

CONTENTS

Bakshish Ram & Anr. v. State of Punjab	.....	732
Dayanand Anglo Vedic (DAV) College Trust and Management Society v. State of Maharashtra and Anr.	.....	821
Gambhirsinh R. Dekare v. Falgunbhai Chimanbhai Patel and Anr.	.....	719
Indian Soaps & Toiletries Makers Association v. Ozair Husain and Ors.	.....	675
Kailash @ Tanti Banjara v. State of Madhya Pradesh	.....	875
Niranjan Hemchandra Sashittal and Anr. v. State of Maharashtra	.....	767
Rajesh Kumar & Ors. Etc. v. State of Bihar & Ors. Etc.	.....	753
Republic of Italy and Ors. v. Union of India and Ors.	.....	595
Rushi Guman Singh v. State of Orissa & Ors.	.....	862

Satya Pal v. State of Haryana & Anr.	.....	745
Secretary to Government of India v. Sawinder Kaur and Anr.	.....	788
State of Haryana v. Basti Ram	.....	850
State of Rajasthan & Ors. v. Hindustan Zinc Ltd. & Anr.	.....	704
Umesh Singh v. State of Bihar	.....	797

SUBJECT-INDEX**APPEAL:**

Appellate jurisdiction of High Court - In criminal appeal - Held: As a first court of appeal, High Court should record its own findings after independent assessment of evidence.

(Also see under: Penal Code, 1860)

Bakshish Ram & Anr. v. State of Punjab 732

ARMS ACT, 1959:

s.27.

(See under: Penal Code, 1860) 797

**CIRCULARS/GOVERNMENT ORDERS/
NOTIFICATIONS:**

Circular No.8/4/83-FF(P) dated 31.1.1983 issued by Ministry of Home Affairs.

(See under: Swatantrata Sainik Samman Pension Scheme, 1980) 788

CODE OF CRIMINAL PROCEDURE, 1973:

(1) s.161, Explanation - Police statement - Omission of a fact or circumstance - The question whether the omission amounts to contradiction is a question of fact which is to be determined by the Court.

(Also see under: Penal Code, 1860)

Satya Pal v. State of Haryana & Anr. 745

(2) s.482 - Defamatory news item - In local edition of a newspaper - Complaint against Editor and Resident Editor alleging defamation - Editor sought

quashing of the complaint on the ground that he was not aware of offending news item as he was stationed at different place - High Court quashed the complaint against the Editor - Held: High Court quashed the prosecution on erroneous assumption of fact - In view of the scheme of Press and Registration of Books Act and in view of presumption provided u/s. 7 thereof, Editor is responsible for publication of a news item - Press and Registration of Books Act, 1867 - s.7.

Gambhirsinh R. Dekare v. Falgunbhai Chimantbhai Patel and Anr. 719

CONSTITUTION OF INDIA, 1950:

(1) Arts.19(1)(a) and 19(2) - Freedom of speech and expression - Right to receive information - Held: Freedom of speech and expression includes right to receive information - But such right can be limited by reasonable restrictions under the law made for the purpose mentioned in Art.19(2) - It is imperative for the State to ensure the availability of the right to the citizens to receive information - But such information can be given to the extent it is available and possible, without affecting the fundamental right of others.

(Also see under: Drugs and Cosmetics Rules, 1945)

Indian Soaps & Toiletries Makers Association v. Ozair Husain and Ors. 675

(2) Art. 30 - Linguistic educational institution - Establishment and administration of - In a State - By a member of linguistic non-minority in another

(v)

State - Held: In order to claim linguistic status for an institution in any State, the institution should have been established and should be administered by the persons who are minority in such State - A non-minority in another State cannot establish, administer and run such institution.

Dayanand Anglo Vedic (DAV) College Trust and Management Society v. State of Maharashtra and Anr. 821

(3) Art. 32 - Powers under - Exercise of - Scope - Accused, a public servant, allegedly acquired disproportionate assets - Trial under Prevention of Corruption Act - Prayer for quashing of the trial on the ground of delay - Held: No time limit can be stipulated for disposal of criminal trial - The delay caused has to be weighed on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of the collective - In the case at hand, gravity of the offence is not to be adjudged on the bedrock of the quantum of bribe - An attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenet of democracy - Also, on facts, delay occurred due to dilatory tactics adopted by accused, laxity on the part of the prosecution and faults on the part of the system, i.e., to keep the court vacant - The balance to continue the proceeding against accused tilts in favour of the prosecution - Jurisdiction under Art. 32 not exercised to quash the proceedings - Prevention of Corruption Act, 1988 - s.13(2) r/w s.13(1)(e).

(vi)

Niranjan Hemchandra Sashittal and Anr. v. State of Maharashtra 767

(4) Art. 297.
(See under: International Law) 595

CRIMES AGAINST WOMEN:
(See under: Penal Code, 1860) 732,
745, 850 and 875

DRUGS AND COSMETICS ACT, 1940:
(See under: Drugs and Cosmetics Rules, 1945) 675

DRUGS AND COSMETICS RULES, 1945:
Drugs - Ingredients of - Disclosure - Vegetarian/non-vegetarian - High Court in writ jurisdiction directing the drug manufacturers to display a particular symbol in the packages of drugs other than life saving drugs to identify the ingredients of 'non-vegetarian'/'vegetarian' origin - Held: Under the Rules, Central Government in consultation with Drug Technical Advisory Board is empowered to decide whether any amendment is to be made in the relevant Rules showing the ingredients of vegetarian or non-vegetarian origin or to provide a symbol - Without fruitful consultation with Advisory Board, no amendment can be made or suggested to change the label of drugs and cosmetics - Advisory Board had already opined that labelling of drugs as 'vegetarian' or 'non-vegetarian' or 'from animal sources' is not desirable - High Court u/Art. 226 had no jurisdiction to direct the Executive to enact a law in a particular manner, as was done in

(vii)

the instant case - It was also not open to High Court to suggest any interim arrangement as was given by the impugned judgment - Drugs and Cosmetics Act, 1940 - Constitution of India, 1950 - Art. 226.

Indian Soaps & Toiletries Makers Association v. Ozair Husain and Ors. 675

EVIDENCE:

(i) Rigor mortis - Time of death - Opinion of doctor regarding complete vanishing of rigor mortis from the dead body after 36 hours - Held: Not correct - The medical officer deposed contrary to the rule of medical jurisprudence - On facts, the same could not be the basis for acquittal of the accused - Medical jurisprudence.

(ii) Discrepancy between medical and ocular evidence - Effect - Held: Between medical and ocular evidence, the ocular evidence must be preferred.

Umesh singh v. State of Bihar 797

EVIDENCE ACT, 1872:

(1) s.60 - Oral evidence - Based on hearsay evidence - Admissibility - Held: Such oral evidence is not admissible.

(Also see under: Penal Code, 1860)

Bakshish Ram & Anr. v. State of Punjab 732

(2) s.113B.

(See under: Penal Code, 1860) 745

INTERNATIONAL CONVENTIONS AND TREATIES:

(viii)

(i) Declaration on Principles of International Law Concerning Family Relations and Co-operation Between States in accordance with the Charters of United Nations.

(ii) United Nations Convention On The Law Of The Sea, 1982 - Articles 97 and 100.

(See under: International Law) 595

INTERNATIONAL LAW:

Incident of firing by officers of naval staff of Italy deployed on merchant ship of Italy - Resulting in death of two persons on Indian Fishing Vessel - FIR against two officers u/s. 302/34 IPC lodged in State of Kerala - State Police investigated the matter and arrested the accused - Held: Action by State of Kerala was without jurisdiction because the incident took place within Contiguous Zone on which the State did not have jurisdiction - Also because in the case, two sovereign countries were involved and one country had already initiated criminal proceedings against the accused, State of Kerala as one of the units of the federal unit would not have authority to try the accused - 'Declaration on Principles of International Law Concerning Family Relations and Co-operation between States in accordance with the Charters of United Nations' has to be conducted at federal level and not at provincial level - The incident cannot be said to be an "incident of navigation" within the meaning of Art. 97 of UNCLOS - By virtue of extension of the provisions of IPC and Cr.P.C. to contiguous zone, Union of India is entitled to take

cognizance, investigate and try the accused - But the same is subject to the provisions of Art. 100 of UNCLOS - Direction to Union of India to set up Special Court to try the case - Accused can also invoke provisions of Article 100 of UNCLOS whereupon the question of jurisdiction to investigate into the incident and for the courts in India to try the accused would be considered - If found that both the countries i.e. India as well as Italy have concurrent jurisdiction over the matter, the directions passed in this judgment will continue - Penal Code, 1860 - ss. 302, 307, 427 r/w s.34 - Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 - s.3 - United Nations Convention on the Law of the Sea, 1982 - Articles 97 and 100 - Maritime Zones Act, 1976 - Declaration on Principles of International Law Concerning Family Relations and Co-operation Between States in accordance with the Charters of United Nations Constitution of India, 1950 Article 297.

Republic of Italy and Ors. v. Union of India and Ors. 595

MARITIME ZONES ACT, 1976:
(See under: International Law) 595

MEDICAL JURISPRUDENCE:
(See under: Evidence) 797

MINERAL CONCESSION RULES, 1960:
(i) rr. 64A, 64B, 64C and 64D - Mining lease for extracting lead and zinc - Recovery of royalty in respect of minerals extracted by the lessee - Methodology for calculation of royalty - Notifications

issued by Central Government from time to time - Notification dated 11th April, 1997 substituted by Notification dated 12th September, 2000 - Held: High Court has rightly opined that lessee-company was not liable to pay royalty on the tailings as they had not been taken out of the leased area and that as per r.64C, unless dumped tailings or rejects are consumed by lessee, no royalty can be collected on such tailings or rejects - By virtue of Notification dated 12th September, 2000 read with the relevant Rules, lessee-company is to pay royalty only on the contents of metal in the ore produced and not on the metal contained in the tailings, rejects or slimes which had not been taken out of the leased area and which had been dumped into dumping ground of leased area.

(ii) rr. 64A, 64B, 64C and 64D - Mining lease for extracting lead and zinc - Recovery of royalty in respect of the minerals extracted by the lessee - Dispute over methodology for calculation of royalty - Direction issued by High Court remitting the matter to the mining engineer for re-computing the royalty payable on lead and zinc contained in the ore produced - Held: As the metal concentrate taken out from the leased area was known to the parties, it was not necessary to have any further details regarding the ore produced by the lessee-company - Direction accordingly quashed - Mines And Minerals (Development And Regulation) Act, 1957 - s.9.

State of Rajasthan & Ors. v. Hindustan zinc Ltd. & Anr. 704

(xi)

ORISSA CIVIL SERVICES (CCA) RULES, 1962:

r.12(4).

(See under: Service Law) 862

PENAL CODE, 1860:

(1) s. 302 r/w s. 34 - Murder - Deceased was shot at with revolver and rifle - Several accused - Conviction of accused-appellant - Held: Justified - Statement of related eye-witness was rightly treated as FIR - His evidence supported by other witnesses - Claim of appellant that he was falsely implicated not tenable - His conviction based on evidence on record and on proper appreciation of the same - Arms Act - s.27.

(Also see under: Evidence)

Umesh Singh v. State of Bihar 797

(2) ss. 302, 307, 427 r/w s.34.

(See under: International Law) 595

(3) s.304B - Dowry death - Conviction by courts below - Held: Prosecution failed to establish its case beyond reasonable doubt - Courts below committed an error in convicting the accused - Evidence Act, 1872 - s.113-B.

Bakshish Ram & Anr. v. State of Punjab 732

(4) ss.304B and 498A - Prosecution u/ss. 302/34 and 304B - Acquittal by trial Court - Conviction by High Court u/ss. 304B and 498A - Held: Justified - In view of the prosecution evidence, High Court rightly held that deceased was subjected to demand of dowry as well as cruelty and harassment in connection with such demand, soon before her death - High Court also rightly drew presumption

(xii)

u/s.113 B of Evidence Act that appellant-accused caused dowry death - Evidence Act, 1872 - s.113B.

Satya Pal v. State of Haryana & Anr. 745

(5) ss. 376 and 506B - Rape - Courts below though found that intercourse was with consent of prosecutrix, but convicted the accused as the prosecutrix was 14 years of age - Held: Conviction justified - In view of the age of the prosecutrix, her consent has no consequence.

Kailash @ Tanti Banjara v. State of Madhya Pradesh 875

(6) ss.376(2)(g), 366, 342 and 506 - Gang rape of girl below 16 years of age - Conviction by trial court relying on evidence of prosecutrix - High Court acquitted the accused - Held: High Court committed error of law in ignoring the evidence of prosecutrix - Case remitted to High Court.

State of Haryana v. Basti Ram 850

PRESS AND REGISTRATION OF BOOKS ACT, 1867:

s.7.

(See under: Code of Criminal Procedure, 1973) 719

PREVENTION OF CORRUPTION ACT, 1988:

s.13(2) r/w s.13(1)(e).

(See under: Constitution of India, 1950) 767

SERVICE LAW:

(1) Appointment - Selection - On the basis of competitive examination - Evaluation of answer scripts challenged - Defect found in 'Model Answer

Key' to one of the papers - High Court directed to conduct fresh examination in the paper having defective 'Model Answer Key' - Held: The entire selection process was vitiated by use of defective 'Model Answer Key' and appointments made on the basis of such examination would also be rendered unsustainable - However, in the facts of the case, instead of directing fresh examination, correcting the defect by evaluation of answer scripts with correct key was better option - The re-evaluation would affect only inter-se seniority among the candidates - The already appointed candidates, after re-evaluation, if did not make the grade, would not be ousted from service, but would figure at the bottom of the select list.

Rajesh Kumar & Ors. Etc. v. State of Bihar & Ors. Etc. 753

(2) Suspension - During further enquiry by Disciplinary Authority after direction of Court - Held: Though delinquent officer was not under suspension at the time of order of removal from service, he was rightly directed to be deemed suspended u/s.12(4) from the date of original order of removal - Orissa Civil Services (CCA) Rules, 1962 - r.12(4).

Rushi Guman Singh v. State of Orissa & Ors. 862

SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF MARITIME NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF ACT, 2002:

s.3.

(See under: International Law) 595

SWATANTRATA SAINIK SAMMAN PENSION SCHEME, 1980:

Pension - Granted by High Court from the year 1973 - Held: The direction relating to entitlement of claimant to the benefit of pension from 1973 is erroneous - He could be covered under the Scheme only after the circular dated 31.1.1983 whereby he was made entitled to the pension - Circular No.8/4/83-FF(P) dated 31.1.1983 issued by Ministry of Home Affairs.

Secretary to Government of India v. Sawinder Kaur and Anr. 788

WORDS AND PHRASES:

'Establish' and 'administer' - Meaning of, in the context of Art. 30 of the Constitution of India, 1950.

Dayanand Anglo Vedic (DAV) College Trust and Management Society v. State of Maharashtra and Anr. 821