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the offence is taken and process issued - Evidence Act, 1872 - s.32.

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(3) s. 465 r/w s. 197 and s. 19 (3) r/w s.19 (1) of PC Act - Interference with criminal prosecution on the ground of defects/omissions/errors in the order granting sanction for prosecution - Held: Both s. 465, and s. 19 (3) of PC Act make it clear that any error, omission or irregularity in the grant of sanction will not affect any finding, sentence or order passed by a competent court unless in the opinion of the court, a failure of justice has been occasioned - Prevention of Corruption Act, 1988 - s. 19 (3) r/w s. 19 (1).

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exercised to quash criminal proceedings against accused-appellant, there is no justification to interfere with the said decision - Prevention of Corruption Act, 1988 - s, 13 (2) r/w s.13(1)(d) - Penal Code, 1860 - ss. 120 B, 420 and 471.

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(1) Art. 129 and 215.

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(2) Art. 227 - Scope of - Held: High Court cannot exercise its power u/Art. 227 as an appellate court or re-appreciate evidence and record its findings on the contentious points - Only if there is a serious error of law or the findings recorded suffer from error apparent on record, the High Court can quash the order of a lower court - Service law.

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(1) Contempt in the face of court - Held: When a contempt is committed in the face of the High Court or the Supreme Court to scandalize or humiliate the Judge, instant action may be necessary - There was no question of giving the appellant any opportunity to make his defence - Natural justice - Opportunity of hearing.

*Ram Niranjan Roy v. State of Bihar and Ors.* ..... 583

(2) (i) s. 14 - Contempt of court - Contemnor appearing-in-person before High Court and

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shouting at court and making false statement before court - High Court holding him guilty of contempt of court and directing him to be taken into custody and to be sent to jail for 24 hours as punishment - Held: Intemperate language used by the appellant while addressing the Judges of the High Court is most objectionable and contumacious - He did not show any remorse - He did not tender any apology, but, continued his rude behaviour of shouting at the court and baiting the court by which he lowered the dignity and authority of the High Court - Thus, guilty of having committed contempt in the face of the High Court u/s 14 - Constitution of India, 1950 - Art. 215.

(ii) s. 2(c) - Criminal contempt of court - Contemnor-in-appeal before Supreme Court filing copy of judgment of High Court by replacing words in it and filing false affidavit - Held: Contemnor is guilty of tampering with High Court's order and filing it in Supreme Court - This would be criminal contempt u/s. 2(c) as also contempt of Supreme Court - Contemnor imposed fine of Rs. 25,000/- - Constitution of India, 1950 - Art. 129.

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ss. 59, 60 and 61.

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Curative power.

(See under: Reference to larger bench) ..... 792

## DELAY/LACHES:

Plea that claim of respondent was time barred - Held: Claim of respondents cannot be held to be time barred - Principle of delay and laches would not apply, by virtue of the adjustment of payments being made on FIFO (first in first out) basis - Appellant was duly informed that the part payments made would be adjusted by respondents under FIFO system - It has been correctly held that in such circumstances, s.59 of Contract Act would not be applicable - In any event, Limitation Act is inapplicable to proceedings before State Commission - There is no reason to interfere with the findings recorded by appellate tribunal - Contract Act, 1872 - ss. 59,60 and 61 - Limitation Act, 1963.

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## DYING DECLARATION:

Evidentiary value, when dying declaration is recorded not directly from the actual words of the maker but as dictated by somebody else.

(See under: Evidence) ..... 817

## ELECTRICITY ACT, 2003:

(1) (i) s. 86 (1) (f) - Discretion of State Commission either to adjudicate the dispute or to refer it to arbitration - Dispute between parties with regard to accounting details, refund of excess rebate etc. - State Commission exercising the discretion to adjudicate the dispute - Held: It cannot be accepted that since appellant had made a request for a reference of dispute to arbitration, State

Commission ought to have made the reference - Appellant chose to contest the claim of respondent on merits and filed written statement before State Commission - Further, appellant participated in the entire proceedings and invited the findings on merits - Besides, applicability of Arbitration and Conciliation Act, 1996 and Arbitration Act, 1940 has been specifically excepted by Article 16 (2) of the Power Purchase Agreement - Commission is required to exercise its discretion reasonably and not arbitrarily - State Commission upon consideration of the entire matter rightly exercised its discretion.

(ii) s.86 - Adjudication of dispute by State Commission - Held: If the amount of invoice is disputed, appellant is obliged to make full payments of the invoice when due and then raise the dispute - Undoubtedly, early payment is encouraged by offering rebate of 2.5% if paid within 5 days of the date of the invoice - Similarly, 1% rebate would be available if the payment of the entire invoice is made within 30 days - Rebate is in the form of incentive and is an exception to the general rule requiring payment in full on due date - Therefore, appellant had no legal right to claim rebate at the rate of 2.5% not having paid the entire invoice amount within 5 days - Appellant entitled to 1% rebate if payment is made within 30 days of invoice.

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(2) (i) ss.111 and 113 - Appellate Tribunal for Electricity - Appeal - Jurisdiction -

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Tribunal exercises jurisdiction over State Commission by way of a first appeal - Therefore, it is the bounden duty of appellate tribunal to examine as to whether decisions rendered by State Commission suffer from vice of arbitrariness, unreasonableness or perversity - It is always open to appellate tribunal to examine as to whether State Commission has exercised discretion with regard to referring the dispute to arbitration, in accordance with well known norms for exercising such discretion.

(ii) s.125 - Appeal to Supreme Court - Scope of - Held: Under s.125 appeal lies in Supreme Court on any one or more of the grounds specified in s.100 of the Code of Civil Procedure, 1908 - Therefore, unless the Court is satisfied that the findings of fact recorded by the State Commission are perverse, irrational and based on no evidence, it would not interfere.

(iii) ss. 84 - Appointment of Chairperson of State Commission - States of Tamil Nadu - Held: State Commission in deciding a lis between appellant and respondent, discharges judicial functions and exercises judicial power of State - It exercises judicial functions of far reaching effect - Therefore, it must have essential trapping of the court - State Government ought to have exercised its power under sub-s. (2) of s. 84 to appoint one or more Judicial Members in State Commission - Till date no judicial Member has been appointed in the State Commission - Matter needs to be considered, with some urgency.

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#### EVIDENCE:

(1) Dying declaration - Evidentiary value of - Trial of accused for offences punishable u/ss. 302, r/w s. 149 and s. 148 IPC - Witnesses turned hostile - Prosecution case based on dying declaration - Acquittal by trial court - Conviction by High Court - Held: If dying declaration is recorded not directly from the actual words of the maker but as dictated by somebody else, this by itself creates suspicion about credibility of such statement and prosecution has to clear the same to the satisfaction of court - In the instant case, dying declaration was not recorded in actual words of victim, but was recorded by witness on the dictation of PSI - Further, there was overwriting on the time of recording of statement as also insertion of two names in different ink - Trial court rightly did not consider it safe to rely upon dying declaration and rightly acquitted the accused - High Court without considering the principles of dealing with an appeal against acquittal erred in upsetting the judgment of acquittal - Judgment of High Court set aside - Penal Code, 1860 - ss. 302, r/w s. 149 and s.148.

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(2) s.32 - Dying declaration - Held: As per s.32(1), any statement made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death is relevant in a case in which the cause of death of the person making the statement comes into question - It is an exception to the rule of hearsay - However, general expressions suspecting a particular individual not directly

occasion of death are not admissible when the cause of death of the deceased comes into question.

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

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(3) s.35 - Birth certificate issued by Municipal Corporation - Evidentiary value of - Held: Birth certificate issued by the Municipal Corporation is a conclusive proof of age, the same being an entry in the public record as per s.35 of the Evidence Act, 1872 - Service law.

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#### MADHYA PRADESH MUNICIPALITIES ACT, 1961:

s. 319 - Bar of suit in absence of notice - Suit for declaration of title and permanent injunction - No notice u/s 319 issued by plaintiff to Nagar Palika Parishad - Held: In view of bar of suit for declaration of title in absence of notice u/s 319, suit was not maintainable - Courts below wrongly held that the suit was for perpetual injunction - Plaintiff having claimed title, the suit cannot be termed to be suit for perpetual injunction alone - Judgments of the courts below, set aside.

*Nagar Palika Parishad Mihona and Anr. v. Ramnath and Anr.* ..... 811

#### MAHARASHTRA AGRICULTURE UNIVERSITY ACT, 1983:

(i) ss. 6, 11 and 15 - Power of Chancellor to appoint Committee to inquire into illegalities and irregularities in selection and appointment of Senior Research Assistants and Junior Research Assistants - Held: Inquiry directed by Chancellor into illegalities and irregularities of selection process in appointment of Senior and Junior Research Assistants was legally permissible - Exercise of such power is not subject to any limitation or impediment because the power is vested in a high constitutional functionary who is expected to exercise the same only when such exercise becomes necessary to correct aberrations and streamline administration so as to maintain the purity of the procedures and process undertaken by the University in all spheres dealt with by it.

(ii) ss. 11 and 15 - Report of Justice Dhabe Committee that entire selection process was vitiated by illegalities, irregularities and improprieties and, therefore, appointments made need to be set aside - Accepted by Chancellor and appointments cancelled - Compliance of principles of natural justice - Held: Justice Dhabe Committee had issued notices to the appointees who had in turn responded to the same - Therefore, it cannot be said that principles of natural justice were violated by the Committee especially when no prejudice is demonstrably caused to petitioners on account of procedure which the Committee followed in concluding the enquiry proceedings - On facts, appointment rightly set aside by Chancellor - Service law - Administrative law - Principles of natural justice - Audi alteram partem.

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#### MAHARASHTRA CIVIL SERVICES (PENSION) RULES, 1982:

rr.46(4), 48(3) - Pension - Fixation of - Qualifying period - Calculation of - As per the Resolution dated 11.3.1992 issued by Government of Maharashtra, pension scheme shall also be made applicable to teaching and non-teaching employees in non-agricultural universities and non-government colleges affiliated to it from 1.10.1982 - Para 3 of Resolution dated 11.3.1992 states that the benefit of previous service by condoning break in service can be granted only if there is compliance of conditions contained in r.48(1) of Rules, 1982 - As per r.48(3) in the absence of a specific

indication to the contrary in the service record, an interruption between two spells of civil service rendered by a Government servant under Government, shall be treated as automatically condoned and the pre-interruption services to be treated as qualifying service - Appellant resigned from the Government service on 18.07.1960 and joined the post of Lecturer in the College on the same day i.e. 18.07.1960 - He retired from the College on 24.05.1983 i.e. after 1.10.1982 - Therefore, appellant is entitled to the benefits in terms of Resolution dated 11.3.1992 - Higher authorities recommended to add the earlier period of service for determination of pensionary benefit - In view of the provisions of r.48 r/w Government Resolution dated 11.3.1992, appellant is entitled for counting the service earlier rendered between 21.06.1950 to 17.07.1960 for determination of pension - Government Resolution No.NGC 1284/106150/994/84/VS-4 dated 11.3.1992.

(Also see under: Service Law).

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#### MAINTENANCE:

Claim of, by Muslim Woman, who during pendency of application was divorced.

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## MOTOR VEHICLES ACT, 1988:

s. 157 - Deemed transfer of insurance policy - Death of driver of tractor in an accident - Ownership of tractor transferred during validity of insurance policy and accident took place during said period - Held: Deceased workman was in the course of employment of second respondent in whose name ownership of vehicle stood transferred and said vehicle was covered under a valid insurance policy - High Court ought not have simply brushed aside the decision of Commissioner fastening joint liability on Insurance Company in the light of deeming provision contained in s. 157 (1).

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(2) ss. 302, r/w s. 149 and s. 148.  
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(3) s.304 Part I r/w s.34 and s.300, First Exception - Love affair between 'B' and 'S' - On the occurrence night, 'S' went to the house of 'B' to meet her - Annoyed by the presence of 'S' in their house in the night, the father and uncle of 'B' (the appellants) and other accused persons beat 'S' and dragged him through the staircase which resulted in injuries to 'S' and ultimately in his death - Conviction of appellants u/s.302 r/w s.34 - Challenge to - Held: Nobody would tolerate an intruder into their house in the night hours - By no means, can it be held to be a case of pre-meditation - It was a case of grave and sudden provocation and would come under the First Exception to s.300 - Death was caused by the acts of the appellants done with the intention of causing such bodily injury as is likely to cause death - Conviction of appellants altered to that u/s.304 Part I r/w s.34 alongwith 7 years RI.

*Saroj @ Suraj Panchal & Anr. v. State of West Bengal* ..... 646

(4) s.376 - Rape - Consent - Consensual sexual relationship - Allegation against appellant that he entered into marital relations with the prosecutrix without disclosing to her the fact of his being already married - Defence case that the prosecutrix was well aware that the appellant was married and,

still persuaded appellant for registration of marriage - Trial court convicted u/s.376 - High Court though noted that friendship between the couple strengthened into close acquaintance and eventually leading them to elope, still convicted the appellant and treated prosecutrix as victim - Held: On facts, it cannot be concluded that the appellant was culpable for the offence of rape - Conviction of the appellant set aside.

*Vinod Kumar v. State of Kerala* ..... 752

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

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(2) s. 19 (3) r/w s. 19 (1) - Irregularity in grant of sanction - Effect of.

(See under: Code of Criminal Procedure, 1973) ..... 602

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Judgment - Binding effect of - Held: Reference of a case to a larger Bench necessarily has to be for a reconsideration of the principle of law on which the case has been decided and not the merits of the decision - Decision rendered by any Bench is final inter-parte, subject to the power of review and the curative power.

*Gopakumar B. Nair v. C.B.I. & Anr.* ..... 792

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##### Appointment/Recruitment/Selection:

(1) Selection - To Group D posts - Interview not being part of the process, equal marks earmarked for written test and interview - Held: Criterion was changed after conducting the written test and admittedly not at the stage of initiation of the selection process - Marks allocated for oral interview were the same as for written test i.e. 50% for each - The manner in which marks were awarded in the interview to candidates indicated lack of transparency - Some candidates were awarded more marks in interview than they got in written test - Direction of High Court to continue with the selection process from the point it stood vitiated does not require interference.

*Bishnu Biswas & Ors. v. Union of India & Ors.* ..... 625

(2) Date of birth - Service records - Application for change of date of birth on the basis of birth certificate issued by Municipal Corporation - Respondent-Employer rejected application and relied upon the School Leaving Certificate and thereby retired the employee - Labour court set aside the said order holding that employer ought to have not relied on the School Leaving Certificate since as per certificate issued by school to the brother of the appellant, the difference between appellant and his brother was only 5 months and that was improbable and impossible - Writ petition u/Art.227 - High Court set aside the order of labour court - Held: Respondent-board ought not to have

relied upon the School Leaving Certificate and instead, the birth certificate issued by the Municipal Corporation should have been relied upon - High Court did not apply its mind in setting aside the award of the labour court in exercise of its power of judicial review and superintendence - Therefore, impugned judgment and order of the High Court set aside and the award of the labour court restored - Constitution of India, 1950 - Article 227.

(Also see under: Constitution of India, 1950 as also Evidence Act, 1872)

*Iswaral Mohanlal Thakkar v. Paschim Gujarat Vij Company Ltd. & Anr.* ..... 858

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*Madhukar v. State of Maharashtra and Ors.* ..... 832

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#### WAKF ACT, 1995:

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- Suit for eviction of tenant from Wakf property -

Held: Is exclusively triable by the civil court, as such a suit is not covered by the disputes specified in ss. 6 and 7 - Jurisdiction.

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#### WITNESSES:

Hostile witness - Evidence of - Held: Witness should be regarded as adverse and liable to be cross-examined by the party calling him only when the court is satisfied that the witness bore hostile animus against the party for whom he is deposing or that he does not appear to be willing to tell the truth - In order to ascertain the intention of the witness or his conduct, the judge concerned may look into the statements made by the witness before the Investigating Officer or the previous authorities to find out as to whether or not there is any indication of the witness making a statement inconsistent on a most material point with the one which he gave before the previous authorities - The court must, however, distinguish between a statement made by the witness by way of an unfriendly act and one which lets out the truth without any hostile intention.

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