

CONTENTS

Ahsanul Hoda v. State of Bihar	.....	312
Anil Kumar Mahajan v. Union of India through Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi and Ors.	.....	373
Anuj Kumar Gupta @ Sethi Gupta v. State of Bihar	.....	435
Baldev Krishan v. Satya Narain	.....	551
Barku Bhavrao Bhaskar v. State of Maharashtra	.....	449
D.H.B.V.N.L. Vidyut Nagar, Hisar & Ors. v. Yashvir Singh Gulia	.....	501
Devendra Kumar v. State of Uttaranchal & Ors.	.....	471
Ganga Singh v. State of Madhya Pradesh	.....	400
GM, Sri Siddeshwara Co-operative Bank Ltd. & Anr. v. Sri Ikbāl & Ors.	.....	532
Govinda Bala Patil (D) by Lrs. v. Ganpati Ramchandra Naikwade (D) by Lrs.	.....	461
Hotel Queen Road Pvt. Ltd. (M/s.) & Ors. v. Mr. Ram Parshotam Mittal & Ors.	.....	421

Keshavamurthy (C.) v. H.K. Abdul Zabbar	.....	429
M. P. State Mining Corporation Ltd. v. Sanjeev Bhaskar & Ors. etc.	.....	386
Malhotra (S. P.) v. Punjab National Bank & Ors.	.....	413
Manickam (S.) v. Metropolitan Transport Corp. Ltd.	.....	351
Manjeet Singh Khera v. State of Maharashtra	.....	511
Pramod Kumar v. State (GNCT) of Delhi	.....	323
Premwati v. Union of India & Ors.	.....	364
Rakesh Kumar Sharma v. Govt. of NCT of Delhi & Ors.	.....	486
State of M.P. v. Najab Khan and Ors.	.....	301
State of Rajasthan v. Shiv Charan & Ors.	.....	336
Subramanian Swamy (Dr.) and Ors. v. Raju, Thr Member, Juvenile Justice Board and Anr.	.....	520
Union of India and Anr. v. Shri Bhanwar Lal Mundan	.....	559

SUBJECT-INDEX

ARMS ACT, 1959:
 ss.25 and 27.
 (See under: Penal Code, 1860) 323

BOMBAY GENERAL CLAUSES ACT, 1904:
 s.13.
 (See under: Bombay Tenancy and Agricultural
 Lands Act, 1948) 461

BOMBAY TENANCY AND AGRICULTURAL LANDS
 ACT, 1948:
 (i) s.32G - Proceedings under - Initiated by tenant
 - Rejected by Additional Tehsildar - Appellate-
 authority holding that landlord failed to prove
 specific purpose of lease - Revisional court gave
 its finding in favour of landlord that land was leased
 out for growing sugarcane - High Court, in writ
 petition set aside the order of revisional court -
 Held: High Court erred in setting aside order of
 revisional court.
 (ii) s. 43A - Applicability of - Whether applicable
 to single person - High Court in view of plural
 expressions in the provision held that the provision
 covers only those cases in which lease is given to
 more than one person - Held: In view of s.13 of
 Bombay General Clauses Act which provides that
 singular shall include plural and vice versa, plural
 expression will include singular - Thus, s.43A would
 be applicable to single person - Bombay General
 Clauses Act, 1904 - s.13.
Govinda Bala Patil (D) By Lrs. v. Ganpati
Ramchandra Naikwade (D) By Lrs. 461

(iii)

COMPENSATION:
 (1) (See under: Land Acquisition Act, 1894) 312,
 364
 (2) (See under: Motor Vehicles Act, 1988) 351

CONSTITUTION OF INDIA, 1950:
 (1) Art. 136 - Special leave petition - Criminal
 proceedings - Third party intervention -
 Maintainability - Held: Law does not recognize right
 of a third party/stranger to participate or come to
 aid of State in a criminal proceeding - In the instant
 case, petitioner (a third party), is not seeking
 impleadment in the inquiry against juvenile accused,
 pending before Juvenile Justice Board or in the
 trial - He is seeking an authoritative pronouncement
 of the true purport and effect of different provisions
 of Juvenile Justice Act so as to take a juvenile out
 of the purview of the Act - Such adjudication has
 implications beyond the case of juvenile accused
 - Therefore, petition does not suffer from the vice
 of absence of locus of petitioners - Petition is
 maintainable - Juvenile Justice (Care and
 Protection of Children) Act, 2000.
Dr. Subramanian Swamy and Ors. v. Raju,
Through Member, Juvenile Justice Board
and Anr. 520

(2) Article 226 - Jurisdiction under - Held:
 Availability of alternative remedy is not an absolute
 bar to exercise of extraordinary jurisdiction u/Art.
 226 - But where statute provides efficacious and
 adequate remedy, High Court should not entertain
 such petition - Statutory procedures cannot be
 allowed to be circumvented on misplaced
 considerations - In the instant case, High Court
 erred in invoking jurisdiction u/Art.2

(v)

remedy was efficacious - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - s.17. (Also see under: Security Interest (Enforcement) Rules, 2002)

GM, Sri Siddeshwara Co-operative Bank Ltd. & Anr. v. Sri Ikbal & Ors. 532

CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860) 400

CRIMINAL TRIAL:

(1) Non-explanation of serious injuries on the person of accused - Held: May be fatal to prosecution case, but if injuries are minor, even if not explained, prosecution case cannot be disbelieved.

State of Rajasthan v. Shiv Charan & Ors. 336

(2) Supply of complaint or content thereof to accused - Whether binding on prosecution - Held: The complaint, in the instant case received by Anti-Corruption Bureau, only triggered investigation - It did not form foundation of the case in FIR - Complaint was not part of the police report - Therefore, non-supply of complaint or contents thereof do not violate the principle of fair trial nor do they prejudice the accused.

Manjeet Singh Khera v. State of Maharashtra 511

EVIDENCE:

(1) Circumstantial evidence.
(See under: Penal Code, 1860) 435
and 449

(2) Evidence of prosecutrix - Nature and evidentiary value of - Held: Prosecutrix is a competent witness

(vi)

u/s.118 of Evidence Act - Prosecutrix is a victim and not an accomplice - Therefore, her evidence should receive the same weight as that of an injured witness - It does not require corroboration as in the case of evidence of an accomplice - Evidence Act, 1872 - s.118.

(Also see under: Penal Code, 1860)

Ganga Singh v. State of Madhya Pradesh 400

(3) Nature of evidence - In agricultural tenancy case - Held: Such cases are decided on preponderance of probability - Principle of proof beyond reasonable doubt does not apply in such proceedings.

(Also see under: Bombay Tenancy and Agricultural Lands Act, 1948)

Govinda Bala Patil (D) By Lrs. v. Ganapati Ramchandra Naikwade (D) By Lrs. 461

(4) Witness - Official witnesses - Testimony of police official - Appreciation - Held: Witnesses from police department cannot per se be said to be untruthful or unreliable - It would depend upon the veracity, credibility and unimpeachability of their testimony - It cannot be said that the whole case should be thrown overboard because of non-examination of independent witness and reliance on official witnesses - On facts, official witnesses examined in support of prosecution, stood embedded in their version - Despite searching cross-examination, none of them gave way to any tergiversation, thus, no reason to discard them.

(Also see under: Penal Code, 1860)

Pramod Kumar v. State (GNCT) of Delhi 323

EVIDENCE ACT, 1872:

(1) s.8 r/w s.27 - Applicability of.

(vii)

(See under: Penal Code, 1860) 435

(2) s.157.

(See under: Penal Code, 1860; as also Evidence) 400

HARYANA STATE ELECTRICITY BOARD
EMPLOYEES (PUNISHMENT AND APPEAL)
REGULATIONS, 1999:

Regulation 7(8) - Initiation of proceedings under regulation 7 for imposition of major penalty - But after considering the reply of delinquent imposition of minor penalty without holding departmental enquiry - Whether full fledged departmental inquiry was required - Held: Under regulation 7(8) competent authority is empowered to dispense with departmental inquiry, even though it has contemplated major penalty proceedings - On being satisfied with reply of delinquent, can follow the procedure for imposing minor penalty.

D.H.B.V.N.L. Vidyut Nagar, Hisar & Others v. Yashvir Singh Gulia 501

INTERIM ORDERS:

(See under: Practice and Procedure) 421

INVESTIGATION:

Defective investigation - Held: Unless casts a reasonable doubt on prosecution case, cannot be a ground to acquit the accused.

(Also see under: Penal Code, 1860)

Ganga Singh v. State of Madhya Pradesh 400

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000:

(See under: Constitution of India, 1950) 520

LAND ACQUISITION:

Land acquired - Determination of value of land -

(viii)

High Court relying on Balbir Singh's case, held that value of the land should be fixed at Rs.50,000/- - - But in view of the fact that in Balbir Singh's case, acquisition was one year prior to the acquisition in the instant case, High Court adopted depreciated value and fixed the value at Rs.42,000/- per bigha - Held: Reasoning of High Court in relying on *Balbir Singh's case for enhancing the value of the land is confirmed - But the rate fixed by High Court is modified to Rs.50,000/- from Rs.42,000/- per bigha in view of the fact that value in Balbir Singh's case was fixed on the basis of cases which were acquired prior to the acquisition in the instant case.

Premwati v. Union of India & Ors. 364

LAND ACQUISITION ACT, 1894:

Acquisition of land - Compensation - High Court reduced compensation by fixing lower market rate of land and set aside the part of the order passed by reference court granting damages of standing crops - Held: On facts, not justified - Determination of market value by High Court was not based on any evidence but on mere presumption and surmises - High Court set aside compensation towards damages of standing crops by wrongly placing reliance on the statement of an Officer of the State, who was posted elsewhere at the time of acquisition of the land - Order passed by High Court set aside and the award passed by reference court restored.

Ahsanul Hoda v. State of Bihar 312

LAND LAW AND AGRICULTURAL TENANCY:

(See under: Bombay Tenancy and Agricultural Lands Act, 1948) 461

(ix)

LOCUS STANDI:

(See under: Constitution of India, 1950) 520

MAXIMS:

(i) '*fraus et jus numquam cohabitant*' - Applicability of.(ii) '*Subla fundamento cedit opus*' - Applicability of.(iii) '*Nullus commodum capere potest de injuria sua propria*' - Applicability of.*Devendra Kumar v. State of Uttaranchal & Ors.* 471

MINERAL CONCESSION RULES, 1960:

r.25A.
(See under: Mines and Minerals) 386

MINES AND MINERALS:

Mining lease - Granted for a period of 20 years - But after a period of 14 years, State Government determined the lease - The determination challenged by lessee - During pendency of the petition, death of lessee - Legal heirs not substituted - Subsequently High Court set aside the order of Government - Held: Legal heirs of lessee were neither entitled to continue original lease nor entitled for renewal thereof - On death of original lessee his petition before High Court, abated in absence of any substitution petition - Legal heirs of lessee cannot derive advantage of order of High Court as the order was inadvertently passed in absence of knowledge of lessee - Moreover, at the time, when lessee had died, there was no provision for orders to continue the application for a mining lease - Mines and Minerals (Regulation and Development) Act, 1957 - Mineral Concession

(x)

Rules, 1960 - r.25A.

M.P. State Mining Corporation Ltd. v. Sanjeev Bhaskar & Ors. etc. 386

MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, 1957:

(See under: Mines and Minerals) 386

MOTOR VEHICLES ACT, 1988:

Accident - Compensation - Determination of - "Just compensation" - Held: Concept of "just compensation" suggests application of fair and equitable principles and a reasonable approach on the part of tribunals and courts - Adjudicating authority to take note of sufferings of injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned.

(ii) Accident - Compensation - Grant of - Under both the heads viz., loss of earning/earning capacity as well as permanent disability - Propriety - Victim, a 45 year old proprietor of a furniture mart - Sustained 85% permanent disability by way of amputation of his right leg below knee - Held: Considering the age and avocation of the appellant and the fact that he cannot do the same work as he was doing prior to the accident due to amputation of his right leg, Tribunal fully justified in fixing a sum of Rs. 1 lakh towards 85% permanent disability - High Court erred in setting aside the award of Rs.1 Lakh under the head 'permanent disability' on the ground that substantial amount had been fixed under the head 'loss of earning' and 'loss of earning capacity'.

(iii) Accident - Compensation - G

(xi)

the head 'loss of earning/earning capacity' - Appropriate multiplier - Victim, a 45 year old proprietor of a furniture mart - Sustained 85% permanent disability by way of amputation of his right leg below the knee - High Court reduced the multiplier from 13 to 10 - Propriety - Held: Proper multiplier in terms of the second Schedule is 13 which was rightly applied by the Tribunal.

S. Manickam v. Metropolitan Transport Corp. Ltd. 351

NEGOTIABLE INSTRUMENTS ACT, 1881:

ss. 138 and 139 - Dishonour of cheque - Conviction by trial court and appellate court - Acquittal by revisional court - Held: Once complaint case of cheque bouncing is prima facie established, burden is on accused to disprove the allegations - Accused in the instant case failed to disprove the allegation - Order of conviction upheld.

C. Keshavamurthy v. H. K. Abdul Zabbar 429

PENAL CODE, 1860:

(1) (i) s.302/149/148 - Conviction under - By trial court - Sentence of life imprisonment with fine - High Court altered conviction to one u/s.323 and reduced sentence to one year imprisonment on the ground inter alia that fatal injury was attributable to absconding accused and complainant party was aggressor - Held: Finding of High Court was based on no evidence and, as such, was perverse - It is actually a case where common object of unlawful assembly stood translated into action and members of the assembly succeeded in their mission.

(ii) s. 149 - Common object - Invocation of - Discussed.

State of Rajasthan v. Shiv Charan & Ors. 336

(xii)

(2) ss. 302 and 186/332 - Murder - Prosecution version that country-made pistol was fired by accused that caused injuries to deceased - Held: Tenable - Deceased and accused were grappling with each other - Country-made pistol seized from accused, which was in working order - Prosecution version that all of a sudden, accused brought out his country-made pistol and fired from close range clearly established by evidence - Defence plea that while grappling, the position changed and bullet fired from the service revolver of PW hit deceased not acceptable - No material to prove that gun shot was fired from the weapon of PW - Evidently, the shot was fired from country-made pistol seized from custody of accused-appellant - Arms Act, 1959 - ss.25 and 27.

Pramod Kumar v. State (GNCT) of Delhi 323

(3) ss.302 and 201 - Murder - Dead body recovered from river - Circumstantial evidence - Confessional statement made by accused-appellant to Investigating officer - Conviction of appellant by courts below - Held: Justified - From the evidence of io, supported by version of PW, it is clear that at the instance of appellant and a co-accused, body of deceased was recovered from a river stream - There were signs of marks on the neck of the deceased - The identity of the place where the dead body was lying, which was exclusively within the knowledge of appellant, was certainly admissible by virtue of application of s.8, r/w s.27 of Evidence Act - Chain of circumstances complete in every respect in order to lead to only conclusion that appellant was squarely responsible for killing of deceased - Evidence Act, 1872 - s.8 r/w s.27 - Applicability of.

Anuj Kumar Gupta @ Sethi Gupta
of Bihar

(4) s.326/34.
(See under: Sentence / Sentencing) 301

(5) ss.364, 302 and 201 - Conviction by courts below, holding that chain of circumstances against accused was complete - Held: Evidence of doctor who conducted post-mortem proved that death was homicidal - In view of overwhelming evidence which proved all the circumstances against accused, order of conviction is justified.

Barku Bhavrao Bhaskar v. State of Maharashtra 449

(6) s. 376 - Rape - Acquittal of accused by trial court on the ground that sexual intercourse was with the consent of prosecutrix - Conviction by High Court - Held: Evidence of prosecutrix is reliable - The same is corroborated by evidence of PW, FIR and FSL report - Prosecution case is proved beyond reasonable doubt - Accused is liable to be convicted - Evidence Act, 1872 - s.157.

Ganga Singh v. State of Madhya Pradesh 400

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995:

s.2(i) and s. 47, first and second proviso - Officer in Indian Administrative Service, declared insane in Departmental inquiry and compulsorily retired, after 30 years of service - Administrative Tribunal dismissed the application of the officer - High Court granted liberty to the counsel of the officer to withdraw the petition with liberty to file the same through next friend as the officer was insane - Held: High Court should not have allowed the counsel to withdraw the petition - It should have referred the matter to Medical Board, and if Officer was found to be insane, it should have decided the matter on

merit by appointing an advocate as amicus curiae - Even if, it is presumed that the officer was insane, he could not have been removed from service in view of s. 47, as insanity is one of the disabilities u/s. 2(i) - Respondents are directed to treat the officer continued in service till the date of his superannuation - He is entitled to full salary minus subsistence allowance and also full retiral benefits counting total period of service - Service Law.

Anil Kumar Mahajan v. Union of India through Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi and Ors. 373

PRACTICE AND PROCEDURE:

Extension of interim relief beyond the date of final disposal of the case - Propriety of - Held: Though continuation of interim relief beyond date of disposal is not permissible, where matter is heard on merits, and withdrawal of case is permitted on facts of case, court is at liberty to extend interim relief for a limited period after recording reasons for the same.

M/s. Hotel Queen Road Pvt. Ltd. & Ors. v. Mr. Ram Parshotam Mittal & Ors. 421

RAJASTHAN PREMISES (CONTROL OF RENT AND EVICTION) ACT, 1950:

s. 13(1)(h) - Eviction suit - On the ground of bonafide requirement - Decreed by trial court and first appellate court - During pendency of the case, demise of wife of the landlord - High Court set aside the decree holding that the ground of bonafide requirement did not survive due to demise of landlord's wife - Parties reached settlement, agreeing that tenants could occupy tenanted premises for a further period of t

rent shall stand increased.

Baldev Krishan v. Satya Narain 551

RENT CONTROL AND EVICTION:

(See under: Rajasthan Premises (Control of Rent and Eviction) Act, 1950) 551

REVISION:

Jurisdiction of revisional court - Scope of - Held: Revisional court ordinarily does not reappraise the evidence - But where finding recorded by appellate authority is perverse, it can upset the finding of appellate authority.

(Also see under: Bombay Tenancy and Agricultural Lands Act, 1948)

Govinda Bala Patil (D) By Lrs. v. Ganpati Ramchandra Naikwade (D) By Lrs. 461

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002:

s.13(4).
(See under: Security Interest (Enforcement) Rules, 2002) 532

SECURITY INTEREST (ENFORCEMENT) RULES, 2002:

r.9 - Auction of mortgaged property by lender- Bank - For realization of loan amount from borrower - Auction purchaser paid 75% of the sale consideration after the period specified in sub-r. (4) of r.9 - Bank issued sale certificate in favour of auction-purchaser - Held: Period specified in sub-r. (4) of r.9 for payment of balance amount of sale consideration is not mandatory - It is extendable if there is written agreement between parties i.e. borrower, lender and auction purchaser - In the

instant case, in view of letter of borrower giving consent that balance amount could be received from auction-purchaser after specified date, the letter having been accepted by Bank and auction-purchaser having made payment accordingly, the period can be said to have been extended as per written agreement - Thus, condition in r.9(4) has been substantially satisfied - Even if a provision is mandatory it can be waived by beneficiary of such provision - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - s.13(4).

GM, Sri Siddeshwara Co-operative Bank Ltd. & Anr. v. Sri Iqbal & Ors. 532

SENTENCE/SENTENCING:

Conviction u/s. 326/34 IPC - Sentence of 3 years RI imposed by trial court - Reduced by High Court to sentence for the period already undergone i.e. 14 days - Held: In view of the serious nature of injuries, High Court was not justified in reducing the sentence to the period already undergone - Facts and circumstances of the case, nature of crime, manner of planning and commission of offence, motive, conduct of accused, nature of weapons and all other attendant circumstances are relevant while imposing sentence - It is duty of court to award appropriate sentence and not to show undue sympathy - Sentence awarded by trial court restored - Penal Code, 1860 - s.326/34.

State of M.P. v. Najab Khan and Ors. 301

SERVICE LAW:

(1) APPOINTMENT/RECRUITMENT/SELECTION: Selection - Eligibility - Lack of - Effect - Termination of appellant on the ground that he had obtained employment by misrepresentation

ineligible, not being possessed of requisite educational qualification of B.Ed on the last date of submission of application - Held: Justified - Appellant was not eligible as per the requirement of rules/advertisement since he did not possess the required eligibility on the last date of submission of the application forms - The letter of offer of appointment issued to him was provisional and conditional subject to verification of educational qualification, i.e., eligibility, character verification etc. - Moreover, the process of verification and notice of termination of appellant followed within a very short proximity of his appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance.

Rakesh Kumar Sharma v. Govt. of NCT of Delhi & Ors. 486

(2) Disciplinary enquiry - Enquiry officer exonerated the delinquent officer of all the charges - Disciplinary authority partially disagreed with the findings - Imposed punishment of dismissal from service - Held: Where disciplinary authority disagrees with Enquiry Officer, it must record reasons for disagreement and communicate the same to delinquent and should pass an order of punishment only after considering delinquent's explanation - In the instant case, since such a course was not adopted, punishment stood vitiated.

S.P. Malhotra v. Punjab National Bank & Ors. 413

(3) Pay fixation - Repatriation of employee from deputation post in parent department on promotional post - Pay fixation on promotion post on the basis of higher pay on deputation post - At the time of superannuation, pay refixed and

employee directed to refund excess sum - Held: Fixation of pay on promotional post on the basis of higher pay scale on deputation post, was erroneous - Authorities were within domain to rectify it - However, there shall be no recovery of excess amount paid to employee.

Union of India and Anr. v. Shri Bhanwar Lal Mundan 559

(3) (See under: Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1999) 501

(5) (See under: Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) 373

(6) Termination of service - On account of suppression of the fact of pendency of criminal case - Held: Where an applicant gets an office by misrepresenting the facts by playing fraud upon competent authority, such order cannot be sustained in the eye of law - Material Information sought by employer, if not disclosed, would amount to moral turpitude and is separate and distinct from involvement in a criminal case - The services of the appellant rightly terminated.

Devendra Kumar v. State of Uttaranchal & Ors. 471

WORDS AND PHRASES:

'Written agreement' and 'parties' - Meaning of, in the context of s.9(4) of Security Interest (Enforcement) Rules, 2002.

GM, Sri Siddeshwara Co-operative Bank Ltd. & Anr. v. Sri Ikbal & Ors. 532