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(2) Legal malice.
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CODE OF CIVIL PROCEDURE, 1908:

O. 8, rr. 3, 4 and 5 - Manner in which allegations of fact in the plaint should be traversed - Legal consequences flowing from its non-compliance - Held: Burden of proving the facts rests on the party who substantially asserts the affirmative issues and not the party who denies it but there may be an exception thereto - On facts, plaintiff examined witnesses, proven entries in the books of accounts and also proven the acknowledgements duly signed by defendant - Defendant, on the contrary, except making a bald denial of the averments, did not state anything else - Nothing was put to the

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witnesses in the cross-examination when the documents were exhibited - Defendant could not have been permitted to lead any evidence when nothing was stated in pleadings - Courts below had correctly rested the burden of proof on defendant but High Court, in an erroneous impression, overturned the said finding - Evidence.

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CODE OF CRIMINAL PROCEDURE, 1973:

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(2) s.313 - Examination of accused u/s.313 - Purpose - Held: Is to meet the requirement of principles of natural justice, i.e. *audi alteram partem* - No matter how weak the evidence of prosecution may be, it is the duty of court to examine the accused, and to seek his explanation as regards incriminating material that has surfaced against him - Circumstances not put to accused in his examination u/s.313 CrPC, cannot be used against him and must be excluded from consideration.

(Also see under: Penal Code, 1860)

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(3) s.313.

(See under: Penal Code, 1860)

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Competition Commission and Competition Appellate Tribunal - Required to pass reasoned

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orders - Held: Competition Commission as well as Appellate Tribunal are exercising very important quasi judicial functions and orders passed by them can have far reaching consequences - The minimum required of them is that orders passed by them are supported by reasons, even briefly - On facts, impugned orders passed by Competition Commission and Appellate Tribunal are bereft of any reasons in support of their conclusions and, therefore, cannot be sustained - Matters remanded back to Appellate Tribunal for reconsideration of the entire issue on merits including the preliminary objections raised by appellants - Monopolies and Restrictive Trade Practices Act, 1969.

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CONSTITUTION OF INDIA, 1950:

(1) Art. 32 - Writ of habeas corpus.

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(2) Arts. 32 and 142.

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(3) Art. 141 - Determination made by Supreme Court on merits - Proposition upheld as legal, extended to other similarly situated parties since they were also heard by the Court.

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no bar in exercising that jurisdiction, since the order passed by Joint Registrar was arbitrary and in clear violation of second proviso to s.53(1) of the Act - Madhya Pradesh Co-operative Societies Act, 1960 - s.78.

State of M.P. and Others v. Sanjay Nagayach and Ors. 738

CONSTITUTIONAL LAW:

Separation of powers - Issuance of directions by constitutional courts in case of legislative vacuum - Held: Simply filling up an existing vacuum till legislature chooses to make appropriate laws, does not amount to taking over the functions of legislature - It is permissible to issue directions if the law does not provide a solution of a problem, as an interim measure, till proper law is enacted by legislature - The Court, therefore, may also issue necessary directions as an interim measure - Constitution of India, 1950 - Arts. 32 and 142.

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CO-OPERATIVE SOCIETIES:

Supersession of elected bodies - Held: Co-operative philosophy on society must rest on free universal association, democratically governed and conditioned by equity and personal liberty - Registrar/Joint Registrar, while exercising power of supersession has to form an opinion and that opinion must be based on some objective criteria, which has nexus with final decision and he is bound to follow judicial precedents - The manner in which

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State Government took so much interest by spending huge public money pursuing the matter upto Supreme Court, that too without following binding precedents of High Court, deprecated - In view of mushrooming of cases in various courts challenging orders of supersession of elected committees, general directions given - Precedent - Judicial deprecation.

(Also see under: Madhya Pradesh Co-operative Societies Act, 1960)

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(See under: Penal Code, 1860) 801 and 884

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DELAY / LACHES:

- (1) (See under: FIR) 815
(2) (See under: SEBI (Substantial Acquisition of Shares And Takeovers) Regulations, 1997) 662

EVIDENCE:

- (1) (i) Circumstantial evidence - Last seen theory.
(ii) Evidence of hostile witness.
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(ii) Variance in the pleadings in plaint and the evidence adduced by plaintiffs - Effect - Held: On facts, the variance was absolutely very little - It did not remotely cause prejudice to defendant - In all circumstances, it cannot be said that because of variance between pleading and proof, the rule of *secundum allegata et probata* would be strictly applicable.
(iii) Evidence - Books of accounts maintained in regular course of business - Held: Should not be rejected without any kind of rebuttal or discarded without any reason.
(Also see under: Code of Civil Procedure, 1908)
Gian Chand & Brothers and Another v. Rattan Lal @ Rattan Singh 601

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(3) Deposition of sole eye-witness - Held: Conviction can be recorded on the testimony of a single witness if his version is clear and reliable, for the principle is that the evidence has to be weighed and not counted - Process to evaluate the evidence of single witness, explained.

(Also see under: Penal Code, 1860)

Kusti Mallaiah v. The State of Andhra Pradesh 815

(4) Conduct of accused - Act of absconding - Effect - Held: Mere abscondance of an accused does not lead to a firm conclusion of his guilty mind - In a given situation, such an action may be part of natural conduct of a person - Abscondance is in fact relevant evidence, but its evidentiary value depends upon surrounding circumstances, and, the same must only be taken as a minor item in evidence for sustaining conviction.

(Also see under: Penal Code, 1860)

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(5) (i) Non-examination of independent witnesses.
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(See under: Narcotic Drugs and Psychotropic Substances Act, 1985) 770
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EVIDENCE ACT, 1872:

(1) s.11 - Omission of important facts affecting probability of the case - Held: Is a relevant factor u/s.11 to judge the veracity of prosecution case.

(Also see under: Penal Code, 1860)

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(2) s.27.

(See under: Penal Code, 1860) 801

FIR:

Delay in registration of FIR - Held: In the instant case, process u/s 174 CrPC was followed after the dead body was located - Relatives of deceased were searching for it - They subsequently identified her photograph and her belongings - In the circumstances, it cannot be said that there has been delay in lodging the FIR - Code of Criminal Procedure, 1973 - s.174 - Delay/Laches.

(Also see under: Penal Code, 1860)

Kusti Mallaiah v. The State of Andhra Pradesh 815

GUJARAT ANIMAL PRESERVATION ACT, 1954:

s.5(1A) - Truck transporting buffalo calves, seized - Application for release of truck - Held: In the case at hand, the vehicle impounded by respondents was transporting 'buffalo calves' which does not fall under the list of prohibited animals mentioned in sub-s. (1A) of s.5 - Thus, s.6B(3) of the Amendment Act, 2011 could not be invoked in order to deny claim of release of vehicle - Further, it is of no use to keep the seized vehicle in the police station for a long period resulting in its natural decay on account of weather conditions - Release of truck ordered - Penal Code, 1860 - s.451.

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(1) Legislative intent.

(See under: Madhya Pradesh Co-operative Societies Act, 1960) 738

(2) Need for legislation.

(See under: Air Force Act, 1950) 781

MADHYA PRADESH CO-OPERATIVE SOCIETIES

ACT, 1960:

(1) (i) s.31(1), second and third provisos and s.31(2) r/w s.49(7A)(i), proviso - Supersession of Board of Directors of District Co-operative Bank - Without prior consultation with RBI - Held: In the instant case, order of supersession is not only in clear violation of second proviso to s.53(1), but also allegations raised in show cause notice are

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deficiencies mostly relating to systems and procedures and are of general nature and not grave enough to overthrow a democratically elected Board of Directors - Board of Directors was superseded illegally, and, therefore, in view of proviso to s. 49(7A)(i), they need to be put back in office and allowed to continue for the period they were put out of office - Costs imposed on State Government and officer concerned - Legislature - Legislative intent.

(ii) s.31 (1), second proviso - Expression 'previous consultation with the Reserve Bank - Connotation of - Held: Previous consultation is a condition precedent before forming an opinion by Joint Registrar to supersede the Board of Directors - In addition to six propositions laid down in the case of *Indian Administrative Services (SCS) Association, U.P.*, one more proposition that may be added is that when the outcome of proposed action is to oust a democratically elected body, previous consultation with RBI is to be construed as mandatory.

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(2) s.78.
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(1) '*Noscitur a sociis*'.
(See under: SEBI (Substantial Acquisition of Shares And Takeovers) Regulations, 1997) 662

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(2) *Audi alteram partem*.
(See under: Code of Criminal Procedure, 1973) 830

(3) *Secundum allegata et probata*.
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MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969:
(See under: Competition Law) 659

MOTOR VEHICLES ACT, 1988:

(i) s. 2(44) and 2(28) - Motor vehicle - 'Tractor', 'Dumper' - Held: Tractor is a motor vehicle in terms of definition u/ss 2(28) and 2(44) - Tractor which is used basically for agricultural purpose and a dumper used in the factory premises, can suitably be adapted for being used on the road, therefore, they will meet the requirement of definition of motor vehicle u/s 2(28).

(ii) s.2(28) - Motor vehicle - 'Jugaad' - Held: Is squarely covered under the definition of motor vehicle as specified u/s 2(28), since it is mechanically propelled and adapted for use on road and, therefore, other relevant provisions of the Act/rules are applicable - Statutory authorities must ensure that 'Jugaad' can be plied only after meeting requirements of the Act - Government of India (Ministry of Shipping, Road Transport and Highways) Circular dated 26.7.2007, clarifying that 'Jugaad' is a vehicle u/s 2(28).

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NARCOTIC DRUGS AND PSYCHOTROPIC

SUBSTANCES ACT, 1985:

(1) ss. 18 and 50 - Seizure of contraband from tool box of scooter of accused - Conviction and sentence of 10 years RI and fine of Rs. 1 lakh - Affirmed by High Court - Held: In the instant case, non-examination of independent witnesses does not affect prosecution case - Evidence of official witnesses is reliable and absolutely trustworthy and court can act upon the same - In case of search of vehicle, s.50 is not attracted - Appeal having been filed in 1996, the 2001 amendment regarding determination of commercial or non-commercial quantity has no relevance - Conviction and sentence upheld - Evidence - Non-examination of independent witnesses - Investigation - Notification SO No. 1055(E) dated 19.10.2001.

Kashmiri Lal v. State of Haryana 770

(2) (i) Search and seizure - Reliance placed only on the testimony of official witnesses / police officials - Non-examination of independent witnesses - Effect - Held: There is no absolute rule that police officers cannot be cited as witnesses and their depositions should be treated with suspect - In the case at hand, evidence of Sub Inspector was supported by Constable, as well as other witnesses - Evidence of police officials being absolutely unimpeachable, no reason to hold that non-examination of independent witnesses affected the prosecution case.

(ii) s.50 - Applicability of - Held: On facts, 32 bags of poppy straw powder weighing 64 Kgs. had been

seized from two bags belonging to accused-appellant - There was no seizure from the person of appellant - Therefore s.50 was not attracted and consequently compliance with s.50 was not required in the facts and circumstances of the case.

Ram Swaroop v. State (Govt. NCT) of Delhi 791

NATURAL JUSTICE:

(1) Personal hearing.

(See under: SEBI (Substantial Acquisition of Shares And Takeovers) Regulations, 1997) 662

(2) *Audi alteram partem*.

(See under: Code of Criminal Procedure, 1973) 830

NAVY ACT, 1957:

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(See under: Air Force Act, 1950) 781

PENAL CODE, 1860:

(1) s.302 - Murder of wife by husband - Circumstantial evidence - Conviction and sentence of life imprisonment awarded by courts below - Upheld - Principles, including the last seen theory, to be applied while convicting the accused on the basis of circumstantial evidence and the issues pertaining to number of witnesses to be examined, discrepancies in depositions, evidence of hostile witness, police official as a witness, motive and explanation of accused u/s 313 CrPC, discussed - Criminal law - Motive - Evidence - Circumstantial evidence - Last seen theory - Evidence of hostile witness - Evidence of police witness -

Discrepancies in depositions.

Rohtash Kumar v. State of Haryana 884

(2) s.302/34 - Murder - Circumstantial evidence - Conviction and life sentence awarded by courts below - Held: The circumstances clearly establish that prosecution has proved the guilt of accused and the circumstances are conclusive in nature to exclude every hypothesis but the one proposed to be proved - The chain of evidence is absolutely complete - Conviction and sentence upheld - Criminal law - Motive - Evidence Act, 1872 - s.27 - Code of Criminal Procedure, 1973 - s.313.

Rumi Bora Dutta v. State of Assam 801

(3) ss.302/34 and 404/34 - Conviction and sentence of life imprisonment - Held: Evidence of sole eye-witness is cogent and trust worthy and has been corroborated by medical evidence and proven by recoveries - Minor discrepancies in evidence of other witnesses cannot be termed even as minor contradictions - Conviction and sentence upheld - Evidence.

Kusti Mallaiah v. The State of Andhra Pradesh 815

(4) s.376(2)(f) and 302 - Rape and murder of minor girl - Circumstantial evidence - Appreciation of - Standard of proof - Expressions 'may be' and 'must be' - Connotation of - Held: Suspicion, however grave, cannot take the place of proof - Large difference between something that 'may be' proved, and something that 'will be proved' - Court must

draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime - In the instant case, it cannot be held that the circumstances clearly point towards the guilt of appellant - Burden lies not only on the accused to prove his innocence, but also upon the prosecution, to prove its case beyond all reasonable doubt - In a case of circumstantial evidence, burden of proof on prosecution is much greater - Conviction of appellant set aside - Evidence - Code of Criminal Procedure, 1973 - s. 313.

Sujit Biswas v. State of Assam 830

(5) s.451.

(See under: Gujarat Animal Preservation Act, 1954) 648

PLEA:

Plea raised for the first time in the submissions made before Supreme Court.

(See under: SEBI (Substantial Acquisition of Shares And Takeovers) Regulations, 1997) 662

PRECEDENT:

(See under: Co-operative Societies) 738

PREVENTION OF CORRUPTION ACT, 1988:

(i) s.19(1) read with ss. 7, 13(1)(d) and 2 - Public servant - Sanction for prosecution - Demand and acceptance of illegal gratification - Held: When there is an order of sanction by competent authority

indicating application of mind, the same should not be lightly dealt with - Minor irregularities and flimsy technicalities are to be ignored and cannot be allowed to become tools in the hands of accused - Since trial court has also recorded its conclusions on merits dealing with every aspect and there has been no deliberation on merits by High Court, matter remanded to High Court.

(ii) s.19(1) - Public servant - Sanction for prosecution - Principles culled out.

State of Maharashtra Through C.B.I. v. Mahesh G. Jain

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REMEDY:

Alternate remedy.

(See under: Constitution of India, 1950)

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SEARCH AND SEIZURE:

(See under: Narcotics Drugs and Psychotropic Substances Act, 1985)

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SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997:

(i) Regulation 27 r/w Regulation 10 - Order of SEBI rejecting request of appellant for withdrawal of offer to acquire equity shares - Challenged for denial of oral hearing - Held: Not being given an opportunity of oral hearing cannot always be equated to a situation, where no opportunity is given to a party to submit an explanation at all - The entire material on which the appellants were relying was placed before SEBI and on its consideration the offer of appellants was rejected - Therefore, it cannot be said that the appellants have been in any manner

prejudiced by non-grant of opportunity of personal hearing - Administrative law - Natural justice - Personal hearing.

(ii) Regulation 27(1)(b)(c) and (d) - Rejection of request for withdrawal of offer to acquire equity shares - Held: Rejection of request made by appellants for withdrawal from the public offer or exemption under Regulation 27(1)(d) cannot be said to be an order causing adverse civil consequences - Appellants had made an informed business decision - Normally, the public offer once made can only be withdrawn in exceptional circumstances as indicated in Regulation 27(1) (b), (c) and (d) - SEBI as well as the SAT have correctly concluded that withdrawal of the open offer in the given set of circumstances is neither in the interest of investors nor development of the securities market - Interpretation of statues - Eiusdem generis - Maxim 'noscitur a sociis'.

(iii) Regulation 27(1) - Order of SEBI rejecting request for withdrawal - Plea of delay in passing the order - Held: Plea was not raised before SAT - It cannot be permitted to be raised for the first time in the submissions made before Supreme Court - Even on merits, there was no delay on the part of SEBI in approving the draft letter of offer - Securities and Exchange Board of India Act, 1992 - s.15Z - Delay/Laches.

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SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992:
s.15Z.

(See under: SEBI (Substantial Acquisition of
Shares And Takeovers) Regulations, 1997) 662

SERVICE LAW:

(1) (i) Posting (or transfer) beyond the cadre (or parent department) - Appellants selected and appointed as Assistant Surgeons - But posted against vacant posts of Senior/Junior House Officers, at Government Medical College - Held: Though the posts of Assistant Surgeons were created by Health and Medical Education Department of State Government, the said department comprised of two independent Directorates, namely, the Directorate of Health Services and the Directorate of Medical Education - Appellants were substantively appointed to the Directorate of Health Services, and not in the Directorate of Medical Education - Their posting at Government Medical College was beyond their parent cadre and, therefore, by way of deputation - Reversion/repatriation of the appellants to their parent department, i.e., the Directorate of Health Services, affirmed.

(ii) Posting (or transfer) beyond the cadre (or parent department) - Consent of employee - Relevance and determination of - Held: An employee's posting (or transfer), against his will, to a department other than the one to which he is appointed, would be impermissible - But willingness of posting beyond the cadre (and/or parent department) need not be

expressly sought and can be implied - In the instant case, consent of appellants was tacit and unquestionable.

Kavi Raj & Others v. State of J&K & Ors. 620

(2) (i) Selection - Panel not indicating preference - Effect of - Post of Director General, All India Radio - Held: The panel sent earlier does not specifically state that the recommendations were in order of merit or in order of preference as determined by the Board - The subsequent recommendation was made in order of preference by deliberation - Even after three members were substituted, it would not have made any difference as majority of the earlier Members were there and they had given preference in favour of fourth respondent - Therefore, there is no flaw in the three Members participating in the short-listing of the names and giving preference - There is no element of legal malice.

(ii) Selection - Recommendation in order of preference - The term 'preference' - Connotation of.

G. Jayalal v. Union of India and Others 868