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SUBJECT-INDEX**ADMINISTRATIVE LAW:**

Delegated legislation - Notification - Held: Notification issued in exercise of powers under the Act cannot amend the Act - In the context of instant case, since no duty could be levied on DTH operation under 1936 Act prior to issuance of notification dated 5-5-2008, duty can not be levied under the said Act after issuance of notification - Madhya Pradesh Entertainment Duty and Advertisements Tax Act, 1936.

(Also see under: Madhya Pradesh Entertainment Duty and Advertisements Tax Act, 1936)

M/s Tata Sky Ltd. v. State of M.P. and Ors. 849

APPEAL:

Benefit of acquittal to non-appellant accused.

(See under: Constitution of India, 1950; and

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APPRENTICES ACT, 1961:

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CIRCULARS / GOVERNMENT ORDERS /**NOTIFICATIONS:**

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Government of Madhya Pradesh fixing 20% entertainment duty.

(See under: Administrative Law) 849

CODE OF CIVIL PROCEDURE, 1908:

(1) (i) s.96 read with O. 41, r.31 - First appeal before High Court challenging judgment and decree passed in a suit for specific performance of agreement to sell - High Court holding that plaintiff was not ready and willing to perform his part of contract - Held: Finding recorded by High Court on the issue is perverse being contrary to evidence on record - Further, High Court while deciding appeal u/s 96, did not consider all the issues as is required under O. 41, r.31 - Judgment and decree passed by High Court set aside and that passed by trial court restored - Appellant directed to refund the amount of compensation to first respondent along with 9% interest.

(ii) O. 3, rr. 1 and 2 - Recognized agent - Power of attorney holder - Held: It is a settled legal proposition that power of attorney holder cannot depose in place of principal - Nor can he depose for principal in respect of a matter, as regards which, only principal can have personal knowledge and in respect of which, principal is entitled to be cross-examined.

S. Kesari Hanuman Goud v. Anjum Jehan & Ors. 750

(2) O.6, r.17 read with O.2, r.2 - Amendment of

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plaint - Declined by City Civil Court, but permitted by High Court - Held: The statement that plaintiffs were not aware of conveyance dead, prima facie, is not correct - Plaintiffs had come to know of conveyance dead much before filing of suit, but relief was not sought for in plaint - There is no ground for allowing amendment sought for by plaintiffs which was not only a belated one but was clearly an after-thought for obvious purpose to avert inevitable consequence - Order of High Court set aside and that of City Civil Court restored.

Mashyak Grihnirman Sahakari Sanstha Maryadit v. Usman Habib Dhuka & Ors. 873

CODE OF CRIMINAL PROCEDURE, 1973:

(1) s. 386 - Power of appellate court in an appeal against acquittal - Held: Is not circumscribed by any limitation - It has power to review entire evidence - Appellate court can reverse acquittal order, if, on appraisal of evidence, it finds that the view taken by court, while acquitting the accused was not a possible view.

(Also see under: Penal Code, 1860)

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Extra-judicial confession - Held: Is a weak form of evidence and based on such evidence no conviction and sentence can be imposed upon appellants and other accused.

(Also see under: Penal Code, 1860)

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Art. 142 - Benefit of acquittal extended to non-appellant-accused also - Penal Code, 1860 - ss. 302, 376 (2) (g), 201, 404 and 506 IPC.

(Also see under: Penal Code, 1860)

Tejinder Singh @ Kaka v. State of Punjab 802

CRIMES AGAINST WOMEN:

(1) Rape victim - Entitlement to legal recourse - Held: In view of International Covenant on Economic, Social, and Cultural Rights 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, rape survivors are entitled to legal recourse that does not retraumatize them or violate their physical or mental integrity and dignity - Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence - There is a demand of sound standard of conducting and interpreting forensic examination of rape survivors

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- International Covenant on Economic, Social, and Cultural Rights 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985.

(Also see under: Penal Code, 1860)

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(2) (See under: Penal Code, 1860) 765,
797, 802 and 870

CRIMINAL TRIAL:

Conviction on the basis of s. 34 IPC for which accused was not charged - Held: Mere omission of s. 34 in charge-sheet does not ipso facto or ipso jure lead to any inference or presumption of prejudice caused to accused - Prejudice from such omission needs to be satisfactorily demonstrated - In the instant case, no prejudice shown to have been caused - Penal Code, 1860 - s. 34.

(Also see under: Penal Code, 1860)

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EVIDENCE:

(1) Circumstantial evidence.

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(2) (See under: Penal Code, 1860) 783

EVIDENCE ACT, 1872:

(1) s.113-B.

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(See under: Penal Code, 1860) 870

(2) s. 133 - Evidence of accomplice - Evidentiary value - A conviction cannot be held illegal merely because it proceeds upon uncorroborated testimony of an accomplice - But it is established rule of practice that it is unsafe to record a conviction on testimony of an approver unless the same is corroborated in material particulars by some untainted and credible evidence - In the instant case, evidence of approver was duly corroborated in the form of oral depositions as also forensic evidence.

(Also see under: Penal Code, 1860)

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HINDU MARRIAGE ACT, 1955:

ss.13 and 23 - Petition for divorce by husband on grounds of cruelty and desertion - Dismissed by courts below - Held: Both the courts noticed relevant facts and came to a definite conclusion that appellant has not only been cruel to respondent, but has also brought the situation to the point where respondent had no option but to leave matrimonial home - In this situation, as appellant was trying to take advantage of his own wrong, courts below rightly disallowed the relief sought for - Order of High Court does not suffer from any infirmity, illegality or perversity - No interference called for.

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INDUSTRIAL DISPUTES ACT, 1947:

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INTERNATIONAL CONVENTIONS / TREATIES:

(i) International Covenant on Economic, Social, and
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MADHYA PRADESH ENTERTAINMENT DUTY AND
ADVERTISEMENTS TAX ACT, 1936:

ss.2(a),2(b),2(d)(iv), 3 and 4 - Levy of entertainment
duty on Direct to Home (DTH) entertainment
service for the period 5-5-2008 to 1-4-2011 - Held:
DTH is not covered by provisions of s.3 read with
ss.2(a), 2(b) and 2(d) - Further, neither provision
of s.4(1) nor any of modes provided u/s.4(2) can

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be made applicable for collection of duty on DTH
- Therefore, 1936 Act cannot be extended to cover
DTH operations being carried out by appellants -
Indian Telegraph Act, 1885 - s. 4 - Indian Telegraphy
Act, 1933 - Madhya Pradesh Entertainment Duty
and Advertisements Tax Rules 1942 -
Administrative Law.

(Also see under: Administrative Law)

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MADHYA PRADESH ENTERTAINMENT DUTY AND
ADVERTISEMENTS TAX RULES 1942:

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Duty and Advertisements Tax Act, 1936) 849

MAHARASHTRA REGIONAL AND TOWN PLANNING
ACT, 1966:

s.127 - Land reserved not acquired/no steps
commenced towards acquisition within six months
of service of notice u/s 127 - Held: Reservation
shall be deemed to have lapsed and land shall be
deemed to have been released from such
reservation so as to enable the owner to develop
the same - Steps towards acquisition would really
commence when State Government takes active
steps for acquisition of particular piece of land
which leads to publication of declaration u/s 6 of
1894 Act - Expression "no steps as aforesaid"
used in s. 127 of 1966 Act has to be read in the
context of provisions of 1894 Act and mere passing
of a resolution by Planning Authority or sending of

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a letter to Collector or even to State Government cannot be treated as commencement of proceedings for acquisition of land under 1966 Act or 1894 Act - Land Acquisition Act, 1894 - s.6.

Shrirampur Municipal Council, Shrirampur v. Satyabhamabai Bhimaji Dawkher and Others 664

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'Falsus in uno, falsus in omnibus'.
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MOTOR VEHICLES ACT, 1988:

(i) s. 166 - Motor accident - Compensation - Computation of - Multiplier - Additional income for future prospects - Deduction towards income tax as also personal expenses - Guidelines, laid down.

(ii) s.168 - 'Just compensation' - Held: The expression, 'just' means that the amount so determined is fair, reasonable and equitable by accepted legal standards.

Reshma Kumari and Ors. v. Madan Mohan and Anr. 706

PAYMENT OF GRATUITY ACT, 1972:

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PENAL CODE, 1860:

(1) s. 34.
(See under: Criminal Trial) 631

(2) s.302 - Death of 22 year old married woman within 2 months of marriage due to burn injuries - Dying declaration given by victim - Conviction of mother-in-law (appellant) u/s.302 alongwith life imprisonment - Held: Victim got injured in her in-laws house while appellant was present - Veracity of her dying declaration cannot be doubted and there is no cogent reason to interfere with conviction of appellant - However, appellant has already served 14 years and 6 months of imprisonment in jail and her case has not been considered by State for premature release u/s.432 CrPC - Authorities concerned to consider case of appellant for premature release strictly in accordance with law - Evidence Act, 1872 - s.113B - Code of Criminal Procedure, 1973 - s.432.

Annapurna v. State of U.P. 870

(3) s. 302 - Murder - Acquittal by trial court - Conviction by High Court - Held: Medical evidence is quite consistent with prosecution case that deceased was killed by inflicting injuries by a pair of scissors - Both eye-witnesses fully supported prosecution case in regard to assault by appellant on deceased with a pair of scissors - Discrepancies between statements of two eye-witnesses highlighted by trial court cannot be a ground for rejecting their deposition entirely - High

Court has rightly rejected the view taken by trial court as wholly untenable and has rightly accepted the evidence of prosecution witnesses in order to bring home guilt of appellant - Maxim, falsus in uno, falsus in omnibus - Evidence.

Rajendra Singh v. State of Uttaranchal 783

(4) ss. 302, 307, 427 r/w s. 34 and s.3 of Explosive Substances Act r/w s. 34 IPC - Bomb planted at the instruction of accused - Resulted in death of one and injuries to others - Conviction by courts below - Held: Prosecution case is supported by eye-witnesses, injured witnesses and approver - Motive established - Conviction justified.

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(5) ss. 302 and 324 r/w s. 34 - Acquittal by trial court - Conviction by High Court - Held: Conviction was justified in view of depositions of injured witness and other eye-witnesses - Incident was premeditated - Absence of charge u/s. 34 would not affect legality of conviction, as such omission caused no prejudice to accused.

(Also see under: Code of Criminal Procedure, 1973; and Criminal Trial)

Chinnam Kameswara Rao and Ors. v. State of A.P. Rep. by Home Secretary 631

(6) ss.302 and 376 - Rape and murder - Case based on circumstantial evidence - Conviction of accused-appellant with 10 years RI - Held: Justified - Medical evidence revealed that victim was subjected to sexual intercourse before her death -

Mother of victim found accused present at scene of crime immediately after occurrence - Accused remained absconding for two days - All circumstances supported prosecution version - No missing link in any of circumstances found proved - Further, accused had inimical relationship with family of victim and thus, motive aspect demonstrated was also acceptable - Moreover, accused-appellant did not let in any evidence for his defence - Circumstantial evidence.

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(7) ss. 302, 376(2)(g), 201 and 506 - Gang rape and murder - Conviction by trial court - Affirmed by High Court - Held: There is major discrepancy in testimony of witnesses and also registration of FIR on the basis of information furnished by informant - Further, Sarpanch to whom accused were stated to have made confessional statement, reported the matter to police after 16 days - His evidence is not believable - Narration of alleged offences against appellants and other accused by prosecution witnesses is most unnatural and unbelievable to convict and sentence them - Their conviction and sentences set aside - Circumstantial evidence. (Also see under: Constitution of India, 1950)

Tejinder Singh @ Kaka v. State of Punjab 802

(8) s. 376(1) - Rape - Statement of prosecutrix that accused committed forcible sexual intercourse against her wish at knife point - Held: Except simply denying the offence alleged in statement u/s 313

Cr.P.C., accused did not let in any evidence to contradict the version of prosecutrix - Trial court on a detailed consideration of evidence concluded that case of prosecutrix was cogent and convincing and was also supported by evidence of other witnesses and recoveries made from place of occurrence - Judgments of courts below call for no interference.

Swaroop Singh v. State of M.P. 765

(9) ss. 376, 506, 366 and 363 - Kidnapping and rape of a girl of 13 years - Conviction of accused by courts below - Held: On date of incident, victim was of 13 years and 9 months and was a student of 6th standard - To refute the same, no evidence has been led by accused-appellant - Said finding stood affirmed by High Court and in view thereof, it remains totally immaterial whether prosecutrix was a consenting party or not - Case does not present special features warranting any interference.

Lillu @ Rajesh & Anr. v. State of Haryana 774

PETROLEUM ACT, 1934:

s.20 read with Marketing Discipline Guidelines, 2005 - Dealership licence - Cancellation of - Held: Cancellation of dealership agreement is a serious matter and cannot be taken lightly - In the instant case, Guidelines with regard to taking of samples, numbering them, and sending the same to Laboratory in the manner prescribed have not been followed by Inspecting Officer - Further, provision

of s.20 was also not complied with - High Court rightly interfered with order of termination of dealership agreement/licence and quashed it - Appellants are directed to implement the directions given by High Court in its judgment - Marketing Discipline Guidelines, 2005 - Para 2.4.5

Bharat Petroleum Corporation Ltd. v. M/s Jagannath & Co. & Ors. 828

POWER OF ATTORNEY:

(See under: Code of Civil Procedure, 1908) 750

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SERVICE LAW:

(1) Appointment - Recruitment - Candidate in wait-list - Claiming appointment, in view that candidate above him in merit list did not join - Held: In the facts of case, candidate deserved to be appointed to the post - Offer of appointment would relate back to permissible date contemplated under rules laying down conditions of service - Candidate entitled to seniority immediately below those who were appointed from the same process of selection - He would be entitled to wages from date of order.

State of J & K and Ors. v. Sat Pal 648

(2) Assured Career Progression (ACP) Scale - Entitlement - Period spent in apprenticeship - Held: Cannot be counted for grant of ACP Scale, because apprentices are trainees and not workmen

- Apprentices Act, 1961 - ss. 2(aa), 2(aaa) and 18.

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STATE FINANCIAL CORPORATIONS ACT, 1951:

s. 46-B - Industrial concern closed down - Recovery of dues of workmen as also of State Financial Corporation - Held: Merely because appellants Financial Corporation subsequently sold the properties, that by itself cannot destroy rights of workmen as held by competent courts -- Under s.46-B, provisions of 1951 Act shall be applicable in addition to, and not in derogation of any other law applicable to an industrial concern - High Court compared claim of petitioner with claims of workmen where a company goes into liquidation and held that dues of workmen shall have preference - Comparison has to be seen with proper perspective and that has to be seen on the backdrop of s. 46-B - There is no error in the order of High Court - Industrial Disputes Act, 1947 - ss.33-C - Payment of Gratuity Act, 1972.

Asstt. General Manager, Karnataka State Financial Corporation v. General Secretary, Mysore Division Industrial Workers General Union and Ors. 744

TELEGRAPH ACT, 1885:

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WORDS AND PHRASES:

'Apprentice' and 'apprenticeship training' - Meaning of, in the context of Apprentices Act, 1961.

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