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MONTHLY DIGEST
Supreme Court

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MONTHLY DIGEST - SUPREME COURT

2024(1)MDSC1

IN THE SUPREME COURT OF INDIA

[From DELHI HIGH COURT]

[Before Abhay S Oka; Sanjay Karol]

Criminal Appeal No. 1473 of 2011 **dated 18/10/2023**

Abhishek Sharma vs. State (Govt of NCT of Delhi)

LAST SEEN THEORY BEEN

Indian Penal Code, 1860 Sec. 302, Sec. 307 - Evidence Act, 1872 Sec. 32 - Appeal impugns a judgment and order of conviction passed by the High Court - The convict-Appellant was not seen at the spot of the crime, nor has the last seen theory been invoked by the prosecution to establish that the deceased and he were together at the time and place of the incident - The deceased was in a position to speak up until six days prior to her death when she was put on life support - Non- Recording of the deceased's statement in the presence of the Magistrate or actual ascertainment of her fitness to make statements by doctors remains unexplained - Apart from the alleged dying declarations of the deceased, there is no evidence on record to point to the guilt of the convict- Appellant - Nothing on record indicates the ownership of a vehicle by the convict- Appellant; any disagreement or animosity between the convict- Appellant and the deceased, that is of such an extreme nature as to set her on fire; any connection between the convict- Appellant and the inflammable substance used to kill the victim such as the record of purchase or statement of any person to show such substance to be in possession of the convict- Appellant, etc. - The fact that the crime in question occurred at an open public access place cast doubt on the prosecution case. - Appeal Allowed.

[Paras 33 and 34]

Law Point:- A dying declaration, if it is free of tutoring, prompting, etc. can form the sole basis of conviction

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Case Pointer
Monthly Digest - Supreme Court

2024(1)MDSC2

IN THE SUPREME COURT OF INDIA

[From CALCUTTA HIGH COURT]

[Before J K Maheshwari; K V Viswanathan]

Civil Appeal No. 6411 of 2023, 6412 of 2023, 6413 of 2023, 6414 of 2023, 6415 of 2023, 6416 of 2023, 6417 of 2023, 6418 of 2023 **dated 03/10/2023**

Aditya Khaitan & Ors vs. IL and FS Financial Services Limited

TERMINATION OF PROCEEDINGS

Code of Civil Procedure, 1908 Or. 8R. 10, Or. 8R. 1, Or. 5R. 1 - Arbitration and Conciliation Act, 1996 Sec. 29A, Sec. 23 - Negotiable Instruments Act, 1881 Sec. 138 - Commercial Courts Act, 2015 Sec. 16, Sec. 12A - Appeals challenge the judgment of the High Court at Calcutta passed in General Application in Civil Suit, by which the High Court had dismissed the said applications and consequently denied the applicants/defendants prayer to take on record their written statements - When the whole world was in the grip of devastating pandemic, it could never have been said that the parties were sleeping over their rights - The extraordinary situation was dealt with rightly by extraordinary orders protecting the rights of parties by ensuring that their remedies - The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29- A of the Arbitration and Conciliation Act, 1996, Section 12- A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings - Appeals are allowed and the written statements filed on are directed to be taken on record.

[Paras 2, 12 and 20]

Law Point- The outer limit within which the court or tribunal can condone the delay is 120 days from the date of summons.

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Case Pointer
Monthly Digest - Supreme Court

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2024(1)MDSC3

IN THE SUPREME COURT OF INDIA

[From CALCUTTA HIGH COURT]

[Before J K Maheshwari; K V Viswanathan]

Civil Appeal No 6411 of 2023, 6412 of 2023, 6413 of 2023, 6414 of 2023, 6415 of 2023, 6416 of 2023, 6417 of 2023, 6418 of 2023 **dated 03/10/2023**

Aditya Khaitan & Ors vs. Il and Fs Financial Services Limited

PERIOD OF LIMITATION

Constitution of India Art. 142- Code of Civil Procedure, 1908 Or. 8R. 10, Or. 8R. 1, Or. 5R. 1- Arbitration and Conciliation Act, 1996 Sec. 29A, Sec. 23- Negotiable Instruments Act, 1881 Sec. 138- Commercial Courts Act, 2015 Sec. 16, Sec. 12A- Civil Appeal challenge the judgment of the High Court passed in General Application- applications for taking on record the written statements cannot be entertained after period of limitation- filing written statements expired- extraordinary situation was dealt with rightly by extraordinary orders protecting the rights of parties by ensuring that their remedies and defences were not barred- the outer limit within which the court or tribunal can condone the delay is 120 days from the date of summons- Appeals are allowed.

[Para 3,9,10,13,19,21]

Law Point- Article 142 of constitution of India provides a unique power to the Supreme Court, to do "complete justice" between the parties, where, at times, the law or statute may not provide a remedy.

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2024(1)MDSC4

IN THE SUPREME COURT OF INDIA

[Before Abhay S Oka; Pankaj Mithal]

Criminal Appeal No 3233 of 2023 **dated 16/10/2023**

Ambalal Parihar vs. State of Rajasthan & Ors

GROSS ABUSE OF PROCESS OF LAW

Code of Criminal Procedure, 1973 Sec. 482 - Writ Petition was filed on the civil side by the respondents in which a prayer was made for issuing a writ of mandamus for clubbing the eight First Information Reports and consolidating them into one - The

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Case Pointer
Monthly Digest - Supreme Court

impugned order has been passed in the said Civil Writ Petition - The appellant has made a very serious allegation that as the learned Single Judge taking up assignment of the criminal matters dealing with Section 482 CrPC did not grant interim relief to the respondents in two cases - The complainants were not impleaded in the Civil Writ Petitions - A Judge can take up a case provided either the cases of that category have been assigned to him as per the notified roster or the particular case is specifically assigned by the Chief Justice - Though a Civil Writ Petition was filed, the learned Judge ought to have converted into a Criminal Writ Petition which could have been placed only before the roster Judge taking up Criminal Writ Petitions. Action of filing Civil Writ Petition by the respondents was nothing but a gross abuse of process of law and it was a classic case of forum hunting - Writ Petition is dismissed - The appeal is allowed.

[Paras 3, 4, 5 and 8]

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2024(1)MDSC5

IN THE SUPREME COURT OF INDIA

[From UTTARAKHAND HIGH COURT]

[Before J B Pardiwala; Prashant Kumar Mishra]

Criminal Appeal No 301 of 2015, 2430 of 2014 **dated 06/10/2023**

Balvir Singh vs. State of Uttarakhand

BURDEN OF PROVING A PLEA

Indian Penal Code, 1860 Sec. 34, Sec. 302, Sec. 306, Sec. 364, Sec. 498A - Code of Criminal Procedure, 1973 Sec. 156, Sec. 161, Sec. 313 - Evidence Act, 1872 Sec. 101, Sec. 106, Sec. 114 - Dowry Prohibition Act, 1961 Sec. 4, Sec. 3 - Appeals are directed against a common judgment and order, by which the High Court affirmed the judgment and order - Aluminium phosphide either in the liquid form or in the form of tablets was procured by the accused husband and the same was administered to the deceased - Appellant and his father and stepmother had conjointly committed the murder of the deceased and that the appellant and his father had then hastily and stealthily disposed of the body in order to conceal the commission of the offence - The trial Court had rightly observed that the mere fact that some witnesses had seen some smoke emerging from the room, with a kitchen nearby at a time when food was likely to be cooked, could not indicate that the saree had caught fire - Neither the murdered woman nor the appellant nor any member of his family was shown to have run about or called for help against a fire - Both the Appeals dismissed.

[Paras 57, 58, 59 and 62]

Law Point:- The burden of proving a plea specifically set up by an accused, which may absolve him from criminal liability, certainly lies upon him. Once the prosecution established a prima facie case, the appellant was obliged to furnish some explanation under Section 313 CrPC with regard to the circumstances under which the deceased met an unnatural death inside the house

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2024(1)MDSC6

IN THE SUPREME COURT OF INDIA

[From DELHI HIGH COURT]

[Before B V Nagarathna; Ujjal Bhuyan]

Civil Appeal No. 11128 of 2016, 4902 of 2022, 162 of 2018, 159 of 2021, 4839 of 2017, 153 of 2021, 6897 of 2018, 158 of 2021, 302 of 2021, 303 of 2021, 11149 of 2016, 11148 of 2016, 11130 of 2016, 11131 of 2016, 11134 of 2016, 11132 of 2016, 11136 of 2016, 11133 of 2016, 11135 of 2016, 11137 of 2016, 11140 of 2016, 11141 of 2016, 11139 of 2016, 11142 of 2016, 11143 of 2016, 11145 of 2016, 11146 of 2016, 11147 of 2016, 163 of 2018, 11129 of 2016 **dated 16/10/2023**

CIT, Delhi vs. Bharti Hexacom Ltd

REVENUE EXPENDITURE

Income Tax Act, 1961 Sec. 32, Sec. 37, Sec. 35AB, Sec. 35A, Sec. 35ABB, Sec. 35ABA - Telegraph Act, 1885 Sec. 21, Sec. 20, Sec. 20A, Sec. 8, Sec. 4 - Whether, the variable licence fee paid by the respondent- Assessees to the Department of Telecommunications under the New Telecom Policy of 1999 is revenue expenditure in nature and is to be allowed deduction under Section 37 of the Act, or, whether the same is capital in nature, Section 35ABB of the Act - The date set out in the Policy of 1999 should be treated as capital and the balance amount payable on or after the said date should be treated as revenue - The nature of payment being for the same purpose cannot have a different characterisation merely because of the change in the manner or measure of payment or for that matter the payment being made on annual basis - The payment is intrinsic to the existence of the licence as well as trade itself - Such a payment has to be treated or characterized as capital only - Judgment of the Division Bench of the High Court, is hereby set aside - The appeals filed by the appellant(s)- Revenue are allowed.

[Paras 5, 26, 27 and 28]

Law Point:- The licence issued under Section 4 of the Telegraph Act is a single licence to establish, maintain and operate telecommunication services.

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Case Pointer
Monthly Digest - Supreme Court

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2024(1)MDSC7

IN THE SUPREME COURT OF INDIA

[From PUNJAB AND HARYANA HIGH COURT]

[Before Vikram Nath; Ahsanuddin Amanullah]

Civil Appeal No. 6918 of 2023, 6919 of 2023 **dated 19/10/2023**

Central Warehousing Corporation vs. Thakur Dwara Kalan Ul- Maruf Baraglan Wala (Dead) & Ors

AMOUNT OF COMPENSATION

Land Acquisition Act, 1894 Sec. 6, Sec. 9, Sec. 18, Sec. 4- Civil appeals assail the correctness of common judgment and order of the High Court of Punjab & Haryana for raising the amount of compensation- Land Acquisition Collector serving notices under Section 9 of the 1894 Act- land owners may get a fair and reasonable amount of compensation for losing their land, and at the same time balancing the State exchequer by not awarding an amount which may be in excess of the market value so as not to put an additional burden on the appellant which is a State entity- cumulative annual increase should have drastic change- the compensation would be equivalent to compensation awarded- appeals are allowed.

[Para 4,8,14,19 to 26]

Law Point- While acquisition of land declared that land is required for a public purpose fair and reasonable compensation should be awarded.

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2024(1)MDSC8

IN THE SUPREME COURT OF INDIA

[From MADHYA PRADESH HIGH COURT]

[Before Abhay S Oka; Pankaj Mithal]

Criminal Appeal No. 1209 of 2011 **dated 09/10/2023**

Chandra Pratap Singh vs. State of M P

ILLEGALITY BY HIGH COURT

Indian Penal Code, 1860 Sec. 149, Sec. 201, Sec. 148, Sec. 34, Sec. 302, Sec. 141- Code of Criminal Procedure, 1973 Sec. 216, Sec. 386- Criminal Appeal to substitute Appellant's conviction under Section 302 - allegation of triple murder - Illegality committed by high court by proceeding with the hearing of the appeal in the absence of his advocate- no material to prove the existence of common intention- appeal is allowed.

[Para 1,2,8,9,10,12,20]

Law Point- The appellate court has power to order retrial of the case by a court of competent jurisdiction subordinate to such appellate court where a retrial must be such that where the trial was undertaken by the court having no jurisdiction, or trial was vitiated by serious illegality or irregularity on account of the misconception of nature of proceedings.

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2024(1)MDSC9

IN THE SUPREME COURT OF INDIA

[Before S Ravindra Bhat; Aravind Kumar]

Miscellaneous Application; Special Leave Petition (Civil); Civil Appeal No 184 of 2023; 8553 of 2022; 4591 of 2023 **dated 19/10/2023**

Chennai Metro Rail Limited Administrative Building vs. Transtonnelstroy Afcons (Jv) & Anr

UNILATERAL INCREASE OF FEE

Arbitration and Conciliation Act, 1996 Sec. 14, Sec. 34, Sec. 13, Sec. 15, Sec. 33- Chennai Metro Rail Limited, the applicant a joint venture between the Central Government and the Government of Tamil Nadu, pursuant to a public tender, awarded the contract to the respondent- unilateral increase of fee by the tribunal despite the protests or objections of one of the disputing parties, is impermissible in law- the authority for the proposition that the issue of fixation of fee, is contractual, and wherever there is no prior arrangement or court order, the tribunal has to fix it at the threshold- Arbitrators are directed to resume the proceedings- Application, Special Leave Petition and Civil Appeal dismissed.

[Para 1,3,6,18,19,20,21,38,39]

Law Point- S. 14 of the Arbitration and Conciliation Act deals with the resignation/termination of the appointed arbitrator. The grounds for resignation

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are inability to perform the duty de jure or de facto or where he himself withdraws from the case citing any other reason.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23102737537**

2024(1)MDSC10

IN THE SUPREME COURT OF INDIA

[From HIMACHAL PRADESH HIGH COURT]

[Before C T Ravikumar; Sanjay Kumar]

Civil Appeal No. 8172 of 2009 **dated 06/10/2023**

Dhani Ram (Died) Through Lrs & Others vs. Shiv Singh

WILL

Evidence Act, 1872 Sec. 68, Sec. 71 - Indian Succession Act, 1925 Sec. 63 - Hindu Succession Act, 1956 Sec. 15 - Section 63 of the Succession Act prescribes the mode and method of proving a Will and, to the extent relevant, it reads as under - If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence - Mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a Will - Though the fact that there has been registration would be an important circumstance in favour of the Will being genuine if the evidence as to registration establishes that the testator admitted the execution of the Will after knowing that it was a Will the execution of which he was admitting - Section 68 of the Evidence Act requires at least one attesting witness to the Will to prove its execution in terms of Section 63 of the Succession Act.

[Paras 19, 20, 21 and 26]

Law Point:- Where evidence is given after a lapse of several years in the context of attestation of a Will, contradictions of minor nature should not be taken to be suspicious circumstances, as memory would fade after the lapse of a long period of time.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC2310929104**

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2024(1)MDSC11

IN THE SUPREME COURT OF INDIA

[From PUNJAB AND HARYANA HIGH COURT]

[Before Abhay S Oka; Pankaj Mithal]

Criminal Appeal No 421 of 2011 **dated 05/10/2023**

Dharma @ Dharam Singh & Anr vs. State of Haryana

EYE WITNESS

Indian Penal Code, 1860 Sec. 34, Sec. 302 - Appeal against the order of conviction for the offence punishable under Section 302 read with 34 of the Indian Penal Code - Eye witness has not identified both the accused in the Court - The appellants could not have been convicted in the absence of their identification by the eye witness before the Court - Appeal is allowed.

[Paras 2, 6 and 9]

Law Point:- A witness who claims to be an eye witness must be in a position to identify the accused in the Court.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23112055144**

2024(1)MDSC12

IN THE SUPREME COURT OF INDIA

[From HIMACHAL PRADESH HIGH COURT]

[Before M M Sundresh; J B Pardiwala]

Criminal Appeal No 266 of 2015, 267 of 2015 **dated 13/10/2023**

Harvinder Singh @ Bachhu vs. State of Himachal Pradesh

APPEAL AGAINST CONVICTION

Indian Penal Code, 1860 Sec. 376, Sec. 380, Sec. 34, Sec. 302, Sec. 511, Sec. 454 - Code of Criminal Procedure, 1973 Sec. 161 - Evidence Act, 1872 Sec. 8, Sec. 3 - Appeal against conviction - The question is not as to whether there occurred a homicidal death or not but who did it - Unnatural conduct and unexplained circumstances can be a ground for disbelieving the witness - It is a sound and well-Established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact - The circumstances concerned 'must or should' and not 'may be' established - When the trial court renders

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its decision by acquitting the accused, presumption of innocence gathers strength before the appellate court - Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided - Failure on the part of the prosecution in not examining a witness, though material, by itself would not vitiate the trial - Mere absconding by itself cannot constitute a sole factor to convict a person - The appeals are allowed.

[Paras 14, 24, 25, 29, 30 and 31]

Law Point:- It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt."

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23112055369**

2024(1)MDSC13

IN THE SUPREME COURT OF INDIA

[From CHHATTISGARH HIGH COURT]

[Before Abhay S Oka; Sanjay Karol]

Criminal Appeal No. 1730 of 2012 **dated 19/10/2023**

Indrakunwar vs. State of Chhattisgarh

RIGHT TO PRIVACY

Indian Penal Code, 1860 Sec. 302- Code of Criminal Procedure, 1973 Sec. 313- Criminal Appeal- right to privacy shield the matters concerning the personal life of a woman accused- convict- Appellant allegedly killed the child and threw the corpse into a dabri - Awarding the punishment of life imprisonment requires due appreciation of evidence - witnesses could prove accused being pregnant - Medical Officer did not mention if child belonged to the accused person- right to privacy is inviolable- thrusting upon a woman the guilt of having killed a child without any proper evidence- convict- Appellant is acquitted of all charges- appeal is allowed.

[Para 3 to 20,35,36,43,44,45]

Law Point- There is a requirement by law to disclose the aspects required to adjudicate in a criminal matter, such duty cannot unreasonably and unwarrantedly step over the fundamental right of privacy.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23102128975**

Case Pointer
Monthly Digest - Supreme Court

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2024(1)MDSC14

IN THE SUPREME COURT OF INDIA

[Before S Ravindra Bhat; Dipankar Datta]

Civil Appeal No. 4708 of 2022 **dated 19/10/2023**

Infrastructure Leasing and Financial Services Ltd vs. HDFC Bank Ltd & Anr

LEASE RENTAL DISCOUNTING FACILITY

Transfer of Property Act, 1882 Sec. 6, Sec. 132, Sec. 130, Sec. 131, Sec. 5, Sec. 3- Companies Act, 2013 Sec. 242, Sec. 241, Sec. 432- Insolvency and Bankruptcy Code, 2016 Sec. 14- Civil Appeal aggrieved by an order of the National Company Law Appellate Tribunal to freeze asset and security - HDFC lender sanctioned a financial facility of Rs. 400 crores- HDFC instructed the Escrow Bank to transfer monthly instalments from the Escrow Account to the Lender's Account- the facilities extended are in the nature of lease rental discounting facility- relief of release/refund/reversal of amounts debited from Escrow Account stating that the same is in line with order issued by former judge of this court is misplaced since the same has not attained finality and was under scrutiny by the tribunal in the applications filed by the lender- the rents payable by appellant, lessees and licensees are debts, which stood transferred to the creditor, respondent- appeal is dismissed.

[Para 9 to 19, 33,34, 39,40]

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23102129084**

2024(1)MDSC15

IN THE SUPREME COURT OF INDIA

[From DELHI HIGH COURT]

[Before Bela M Trivedi; Dipankar Datta]

Criminal Appeal No. 1959 of 2012 **dated 05/10/2023**

Iveco Magirus Brandschutztechnik GmbH vs. Nirmal Kishore Bhartiya & Anr

DEFAMATORY STATEMENTS

Indian Penal Code, 1860 Sec. 500, Sec. 34, Sec. 107, Sec. 499- Code of Criminal Procedure, 1973 Sec. 482, Sec. 204, Sec. 203, Sec. 200, Sec. 2(n), Sec. 202- Criminal Appeal - writing, sending, publishing letters containing malicious and defamatory statements and imputation against the complainant- authorized agent had issued defamatory statements with the consent of the principal- Trial Court was justified in issuing summons to the accused based on the materials- principal had due knowledge

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of such defamatory statements yet did not caution or reprimand the agent for doing so- the facts alleged do not prima facie make out the offence of defamation - appeal is dismissed.

[Para 3 to 12, 45,46,47]

Law Point- Issue of process lays down that if the Magistrate taking cognizance of an offence is of the view that there is sufficient ground for proceeding then he may issue summons for attendance of the accused in a summons- Case.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23101033895**

2024(1)MDSC16

IN THE SUPREME COURT OF INDIA

[From UTTARAKHAND HIGH COURT]

[Before B R Gavai; Prashant Kumar Mishra]

Civil Appeal No 7871 of 2023, 7872 of 2023 **dated 28/11/2023**

Jaiveer Singh and Others vs. State of Uttarakhand and Others

EQUIVALENCE OF QUALIFICATION

Right of Children to Free and Compulsory Education Act, 2009 Sec. 23, Sec. 32 - National Council For Teacher Education Act, 1993 Sec. 29, Sec. 12A - These appeals challenge the common judgment and order holding that the 18 months Diploma in Elementary Education conducted through the Open and Distance Learning mode in elementary education by the National Institute of Open Schooling is a valid Diploma for applying against the regular posts of Assistant Teachers (Primary) in the State of Uttarakhand - The State, as an employer, is entitled to prescribe qualifications as a condition of eligibility, after taking into consideration the nature of the job, the aptitude required for efficient discharge of duties, functionality of various qualifications, course content leading up to the acquisition of various qualifications, etc. - Equivalence of qualification is a matter for the State, as recruiting authority, to determine - There can be no doubt that NCTE, as an expert body, has a right to prescribe the minimum qualifications - It is not for courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority - Appeals Allowed.

[Paras 41 and 42]

Law Point:- Judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications with any other given qualification.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC2312851055**

2024(1)MDSC17

IN THE SUPREME COURT OF INDIA

[Before S Ravindra Bhat; Aravind Kumar]

Civil Appeal No. 11104 of 2014 **dated 19/10/2023**

Keshav Bhaurao Yeole (D) By Lrs vs. Muralidhar (D) & Ors

CIVIL APPEAL

Bombay Tenancy and Agricultural Lands Act, 1948 Sec. 6, Sec. 33B, Sec. 31D, Sec. 31C, Sec. 43A, Sec. 29, Sec. 4B, Sec. 31A, Sec. 7, Sec. 5, Sec. 31, Sec. 31B, Sec. 2- Civil Appeal - Appellants are the legal heirs of original landlord - made two separate lease related to cultivation of crops - tenant did not voluntarily relinquish his possession in response to the notice- the original authority's direction for restoration of 22 acres of suit land proceeded on a misinterpretation of Section 31B of the Act- while considering an eviction petition filed by the landlord against his tenant, laid down the principle that the crucial date for deciding the bona fides of the requirement of the landlord is the date of his application for eviction- appeal is allowed.

[Para 3,5,7,8,20,21,25,28,29,30]

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23102129137**

2024(1)MDSC18

IN THE SUPREME COURT OF INDIA

[Before Dr Dhananjaya Y Chandrachud; J B Pardiwala; Manoj Mishra]

Writ Petition (Civil) No 360 of 2021 **dated 09/10/2023**

Kishan Chand Jain vs. Union of India & Ors

OPTION OF VIRTUAL HEARINGS

Right to Information Act, 2005 Sec. 6, Sec. 19, Sec. 15, Sec. 7, Sec. 5, Sec. 18, Sec. 25, Sec. 4, Sec. 3, Sec. 26 - The petitioner invokes the jurisdiction of this Court under Article 32 of the Constitution seeking directions that the SICs should allow the option of virtual hearings along with physical hearings - Access to justice is a right of constitutional purport which signifies that individuals have effective means to

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approach legal institutions to seek appropriate legal remedies - It is a constitutional duty of every adjudicatory institution, may it be courts, tribunals, or commissions, to adopt technological solutions such as video- Conferencing and make them available to litigants and the members of the Bar on a regular and consistent basis - Access to the Information Commissions is integral to securing the right to information, which is a necessary concomitant of right to equality under Article 14, the freedom of speech and expression under Article 19(1)(a) of the Constitution, and the right to life under Article 21 - E- Filing provides round the clock access to courts, and in the process, facilitates the convenience of lawyers and litigants - The writ petition is disposed of.

[Paras 19, 20, 21, 22 and 24]

Law Point: Technological solutions can be a tool to actualize the right of access to justice by providing virtual entry to the litigants in the courtroom.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23112056324**

2024(1)MDSC19

IN THE SUPREME COURT OF INDIA

[Before Sanjiv Khanna; S V N Bhatti]

Criminal Appeal No OF 2023 dated 30/10/2023

Manish Sisodia vs. Central Bureau of Investigation

CONSTRUCTIVE POSSESSION

Indian Penal Code, 1860 Sec. 201, Sec. 420, Sec. 108, Sec. 107, Sec. 120B, Sec. 120 - Code of Criminal Procedure, 1973 Sec. 482, Sec. 161, Sec. 164, Sec. 306, Sec. 439 - Prevention of Corruption Act, 1988 Sec. 7, Sec. 8, Sec. 7A, Sec. 12 - Prevention of Money- Laundering Act, 2002 Sec. 50, Sec. 2, Sec. 70, Sec. 45, Sec. 4, Sec. 3 - Rule of law means that laws apply equally to all citizens and institutions, including the State - Appellant seeking bail in the prosecutions arising from RC , registered by the Central Bureau of Investigation, under the Prevention of Corruption Act, 1988 and the Indian Penal Code, 1860 and Enforcement Case Information Report, filed by the Directorate of Enforcement, under the Prevention of Money Laundering Act, 2002 - The plea that the appellant was not in possession of the proceeds of the crime, should not be accepted as the expression 'possession' includes constructive possession - The appellant was a key to the processes and activities dealing with the proceeds of the crime and in using proceeds of the crime - The appellant has deliberately destroyed the evidence - When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail - Appeals are dismissed.

[Paras 2, 22 and 28]

Law Point:- The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23103132072**

2024(1)MDSC20

IN THE SUPREME COURT OF INDIA

[From MADRAS HIGH COURT]

[Before S Ravindra Bhat; Aravind Kumar]

Civil Appeal No. 6785 of 2023 **dated 16/10/2023**

Mohamed Ibrahim vs. Chairman & Managing Director & Ors

SUBSTANTIVE EQUALITY

Rights of Persons With Disabilities Act, 2016 Sec. 2 - The appellant is aggrieved by a judgment of the Madras High Court, which dismissed his petition, claiming arbitrariness in the declining of his candidature as Assistant Engineer by the Tamil Nadu Generation and Distribution Corporation Limited, on the ground that he was colour blind - Substantive equality aims at producing equality of outcomes, and in the context of the case, observed that the "principle of reasonable accommodation is one of the means for achieving substantive equality, pursuant to which disabled individuals must be reasonably accommodated based on their individual capacities - Exclusion results in the negation of individual dignity and worth or they can choose the route of reasonable accommodation, where each individual's dignity and worth is respected - The impugned judgment cannot stand; it is set aside, the respondent corporation, is directed to appoint and continue the appellant in its service.

[Paras 1, 22, 24, 26 and 28]

Law Point:- The principle of reasonable accommodation acknowledges that if disability" should be remedied and opportunities are "to be affirmatively created for facilitating the development of the disabled. Reasonable accommodation is founded in the norm of inclusion.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23101828959**

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Case Pointer
Monthly Digest - Supreme Court

2024(1)MDSC21

IN THE SUPREME COURT OF INDIA

[From PUNJAB AND HARYANA HIGH COURT]

[Before Abhay S Oka; Pankaj Mithal]

Criminal Appeal No. 2350 of 2011 **dated 13/10/2023***Mohd Rijwan vs. State of Haryana***TEST IDENTIFICATION PARADE**

Indian Penal Code, 1860 Sec. 201, Sec. 34, Sec. 302 - The Sessions Court convicted the appellant- Accused for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code - Conviction and sentence have been confirmed by the High Court - The two most important circumstances forming part of the chain are (a) last seen together and (b) recovery of the deceased's body at the instance of the appellant - Thus, the identification of the appellant becomes very doubtful as the accused was shown to the witness in the office of the Superintendent of Police, only with a view to see that he identifies the accused in the court - The evidence of another eyewitness to the theory of last seen together has been withheld from the court - The circumstance of the last seen together has not been established - The appeal is allowed.

[Paras 5, 8 and 10]

Law Point:- The identification of the accused in the test identification parade by the eyewitness, though not conclusive, may, in a given case, give credence to the identification of the accused before the Court by the eyewitness.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23101533209**

2024(1)MDSC22

IN THE SUPREME COURT OF INDIA

[Before M M Sundresh; Prashant Kumar Mishra]

Civil Appeal No 6933 of 2023 **dated 20/10/2023***Mumtaz Yarud Dowla Wakf vs. Badam Balakrishna Hotel Pvt Ltd & Ors***SUIT PROPERTY**

Code of Civil Procedure, 1908 Sec. 47 - Owner of suit property appellants executed a registered lease deed with respondents - suit premises sublet without permission - appeal against order of High Court which reversed order of dismissal by executing

court in application whereby objection of maintainability was raised by respondents before executing court after 4 yrs - There was absolutely no objection raised by the contesting respondents till the stage of execution petition - Executing Court cannot go beyond the decree, interference, including on a question of jurisdiction, should be undertaken rarely as a matter of exception- Settled proposition of law is that once an order has been passed, it is complied with, accepted by the other party, derived the benefit out of it, he cannot challenge it on any ground - the effect of change of forum may not have an application when there is already a decree where a party has not raised the issue of jurisdiction at any point before - the Wakf Tribunal has got sufficient jurisdiction to try every suit pertaining to either a Wakf or a Wakf property, the jurisdiction now lies with the Wakf Tribunal - Thus impugned order passed of High Court is set aside, by restoring the one passed by the Executing Court - Appeal allowed.

[Para 4, 8, 9, 14, 15, 30, 31, 32]

Law Point: executing court cannot go beyond the decree, interpretation and application of Sec. 47 of CPC

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23103036135**

2024(1)MDSC23

IN THE SUPREME COURT OF INDIA

[From KARNATAKA HIGH COURT]

[Before Surya Kant; Dipankar Datta]

Criminal Appeal No. 3297 of 2023 **dated 20/10/2023**

Munilakshmi vs. Narendra Babu & Anr

RECALLING WITNESSES

Indian Penal Code, 1860 Sec. 341, Sec. 149, Sec. 355, Sec. 201, Sec. 504, Sec. 143, Sec. 34, Sec. 109, Sec. 302, Sec. 306, Sec. 450, Sec. 427, Sec. 498A, Sec. 120B, Sec. 323, Sec. 448, Sec. 506, Sec. 454, Sec. 354B - Code of Criminal Procedure, 1973 Sec. 311 - Arms Act, 1959 Sec. 25 - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3 - Karnataka Police Act, 1963 Sec. 96, Sec. 97 - This criminal appeal arises out of an order passed by the High Court, whereby Respondent was granted regular bail in trial proceedings under Sections 109, 120B, 201, 302, 450, 454 read with Section 34 of the Indian Penal Code - The unusual and surprising events that have happened post the grant of bail to Respondent, do make out a case for recalling the witnesses for an effective, fair, and free adjudication of the trial - A

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person can be called and examined though not summoned as a witness, or can be recalled, or re- Examined so as to throw light upon the imputations - Power to recall witnesses under Section 311 CrPC ought to be exercised sparingly and mere hostility by a witness, per se, would not be a sufficient ground to infer misuse of concession of bail - appeal is disposed of.

[Paras 2, 28, 30 and 31]

Law Point :- The impact of supervening circumstances developing post the grant of bail, such as interference in the administration of justice, abuse of concession of bail, etc., which are aversive to a fair trial and would warrant cancellation of bail.

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2024(1)MDSC24

IN THE SUPREME COURT OF INDIA

[From PUNJAB AND HARYANA HIGH COURT]

[Before Sanjay Kishan Kaul; Sudhanshu Dhulia; Aravind Kumar]

Civil Appeal No. 2425 of 2023, 2426 of 2023 **dated 09/10/2023**

Nabha Power Limited vs. Punjab State Power Corporation Limited

MAINTAINABILITY OF PETITION

Electricity Act, 2003 Sec. 62, Sec. 86- Civil Appeal pertaining to recovery of deductions of monthly tariff by the respondent- respondent filed petition as appellant was not paid amount- appellant filed preliminary objection against maintainability of petition - contractual right arises in favour of the appellants- appeals are allowed.

[Para 1,13,14,20,24]

Law Point- Electricity Act Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23101129681**

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Monthly Digest - Supreme Court

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2024(1)MDSC25

IN THE SUPREME COURT OF INDIA

[From PUNJAB AND HARYANA HIGH COURT]

[Before S Ravindra Bhat; Aravind Kumar]

Criminal Appeal No. 1786 of 2023, 1787 of 2023, 1788 of 2023 **dated 09/10/2023**

Naresh @ Nehru; Irshad and Another vs. State of Haryana

CONFESSIONAL STATEMENT

Indian Penal Code, 1860 Sec. 149, Sec. 148, Sec. 302, Sec. 307 - Code of Criminal Procedure, 1973 Sec. 161, Sec. 313 - Evidence Act, 1872 Sec. 65B, Sec. 25 - Arms Act, 1959 Sec. 25 - Appeal against the Judgment by the High Court, where under the accused were convicted for the offences punishable under Section 302 read with Section 149 of the Indian Penal Code (for short 'IPC') by the Sessions Court came to be affirmed - Appellant has not been alleged to have been armed with any weapon, so no inference could have been drawn about the common object to commit the offence - The non-Disclosure of the names of the accused persons at the first instance creates reasonable doubts as to the appellant's identity - There was no evidence suggesting a sharing of common object between the accused - The presence of witness at the scene raises doubt due to contradictions - Neither laptop nor mobile phone was produced by prosecution or had been seized by the police during the course of investigation - The confessional statement of the accused and co- Accused came to be recorded when they were in police custody - Appeals are allowed and the appellants are acquitted of the offences.

[Paras 1, 5, 6, 7 and 9]

Law Point:- Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23101129720**

2024(1)MDSC26

IN THE SUPREME COURT OF INDIA

[From MADHYA PRADESH HIGH COURT]

[Before B R Gavai; Pamidighantam Sri Narasimha; Prashant Kumar Mishra]

Criminal Appeal No. 489 of 2019, 490 of 2019 **dated 19/10/2023**

Naveen @ Ajay vs. State of Madhya Pradesh

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Case Pointer
Monthly Digest - Supreme Court**FAIR TRIAL**

Indian Penal Code, 1860 Sec. 363, Sec. 201, Sec. 302, Sec. 376A, Sec. 366A, Sec. 376- Code of Criminal Procedure, 1973 Sec. 396, Sec. 293, Sec. 294, Sec. 174- Protection of Children from Sexual Offences Act, 2012 Sec. 6, Sec. 5- Criminal Appeal for impugned Judgment of conviction- appellant has been convicted and sentenced for committing rape and murder of 3 months old girl child- entire trial for serious offences has been completed within a span of 15 days in which the appellant has not been afforded a fair trial depriving him of his valuable legal rights- the authors of the reports were not called for evidence- the reports are not open to question as the defence had an opportunity to cross- Examine the authors of the reports during the trial- trial Court conducted trial in hurried manner without giving proper opportunity to the accused to defend himself- Judgment of conviction and sentence is set aside - appeals stand disposed of.

[Para 3,7,8,9,21]

Law Point- The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.

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2024(1)MDSC27

IN THE SUPREME COURT OF INDIA

[From NCDRC]

[Before Hrishikesh Roy; Sanjay Karol]

Civil Appeal No. 339 of 2023 **dated 24/11/2023***New India Assurance Co Ltd & Ors vs. Mudit Roadways***INSURER- INSURED RELATIONSHIP**

Customs Act, 1962 Sec. 22, Sec. 23, Sec. 46, Sec. 17, Sec. 57, Sec. 12, Sec. 15 - Insurance Act, 1938 Sec. 64 - The insurer cannot introduce additional reasoning beyond those detailed in their letter, to justify the repudiation - All communication addressed to the claimants, including letters of repudiation from the insurance company, admit to having insured the premises located at the given address - The repair work would not fall in the category of an alteration which would increase the risk insured for the warehouse premises - The basis of the repudiation accordingly appears to be un- Reasonable and is not acceptable - The reports furnished by the

claimants being consistent and logical are more acceptable in ascertaining the true cause of the fire - Whether the fire took place by a short circuit or any other reason, as long as insured is not the person who caused the fire, the Insurance Company cannot escape its liability in terms of the insurance policy - Trust serves as the cornerstone, forming the essence of the insurer- Insured relationship - Appeal of the Insurance Company deserves to be dismissed.

[Paras 34, 41, 45 and 50]

Law Point:- An insurance company's obligation to the insured is of much greater import.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23112934658**

2024(1)MDSC28

IN THE SUPREME COURT OF INDIA

[From HIMACHAL PRADESH HIGH COURT]

[Before M M Sundresh; J B Pardiwala]

Criminal Appeal No. 2239 of 2011, 2240 of 2011 **dated 06/10/2023**

Ranjan Kumar Chadha vs. State of Himachal Pradesh

CRIMINAL APPEAL

Code of Criminal Procedure, 1973 Sec. 100, Sec. 165, Sec. 51- Code of Criminal Procedure, 1898 Sec. 102, Sec. 51- Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 50, Sec. 20- Criminal Appeal - appeals are at the instance of a convict accused of the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act- case of the prosecution itself is that the accused was carrying a bag on his shoulder; opium like smell was coming from the bag; and the Head Constable informed the Deputy Superintendent of Police who came to the spot- Concept of inextricably linked to person was applied- there is no meaningful difference between the snips and his arm because the penetration by the snips was merely an extension of Klein's person- High Court was justified in holding the appellant guilty of the offence- Appeals Dismissed.

[Para 9 to 20,63,64,114,115,122,124,125]

Law Point- It is an obligation of the empowered officer and his duty before conducting the search of the person of a suspect, to inform the suspect that he has the right to require his search being conducted in the presence of a Gazetted Officer or a Magistrate.

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Mobile App. Use Code: **SC2310929458**

2024(1)MDSC29

IN THE SUPREME COURT OF INDIA

[From KARNATAKA HIGH COURT]

[Before Abhay S Oka; Pankaj Mithal]

Criminal Appeal No 1673 of 2011 **dated 04/10/2023**

Sharanappa @ Sharanappa vs. State of Karnataka

CIRCUMSTANTIAL EVIDENCE

Indian Penal Code, 1860 Sec. 201, Sec. 302 - Code of Criminal Procedure, 1973 Sec. 161 - Appeal against conviction for the offences punishable under Sections 302 and 201 of the Indian Penal Code - The case is based on circumstantial evidence - The first circumstance is of last seen together. The second circumstance is of the recovery of knife allegedly used as a weapon of offence by the appellant, at the instance of the appellant - The third circumstance is that though even according to the appellant, the deceased was missing, he didn't file complaint immediately, he filed it only after getting the knowledge of the fact that the dead body of his wife was found on earlier day - Evidence of the witnesses to the Recovery Memorandum of alleged recovery of the knife at the instance of the appellant has not supported the prosecution - Circumstances which constitute the chain of circumstances against the appellant have not been established - Theory of the prosecution about the last seen together fails - Only on the basis of the third circumstance based on the conduct of the appellant, the appellant cannot be convicted - Appeal is allowed.

[Paras 7, 12 and 13]

Law Point:- It is the duty of the prosecution to establish all the circumstances forming a part of the chain.

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2024(1)MDSC30

IN THE SUPREME COURT OF INDIA

[From DELHI HIGH COURT]

[Before Bela M Trivedi; Dipankar Datta]

Civil Appeal No. 5867 of 2015 **dated 09/10/2023**

Sheo Raj Singh (Deceased) Through Lrs & Ors vs. Union of India & Anr

CONDONATION OF DELAY

Land Acquisition Act, 1894 Sec. 18- Limitation Act, 1963 Sec. 5- Civil Appeal under section 18 of the Land Acquisition Act- condoning the delay in presentation of the appeal- contribution of impersonal machinery and bureaucratic methodology of government departments in delays - merits of a claim considered when deciding such applications for condonation of delay - appeal is dismissed.

[Para 7 to 14 , 31,37]

Law Point- Any appeal or application may be accepted even after the limitation period for the same is over, if the appellant/applicant assures the court that he had a sufficient cause for not being able to file the appeal/application during the limitation period.

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2024(1)MDSC31

IN THE SUPREME COURT OF INDIA

[From MADRAS HIGH COURT]

[Before Vikram Nath; Ahsanuddin Amanullah]

Criminal Appeal No 3619 of 2023 **dated 28/11/2023**

Sivamani and Anr; Sivamani; Dinesh Kumar vs. State Represented By Inspector of Police, Vellore Taluk Police Station, Vellore District

APPEAL AGAINST CONVICTION

Indian Penal Code, 1860 Sec. 324, Sec. 109, Sec. 294, Sec. 307, Sec. 452, Sec. 323 - Appeal against conviction - Previous enmity between the Complainant- The appellants could not have been convicted under Section 307, IPC as the doctor itself found the injuries to be simple in nature and not on any vital part of the body - There was no intention to kill; neither there were repeated blows, nor was it pre- Planned, when admittedly there was a civil suit pending - No allegation of repeated or severe blows having been inflicted - Impugned Judgment is varied only to the extent that the conviction of the appellants stands modified to that under Sections 323 and 324 of the IPC and the sentence imposed is also reduced to the period already undergone - The appeal is disposed of accordingly.

[Paras 5, 6, 9, 10 and 12]

Law Point:- While grievous or life- Threatening injury was not necessary to maintain a conviction under Section 307, IPC, 'The intention of the accused can

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Case Pointer
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be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.'

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2024(1)MDSC32

IN THE SUPREME COURT OF INDIA

[From GUJARAT HIGH COURT]

[Before S Ravindra Bhat; Aravind Kumar]

Criminal Appeal No 2504 of 2023 **dated 09/10/2023**

State of Gujarat vs. Dilipsinh Kishorsinh Rao

TIME OF FRAMING OF THE CHARGE

Code of Criminal Procedure, 1973 Sec. 397, Sec. 228, Sec. 227, Sec. 401 - Whether the order of the sanctioning authority the charge- Sheet is liable to be quashed - An application for discharge came to be filed, contending inter alia that during investigation, the IO had failed to consider the written statement in proper perspective - At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same - Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case - Trial Judge has noticed that explanation provided by the respondent accused was outside the check period and hence the explanation provided by respondent is a mere eye wash - This is an issue which has to be thrashed out during the course of the trial and at the stage of framing the charge mini trial cannot be held - Trial court order is set aside and appeal is allowed.

[Paras : 7, 8, 13, 15 and 17]

Law Point:- The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistency in the statement of witnesses and it is not legally permissible.

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Case Pointer
Monthly Digest - Supreme Court

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2024(1)MDSC33

IN THE SUPREME COURT OF INDIA

[From JHARKHAND HIGH COURT]

[Before Sanjiv Khanna; S V N Bhatti]

Civil Appeal No. 7495 of 2023 **dated 20/11/2023**

State of Jharkhand vs. Sociedade De Fomento Industrial Pvt Ltd and Others

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

Mineral (Auction) Rules, 2015 Rule 9 - The Division Bench erred in not appreciating the structured and compartmentalised consideration of the bidding process under Rule 9, Sub- Rules (6), (11) and (12) of the M(A) Rules in conducting auctions of minerals - Division Bench ignored all crucial circumstances including the inconsistency or impracticability in examining the lone response of the Respondent herein and going forward with a lone price bid - In the case on hand, during the first round of auction attempt, the highest initial price is not available, as no offer is received from anyone, including the Respondent - The consideration of the price bid of the Respondent and making it obligatory for the State Government to perforce consider the price bid of Respondent is illogical, illegal and unsustainable, apart from being against public interest and a loss to the public exchequer - Judgment under appeal is unsustainable and is set aside - Civil Appeal is allowed.

[Paras 10, 13 and 16]

Law Point:- Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC23112646704**

2024(1)MDSC34

IN THE SUPREME COURT OF INDIA

[From KERALA HIGH COURT]

[Before Abhay S Oka; Sanjay Karol]

Civil Appeal No 4619 of 2010, 4620 of 2010 **dated 07/11/2023**

Thankamma Baby vs. Regional Provident Fund Commissioner, Kochi, Kerala

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Case Pointer
Monthly Digest - Supreme Court**REVIEW PETITION**

Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Sections 1 and 7- A - Manufacturing, assembling and selling umbrellas - Appellant engaged in - Respondent issued notice - Alleging that 1952 Act was applicable to appellant - Inquiry - Respondent held that case of appellant was covered by Notification dated 7.3.1962 - Review petition filed by appellant - Rejected - Appeal - Dismissed by Appellate Authority - Petition against order - Dismissed by Single Judge - Division Bench confirmed the same - Hence this appeal - Establishment of appellant is a commercial establishment - Business of appellant will fall in category of 'trading and commercial establishment' - Case of appellant will be governed by said notification issued under Clause (b) of sub- Section (3) of Section 1 - No error in view taken by Single Judge and Division Bench of High Court - Appeals dismissed.

[Paras 8 and 9]

Law Point - Clause (a) of sub- Section (3) as well as Clause (b) of sub- Section (3) are applicable to establishment.

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2024(1)MDSC35

IN THE SUPREME COURT OF INDIA

[From ALLAHABAD HIGH COURT]

[Before Bela M Trivedi; Dipankar Datta]

Civil Appeal No. 6668 of 2023, 6669 of 2023 **dated 11/10/2023***Union of India vs. Uzair Imran & Ors***REVIEW APPLICATION**

Code of Civil Procedure, 1908 Sec. 114, Or. 47R. 1- Administrative Tribunals Act, 1985 Sec. 14, Sec. 19- Civil Appeal for dismissing a Review Application- Review Application urged framework of Order XLVII of the CPC but High Court failed to consider- appreciation of the educational qualification was questioned - excluded candidates of vocational streams for the post of Postal Assistants- appellant failed to secure justice and equality of opportunity- appeal stands disposed.

[Para 4,16,17,20]

Law Point- Section 114 of the Code of Civil Procedure, 1908, provides for the power of the court to review its own judgment or order for the purpose of correcting any errors or mistakes that may have crept in, or to rectify any new

and important matter or evidence which was not within the knowledge of the party seeking the review at the time of the original hearing.

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2024(1)MDSC36

IN THE SUPREME COURT OF INDIA

[Before S Ravindra Bhat; Aravind Kumar]

Civil Appeal No 3806 of 2023 **dated 06/10/2023**

Vishal Chelani & Ors vs. Debashis Nanda

CIVIL APPEAL

Real Estate (Regulation and Development) Act, 2016 Sec. 5, Sec. 18- Civil Appeal to challenge a decision of the National Company Law Appellate Tribunal- appellants are home buyers - who did not approach authorities under RERA Act were given the benefit of 50% better terms than that given to those who approached RERA- applicant had obtained a decree from RERA in capacity of allottee in a Real Estate Project - The appellants are declared as financial creditors as per Section 5 of RERA - appeal is allowed.

[Para 2,5,7,8]

Law Point- The appellants are declared as financial creditors within the meaning of Section 5 of RERA thus provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

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2024(1)MDSC37

IN THE SUPREME COURT OF INDIA

[From ALLAHABAD HIGH COURT]

[Before Vikram Nath; Ahsanuddin Amanullah]

Criminal Appeal No 3618 of 2023 **dated 28/11/2023**

Vishnu Kumar Shukla & Anr; Vishnu Kumar Shukla; Vineeta Shukla vs. State of Uttar Pradesh & Anr; Ram Kumar Garg

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Case Pointer
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FORGED AND FABRICATED DOCUMENT

Indian Penal Code, 1860 Sec. 380, Sec. 463, Sec. 448, Sec. 454 - Code of Criminal Procedure, 1973 Sec. 240, Sec. 482, Sec. 245, Sec. 239, Sec. 144, Sec. 378, Sec. 228, Sec. 227, Sec. 407, Sec. 340 - This appeal is directed against the Final Judgment and Order passed by the High Court of Judicature at Allahabad, by which the Order passed by the Chief Judicial Magistrate, Lucknow rejecting the prayer for discharge of the appellants, who are husband and wife, respectively, has been upheld - Respondent who claimed to be the tenant of the property in question, had filed Regular Suit for permanent injunction, based on a so- Called 'Memorandum of Agreement of Tenancy', - Order dated 18.12.2014 was a clear- Cut finding by a Court of Law that the entire suit was premised on forged and fabricated document(s) - Once the same has been established, the contention to be in possession of the property in question does not arise and clearly the FIR itself was a misuse and abuse of the process of law - The primary consideration at the stage of framing of charge is the test of existence of a prima- Facie case, and at this stage, the probative value of materials on record need not be gone into - Accordingly, this appeal is allowed.

[Paras 10, 12, 14 and 23]

Law Point:- The protection against vexatious and unwanted prosecution and from being unnecessarily dragged through a trial by melting a criminal proceeding into oblivion, either through quashing a FIR/Complaint or by allowing an appeal against an order rejecting discharge or by any other legally permissible route, as the circumstances may be, in the deserving case, is a duty cast on the High Courts.

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2024(1)MDSC38

IN THE SUPREME COURT OF INDIA

[Before Dr Dhananjaya Y Chandrachud; J B Pardiwala; Manoj Misra]

Miscellaneous Application; Writ Petition (Civil) No. 2157 of 2023; 1137 of
2023 **dated 16/10/2023**

X vs. Union of India and Anr

MEDICAL TERMINATION OF PREGNANCY

Medical Termination of Pregnancy Act, 1971 Sec. 3, Sec. 5, Sec. 2, Sec. 4 - Medical Termination of Pregnancy Rules, 2003 Rule 3B, Rule 3A - The petitioner avers that she and her husband attempted to medically terminate the pregnancy at various

hospitals but that they were unable to because of the MTP Act read with The MTP Rules - By its order dated 9 October 2023, this Court allowed the petition and permitted the medical termination of the pregnancy on the ground that continuing with the pregnancy could seriously imperil the mental health of the petitioner - On 10 October 2023, a doctor from AIIMS emailed learned ASG, stating that the foetus has a strong chance of survival and also that if the foetal heartbeat was not stopped, the baby would be placed in an intensive care unit and that there was a high possibility of immediate and long- Term physical and mental disability - The delivery will be conducted by AIIMS at the appropriate time - The decision of whether to give the child up for adoption is entirely that of the parents - The application for recall of the order dated 9 October 2023 is allowed.

[Paras 3, 5, 6, 15, 21, 24, 28, 29]

Law Point:- Article 142 permitted it to relax the application of law depending upon the particular facts and circumstances of the case.

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2024(1)MDSC39

IN THE SUPREME COURT OF INDIA

[From DELHI HIGH COURT]

[Before Sanjiv Khanna; S V N Bhatti]

Special Leave Petition (Civil) Diary No 32275 of 2023 **dated 13/10/2023**

Yamini Manohar vs. T K D Keerthi

PRE- LITIGATION MEDIATION

Code of Civil Procedure, 1908 Or. 7R. 11 - Commercial Courts Act, 2015 Sec. 12A - Section 12A of the CC Act is mandatory - Pre- Litigation mediation is necessary, unless the suit contemplates urgent interim relief - When a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject matter of the suit, the cause of action, and the prayer for interim relief - The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the CC Act - The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff - Non-Grant of interim relief at the ad- Interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order VII, Rule 11 of the Code; at times, interim relief is granted after issuance of notice.

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[Paras 3, 7 and 8]

Law Point:- Camouflage and guise to bypass the statutory mandate of pre-Litigation mediation should be checked when deception and falsity is apparent or established - Special leave petition is dismissed.

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2024(1)MDSC40

IN THE SUPREME COURT OF INDIA

[From MADRAS HIGH COURT]

[Before Abhay S Oka; Pankaj Mithal]

Criminal Appeal No. 3191 of 2023 **dated 13/10/2023**

Yusuf @ Asif vs. State

CRIMINAL APPEAL

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 52A, Sec. 53, Sec. 57- Criminal Appeal - found in possession of commercial quantity 20 kgs of heroin- the appeal dismissed in high court holding that there is no error in the findings recorded by the trial court- Procedure and manner of seizing, preparing the inventory of the seized material, forwarding the seized material and getting inventory certified by the Magistrate concerned- there is no material on record to prove that the Magistrate had certified the inventory of the substance seized- failure of the concerned authorities to lead primary evidence vitiates the conviction- order of conviction is set aside - appeal is allowed.

[Para 8,10,11,16,17]

Law Point- Section 52A of the NDPS Act outlines the procedure for seizing, preparing an inventory of the seized material, forwarding the seized material, and obtaining certification from the relevant Magistrate.

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