Udai Shankar Awasthi v. State of U.P. & Anr. 935

CRIMINAL LAW:

(1) 'Continuing offence' and 'Instantaneous offence' - Difference between.

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

Udai Shankar Awasthi v. State of U.P. & Anr. 935

(2) Criminal conspiracy - Proof - Held: Offence of criminal conspiracy can be proved, either by adducing circumstantial evidence, or by way of necessary implication - However, if the circumstantial evidence is incomplete or vague, it becomes necessary for the prosecution to provide adequate proof, by adducing substantive evidence in court - In order to constitute the offence of conspiracy, it is not necessary that the person involved has knowledge of all the stages of action - Mere knowledge of the main object/purpose of conspiracy, would warrant the attraction of relevant penal provisions.

(Also see under: Penal Code, 1860)

R. Shaji v. State of Kerala 1172

CRIMINAL TRIAL:

Absence of corpus delicti - Effect of - Held: Absence of corpus delicti, by itself is not fatal to a charge of murder, if prosecution successfully proves that victim met a homicidal death.

(Also see under: Penal Code, 1860)

Rishipal v. State of Uttarakhand 917

DELAY:

Question of delay in launching criminal proceedings

(vii)

- May not by itself be a ground for dismissing the complaint at the threshold.

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

Udai Shankar Awasthi v. State of U.P. & Anr. 935

EVIDENCE:

(1) Circumstantial Evidence.
(See under: Penal Code, 1860) 917

(2) Weapon of offence - Recovered at the behest of the accused - Blood stuck on the weapon - Failure by serologist to detect origin of the blood due to dis-integration of the serum - Effect - Held: It does not mean that the blood stuck on the weapon of offence could not have been human blood at all - However, unless the doubt is of a reasonable dimension, which a judicially conscientious mind may entertain with some objectivity, no benefit can be claimed by accused in this regard - Once recovery was made in pursuance of disclosure by the accused, matching or non-matching of blood group lost its significance. (Also see under: Penal Code, 1860)

R. Shaji v. State of Kerala 1172

EVIDENCE ACT, 1872:

(i) s.3 - Appreciation of evidence - In civil case and in criminal case - Held: Basis for appreciating evidence in a civil or criminal case is same - However, since in a criminal case, the life and liberty of a person is involved, by way of judicial interpretation, courts have created the requirement of a high degree of proof.

(ii) s.9 - Test identification parade - Held: Conducting a test identification parade is meaningless if the witnesses know the accused, or if they have been shown his photographs, or if

(viii)

he has been exposed by the media to the public - In the instant case, just after the incident took place, the main accused being a highly ranked police official, wide publicity was given to the same by the media - Moreover, the witnesses made it clear that they were acquainted with the appellant - In such fact-situation, holding / non-holding of Test Identification Parade lost its significance.

(iii) s.134 - Evidence of witness - Appreciation of - Held: It is not the number of witnesses, but the quality of their evidence which is important - Evidence must be weighed and not counted.

(iv) (ii) s.157.
(Also see under: Code of Criminal Procedure, 1973; and Penal Code, 1860)
R. Shaji v. State of Kerala 1172

EXCISE:

Grant of IMFL license.
(See under: Orissa Excise Rules, 1965) 1129

IDENTIFICATION / TEST IDENTIFICATION PARADE: TIP.

(See under: Evidence Act, 1872; and Penal Code, 1860) 1172

INCOME TAX ACT, 1961:

s.32(1) - Depreciation - On the vehicle - Purchased and financed by assessee but registered in the name of third parties i.e. lessees - Claim by assessee for depreciation at normal rate as well as on higher rate - Entitlement - Held: As per s.32, the asset must be 'owned' by assessee and 'used for the purpose of the business' - In the facts of the case, assessee as a lessor was owner of the vehicles, and also used them in the course of business i.e. the business of running on hire - No inference can be drawn from registration certificate as to ownership of legal title of vehicle - Therefore,

assessee was entitled to depreciation at normal rate as well as higher rate - Motor Vehicles Act, 1988 - ss.2(30) and 51.

M/s I.C.D.S. Ltd. v. Commissioner of Income Tax, Mysore & Anr. 1082

JUDICIARY:

Need to adopt mechanism to avoid inordinate delays in pending matters, emphasized.

(See under: Code of Civil Procedure, 1908) 1146

JURISDICTION:

(See under: Code of Criminal Procedure, 1973) 935

KARNATAKA LOKAYUKTA ACT, 1984:

(i) s.3(2)(a) and (b) - Appointment of Lokayukta / Upa Lokayukta - Nature and procedure to be followed - Requirement of 'consultation' in the context of appointment process - Meaning of - Held: Governor can appoint Lokayukta or Upa Lokayukta only on the advice tendered by Chief Minister - Chief Minister is mandatorily required to consult Chief Justice of High Court and four other consultees - Consultation must be meaningful and effective - However, the advice tendered by Chief Minister will have primacy and not that of the consultees including the Chief Justice - On facts, Chief Minister erred in not consulting the Chief Justice - Appointment of appellant was in violation of s.3(2)(b) since the Chief Justice was not consulted nor was the name deliberated upon before advising or appointing him as Upa Lokayukta - Appellant has no authority to continue or hold the post of Upa Lokayukta.

(ii) s.3(2)(a) and (b) - Duties and functions of the Lokayukta / Upa Lokayukta - Nature of - Discussed.

Mr. Justice Chandrashekaraiyah (Retd.) v. Janekere C. Krishna & Ors. etc. 987

LIMITATION:

Limitation prescribed under CrPC - Observance of - Held: Law of limitation prescribed under Cr.P.C. must be observed, but in exceptional circumstances - The principle of condonation of delay is based on general rule of criminal justice system that 'a crime never dies'- Criminal court may condone delay in the interest of justice recording reasons for the same - Code of Criminal Procedure, 1973 - ss.468, 469, 472 and 473 - Delay - Condonation of.

Udai Shankar Awasthi v. State of U.P. & Anr. 935

LOKAYUKTAS / UPLOKAYUKTAS:

(See under: Karnatak Lokayukta Act, 1984) 987

MAXIM:

'*Nullum tempus out locus occurrit regi*' - Applicability.

Udai Shankar Awasthi v. State of U.P. & Anr. 935

MOTOR VEHICLES ACT, 1988:

s.2(30) - 'Owner' - Meaning - Applicability to general law - This provision is a deeming provision that creates a legal fiction of ownership in favour of lessee only for the purpose of the Act - It is not a statement of law on ownership in general. (Also see under: Income Tax Act, 1961)

M/s I.C.D.S. Ltd. v. Commissioner of Income Tax, Mysore & Anr. 1082

ORISSA EXCISE RULES, 1965:

r.34(1) proviso - Grant of IMFL licence - By relaxing the rules - Challenged - High Court quashed the grant of licence - Held: It is evident that every authority was aware of the restrictions on the distance from the preferred site and recommended for relaxation - Non-mentioning of rule does not

(xi)

tantamount to non-passing of an order - Thus, order of granting licence was in consonance with proviso to r.34(1) - Therefore, it cannot be said that there was no order relaxing the rules.

Ropan Sahoo & Another v. Ananda Kumar Sharma & Others 1129

PENAL CODE, 1860:

(1) s.302 r/w s.120B - Murder - Criminal conspiracy - Circumstantial evidence - Dismembered parts of victim's body recovered from a lake - Conviction of appellant - Held: Justified - Motive stood proved - Victim last seen with appellant and co-accused - Recovery of chopper at the behest of appellant - Post-mortem report established that dismemberment of parts of the body was possible by using a weapon like chopper - Victim's skull recovered on basis of disclosure statement of appellant - Use of vehicle in the crime also stood proved - Appellant clearly involved in conspiracy to eliminate the deceased - Prosecution proved its case beyond reasonable doubt.

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

R. Shaji v. State of Kerala 1172

(2) ss.302, 171, 201, 365 and 420 - Prosecution - Circumstantial evidence - Corpus delicti not recovered - Conviction by trial court u/ss. 302, 171, 201, 364 and 420 IPC - High Court acquitted the accused u/s.302 while upheld the conviction u/ss. 171, 201 and 420 and further altered the conviction u/s.364 to that u/s.365 - Appeal - Notice as to why the order acquitting him u/s.302 not be set aside - Plea of accused to withdraw his appeal rejected - Held: Conviction u/ss. 171, 201, 420 and 365 upheld - Acquittal of accused u/s.302 is correct since charge of murder not proved beyond

(xii)

reasonable doubt as it was not proved that the deceased met a homicidal death - Circumstances of the case also did not form a complete chain as to leave no option except to hold that accused alone was guilty of the offences - Evidence - Circumstantial Evidence.

Rishipal v. State of Uttarakhand 917

(3) ss.406 and 420.

(See under: Constitution of India, 1950) 961

SERVICE LAW:

(See under: State Bank of India Officers' Service Rules) 1109

STATE BANK OF INDIA OFFICERS' SERVICE RULES:

(i) rr.68(2)(v), 68(2)(ix)(a), 68(2) (viii) and 68(2)(xix) - Departmental ex parte inquiry - Dismissal from service - Writ petition - High Court set aside dismissal order - Held: Delinquent officer rightly dismissed from service - Departmental inquiry was held as per Rules - In the absence of procedural irregularity, interference of High Court u/Art. 226 of Constitution not correct - Constitution of India, 1950 - Art.226.

(ii) Departmental inquiry - Degree of proof - Disciplinary authority is expected to prove the charges on preponderance of probability and not on proof beyond reasonable doubt.

State Bank of India and Ors. v. Narendra Kumar Pandey 1109

WORDS AND PHRASES:

(i) 'Depreciation' - Meaning of.

(ii) 'Own', 'Owner' and 'Ownership' - Meaning of.

M/s I.C.D.S. Ltd. v. Commissioner of Income Tax, Mysore & Anr. 1082