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(ii) s. 154 - FIR - Registration of - Held: Before registration of FIR, if the facts of the case are such which require some inquiry for the satisfaction of the charges or allegations made in FIR, then a

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(1) Arts. 14, 16 and 39(d).  
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(Also see under: Transfer of Property Act, 1872)

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(Also see under: Penal Code, 1860)

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Prohibition Act and IPC - Under s.113A, the expression is "court may presume" whereas u/ s.113B, expression is "court shall presume" - Parliament intended the provisions to be more stringent and effective in view of growing social evil as can be seen from the Statement of Objects and Reasons in the amending Acts - Dowry Prohibition Act, 1961 - Penal Code, 1860.

(Also see under: Penal Code, 1860)

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s.2(oo) r/w s.2(bb) and ss.25G and H - Respondent appointed as a helper in appellant-Corporation for two fixed periods - On expiry of the second term, service of respondent terminated - Labour Court held that Corporation had violated provisions of ss.25G and H and directed it to reinstate the respondent with continuity in service with consequential benefits - Held: Labour Court as well as High Court completely misunderstood the scope of s.2(oo), (bb), as well as s.25G and H - Respondent had not worked continuously for 240 days in a year to claim the benefit of s.25F, G and H - He had worked only for 54 days in two fixed periods and on expiry of the second term, his service stood automatically terminated on the basis of the contract of appointment - There was no retrenchment u/s.2(oo) r/w s.2(bb), consequently, s.25H did not apply - Award passed by Labour

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Independence of - Requirement of upholding the dignity of high office with full sense of responsibility - Held: Independence of judiciary is basic feature of the Constitution - Judge who presides over the trial, the Public Prosecutor who presents the case on behalf of State and the lawyer vis-à-vis amicus curiae who represents the accused must work together in harmony in public interest of justice uninfluenced by personality of accused or those managing the affairs of State - Public interest demands that trial should be conducted in a fair manner and administration of justice would be fair and independent.

(Also see under: Transfer petition)

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Conferment of jurisdiction - Held: Is a legislative function and it can neither be conferred with consent of parties nor by a superior court - If court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause.

(Also see under: Consumer Protection Act, 1986)

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(1) s.28A - Limitation for filing application for re-determination of compensation u/s.28A - Held: As the Land Acquisition Collector is not a court and acts as a quasi judicial authority while making the award, the provisions of 1963 Act would not apply and, therefore, application u/s.28A has to be filed within the period of limitation as prescribed therein - Such application is to be filed within 3 months from the date of the award - Period of limitation is to be calculated excluding the date on which the award was made and the time requisite for obtaining the copy of the award - Date of acquisition of knowledge by applicant is not relevant - Court has no power to extend period of limitation on equitable grounds - "Inconvenience is not" a decisive factor to be considered while interpreting a statute - Limitation Act, 1963 - Maxim "dura lex sed lex" - Applicability.

*Popat bahiru Govardhane etc. v. Special Land Acquisition Officer & Anr.* ..... 241

(2) s.54 - Time barred appeals - Dismissal of, by High Court on ground of limitation, after dismissal of applications for condonation of delay - Held: Justified - Condonation of delay is to be based on sound legal parameters - In the instant case, there was a delay of 5½ years in filing the appeals u/s.54 - No "sufficient cause" given by appellants which prevented them to approach the High court within limitation - No court could be justified in

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condoning such an inordinate delay - Limitation Act, 1963 - s.5.

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LIMITATION:

Statute of limitation - Aim and rationale - Public policy - To secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression - Held: Limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches - The law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes - Court has no power to extend period of limitation on equitable grounds - Maxim "dura lex sed lex".

(Also see under: Limitation Act, 1963)

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(1) s.5.

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(2) (See under: Land Acquisition Act, 1894) ..... 241

MADHYA PRADESH MUNICIPALITIES ACT, 1961:

(i) s.358(7)(m) - Appellant-Nagar Panchayat - Demanding fee, for parking of motor, trucks and buses in the bus stand, owned and maintained by it - Held: Bus stand was provided by Nagar Panchayat for benefit of all vehicle owners and

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passengers, spending public money - Nagar Panchayat has to get a reasonable return for its upkeep and maintenance - Art 243W(a)(i) and (ii) r/w Entry 17 of Twelfth Schedule to the Constitution and clause (7)(m) of s.358 of Madhya Pradesh Municipalities Act, give ample powers to Nagar Panchayat to impose parking fee for parking the vehicles in Bus stand owned and maintained by it - Constitution of India, 1950 - Art 243W(a)(i) and (ii); Twelfth Schedule, Entry 17 -Motor Vehicles Rules, 1994 - rr. 203 and 204.

(ii) Nagar Panchayat - Powers of - Held: Nagar Panchayat is a unit of self-government, which is a sovereign body having both constitutional and statutory status - It has considerable powers to carry out schemes for economic development and social justice - Municipalities.

*Nagar Panchayat, Kurwai & Anr. v. Mahesh Kumar Singhal and Ors.* ..... 290

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MOTOR VEHICLES ACT, 1988:  
(1) s.110-A - Motor accident - Permanent disability - Claim for compensation - High Court assessing loss of earning capacity at 70% in view of permanent disability - Held: High Court has rightly assessed loss of earning capacity to 70% as per

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Workmen's Compensation Act - Compensation re-determined accordingly - Workmen's Compensation Act, 1923.

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(2) s.166 - Compensation claim - By child victim who suffered disability in a motor accident - Held: While considering the claim by a child victim, it would be unfair and improper to follow the structured formula as per the Second Schedule to Motor Vehicles Act - A child cannot be equated to a non-earning person - Therefore, compensation is to be worked out under non-pecuniary heads in addition to actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. - Guidelines issued for determining compensation in case of a child victim suffering permanent disability.

*Master Mallikarjun v. Divisional Manager, The National Insurance Company Limited & Anr.* ..... 268

(3) Motor accident - Claim for compensation - Liability of Insurance Company - Motor Accident Tribunal held Insurance company as well as owner of vehicle jointly and severely liable - Appeal dismissed by High Court - Plea of Insurance company that policy holder was not holding valid policy because his cheque towards premium was dishonoured prior to date of accident - Held: Though cheque was dishonoured prior to date of accident, intimation thereof was given to holder after the accident - Therefore, Insurance company was

liable to pay compensation.

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(2) (See under: Uttar Pradesh Municipal Corporations Act, 1959) ..... 40

PENAL CODE, 1860:

(1) ss. 302, 364, 379, 201 r/w s.34 - Murder - Conviction of accused-appellants by trial court - Upheld by High Court in appeal - Held: High Court being appellate court was required to deal with each and every question raised on behalf of appellants - High Court failed to discuss and decide the questions raised by appellants - Matter remitted to High Court for fresh disposal in accordance with law - Respondents may also contest the case in support of judgment passed by trial court - Practice and Procedure.

*P. Nagesh and Anr. v. State of Karnataka* ..... 66

(2) s.302 r/w s.34 - Murder - Four accused - Eye-witness account - As per prosecution case, three accused armed with knives and iron rod whereas appellant holding a stick - Doctor, who conducted post mortem, asserted that deceased died due to head injuries - Trial court convicted all u/s. 302 r/w s.34 IPC - High Court confirmed the conviction - Held: PWs asserted that two accused caused

cut injuries to deceased using knives - They did not specifically state whether the stick used by appellant struck on the head or neck of deceased - They merely stated that appellant used the stick and hit on the back - Absolutely, no reference of any injury on the back of deceased was made in post mortem report as well as in evidence of Doctor - Conviction u/s.302 r/w s.34 IPC insofar as appellant is concerned, set aside.

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(4) (i) ss.304B and 489A - Death of married woman - Allegations of cruelty and harassment - Two accused- husband and father-in-law - Conviction of appellant (father-in-law) u/ss. 304B and 498A - By courts below - Held: For conviction u/s.304B, it is obligatory on the part of prosecution to establish that death occurred within seven years of marriage, otherwise, offence would fall only u/s.498A - Prosecution failed to establish the crucial fact of the death occurring within seven years of marriage - Conviction u/s.304B set aside, but conviction u/s.498A confirmed - Evidence Act, 1872 - s.113B.

(ii) s.489A - Cruelty by husband and his relatives - Conviction u/s.498A - Held: No requirement u/s.498A that cruelty should be within seven years of marriage - No invariable necessity u/s. 498A that cruelty should be in connection with demand for dowry.

(iii) ss.304B and 489A - Purpose of - Held: s.498A was introduced to "suitably deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws"

introduced to make the penal provisions "more stringent and effective".

(iv) s.304B - Words "shall be deemed" - Meaning - Held: Though the expression "presumed" is not used u/s.304B, words "shall be deemed" u/s.304B carry, literally and under law, the same meaning since the intent and context requires such attribution.

(Also see under: Evidence Act, 1872)

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(5) ss. 363, 366 and 376.

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(6) s.498A - Suicide by second wife of appellant - One day earlier, deceased had written letter to police station against appellant - Conviction of appellant u/s.498A - Held: Not justified - Explanation u/s.498A defines "cruelty" to mean any of the acts mentioned in clause (a) or clause (b) of s.498A - Alleged acts or conduct of appellant did not amount to cruelty within meaning of clauses (a) or (b) of the Explanation - Except the letter written by deceased to Police Station, no other witness spoke about appellant having committed acts of mental cruelty to her - Finding of High Court that appellant committed a cruel act by permitting his first wife to enter the house of deceased with new born child, is erroneous - No evidence of any physical harm or mental cruelty by appellant against deceased - Appellant, therefore, acquitted.

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#### PRACTICE AND PROCEDURE:

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(Also see under: Service Law)

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#### SELECTION:

Benchmark - Fixation of, for appointment to Post of Deputy Director (Law) in OBC Category in office of Competition Commission of India (CCI) - Held: The entire selection was undertaken in accordance with criterion laid down at the time of recruitment process - After conducting the interview, marks of written test and viva voce were to be added - However, since benchmark was not stipulated for giving the appointment, a decision was taken to give appointments only to those persons who secured 70% marks or above in unreserved category and 65% or above marks in reserved category - Fixation of such a benchmark in order to have meritorious persons for those posts, was legitimate giving a demarcating choice to employer - There was no change in criteria of selection - It was short listing which was done by fixing the benchmark, to recruit best candidates on rational and reasonable basis - That was clearly permissible under the law.

*Yogesh Yadav v. Union of India*

## SERVICE LAW:

(1) Appointment - Of primary teachers - SLPs filed by trained teachers for direction upon the State of Bihar to appoint them in the vacancies of primary teachers in the State - SLPs withdrawn on an undertaking given on behalf of the State - State of Bihar failed to abide by its commitments - Contempt petition - Orders passed by Supreme Court directing that trained teachers be appointed against available vacancies - Dispute in regard to the list of eligible candidates - Retired High Court Judge appointed by Supreme Court as Special Officer - List submitted by him accepted and 34,540 candidates appointed in different primary schools in the State - However, some candidates, who had not appeared before said retired High Court Judge, came up with fresh applications in support of their cases - Most of the applicants were aggrieved by some defect or the other in preparation of select list - Applications, SLPs and writ petitions filed before Supreme Court directed to be treated as withdrawn, with liberty to parties to approach High Court individually or otherwise, for relief, if any, but without, in any way, affecting the appointments already made - Bihar Education Code - Chapters 6 and 7 - Bihar Elementary Teachers Appointment Rules, 2003.

*Yashwant Singh & Ors. v. State of Bihar & Ors.* ..... 111

(2) Back wages - Appointment as a clerk - In a school - During an inspection, name of appellant inadvertently shown as 'Librarian' - School taken-over by State - Services of appellant not taken-

over, because the post of 'Librarian' was not approved - Directions by competent authority to adjust the appellant against the post of clerk in a school - Due to lack of vacancy, he was not posted in any school - Held: Appellant was entitled to full back wages for the period, he was illegally kept out of service, due to mistake - Direction to pay the entire full backwages from the period, he was kept out of service till reinstatement with 9% interest.

*Shiv Nandan Mahto v. State of Bihar & Ors.* ..... 62

(3) Equal pay for equal work - Respondent, a Junior Hindi Translator under Commerce Ministry - Sought parity of pay with Junior Translators in the Central Secretariat Official Language Service (CSOLS) - Tribunal held in favour of respondent stating that there was no reason to deny parity in pay - Held: Since no material was placed before Tribunal about the functional distinction, order of Tribunal cannot be faulted - Though principle of 'equal pay for equal work' is not expressly declared by the Constitution to be a fundamental right, but it certainly is a constitutional right - Art. 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a Directive Principle of State Policy - Constitution of India, 1950 - Arts. 14, 16 and 39(d).

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(4) Incentive increment - To re-employed persons - For undergoing sterilization operation - Held: Not entitled - Policy of Government was that a re-

employed person was not entitled to such incentive increment, if he or his spouse had undergone sterilization operation prior to his re-employment - Policy decision taken by Government was quite reasonable and had nexus with the purpose to be achieved - Department of Posts letter No.6-2/1999 (Mis.)-PAP, dated 18.9.2002.

*The Secretary, Department of Atomic Energy & Ors. v. M. K. Bawane* ..... 155

(5) (i) Pension - State Government withholding a part of pension and/or gratuity during pendency of departmental/ criminal proceedings, in absence of any such provision in the Pension Rules - Held: Gratuity and pension are not bounties - It accrues to an employee and is in the nature of "property" - This right to property cannot be taken away without due process of law as per Art 300 A of the Constitution - No provision in the rules for withholding of pension/ gratuity when departmental proceedings or judicial proceedings were still pending - Attempt of appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced - Executive instructions not having statutory character, cannot be termed as "law" within the meaning of Art 300A - On basis of such a circular, which is not having force of law, appellant cannot withhold even a part of pension or gratuity - Bihar Pension Rules, as applicable to State of Jharkhand - r.43(b) - Constitution of India, 1950 - Art 300A.

(ii) Pension - Held: Right to receive pension is recognized as a right in "property".

*State of Jharkhand & Ors. v. Jitendra Kumar Srivastava & Anr.* ..... 177

(6) Recruitment - Andaman Lakshdeep Harbour Works - Post of Executive Engineer - Three alternate modes of recruitment to the Post, namely, (1) by promotion, failing which (2) by transfer on deputation (including short term contract) and failing both (3) by direct recruitment - Held: No departmental candidate was available - Respondent had not completed 8 years regular service as Assistant Engineer, as required for promotion to the post of Executive Engineer - In such circumstances only out of sympathy, High Court could not have given the impugned direction for appointment of respondent as Executive Engineer - This judicial sympathy resulting into a right in favour of respondent to appoint him contrary to recruitment rules framed under proviso to Art 309 of the Constitution which are statutory in nature was clearly misplaced and needs to be denounced - Such a direction is clearly unsustainable and is accordingly set aside - Constitution of India, 1950 - Art 309.

*Union of India & Ors. v. Shri G. R. Rama Krishna & Anr.* ..... 261

(7) Study leave - Availed by Lecturer to pursue Ph.D. course - Certificate for completion of study course not produced - Recovery of salary and other benefits paid during the period of study leave - Held: A candidate who avails of leave but takes no

interest to complete the course and does not furnish the certificate to that effect, is doing a disservice to institute as well as its students - Public money cannot be spent unless there is mutual benefit - However, in the instant case, as the bond executed by respondent is found to be vague, there is no reason for appellant-institute to recover the balance amount from him - But the amount already recovered be not refunded - This order is made taking into consideration all aspects of the matter and to do complete justice between parties - Constitution of India, 1950 - Art. 142 - Central Civil Services (Leave) Rules, 1972 - rr.53(5) and 63.  
(ii) Granting of study leave - Object of - Explained.

*Sant Longowal Instt. of Engg. & Tech. & Anr. v. Suresh Chandra Verma* ..... 118

(8) Voluntary Retirement Scheme - Employee seeking benefit under - Without waiting for the acceptance thereof, went on leave and took employment elsewhere - Leave not extended - On his failure to join duty, disciplinary proceedings initiated for unauthorized absence from duty and his services terminated - Held: Decision as regards grant of benefit under Voluntary Retirement Scheme is at the discretion of employer, unless where the Scheme itself provides for retirement to take effect at the end of notice period - In the instant case, there was no such stipulation under the Scheme - Employee was rightly terminated.

*C.V. Francis v. Union of India & Ors.* ..... 53

#### TRANSFER OF PROPERTY ACT, 1882:

s.52 - Mortgagor inducing tenant in a mortgaged

property, to prejudice of mortgagee, pendente lite - Permissibility - Mortgagor inducted a tenant without consent of the mortgagee (appellant) - Suit of appellant-mortgagee against tenant and mortgagors for recovery of possession, and damages for use and occupation - Held: Rule of lis pendens applies to suit by a mortgagee as well - s.52 of TPA prevents a mortgagor from creating any lease during pendency of mortgage suit so as to effect the right of a mortgagee - Tenant inducted during subsistence of mortgage is not entitled to get protection of Rent Act - Appellant entitled to get decree, as prayed for, since tenant was inducted illegally by mortgagors and to the prejudice of appellant-mortgagee - Suit of appellant decreed, however, without any mesne profits - Maharashtra Rent Control Act.

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#### TRANSFER PETITION:

(1) Fodder scam - Prosecution initiated in 1997 - After prolonged trial, matter reached final stage, namely, pronouncement of decision - Petition filed by appellant for transfer of case from Court of Special Judge, CBI to any other court - Held: Claim of appellant cannot be entertained - If appellant had any apprehension in his mind, this could have been raised at the earliest point of time and not after conclusion of evidence and arguments, particularly, on the eve of pronouncement of judgment - Objection relating to bias on the eve of passing orders, cannot be entertained - In a matter of this nature, it is not at all desirable to shift the

case to some other court at the last hour - Also, procedure adopted by Special Judge cannot be faulted with, except one aspect which was also noticed by High Court i.e. intimating the parties in the midst of arguments and compelling them to file written arguments on or before a particular date - Except the said recourse, which is not in consonance with the scheme of the Code, particularly, in a criminal trial, considering the magnitude of the case pending since 1997, conduct of the Judge cannot be faulted with - Further time of 5 days granted to prosecution and 15 days to all the accused including the appellant - Criminal trial.

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(2) Petition of appellant-wife for transfer of divorce proceeding instituted by respondent-husband pending trial in Family Court, Hyderabad to Family Court at Kakinada - Rejected by High Court - Held: Not proper - High Court lost sight of the fact that respondent-husband on the one hand has filed a divorce proceeding against appellant-wife and further expects the same to be tried at a place of his choice, which is Hyderabad - Considering the implication of the situation and circumstance, view taken by High Court refusing to transfer the case is fit to be struck down as illegal, devoid of practical fallout and wisdom - Divorce proceeding along with its records permitted to be transferred from Family Court, Hyderabad to Family Court, Kakinada.

*Smt. T. Gayatri Devi v. Dr. Tallepaneni Sreekanth* ..... 152

UTTAR PRADESH MUNICIPAL CORPORATIONS ACT, 1959:

ss.3(2) and 8-AA - Dissolution of Municipal Council for its upgradation to Municipal Corporation - After direction of the court, State invited objections for the same by Public Notice - Municipal Council dissolved - Dissolution challenged by Chairman of the Council on the ground that before dissolution, opportunity of hearing not given to Municipal Council - Held: Dissolution of the Council was not without hearing the Council as several Municipal Councilors were heard before dissolution - Constitution of India, 1950 - Art. 243Q.

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