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(1) Grant of - Enlargement of accused-appellant on bail by the Sessions Judge on the strength of an earlier order of the High Court - Justification - Held: Not justified -Sessions Judge had erroneous perception and fallacious understanding of the earlier High Court order and absolutely misconstrued it - There was no deliberation with







regard to the requirements u/s.439 CrPC in the order passed by the Sessions Judge - Relevant aspects while dealing with an application for bail were not kept in view by the Sessions Judge - Grant of bail though involves exercise of discretionary power of the court, yet said exercise has to be made in a judicious manner and not as a matter of course - If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court - However, vide the impugned order, the High Court took note of certain supervening circumstances to cancel the bail, which exercise in the obtaining factual matrix was not necessary - Code of Criminal Procedure, 1973 - s.439.

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(3)(i) s.482 - Excise auction - Liquor contract awarded to partnership firm - Complaint made by respondent no.1 that while negotiating and accepting the contract, partnership deed dated 5.3.2002 was utilised, wherein respondent no.1 had also invested a huge amount, but the said deed was subsequently replaced by a forged/fabricated deed dated 6.3.2003 in which respondent no.1 was not a partner - Magistrate registered case against appellant-District Excise Officer and two others u/ss.420 and 120-B - Application filed by appellant u/s.482 CrPC for quashing of the complaint - Dismissed by High Court - Propriety - Held: Proper - Penal Code, 1860 - ss. 420 and 120-B.

(ii) s.482 - Criminal proceedings - Quashing of - Scope - Held: An investigation should not be shut out at the threshold if the allegations have some substance - When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence - At this stage neither the court can embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor the court should judge the probability, reliability or genuineness of the allegations made therein.

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CONSTITUTION OF INDIA, 1950:

(1) Arts.136 and 142 - 2G Spectrum Scam Case



-Day-to-day trial - Orders passed by Supreme Court in exercise of powers conferred u/Arts. 136 and 142, while monitoring the investigation of 2G related cases - If liable to be recalled - Held: Purpose and object of passing the impugned orders was for larger public interest and for speedy trial, that too on day-to-day basis which is reflected not only in the various provisions of the Prevention of Corruption Act, but also falls within the realm of judicial accountability - No reason to lay down any guidelines in a Court monitored investigation - A superior court exercising the appellate power or constitutional power, if gives a direction to conduct the trial on day-to-day basis or complete the trial in a specific time by giving direction is not interfering with the trial proceedings but only facilitating the speedy trial, which is a facet of Art. 21 - Charge-sheet was filed only in one among the various 2G related cases - Supreme Court, while passing the impugned order, only directed speedy trial and, that too, on a day-to-day basis which cannot be termed as interference with the trial proceedings - Prevention of Corruption Act, 1988 - s.13(1)(d) - Penal Code, 1860 - s.120-B.

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(2)(i)Art.137 - Review jurisdiction - Exercise of - Scope - Review, when maintainable and when not maintainable - Principles summarised and discussed - Code of Civil Procedure, 1908 - Or. XLVII, r.1 - Supreme Court Rules, 1966 - Part VIII, Or. XL.

(ii) Constitution of India, 1950 - Art.137 - Review petition - Maintainability - Vide order dated 18.09.2003 in M.C. Mehta case, the Supreme Court had directed the CBI to conduct inquiry with respect to execution of Taj Heritage Corridor Project under Taj Trapezium Zone (TTZ) Area at Agra which culminated into registration of an FIR under provisions of IPC and the PC Act against several persons including respondent no.1 - CBI thereupon lodged another FIR under provisions of the PC Act only against respondent no.1 with regard to alleged acquisition of disproportionate movable and immovable assets by her and her relatives - Respondent no.1 filed writ petition before Supreme Court against the second FIR - Supreme Court by order dated 06.07.2012, quashed the second FIR holding that the order dated 18.09.2003 did not contain any specific direction regarding lodging of FIR in the matter of disproportionate assets case against respondent no.1 and that the CBI exceeded its jurisdiction in lodging the same - Review petition challenging order dated 06.07.2012 passed in the Writ Petition - Held: Review petitioner herein was intervener in the earlier writ Petition - Contentions raised by him were dealt with and duly considered at length in the order dated 06.07.2012 and it was clarified that anything beyond the Taj Corridor matter was not the subject matter of reference - Inasmuch as the very same point was urged once again, the same was impermissible - No material within the parameters of review jurisdiction to go into order dated 06.07.2012 passed in the Writ Petition - Code of Civil Procedure, 1908 - Or. XLVII, r.1 -



Supreme Court Rules, 1966 - Part VIII, Order XL - Penal Code, 1860 - s.120-B r/w ss.420, 467, 468 and 471 - Prevention of Corruption Act, 1988 - s.13(2) r/w s.13(1)(d) and s.13(2) r/w s.13(1)(e).

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(ii) Evidence - Appreciation and evaluation of - Concept of proof beyond reasonable doubt - Held: Cannot be made to appear totally unrealistic.

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INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946:
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INTERPRETATION OF STATUTES:
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MAXIMS:
Maxim falsus in uno, falsus in omnibus - Held: Is not applicable in India - It is merely a rule of caution - All that it amounts to is, that in such cases testimony may be disregarded, and not that it must be disregarded - Unless the entire case of the prosecution suffers from infirmities, discrepancies and material contradictions and the prosecution utterly fails to establish its case, acquittal of some accused persons cannot be a relevant facet to determine the guilt of other accused persons - Evidence.

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NATIONAL INVESTIGATION AGENCY ACT, 2008:
(i) s.21 - Appeal from order of the Special Court under the Act, refusing or granting bail - Held: Shall lie only to a bench of two Judges of the High Court.

(ii) National Investigation Agency Act, 2008 - ss.2(g), 13, 14 and 16 - Bail application - Maintainability - Held: Where the NIA Act applies, the original application for bail shall lie only before the Special Court under the Act, and not before the High Court either u/s.439 or u/s.482 CrPC.

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NEGOTIABLE INSTRUMENTS ACT, 1881:

(1) s.138 - Code of Civil Procedure, 1908 - Order IX r.13 - Dishonour of cheque of amount Rs.2,50,000/- - On the ground of 'stop payment' instruction - Complaint u/s. 138 - Petition u/s.482 - High Court quashed the complaint and the consequential proceedings, by ex-parte order - Application for recall of the ex-parte order dismissed - Appeals against the order dismissing the application for recalling the ex-parte order and also against the ex-parte order - Held: Appeal against the order in application for recalling the ex-parte order is devoid of merit as the applicant failed to offer sufficient cause for his non-appearance on the date when the complaint was quashed - Appeal against the ex-parte order is liable to be dismissed on the ground of delay as well as on merit - However, in the interest of equity, justice and fair play, direction to make payment to the complainant for a sum of Rs.5 lakhs, which would be treated as an overall amount including interest and compensation towards the cheque for



which 'stop payment 'instruction was issued.

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(2) ss. 138, 142 and 145 - Filing of complaint petition by Power of Attorney holder - Validity - Whether a Power of Attorney holder can be verified on oath - Whether specific averments as to the knowledge of the Power of Attorney holder in the impugned transaction must be explicitly asserted in the complaint - Effect of s.145 - Held: Filing of complaint petition u/s.138 through power of attorney is perfectly legal and competent - Power of Attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint - However, the power of attorney holder must have witnessed the transaction as an agent of the payee/ holder in due course or possess due knowledge regarding the transaction - It is required by the complainant to make specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint - Power of attorney holder who has no knowledge regarding the transaction cannot be examined as a witness in the case - In the light of s.145, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint u/s.138 and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant upon oath for taking the decision whether or not to issue process on the complaint

u/s.138 - Code of Criminal Procedure, 1973 - s.200.

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(2) s.120-B r/w ss.420, 467, 468 and 471.
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(3) s.149 - Common intention - Punishment prescribed by s.149 - Nature of - Held: It is in a sense vicarious, and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly - At the same time if a person is a mere bystander, and no specific role is attributed to him, he may not come under the wide sweep of s.149.

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(4)(i) s.302/307 r/w s.34 - Firing of gunshots - Causing injuries to PW1 and death of his brother - Five accused - Conviction of A-1 and A-2 i.e. the appellants - Justification - Held: PWs-1 and 2, brother and father of the deceased, deposed in a vivid manner about the culpability of the accused persons in the crime - Non-examination of two witnesses did not affect the trustworthiness of PWs-1 and 2 - Though there was some embellishment by PW-1, the informant, and the other witnesses but that did not make the whole prosecution version



untruthful - Non-seizure of blood-stained clothes and blood stains did not create dent in the prosecution version - The autopsy surgeon, PW-3, clearly opined that deceased had died because of gunshot injuries - The FSL report was clear - As per the FSL report, shots were fired from the weapons sent to the laboratory - Cogent evidence that the weapons belonged to accused-appellants and licenses were issued in their favour - Thus, ocular testimony of PWs-1 and 2 received clear corroboration from the medical evidence as well as from the report of the FSL - Conviction of the appellants accordingly affirmed.

(ii) s.34 - Common intention - Existence of - When may be inferred - Death of PW1's brother and injuries caused to PW1 due to gun shots fired by the accused persons - Conviction of the two accused-appellants (A-1 and A-2) u/s.302/307 r/w s.34 - Plea that A-2 could not have been convicted with the aid of s.34 - Held: Not tenable.

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(5) s.302/307 r/w s.34.
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(6) ss.302 r/w 149, 364 r/w 149, 307 r/w 149, s.436 r/w 149 and s.435 r/w 149.
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SERVICE LAW:
(1)(i) Regularisation - Appointment of appellants



ex-servicemen as Special Police Officers (SPOs) in terms of the procedure u/s.17 of the Act - Claim of appellants for regularisation - Rejected - Legality - Held: Recruitment of appellants was made in the background of terrorism prevailing in the State of Punjab at that time - Decision to resort to procedure u/s.17 was taken at the highest level of the State by conscious choice to provide necessary security to the public sector banks - Process of selection adopted in identifying the appellants was not unreasonable or arbitrary - Appointment of appellants was made by the State and disciplinary control vested with the State, the two factors which conclusively establish relationship of master and servant between the State and the appellants - No justification for the State to take defence, after permitting utilisation of the services of appellants for decades, that there were no sanctioned posts to absorb the appellants - Sanctioned posts do not fall from heaven - State has to create them by a conscious choice on the basis of rational assessment of the need - Failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants for decades together itself would be arbitrary action (inaction) on the part of the State - On facts, creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of the appellants was made available had agreed to bear the burden - If absorbing the appellants into the services of the State and providing benefits at par with the police

officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden - State Government directed to regularise the services of the appellants by creating necessary posts - Police Act, 1861 - ss.17 and 18.

(ii) Service Law - New posts - Creation of - Assessment of need - Examination by Constitutional Court not barred.

(iii) Service Law - New posts - Creation of - Considerations for - Discussed.

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(2) Retiral benefits - Payment of - Change in policy - Resolutions passed by the Board of Management of the University in relation to giving options to the University employees for changing from Contributory Provident Fund scheme to Pension Scheme - Change effected subsequently set aside by the appellant-State - Justification - Held: Though the University is an autonomous body, any financial liability incurred by it is to be ultimately discharged with the financial help of appellant-State - Inspite of the clear and unambiguous provisions of s.39, the Board of Management of the University did not get necessary assent of the Chancellor, i.e. the Governor of the State before effecting the change in the scheme with regard to payment of the retiral benefits to its employees - University could not have unilaterally decided to give huge financial benefit



to its employees without taking consent of the Chancellor, i.e. the Governor of the State in violation of s.39 - Control exercised by the State on the University in the financial matters is completely justified - State was entitled to reject the change effected by the University - Rajasthan Agricultural University, Udaipur Act, 2000 - ss.2(h) r/w s.8 and ss.38 and 39 - Pension Rules, 1990.

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(3)(i)Retirement - Compulsory retirement - Respondent working in appellant-transport Corporation compulsorily retired from service in the year 2002 - Writ Petition - High Court held that the acts of misconduct pointed out against the respondent pertained to a period more than 12 years before his compulsory retirement and it was unjust, unreasonable and arbitrary to retire the respondent prematurely on the basis of old and stale material pertaining to the period 1978-1990 - Quashing of the order of compulsory retirement of respondent - Justification - Held: The entire service record is relevant for deciding as to whether the government servant needs to be eased out prematurely - However, at the same time, subsequent record is also relevant, and immediate past record, preceding the date on which decision is to be taken would be of more value, qualitatively - What is to be examined is the "overall performance" on the basis of "entire service record" to come to the conclusion as to whether the concerned employee has become a deadwood and it is in public interest to retire him compulsorily

- On facts, insofar as period 1978-1990 is concerned, the respondent was charge sheeted in 19 cases - In few cases he was exonerated and in some other cases he was given minor penalty which projects a dismal picture - Even the service record after 1990 i.e. in last 12 years preceding the order of retirement does not depict a rosy picture - In any case, nothing to show the performance of respondent became better during this period - Order of compulsory retirement accordingly upheld - Industrial Employment (Standing Orders) Act, 1946 - Rajasthan State Road Transport Workers and workshop Employees Standing Orders, 1965 - r.18-D.

(ii) Service Law - Retirement - Compulsory retirement - Nature of - Scope for judicial review - Held: Order of compulsory retirement is neither punitive nor stigmatic - It is based on subjective satisfaction of the employer and a very limited scope of judicial review is available in such cases - Interference is permissible only on the ground of non application of mind, malafide, perverse, or arbitrary or if there is non-compliance of statutory duty by the statutory authority - Power to retire compulsorily, the government servant in terms of service rule is absolute, provided the authority concerned forms a bonafide opinion that compulsory retirement is in public interest.

(iii) Service Law - Retirement - Compulsory retirement - Considerations for - Entire service record - If to be looked at - Adverse entries -



Relevance of - Held: After promotion of an employee, the adverse entries prior thereto have no relevance and can be treated as wiped off when the case of the employee is to be considered for further promotion - However, this 'washed off theory' has no application when case of an employee is assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement - The rationale is that since such an assessment is based on "entire service record", there is no question of not taking into consideration earlier old adverse entries or record of the old period - While such a record can be taken into consideration, at the same time, the service record of the immediate past period are to be given due credence and weightage.

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SUPREME COURT RULES, 1966:
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TERRORISTS AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987:
s.3(1) - Retaliatory attack by group of extremists leading to death of 35 persons and injury to 7 persons - Accused-appellants convicted and sentenced to death - Justification - Held: On facts, even if deficiencies in the prosecution are ignored, prosecution case against appellant no.2 is rather weak - His name not mentioned in the FIR - PW-2 injured witness failed to identify appellant no.2 in

Court - None of the other witnesses including PW-3, another injured witness, attributed any role to him - In the circumstances, appellant no.2 deserves acquittal - As far as appellant no.3 is concerned, in addition to his name being mentioned in the FIR as one who was slitting the throats, he was identified by PW-2 injured witness in Court - Appellant no.3 was attributed the role of slitting the throats by PW-2 in his oral deposition - Though other witnesses did not attribute any specific role to him, he was identified by them as a participant in the crime - As far as appellant no.1 is concerned, PW-2 stated in oral evidence that he was slitting the throats, and he identified him in the court as well, though no other witness attributed any particular role to him - PW2 being an injured witness, his testimony cannot be ignored - He attributed a specific role to appellants nos.1 and 3 - Conviction of these two accused us.302 IPC and other charges accordingly upheld - However, the incident occurred in 1992 and the charges were framed in 2004 and more than nine years passed thereafter also, and the appellants have been facing the trauma of the crime and the trial all this period - Besides, the manner in which the investigation proceeded far from satisfactory - Possibility that due to their poverty and caste conflict the accused were drawn in the melee and participated in the crime - Taking into account the circumstances, death sentence awarded to appellant nos.1 and 3



commuted to life imprisonment, which is to mean the rest of their natural life - Penal Code, 1860 - ss.302 r/w 149, 364 r/w 149, 307 r/w 149, s.436 r/w 149 and s.435 r/w 149.

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