



THE INDIAN LAW INSTITUTE (Deemed University)



WHAT THE SUPREME COURT HAS SAID ?

Evidence has to be weighed and not counted

The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Indian Evidence Act, 1872. Thus, there is no legal impediment in convicting a person on the sole testimony of a single witness. It is not the number, the quantity, but the quality that is material. The Supreme Court held, test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.

[*Kunju @ Balachandran v. State of Tamil Nadu*, decided on January 16, 2008]

Presumption of marriage is rebuttable

When Section 50 read with Section 114 of the Indian Evidence Act, 1872, it is clear that the act of marriage can be presumed from the common course of natural events and the conduct of parties as they are borne out by the facts of particular case. The Supreme Court held that where the partners lived together for long spell as husband and wife there would be presumption in favour of wedlock. The presumption is rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place.

[*Tulsa & Ors. v. Durghatiya & Ors.*, decided on January 15, 2008]

Applicability of Section 34 IPC

The Supreme Court has in *Sewa Ram and Another v. State of U.P.* Criminal Appeal No. 1695 of 2007 reiterated the application of Section 34 IPC thus:

"Under the provision of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application the principles enunciated in Section 34, when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone".

[*Sewa Ram and Another v. State of U.P.*, Criminal Appeal No. 1695 of 2007 decided on December 11, 2007]

Distinction between exceptions 1 and 4 to S-300 IPC - reiterated

In *D. Sailu v. State of A.P.*, Cr. App. No. 1592 of 2007, the Supreme Court reiterated the distinction between exception 1 and 4 to S. 300 as follows:-

"The Fourth Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self Control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do."

The Court also reminded that where the eyewitness's account is found credible and trustworthy medical opinion pointing to alternative possibilities is not accepted as conclusive.

[*D. Sailu v. State of A.P.*, Cr. App. No. 1592 of 2007, decided on December 18, 2007]

Test formulated for review under O. 47 r. 1

The apex court discussed the question whether the High Court is justified in allowing Review Application under O. XLVII r. 1 of C. P.C.? The court formulated the following tests to find whether a

review is permissible: (a) from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed; (b) on account of some mistake; (c) where error is apparent on the face of the record or is palpable wrong; (d) any other sufficient reason. While dismissing the appeal the court held that if the judgment or order is vitiated by an apparent error or it is a palpable wrong and if the error is self evident, review is permissible under O. XLVII r.1.

[*B. Bagirathi Ammal v. Palani Roman Catholic Mission*, Civil Appeal 78-79/2002 decided on December 6, 2007]

Operative part of judgment is to be effective

In *Murugan v. State through Inspector of Police*, Cr. App. No. 1276 of 2005 the Supreme Court noticed that in the High Court's judgment the period of imprisonment imposed as punishment was mentioned differently in the beginning of the judgment and the operative part of judgment. The court ruled that the period mentioned in the operative part shall be taken to be correct.

[*Murugan v. State through Inspector of Police*, Cr. App. No. 1276 of 2005 decided on December 4, 2007]

Intention and Recklessness - Distinguished

The Supreme Court in *Naresh Giri v. State of M.P.* in App. No. 1530/2007 distinguished the mental state required under

section 302 IPC from the one required under section 304A IPC. It was a case wherein the driver of a bus, which was hit by a train in an unmanned Railway gate killing two, was charged, among other sections, under Section 302 IPC. He challenged the charge on the basis that he had no intention to cause death. The Court rightly upheld his contention observing thus:

Recklessness covers a whole range of states of mind from failing to give any thought at all to whether or not there is any risk of those harmful consequences, to recognising the existence of the risk and nevertheless deciding to ignore it.

[*Naresh Giri v. State of M.P.* in App. No. 1530/2007 decided on November 12, 2007]

Obligation to explain the injuries on the accused

The Supreme Court in *State of U.P. v. Avtar Singh*, Criminal Appeal No. 54 of 2001 explained the law on obligation to explain the injuries on the accused thus:

If the witnesses examined on behalf of the prosecution are believed by the court in proof of guilt of the accused beyond reasonable doubt, question of obligation of prosecution to explain injuries sustained by the accused will not rise.

[*State of U.P. v. Avtar Singh*, Cr. App. No. 54 of 2001, decided on November 12, 2007]

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[*State of U.P. v. Atar Singh*, Criminal Appeal No: 54 of 2001 , decided 12-11-07]

Dying

Declaration

In this case there were two dying declarations though one was made before the Magistrate. But the forensic expert opinion which remained unimpeached raised doubt as regards the condition of the deceased to make a voluntary and truthful statement. After examining the case law the court came to the conclusion that “the dying declaration must inspire confidence so as to make it safe to

act upon. Whether it is safe to act upon a dying declaration depends upon not only the testimony of the person recording dying declaration – *be it even a magistrate* but also all the material available on record and the circumstances including the medical evidence” (Emphasis supplied). And the court refused conviction on the basis of dying declaration.

[Nallapati Sivaiah v. Sub-Divisional Officer, Guntur, A.P., Cr. App. No. 1315 of 2005, decided on September 26, 2007]

Section 307

The court delved into the ingredients constituting an offence under S. 307 and held that there are 2 ingredients necessary to decide culpability under the section and they are:

- i) There must be intention of or knowledge relating to the commission of murder**
- ii) There should be an act towards its commission.**

[Prakash Chandra Yadav v. State of Bihar & Ors., Cr. App. No.1427 of 2007 Dated October 12, 2007]

Common Intention

The court reiterated that in order to convict vicariously under section 34, it is not necessary to prove that each and every accused had indulged in some overt act inflicting deadly injuries. It is enough if the material available on record discloses that the overt act of one or more of the accused was or were done in furtherance of common intention.

[*Paramjit Singh @ Mithu Singh v. State of Punjab*, Cr. App. No. 1474 of 2005, decided on October 31, 2007]

Administration of Criminal Justice

In this case a criminal revision petition was dismissed by the High Court as inspite of the notice, nobody appeared for the petitioner. The apex court held that a criminal matter cannot be dismissed for default and must be decided on merits. And the same holds true for criminal revision as well.

[*Madan Law Kapoor v. Rajiv Thapar & Ors.*, Cr. App. No. 1150 of 2007 decided on August 31, 2007]

Sentencing

In the instant case the apex court reversed the judgment of the High Court wherein the court had reduced the punishment of 7 years R.I. for rape of a 10 year old child to two and half years R.I. The court reasoned that the accused was a young boy of 18 years belonging to Vaddara Community and illiterate and hence it was proper to reduce the sentence. The apex court deprecating the practice of taking resort to “special and adequate reasons” – in a casual manner held that “Judicial response to human rights cannot be blunted by legal jugglery”. The apex court restoring the sentence given by the trial court held that the measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused the state and age of the sexually assaulted female and

the gravity of the criminal act.

[State of Karnataka v. Raju, Cr. App. No. 782 of 2001 decided on September 14, 2007]

Judicial Propriety

The court implored the judiciary to show restraint in summoning senior officials. No doubt they have been vested with the authority to do so but it should be sparingly used in rare and exceptional circumstances. The judiciary must have respect for the executive and the legislature.

[State of Gujarat v. Turabali Gulamhussain Hilani & Ors., Cr. App. No. 1338 of 2007, dated October 4, 2007]

Delay in acquittal by the High Court - A ground for mitigation

The decision of the Supreme Court in *State of Rajasthan v. Munshi*, Criminal Appeal No. 928 of 2001 indicates that the Supreme Court may mitigate the sentence if the decision of acquittal was reserved after a long time.

The Court observed thus:-

"The learned counsel for the accused has finally pointed out that the incident had occurred way back in 1994 and some mitigation therefore in the quantum of sentence was called for especially as the High Court had found that no case had been

made out against the accused. We accordingly reduce the sentence awarded by the trial court from 10 years R.I. to 7 years R.I. the other part of the sentence shall remain as it is."

[*State of Rajasthan v. Munshi*, Criminal Appeal No. 928 of 2001, decided on October 12, 2007]

**Extent of protection
afforded by Section 438 Cr. PC.**

The Supreme Court in *Naresh Kumar Yadav v. Ravindra Kumar and Ors.*, Criminal Appeal No. 1462 of 2007 declared thus:

"As observed in *Salauddin's* case (AIR 1996 SC 1042) the protection in terms of Section 438 is for a limited duration during which the regular court has to be moved for bail. Obviously, such bail is in terms of Section 439 of the Code, mandating the applicant to be in custody".

[*Naresh Kumar Yadav v. Ravindra Kumar and Ors.* Criminal Appeal No. 1462 of 2007 decided on October 23, 2007]

**Default sentence
under the NDPS Act reduced**

In *Shanti Lal v. State of M.P.*, Criminal Appeal no. 1375 of 2007, the Supreme Court ordered that in default of payment of fine of rupees one lakh under Section 18 of NDPS Act, the convict need undergo imprisonment for 6 months instead of 3 years as ordered

by the trial court and the High Court.

[*Shanti Lal v. State of M.P.*, Criminal Appeal no. 1375 of 2007, decided on October 8, 2007]

Factors that influence courts to grant bail

In *Jaya Simha v. State of Karnataka*, Criminal Appeal No. 196/2007, the Supreme Court granted bail to the petitioner who was denied bail by the High Court on several occasions. Among the factors mentioned the following seem to have influenced the court in granting bail:

- 1. Appellant was in jail for 3 years 9 months.**
- 2. Charge sheet was made only in 2006.**
- 3. 256 witnesses have been cited.**
- 4. It is likely to take a long time for completion of trial.**
- 5. Co-accused has already been granted bail.**

(*Jaya Simha v. State of Karnataka*, Criminal Appeal No. 196/2007, decided on September 21, 2007)

Reversing of acquittal by the High Court

In *Jagdish & Another v. State of M.P.*, Criminal Appeal No. 988 of 2006 the Supreme Court reversed the conviction registered by the High Court on the ground that the High Court was not right in reversing the acquittal recorded by the trial court on appreciation of evidence. The court relied on its decision in *Kallu @ Masih v. State of M.P.* (2006) 10 SCC 313.

[*Jagdish & Another v. State of M.P.*, Criminal Appeal No. 988 of 2006 decided on September 18, 2007]

Conviction in dowry death case

In *M. Srinivasulu v. State of A.P.* Criminal Appeal No. 11 of 2002 the Supreme Court essayed on the interrelationship between Section 304B and Section 498A read with Section 113B Evidence Act thus:

“It is to be noted that Section 304B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The Explanation to Section 498A gives the meaning of ‘cruelty’. In Section 304B there is no such explanation about the meaning of ‘cruelty’. But having regard to common background to these offences it has to be taken that the meaning of ‘cruelty’ or ‘harassment’ is the same as prescribed in the Explanation to Section 498A under which ‘cruelty’ by itself amounts to an offence. Under Section 304B it is ‘dowry death’ that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498A. A person charged and acquitted under Section 304B can be convicted under Section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections.

As regards the appreciation of evidence by the trial court and High Court, the Supreme Court said:

“What the trial court and the High Court appears to have done is to pick up one line from one place and another

from another place and conclude that there was demand of dowry. Reading of the letters in the entirety show that there was, in fact, no mention of any demand for dowry.

It may be pertinent to note that both the trial court and the High Court convicted the appellant.

(M. Srinivasulu v. State of A.P. Criminal Appeal No. 11 of 2002 decided on September 10, 2007)

**Number of persons killed
has no bearing on the sentence**

In *Des Raj v. State of Punjab*, Criminal Appeal No. 648 of 2007 the Supreme Court commuted the death sentence to life imprisonment. The appellant was convicted of murder of three persons by the High Court. The Supreme Court revised the sentence reasoning thus:

The repeated loading and firing in utter disregard for life, in the circumstances, is not an indication of extreme depravity or brutality, but of a drunken rage. The trial court and the High Court and the High Court have persuaded themselves to award the death penalty by considering only the aggravating circumstances, and to an extent carried away by the fact that three died and four (two directly and two indirectly) were injured. The mitigation circumstances have not been given their due importance. On a careful balancing of the aggravating and the mitigation circumstances, we find that in

spite of the gravity of the crime involving triple murder, the aggravating circumstances notice and enumerated by the High Court do not outweigh, much less overwhelmingly, the mitigating circumstances. This is not the rarest of rare case, which invites death penalty.

[*Des Raj v. State of Punjab*, Criminal Appeal No. 648 of 2007 decided on September 9, 2007]

Conviction and Sentence

In *Subhash v. State of Haryana*, Criminal Appeal No. 1107 of 2007, the appellants were convicted and sentenced as follows by the High Court:

- (a) Under Section 392 read with Section 397 - 7 years RI**
- (b) Under Section 302 read with Section 134 IPC - Life Imprisonment and Rs. 10,000/- sentences were to run concurrently.**

This was revised by the Supreme Court as follows:

- (a) Under Section 392 read with Section 397 - 7 years RI for each offence.**
- (b) Under Section 304 Part II - 7 years. All sentences were to run concurrent. Since the accused has already served 7 1/2 years RI he was ordered to be released.**

It was in evidence that the deceased who tried to get out of the canal was kicked back to it and thus got drowned. Still the Supreme Court altered the conviction from under section 203 to 304 Part II without much discussion leaving an impression that there was not adequate reasoning.

High Court's

judgment not proper

The Supreme Court in *State of Maharashtra v. Tulshiran Bhanudas Kamble*, Criminal Appeal No. 85-87 of 2000 the Supreme Court criticized the High Court judgment thus:

This is a case of great injustice which has been caused by the judgment of High Court which has acquitted the accused of the offence under section 203 of the Indian Penal Code of flimsy grounds. Such a judgment if upheld will shake the confidence of the public in the judiciary.

The Court further reiterated the principles that if follows in interfering with acquittals in appeals (*Chandrappa v. State of Karnataka*, 2007(3) Scale 90) and reversed the High Court's judgement exercising its jurisdiction under Article 136 of the Constitution.

[*Maharashtra v. Tulshiran Bhanudas Kamble*, Criminal Appeal No. 85-87 of 2000 decided on August 21, 2007]

due to cardiac arrest - meaning

In *State of Haryana v. Jagat Paul*, Criminal Appeal No. 981-982 of 2000 the Supreme Court reversed the High Court's alteration of conviction of the accused from under Section 302 to one under Section 325 of the ground that the death was caused due to cardiac arrest. In fact the trial court had correctly identified the causes of death as the injuries inflicted by the accused. It rightly concluded the cardiac arrest is a symptom of death and that it was caused by the injuries. The Supreme Court reversed the High Court ruling and upheld that the trial court's conviction of the accused under Section 302/34 IPC.

[*State of Haryana v. Jagat Paul*, Criminal Appeal No. 981-982 of 2000 decided on June 20, 2007]

Applicability of Section 34 IPC

In *Lala Ram v. State of Rajasthan*, Criminal Appeal No. 1116 of 2006 the Supreme Court reiterated that Section 34 is applicable even if no injury has been caused by the particular accused himself. For applying Section 34 it is not necessary to show some overt act on the part of the accused (See also *Amit Singh Bhikam Singh Thankur v. State of Maharashtra*, 2007 (2) SCC 310.

[*Lala Ram v. State of Rajasthan*, Criminal Appeal No. 1116 of 2006, decided on June 20, 2007]

Scope of S. 319 Cr.P.C.

In this case, the High Court had quashed the order of the Sessions Judge under S. 319 Cr.P.C. summoning Respondent No. 2 to face trial. The court relied upon statement of 6 witnesses which had been recorded by the investigation officer under S. 161 Cr.P.C. to the effect that the respondent was at a different place from place of commission of crime. Setting aside the order of High Court, the court reiterated that the burden of establishing the plea of alibi lays squarely on the person pleading it. In this case apart from those statements no legal evidence was adduced.

The court reiterated that if the evidence tendered in the course of any enquiry or trial shows that any person not being the accused has committed any offence for which he could be tried together with the accused, he can be summoned to face trial even though he may not have been charge sheeted by the investigating agencies or may have been discharged at an earlier stage.

Balasubramanyan J further held that there is no rationale in fettering the power under S. 319 Cr.P.C., either by calling it extraordinary or by stating that it will be exercised only in exceptional circumstances. It should be used when the occasion envisaged by the section arises.

[Rajendra Singh v. State of U.P. & Anr., Cr. App. No. 1019 of 2007, decided on August 6, 2007]

Circumstantial evidence

The appellant was convicted under section 302 based on circumstantial evidence. The court upholding the conviction held that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

[Shaik Mastan Vali v. State of Andhra Pradesh, Cr. App. No. 1003 of 2007, decided on August 3, 2007]

Speaking orders

In this case bail was granted to the accused by the High Court without assigning reason. The same had been denied by the Additional Chief Judicial Magistrate, Jaipur and by Additional Sessions Judge, Jaipur. Deprecating the practice of non-speaking orders the court held that though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the court while passing orders on bail application, yet a court dealing with the bail application should be satisfied as to whether there is a prime facie case though exhaustive exploration of the merits of the case is not necessary. The court cancelled the bail and remitted the matter to the High Court for fresh consideration of the bail application.

[*Deepak Singh v. State of Rajasthan & Anr.*, Cr. App. No. 1002 of 2007 decided on August 3, 2007]

Inconsistencies in Dying Declarations - Benefit of doubt to be given to accused

The accused in *Mehiboobsab Abbasabi Nadaf v. State of Karnataka*, Criminal Appeal No. 130 of 2006 was given benefit of doubt because of the inconsistencies in the different dying declarations made by the deceased.

About the acceptability of dying declaration the Court's observation are illustrative. The Court said:

"Conviction can indisputably be based on a dying declaration. But before it can be acted upon, the same must be held to have been rendered voluntarily and truthfully. Consistency in the dying declaration is the relevant factor for placing full reliance thereupon. In this case, the deceased herself had taken contradictory and inconsistent stand in different dying declarations. They, therefore, should not be accepted on their face value. Caution, in this behalf, is required to be applied."

[*Mehiboobsab Abbasabi Nadaf v. State of Karnataka*, Criminal Appeal No. 130 of 2006 decided on August 1, 2007]

Further investigation after the final report possible

The Supreme Court held that a further investigation into a complaint after the filing and disposal of final report in the first instance is possible in view of S. 173(8) Cr. Pc. in *N.P. Jharia v. State of M.P.*, Cr. Appeal No. 1262 of 2001.

[*N.P. Jharia v. State of M.P.*, Cr. Appeal No. 1262 of 2001 decided on July 30, 2007]

Dying Declaration

The court held that dying declaration is only a piece of untested evidence and must like any other evidence, satisfy the court that what is stated therein is the unalloyed truth and that is absolutely safe to act upon it. If after careful scrutiny the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there should be no legal impediment to make it basis of conviction. The court in this case convicted the accused for life imprisonment under section 302 on the basis of dying declaration.

[*Smt. Shakuntala v. State of Haryana*, Cr. Appeal No. 376 of 2002 decided on July 27, 2007]

Retirement of an employee is no bar for hold enquiry

In *U.P. Cooperative Federation Ltd. & Ors. v. L.P. Rai*, it was opined by the apex court that where the charges leveled against the employer are not of a minor or trivial nature, it will not be proper to foreclose the rights of the employer to hold a fresh enquiry only on the ground that the employee has retired from service. It was clarified that it will be open to the appellatant employer to hold fresh enquiry against the respondent in accordance with rules.

[*U.P. Cooperative Federation Ltd. & Ors. v. L.P. Rai*, Civil Appeal No. 3218 of 2007, Special Leave Petition (Civil) No. 21963 of 2003, decided on July 24, 2007]

Presumption under Section 113A Evidence Act is prospective in question

The position of Law and Section 113A of Evidence Act is prospective in operation taken in *Gurbachan Singh v. Satpal Singh*, AIR 1990 SC 2009 came to be reiterated in *Arvind Kumar v. State of Maharashtra*, Criminal Appeal No. 452 of 2001.

[*Arvind Kumar v. State of Maharashtra*, Criminal Appeal No. 452 of 2001 decided on July 24, 2007]

The onus of proving the source of deposit is on the depositor

An appeal was filed against the order of the assessing officer who treated certain amount, the source of which was not explained to him, as undisclosed income of persons in whose names the deposit appeared. Since the deposit appeared in the names of partners in a firm, the Tribunal, on appeal held that since the claim was made by members of the public, it was not proper to treat the amount as income from undisclosed source of various assesses and it was necessary to link up all these amounts with the books of the firm. The Supreme Court on finding that the firm a fictitious one held that when there is no explanation regarding the source of investment, the onus of proving the source of deposit primarily rests on the persons in whose names the deposit appeared in various banks. By reversing the order of Tribunal the court held that the IT Department was right in making individual assessments in the hands of respondent assesses.

[*Commissioner of Income Tax, Salem v. K. Chinnathamban*, decided on 24 July, 2007)

Sanction to prosecute

A person was chargesheeted during the period when he was under dismissal from service. Subsequently, he was reinstated. The contention was that since order of dismissal was set aside, he is deemed to be in service during the relevant period. The Court, rejecting it, held that the deeming provision is operative for the purpose for which it has been created and cannot be extended beyond the legitimate field and hence, protection available under Section 19 of Prevention of Corruption Act is not available to the appellant.

[*B.S. Goraya v. U.T. of Chandigarh*, Criminal Appeal No. 1205 of 1999 decided on July 23, 2007]

Vicarious liability of a director of a company

The Court held that the Director would be vicariously liable under Section 138 of the Negotiable Instruments

Act only when he is responsible to the company for the conduct of the business of the company. Such responsibility cannot be inferred from the fact that he negotiated for obtaining financial assistance on behalf of the company. Vicariously liability has to be pleaded and proved. It cannot be a subject of mere inference.

[K. Srikanth Singh v. North East Securities Ltd. & Anr. Criminal Appeal No. 919 of 2007 decided on July 20, 2007]

Legality of circular prohibiting application for probation

This case challenged the legality of a Circular dated 03.08.2005 issued by the I.G. of Prisons prohibiting Probation Board from considering cases of convicts where appeals are pending before the High Court and also directing not to consider the mercy application for grant of release. The Circular was purportedly issued on the basis of the order of a Division bench questioning (i) the irregularity in release on probation and (ii) the decision making process of the Probation Board as in some cases where prayer for bail had been rejected but convicts have been released on probation.

The Court held that the Circular, to the effect that no case would be considered by the Probation Board where appeal is pending and banning the entertainment of the mercy petition, could not have been issued and it is inconsistent with the Madhya Pradesh Prisoners' Release on Probation Act, 1954 and the rules framed thereunder. By upholding the High Court's order, the Supreme Court held that there cannot be any bar for making an application. Whether the prayer in the application is to be accepted or not is a totally different question.

[State of M.P. v. Kusum, decided on July 19, 2007]

Reinstatement in service without back wages

By setting aside the orders of Central Administrative Tribunal and the High Court, the Hon'ble Supreme Court has ordered reinstatement of the appellants (Constable - Driver) in service without back wages. The Court observed that the dismissal of the appellants was due to one day's delay in reporting of duty and there was a justifiable reason of death of his father. Such matters need to be considered sympathetically.

[Ishwar Singh v. Union of India, Civil Appeal No. 3024 of 2007 decided on 16th July 2007]

Retrospective Seniority

It was observed by the Court that there is a conflict of opinion in respect of retrospective seniority. The court could find two different lines of reasoning which (i) recognised retrospective seniority to the promotees as against the direct recruits and (ii) held ultra virus such retrospective seniority. To finally resolve the controversy, the matter was referred to a larger bench.

[Asis Kumar Samanta & Ors. v. State of West Bengal & Ors., Civil Appeal No. 1331 of 2001 decided on July 12, 2007]

Equal pay for equal work

The Supreme Court by affirming the order of Allahabad High Court held that when persons are discharging same functions and duties there is no reason to refuse some benefits to some of them and treat them differently. The Government of India granted varying dearness allowances to the direct recruits and the deputationists though they were discharging the same functions and duties for more than two decades. The Court ordered to

give same benefits to the directly recruited coordinators working under Nehru Yuva Kendra Sangathan from the date of filing Writ Petition in the High Court of Allahabad.

[*Nehru Yuva Kendra Sangathan v. Rajesh Mohan Shukla & Ors* (Civil Appeal No. 7357 of 2000) decided on July 12, 2007]

Medical expenses of victim of police action

The Supreme Court in *State of Punjab v. Kuldeep Singh*, Criminal Appeal No. 1295 of 2002 ordered the State of Punjab to pay Rs. 17000/- to the respondent towards the cost of his medical expenses. It was an appeal from the decision of the Punjab and Haryana High Courts in a petition under Section 482 Cr. PC praying for compensation in addition to what was granted to him as 'special ex-gratia grant' under a notification of the Government of Punjab in connection with assisting victims of police action against terrorism.

[*State of Punjab v. Kuldeep Singh*, Criminal Appeal No. 1295 of 2002]

Restraints on exercise of power under section 482 Cr. PC necessary

Rejecting a prayer for quashing the FIR in a case involving allegations of commission of offence under Section 406 and 498A IPC, the Supreme Court reiterated the need for exercising restraints on the use of power under Section 482 thus:-

"The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of state should normally refrain from giving a prima facie decision in a case, where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal are magnitude and cannot be seen in their true perspective without sufficient material."

(*Manjula Sinha v. State of U.P.*, Criminal Appeal No. 860 of 2007 decided on July 11, 2007).

Delay is no ground for refusing amendment of pleadings

While allowing the prayer for amendment of the written statement by setting aside the order of Special Court (Trial of offences relating to Transactions in Securities) the Court observed thus:

- (i) delay is no ground for refusal of prayer for amendment.
- (ii) while allowing an application for amendment of the pleadings, the court cannot go into the question of merit of such amendment.
- (iii) the only question at the time of considering the amendment of the pleadings would be whether such amendment would be necessary for decision of the real controversy between the parties in the suit.

[*Andhra Bank v. ABN Amro Bank N.V. & Ors* (Civil Appeal No. 2946 of 2007) decided on 10 July, 2007]

CBI may not be asked to investigate into routine matters

Reiterating its position in CBI through *S.P. Jaipur v. State of Rajasthan*, (2001) 3 SCC 333, the Supreme Court in *CBI v. State of Gujarat* ruled that CBI should not be asked to investigate should be ordered to be done by the investigating agencies of the State.

[S.P. Jaipur v. State of Rajasthan, (2001) 3 SCC 333 decided on June 21, 2007]

Offence under Section 304A IPC

In *State of Rajasthan v. Chittarmal*, Criminal Appeal No. 477 of 2001 the facts were that the accused placed a naked electric wire near the fencing of his property to prevent wild animals entering into his property. The deceased who came in contact with it electrocuted. The accused was charged with murder under Section 302. The High Court altered his conviction under Section 302 to Section 304A IPC. This was upheld by the Supreme Court observing thus:-

Section 304A applies to cases where there is no intention to cause death and no knowledge that the act done in all probabilities will cause death.

[State of Rajasthan v. Chittarmal, Criminal Appeal No. 477 of 2001 decided on June 21, 2007]

Abatement explained

It has been ruled by the Supreme Court in *Kulwant Singh & Kulbansh Singh v. State of Bihar*, Cr. Appeal No. 834 of 2007 that mere failure to prevent the commission of an offence is not by itself an abetment of that offence. The instigation must have reference to the thing that was done, and not to the thing that was likely to have been done by the person who is instigated. The court observed:

"Section 109 is attracted even if the abettor is not present when the offence abetted is committed provided that he had instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to the conspiracy some act or illegal omission takes place or has been intentionally induced the commission of an offence by an act or illegal omission."

Distinguishing the offence under section 109 from the offence under Section 114 the court said:

"There is a distinction between Section 109 and Section 114, Section 114 applies where a criminal first abets an offence to be committed by another person, and is subsequently present at its commission. Active abetment at the time of committing the offence is covered by Section 109 and Section 114 is clearly intended for an abetment previous to the actual commission of the crime, that is before the first steps have been taken to commit it".

[Kulwant Singh & Kulbansh Singh v. State of Bihar, Cr. Appeal No. 834 of 2007 decided on June 21, 2007]

Right to Private Defence

The Supreme Court in *Krishna v. State of U.P.*, Cr. Appeal No. 835/2007 ruled that where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused.

[Krishna v. State of U.P., Cr. Appeal No. 835/2007 decided on June 21, 2007]

Delay is no excuse to stop Criminal Proceedings

It has been noticed by the Supreme Court in *Balbir Singh v. State of Delhi*, Cr. Appeal No. 844 of 2002 that delay is no ground to stop proceedings under the TADA. Indeed, there was delay of more than three years when the court started proceedings under TADA after the appellant was discharged by the lower court of want of sanction by the authority concerned.

The Supreme Court following its decisions in *Ramachandra Rao v. State of Karnataka*, 2002 (4) SCC 578 rightly held the initiation of proceedings proper.

Expunging unnecessary criticisms

In an appeal filed by the State of U.P. against unnecessary criticisms leveled by the High Court with reference to the crime situation and the system's response to it the Supreme Court ordered deletion of observations and criticisms:

The Court's observations are instructive:

“This court has repeatedly held that observations which are really unnecessary for disposal of a case should not be made. A bare reading of the High Court's order shows that general and sweeping observations were made without indicating any basis therefore. When there was no allegation by anybody about any lapse in the investigation and, in fact, the High Court's judgments does not indicate any infirmity in the investigation, there was no necessity for casting aspersion on the bona fides of the police officials and for making serious criticisms”.

[*State of U.P. v. Surendra Kumar Solanki*, Cr. Appeal No. 934 of 2002 decided on June 21, 2007].

Opening of Study Centers

The Supreme Court in *Kurmanchal Institute of Degree & Diploma & Ors. v Chancellor, M.J.P. Rohilkhand University & Ors.* (Civil Appeal No. 2698 of 2007) decided on May 17, 2007 held that study centers of the University cannot be permitted to be established beyond the territorial jurisdiction of the University. The court observed that if they are permitted, then it will create a chaos. The court also compared the study centers with that of a college as both requires the appointment of teachers, conduct of practical classes, provision for other amenities and overall supervision by the university.

Admission and Relevant Fact

In *Gannmani Anasuya & Ors. v. Parvatini Amarendra Chowdhary & Ors.* (Civil Appeal No. 7318 of 2000) decided on May 17, 2007, the court reiterated that an admission made by a party need not be proved and can be used against him. If a witness, in cross-examination, accepts the correctness of a document, the same may be used against him having regard to the provisions of the section 145 of the Indian Evidence Act whereof the only requirement would be that his attention is drawn before a writing can be proved. The court also held that an admission made by a Karta of the Hindu Undivided family, who is managing the family property as well as family business affairs would be a relevant fact.

Over Invoicing of Goods

In *Commissioner of Customs, New Delhi v M/s Brooks International & Ors.* (Civil Appeal No. 4559-4561 of 2002) decided on May 24, 2007, the consignment of the respondent was confiscated on two grounds. One that the goods were prohibited goods and two that the value of the goods was much less than the amount of drawback

claimed which is violation of Customs Act 1962. The Supreme Court squarely quoted *Om Prakash Bhati v Commissioner of Customs, Delhi* (2003 (6) SCC 161), which was decided by the larger bench and remanded the matter to the CEGAT for fresh consideration. In *Om Prakash* the court had ruled that where export value is not correctly stated, but there is intentional over-voicing, then it would amount to violation of conditions for import/ export. The court observed that the purpose for over invoicing may be money laundering and which would certainly amount to illegal transaction in foreign currency.

Execution of Will

While examining the interpretation and application of Section 63 of Indian Succession Act, 1925 and Section 68 of Indian Evidence Act, 1872. The Court observed thus:

Before granting lecture of administration the court must satisfy itself not only about the genuineness of the Will but also satisfy itself that it is not fraught with any suspicious circumstances.

Existence of suspicious circumstances itself may be held to be sufficient to arrive at a conclusion that execution of the will has not duly been proved.

[*Benga Behera & Anr. v. Braja Krishore Nanda & Ors.* decided on May 15, 2007]

Presumption of joint family

In a suit for partition, the court has observed:

The fact that persons were residing together or processing some cultivating lands jointly, by itself would not give rise to a presumption that there existed a joint family fund having a joint nucleus. There being absence of any 'joint family' governed by the school of Hindu Law, there could not have existed any joint fund, which conceptualizes existence of a nucleus.

[*Thimmappa Rai v. Ramanna Rai & Ors.* decided on May 9, 2007]

Exception 4 to Section 300 IPC explained

In *Byvarapu Raju v. State of A.P.*, Cr. Appeal No. 899 of 2005 the Supreme Court distinguished exception 4 to S. 300 from exception 1 to S. 300 IPC thus:

"In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden flight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to ulilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1."

The instant case came under exception 4 and therefore the court alerted conviction of the accused from S. 302 to S. 304 Part I IPC reducing the sentence to 10 years' imprisonment.

Concessions made by Counsels in the Court

In *Jagvir Singh v. State (Delhi Admn.)* Cr. App. No. 67 of 2002 the Supreme Court ruled that if a party thinks that the happening in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the the attention of the very judge who has made the record.

It was a case in which the appellant contended that he did not concede to the issue of his appeal being confined to the question of sentence only.

The Supreme Court advised the High Court to give a hearing if the appeallant makes a motion as to the claim that no concession was made.

[*Jagvir Singh v. State (Delhi Admn.)* Cr. App. No. 67 of 2002 decided on June 5, 2007]

Sheel Kr. Roy v. Secy M/o Defence & Ors.

The Court had to deal with imposition of two punishments by order of Court Martial Proceedings on a army officer viz dismissal of service and rigorous imprisonment for unauthorized absence. Keeping in view the delicate mental health of the appellant the Court was of the view that gross injustice has been meted out a more technicalities. The Court while directing that the appellant should be deemed to have been discharged from 7-9-1991 (The date from which he has not been working) and would be entitled to all benefit arising therefore held:

“It is now a settled legal principle which has firmly been accepted throughout the world that a person merely by joining Armed Forces does not cease to be a citizen or be deprived of his human or constitutional right”.

[*Sheel Kr. Roy v. Secy M/o Defence & Ors.* Cr. App. No. 1082 of 2005 decided on May 18, 2007]

Offences Under Section 306 and 304 B IPC

The Supreme Court in *Bhagwan Das v. Kartar Singh* Cr. App. No. No. 720 of 2007 observed thus:-

"In our opinion the view taken by the High Court is correct. It often happens that there disputes and discords in the home and a wife is often harassed by the husband or her in-laws. This, however, in our opinion would not by itself and without something more attract section 306 IPC read with Section 107 IPC.

However, in our opinion mere harassment of wife by husband due to differences per se does not attract Section 306 read with Section 107 IPC, if the wife commits suicide. Hence, we agree with the view taken by the High Court. We, however, make it clear that if the suicide was due to demand of dowry soon before her death then Section 304 B IPC may be attracted, whether it is a case of homicide or suicide".

[*Bhagwan Das v. Kartar Singh* Cr. App. No. No. 720 of 2007 decided on May 14, 2007]

As soon as the new select list is prepared, the old list comes to an end

The writ petitioner though got selected as lecturer in July 2001, had never received a letter of appointment. The authorities (Uttar Pradesh Higher Services Commission) contented that they have sent the communication but the petitioner has never joined. The question for the court to answer was whether the petitioner can be

appointed in pursuance of a post created subsequent to her empanelling in the select list. For the new post a new list was prepared in March 2003. The court held that a select list prepared for filling up of vacancies would be valid for filling up those vacancies for which it was prepared. As soon as the new select list is prepared, the old list comes to an end.

[*State of U.P. & Anr. v. Nidhi Khanna & Anr.*, Civil Appeal No. 2442 of 2007 decided on May 11, 20007]

Raja Lal Singh v. The State of Jharkand

The Court held that for conviction under, S. 304. B the following must be proved: (1) Death of a women occurring otherwise than under normal circumstances, within 7 years of marriage (ii) Soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry. And it was further held that “soon before her death” does not necessarily mean immediately before her death. It is an elastic expression and can refer to a period either immediately before death of the deceased or within a few days or few weeks before death. In this case, harassment for dowry 10 or 15 days before the death was enough to book the accused under S. 304 B.

[*Raja Lal Singh v. The State of Jharkand Cr. App No. 514 of 2006* decided on May 8, 2007]

Sujoy Sen S. v. State of West Bengal

The case was based on circumstantial evidence. It is a settled rule with that in such cases the prosecution has to establish the chain of circumstances which inevitably connect the accused to the crime. In this case a girl had been killed and her father was the first informant and had filed a FIR. Later he said that he saw the accused leave his house when he got back from work. This vital fact was never mentioned in the FIR. The court held that FIR need not be an encyclopedia. But such a vital fact could not have been slipped from the father's mind and he would have definitely mentioned the fact in the FIR. It is not a minor discrepancy in the FIR which could be condoned. Hence the accused was given benefit of doubt as a vital link in the chain of circumstantial evidence was missing.

[*Sen S. v. State of West Bengal Cr. App No. 202 of 2006* decided on 8 May, 2007]

Abdul Aziz v. State of Rajasthan

The appellant was charged under Ss. 302, 148, 149 and 460 IPC and was convicted under S. 460 IPC by the trial Court. The State did not file an appeal for enhancement or conviction under S. 302 IPC. But in the appeal filed by the appellant the High Court convicted him under s. 302/149 IPC on the ground that the trial Court had inadvertently convicted the appellant under S. 460 IPC though he was liable to be convicted under S. 302 IPC. No prior notice for enhancement was issued by the High Court. The Supreme Court saw it as travesty of justice and ordered for punishment as was given by trial court.

[*Abdul Aziz v. State of Rajasthan Cr. App No. 665 of 2007* decided on May 3, 2007]

Dying declaration - Not accepted

A dying declaration retracted by the maker in *Anil Prakash Shukla v. Arvind Shukla*, Cr. Appl. No. 830 of 2002 came to be rejected both by the High Court and the Supreme Court. In this case the magistrate who recorded the declaration did not appear to give evidence.

[*Anil Prakash Shukla v. Arvind Shukla*, Cr. Appl. No. 830 of 2002 decided on May 1, 2007]

Powers of Appellate Courts

The Supreme Court has identified the powers of appellate courts while dealing with an appeal against an order of acquittal thus: -

1. An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;
2. The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law;
3. Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
4. An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
5. If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

These came to be reiterated in *Ramappa Halappa Pujar v. State of Karnataka*, Cr. App. No. 1344 of 2005 (Decided on April 27, 2007)

Ramappa Halappa Pujar & Ors. v. State of Karnataka

The appellants challenged the reversal of acquittal order by the High Court for offences punishable under Sections 143, 147, 148, 341, 342, 504 and Section 149 I.P.C. The Court dismissing the appeal reiterated that various expressions, such as "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances" etc. are not intended to curtail the powers of the appellate Court in an appeal against acquittal. They are in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

[*Ramappa Halappa Pujar & Ors. v. State of Karnataka* Cr. App, No. 1344 of 2005 decided on Apr 27, 2007]

Punishment for throttling to death without motive

In *Shakti Dan v. State of Rajasthan* Cr. App. No. 630 of 2007 the Supreme Court essayed on S. 300 (4) IPC thus:

"It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a

particular person or person - being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the higher degree without any excuse for incurring the risk of causing death or such injury as aforesaid."

It may be pertinent to note that it was a case in which the mother of the accused was throttled by him to death. He was punishable under Section 304 Part I IPC. Accordingly, he was sentenced to 10 years' R.I.

[*Shakti Dan v. State of Rajasthan* Cr. App. No. 630 of 2007 decided on April 26, 2007]

Sitting Judges should be appointed as Chairman of State Legal Services

Authority

In *Supreme Court Bar Association v. Union of India*, Writ Petition (Civil) No. 27 of 2007, the Supreme Court categorically ruled that u/s 6(2) of Legal Services Authority Act, sitting judges of the High Courts, should be appointed Executive Chairman of State Legal Services Authority. The Court observation are worth nothing:

"Though in terms of Section 6(2) retired judge can be appointed, but that shall have to be in exceptional circumstances. the advantage of having a sitting judge as the Chairman far outweigh the disadvantages, some of which have been highlighted by learned counsel for the States where retired Judges are appointed. Therefore, normal rule is that a sitting Judge should be appointed as the Chairman and only when unusual difficulties exist, a retired Judge may be appointed. That has to be the exception and not the rule."

(Decided on March 13, 2007)

Conviction is possible on the basis of evidence of one witness

Reiterating that it is quality of evidence and not quantity of evidence, which is material in the instant case, on the basis of the evidence of one eyewitness (who being the son of the deceased was an 'interested witness') conviction was registered by the High Court. It was upheld by the Supreme Court.

It is interesting to note that the Supreme Court after concluding that it would not interfere with the High Court's decision engaged itself in an analysis of its case law dealing with some precedents of Privy Council back and forth . The well established principles do not require, it is stated with respect, this much elaborate discussion of case law. Brevity ensures not only beauty but also clarity.

(Decided on March 13, 2007)

Applicability of S. 106 and presumption under S. 114 of Evidence Act

Holding that besides S. 27, the courts can draw presumptions under S. 114, illustrations (a) and S. 106 of the Evidence Act, the Supreme Court in *Geejaganda Somaiah v. State of Karnataka*, Cr. App. No. 311 of 2007 observed as follows:

"Under Section 27 only so much of the information as distinctly relates to the fact really thereby

discovered, is admissible. While deciding the applicability of section 27 of the Evidence Act, the court has also to keep in mind the nature of presumption under Illustration (a) to (s) of Section 114 of the Evidence Act. The court can, therefore, presume the existence of a fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relations to the facts of the particular case".

[*Geejaganda Somaiah v. State of Karnataka*, Cr. App. No. 311 of 2007 decided on March 12, 2007]

K. Madalaimuthu & Anr. v. State of Tamil Nadu

The contempt petition filed against two IAS officers for committing delay in the execution of judgment of the court was dismissed on an unconditional apology made by the respondent-condemners. Delay was explained as administrative and procedural one and not due to any wilful disobedience or contempt committed by the petitioners. (Contempt Petition No. 208 of 2006 in Civil Appeal No. 2791-2793 of 2002, decided on Feb. 27, 2007).

Quashing of FIR and investigation by High Court held wrong

In *T. Vengama Naidu v. T. Dora Swamy Naidu* Cr. App. No. 274 of 2007 the Supreme Court disapproved the quashing of FIR and investigation initiated by the magistrate. The High Court quashed the AIR under S.482 on the ground that there was no offence involved. The Supreme Court disapproved it saying thus:

“Our prima facie examination satisfies us that there was ingredients of offence complained of and therefore, at that stage the High Court could not have quashed the FIR as well as the investigation.”

T. Vengama Naidu v. T. Dora Swamy Naidu Cr. App. No. 274 of 2007, decided on February 27, 2007.

Applicability of S.106 Evidence Act in Criminal Trials

The Supreme Court in *Harbans Singh v. State (Govt. of N.C.T. of Delhi)*, Cr. App. No. 212 of 2007 has reiterated that S.106 of Evidence Act is applicable in criminal trials. It casts an obligation on the part of the accused a responsibility of advancing an explanation for his act after the prosecution has proved its case. In the instant case the accused failed to offer an explanation to their transaction involving exchange of Rs.7 lakhs. The Court therefore held them responsible observing thus: -

“It can be seen that the entire case of the prosecution has been proved by the prosecution witnesses except the purpose of the transaction. In the absence of any explanation from the accused in this regard, an adverse inference is in our opinion attracted. They have failed to discharge their onus. It is only for this missing link that the confessional statements were used.”

Harbans Singh v. State (Govt. of N.C.T. of Delhi), Cr. App. No. 212 of 2007 decided on February 15, 2007.

Direct testimony of an eyewitness is preferable

Upholding the judgment of the High Court in *Shyam v. State of MP through P.S. Bercha*, Cr. App. No. 215 of 2007, the Supreme Court observed thus: -

“Over dependence on such opinion evidence, even if the witness is an expert in the field, to checkmate the direct testimony given by an eyewitness is not a safe modus adoptable in criminal cases. It has now

become axiomatic that medical evidence can be used to repel the testimony of eyewitness only if it is so conclusive as to rule out even the possibility of the eyewitness's vision to be true."

[*Shyam v. State of MP through P.S. Bercha* decided on February 15, 2007]

Rarest of rare case – capital punishment restored

In *Ram Singh v. Sonia & Others*, Cr. App. No. 895 of 2005, the Supreme Court reversed the order of the High Court committing the death sentence into life imprisonment and restored the sentence (death sentence) awarded by the trial court because, the case falls under the category of 'rarest of rare case in which 8 relatives of the accused came to be brutally murdered by them.

(*Ram Singh v. Sonia & Others*, Cr. App. No. 895 of 2005, decided on February 12, 2007)

Nature of power under Article 136

Reiterating its position that the power under Article 136 of the constitution is an exceptional power to be exercised sparingly with caution and care and to remedy extraordinary situations occasioning gross failure of justice, the Supreme Court in *Suriyakala v. Mohandoss*, Cr. App. No.188 of 2007 rejected the petition filed after a delay of 888 days.

It was a case wherein the husband of the petitioner got the criminal case filed by the petitioner against him, quashed by the High Court apparently as a result of conciliation between the parties. The Court's observations are illustrative: -

"In the present case we are of the opinion that this is not fit case to be entertained in exercise of our discretion under Article 136. the appellant has also filed a maintenance petition against her husband. What can she possibly get by prosecuting him as well as his family members? The appellant filed the criminal case under Section 498A etc. not only against her husband but also against her husband's father, mother, brother, sister, etc. In exercise of our discretionary jurisdiction under Article 136, we are not inclined to interfere with the impugned Judgment of the High Court quashing the criminal case filed by the appellant."

(Decided on February 12, 2007)

Nature of power under Article 136

Reiterating its position that the power under Art.136 of the Constitution is an exceptional power to be exercised sparingly with caution and care and to remedy extraordinary situations occasioning gross failure of justice, the Supreme Court in *N. Suriyakala v. A. Mohandoss*, Cr. App. No. 188 of 2007 rejected the petition filed after a delay of 888 days.

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mother, brother, sister, etc. IN exercise of our discretionary jurisdiction under Article 136, we are not inclined to interfere with the impugned Judgment of the High Court quashing the criminal case filed by the appellant.”

(Decided on February 12, 2007)

Criminal cases are decided on facts and evidence rather than on case law and precedents

The Supreme Court in *Sayarabano @ Sultanabegum v. State of Maharashtra*, Cr. App. No. 141 of 2006 dismissed the appeal filed by the appellant against her conviction under S.302 IPC on the charge of murdering her daughter-in-law by burning. Though the deceased in her first dying declaration absolved the mother-in-law and others recorded by the Magistrate alleged in the subsequent dying declaration again recorded by the same magistrate that she was brunt by her mother-in-law.

The court observed thus: -

“In our opinion, criminal cases are decided on facts and on evidence rather than on case law and precedents. In the case on hand, there is ample evidence to show that even prior to the incident in question, the appellant used to beat the deceased and ill-treat her. It is in the light of the said fact that other evidence requires to be considered. In our view, both the Courts were right in relying upon the second dying declaration of the deceased treating it as true disclosure of facts by the deceased Halimabi.”

[*Sayarabano @ Sultanabegum v. State of Maharashtra*, Cr. App. No. 141 of 2006, decided on February 08, 2007]

State of Karnataka v. Karnataka State Patel Sangha

There cannot be any discrimination in the allotment of compassionate or ad-hoc pension granted to affected parties under S. 2(n) of Karnataka Village Officers Abolition Act, 1961. The Patel and shanbhogues, had been holders of village offices and discharging identical duties, hence, there is no justification to deny the same benefits to the. (Civil Appeal No. 4163-4164 of 2004, decided on Feb. 8, 2007).

Three degrees of culpable homicide reiterated by the Supreme Court

In *Sellappan v. State of Tamil Nadu*, Cr. App. No.123 of 2007, the Supreme Court observed as follows: -

In the scheme of the IPC culpable homicide is genus and ‘murder’ its specie. All ‘murder’ is ‘culpable homicide’ but not vice-versa. Speaking generally, ‘culpable homicide’ sans ‘special characteristics of murder is culpable homicide not amounting to murder’. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, ‘culpable homicide of the first degree.’ This is the gravest form of culpable homicide, which is defined in Section 300 as ‘murder’. The second may be termed as ‘culpable homicide of the second degree’. This is punishable under the first part of Section 304. Then, there is ‘culpable homicide of the third degree’. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

(*Sellappan v. State of Tamil Nadu*, Cr. App. No.123 of 2007, decided on January 31, 2007)

Imposition of Death Penalty

The Supreme Court in *Bishnu Prasad Sinha v. State of Assam*, Cr. App. No.453 of 2006 ruled that death penalty should not usually be resorted to in cases proved by circumstantial evidence. The Court's observations are instructive:

There are authorities for the proposition that if the evidence is proved by circumstantial evidence, ordinarily, death penalty would not be awarded. Moreover, the appellant No.1 showed his remorse and repentance even in his statement under Section 313 of the Code of Criminal Procedure. He accepted his guilt.

[*Bishnu Prasad Sinha v. State of Assam*, Cr. App. No.453 of 2006, decided on January 06, 2007].

Bar Council's role in Legal Education reiterated

The Supreme Court categorically ruled that as the apex professional body the Bar Council of India is concerned with the standards of the legal profession and the equipment of those who seek entry into that profession.

The Court further upheld the BCI's stand that it should be possible for the authorities to ensure that a person having legal qualifications as presented by the Bar Council alone is appointed as principal of a Law College. Responding to the plea that the Bar Council has now watered down the qualification prescribed for principal's post as a mere degree in law, the Court said thus:

It was stated during the course of arguments that the Bar Council of India itself has watered down the requirement that the Principal of a Law College must have a Postgraduate degree in law and has now provided that it is enough if he has a mere degree in law. This again is a matter for the Bar Council of India to ponder over and to consider whether there is any justification in watering down the qualification for a Principal as either a doctorate in law or a postgraduate degree in law.

[*Bar Council of India v. Board of Mang. Dayanand Coll. of Law and Ors.* Civil Appeal No. 5301-5302 of 2001 decided on November 28, 2006]

Requisite qualification is a must for regularization of service

The respondent was appointed as part time lecturer (temporary) on clock hour basis. He contented to be considered as full timer since he had a workload of 12 teaching periods per week. He had also obtained M. Phil subsequent to his appointment. The question arose for consideration was whether the respondent satisfied the criteria of having a second class Master's Degree and, thus, could have been considered for regular appointment. The Supreme Court held that all appointment must be in accordance with the relevant statute and UGC Rules state that for the purpose of regular appointment as full time lecturer one must obtain 55% in P.G. Since the respondent has only 51% marks in P.G., the respondent does not possess the requisite qualification and not suitable for regular appointment.

[*State of Maharashtra v. Shashikant S. Pujari and others*, Civil App. No. 1386 of 2006, decided on November 24, 2006]

Irretrievable breakdown of marriage is recognized as ground for divorce

The Supreme Court under Art. 142 of the Constitution in *Sanghamitra Ghosh v. Kajal Kumar Ghosh*, Transfer petition (C) No.228 of 2004 followed its decision in *Naveen Kohli v. Neelu Kohli* (2006) 4 SCC 558 and disposed of all the disputes between the parties in accordance with their agreement. [Decided on November 20, 2006]

Last seen theory and burden of proof

In *State of Rajasthan v. Kashi Ram*, Cr. App. No. 745 of 2000 the Supreme Court reversed the High Court's order of acquittal of the respondent who was sentenced to death by the trial court under S.302 IPC on charges of murder of his wife and two children. His house was found locked for several days and he was missing. On opening the house the dead bodies were found. He failed to explain the reasons for his absence. The dead were last seen with him. Explaining the last seen theory the Supreme Court observed: -

The provisions of Section 106 of the evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation, which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act.

The Supreme Court reversed the High Court judgment and sentenced the respondent to life imprisonment.

[*State of Rajasthan v. Kashi Ram*, Cr. App. No. 745 of 2000, decided on November 07, 2006]

Accused and deceased seen together before death

In *Trimukh Maroti Kirkan v. State of Maharashtra*, CRL Appeal No.1341 of 2005 the defense story was that the wife died of snake bite whereas it was proved that she died of asphyxia and that she and the appellant were seen together before her death. The Court affirmed the conviction and sentence of the appellant and observed thus:

“Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.”

(*Trimukh Maroti Kirkan v. State of Maharashtra*, CRL Appeal No.1341 of 2005, decided on October 11, 2006)

Recording of confessions Administration of oath prohibited – Death Sentence set aside

In *Babubhai Udesinh Parmar v. State of Gujarat*, Cr. Appeal No. 1635 of 2005 the Supreme Court set aside the death sentence passed on the appellant on the basis of his confessions in more than one case recorded on the same day. The court disapproved the administration of oath before recording the confessions. The court also noted that the appellant was not given any legal aid.

(*Babubhai Udesinh Parmar v. State of Gujarat*, Cr. Appeal No. 1635 of 2005, decided on November 24, 2006)

Circumstances that lead to proof of guilt should be put to accused under Section 313

Cr. PC

The SC in *Vikramjit Singh @ Vicky v. State of Punjab*, Cr. Appeal No. 1459 of 2005 reiterated that the

circumstances that according to the prosecution, lead to proof should be put to the accused under examination.

In this case the prosecution witnesses turned hostile. The court responded thus:

“It may be an act of dishonesty on their part as contended by Mrs. Kochar but by reason thereof only we cannot hold the appellant guilty of commission of a heinous offence. In view of their statements in the cross-examination giving a complete go by to what had been stated in the examination-in-chief, it is not possible to rely even upon a part of their statement.

It is now a well-settled principle of law that the circumstances which according to the prosecution lead to proof of the guilt against the accused must be put to him in his examination under Section 313 of the Code of Criminal Procedure”

(*Vikramjit Singh @ Vicky v. State of Punjab*, Cr. Appeal No. 1459 of 2005, decided on November 24, 2006)

Prosecution of offence of contempt of lawful authority of public servants

In *State of A.P. v. V. Sarma Rao*, Cr. App. No. 1136 of 2006 on prosecution of offence against public justice in the context of the Land Acquisition Act 1898, the Supreme Court observed: -

The hierarchy of the Courts for the purpose of Section 195 of the Criminal Procedure Code, therefore, will have to be determined, having regard to the nature of the proceedings and the statutes under which the same is required to be determined. We may immediately notice that the Act makes a distinction between filing a complaint by a public servant and a court. Whereas Clause (a) of Sub-Section (1) of section 195 contemplates administrative subordination, Clause (b) contemplates judicial subordination. Each expression used in the Code, therefore, must be understood upon reading the provisions thereof in their entirety and not in isolation.

(*State of A.P. v. V. Sarma Rao*, Cr. App. No. 1136 of 2006, decided on November 10, 2006)

Fresh evidence required for issuing process

In *Anil Singh v. State of Bihar*, Cr. App. No. 1082 of 2006, the Supreme Court reiterated that the power u/s 319 Cr. PC is not to be exercised in a mechanical manner. Only because some evidence has been brought on record, the same by itself may not be a ground to issue process.

[*Anil Singh v. State of Bihar*, Cr. App. No. 1082 of 2006, decided on October 19, 2006)

Notice of Murder not Relevant

In *Major Singh v. State of Punjab*, Cr. App. No. 1231 of 2005, the Supreme Court reiterated that motive of the crime is not important in determining the responsibility in a case of direct evidence.

However, the court reduced the sentence from death to life imprisonment in view of the accused's motive emanating from a suspicion that his sister might have been killed by the deceased. [*Major Singh v. State of Punjab*, Cr. App. No.1231 of 2006, decided on October 19, 2006]

Altering of Charge on the basis of death certificate yet to be admitted

In *Ishwarchand Govadia v. State of Maharashtra* Cr. App. No. 1051 of 2006, the Supreme Court had occasion to consider the legality of the trial Court's alteration of charge on the basis of a fresh death certificate which was to be admitted in evidence after hearing the doctor. The trial court was to decide on the acceptance of the certificate after hearing the doctor. But pending acceptance of the certificate, the trial court on the same day altered the charge to S. 304 B whereas the original charge was under sections 306, 498A read S. 34. This was set aside by the Supreme Court. [*Ishwarchand Govadia v. State of Maharashtra*, Cr. App. No.1051 of 2006, decided on October 13, 2006]

Registration of case for offence disclosed in the complaint is necessary

In *Lallan Chaudhary & Ors. v. State of Bihar & Anr.*, Cr. App. No.1047 of 2006 though the complaint disclosed an offence under S.395, the police registered the case under other sections like S.452/323/34 IPC mechanically. Both the Trial Court and the Session Court did not notice it. The High Court however ordered the Magistrate to proceed with the case as per law. The Supreme Court okayed the direction of the High Court. [*Lallan Chaudhary & Ors. v. State of Bihar & Anr.*, Cr. App. No.1047 of 2006, decided on October 12, 2006]

Consent given under misconception of fact is no consent

In *Yedia Srinivasa Rao v. State of AP*, Cr. App. No. 1369 of 2004 the Supreme Court found that the accused had no intention of marrying the prosecutrix even when he was making the promise at the time of committing sexual intercourse. Even after her becoming pregnant he promised to marry her before the Panchayat. In fact he absconded from the village after making the promise. In such circumstances the Court found that there was no consent and the offence was rape. His conviction and sentence were upheld. [*Yedia Srinivasa Rao v. State of AP*, Cr. App. No. 1369 of 2004 decided on September 29, 2006]

Whether accused can be convicted for an offence for which he was not charged

In the instant case the accused was charged under S. 376/511 IPC and was convicted for the same by the trial court which was upheld by the High Court. But the Supreme Court after detailed examination of S. 375 and related case law came to the conclusion that since penetration was not there the case did not fall under S. 376/511 but under S. 366/354 IPC. Since the charges were not under S. 366/254 the court took refuge of S. 222 Cr. PC and held that the accused charged with major offence can always be convicted for the minor offence, if necessary ingredients of minor offence are present. [*Tarkeshwar Sahu v. State of Bihar*, Cr. App. No. 1036 of 2005 decided on September 29, 2006.]

Right to Speedy Trial

The right to speedy trial is an integral feature of Article 21. Though no time limit can be fixed since it is a relative concept varying from case to case but the trial is vitiated if speedy trial is not granted.. In the instant case not a single witness had been examined by the prosecution for 26 years, hence the court quashed the proceedings against the accused.[*Moti Lal Saraf v. State of J&K and Anr.* Cr. App. No. 774 of 2802, decided on September 29, 2006].

Granting relief under Probations Act

The State represented by *Inspector of Police, Pudukottai, Tamil Nadu v. A Parthiban*, Cr. App. No. 842 of 2003.

It was held that Probation Act cannot be invoked for the benefit of the accused if the Special Act under which he is convicted does not contain any provision extending the benefit. (*Inspector of Police, Pudukottai, Tamil Nadu v. A Parthiban*, Cr. App. No. 842 of 2003, decided on September 29, 2006]

Section 3(2) of the West Bengal Premises Tenancy Act, 1956

The issue before the Court was the interpretation and applicability of Section 3(2) of the West Bengal Premises Tenancy Act, 1956 to leases, which were executed for periods of over twenty years but containing a clause allowing prior determination at the instance of either the lessor or the lessee. The court held: (i) the lease deeds for periods of 20 Yrs. or more would stand excluded from the operation of the 1956 Act except in matters relating to Ss. 31 & 36 thereof; unless the lease was terminated before the expiration. If such a lease was terminated before its full tenure S. 3 (2) would be a defence, but if the lease was allowed to run its full course, this defence would be longer available against eviction. (ii) Further, since the respondent has submitted herself to the jurisdiction under the Transfer of Property Act, 1882 and obtained relief thereunder at an earlier occasion, the respondent is estopped from claiming protection under the provisions of the West Bengal Premises Tenancy Act, 1956 to which she is not, in any event, entitled.

[*Pabitra Kumar Roy & Anr. v. Alita D' Souza*; Civil Appeal No. 2380 of 2001, decided on September 27, 2006]

Hierarchy not a consideration in appointment of arbitrators

In a case dealing with the Arbitration and Conciliation Act 1996, the Supreme Court has clarified that in accordance with s 15(2) of the Act read together with the contract on the termination of the mandate of the Presiding Arbitrator, the other two nominated arbitrators were first required to reach a consensus and only on the failure to do so was the Respondent No. 2 (Indian Road Congress) authorised to make an appointment. The High Court could assume jurisdiction under s 11(6) of the Act only if Respondent No. 2 failed to assume jurisdiction. Further, the court has pointed out that it is wrong to contend that in case one of the arbitrators is a retired Judge, the Presiding Arbitrator should also be a retired Judge. The court rejected the contention that in case one of the arbitrators is a retired Chief Justice, the Presiding Arbitrator should be at least a retired Chief Justice or a retired Judge of a High Court with considerable experience. The parties would be bound by the terms of the contract in the appointment of arbitrators.

National Highways Authority of India v. Bumihway DDB Ltd (JV), Civil Appeal No. 4251 of 2006, decided on September 25, 2006.

Principles of Seniority of Direct Recruits vis-à-vis Promotees explained

In a case where a number of Forest rangers were promoted in excess of the promotee quota of posts available, the court has clarified that promotion in excess of quota makes an employee an ad hoc employee and seniority cannot be given to such employees on the basis of ad hoc promotion. The court also stated that as per the relevant rules, seniority could only be given from the date of substantive appointment. Thus in the given case, promotees who were appointed later could not be given seniority over the appellants (direct recruits) who were appointed prior to that date. Further as seniority has to be determined on the basis of Rules in force on the date of appointment, the said Rules would govern the seniority of the parties. The court also stated that no retrospective promotion or seniority could be granted from a date when an employee has not been “borne” in the cadre. Thus when promotion is outside the quota, seniority would have to be determined from the date that a vacancy arises within the quota, and seniority would be counted from that date and not the date of earlier promotion or subsequent confirmation. As the rule of quota is a statutory one, it needs to be strictly implemented and the hardship of pushing down of promotees appointed in excess of the quota is unavoidable. Any deviation from this rule would offend article 14 and 16(1), and also adversely affect the direct recruits who have been appointed validly in the meantime. The court directed the State of Uttaranchal to revise the seniority lists in the light of the above principles, but declared that this judgment would not adversely affect the benefits enjoyed by any of the promotees who have retired from service.

Uttaranchal Forest Rangers Assn. (Direct Recruits) v. State of Uttar Pradesh, Civil Appeal No. 4249 of 2006, decided on September 25, 2006.

Scope of Section 34

The accused appellant though did not actively participate in the killing of the deceased but the fact that he stood guard and prevented others from intervening to save the deceased in itself shows that he was acting in furtherance of the common intention. [*Kishore Eknath Nikam v. State of Maharashtra* Cr. Appeal No. 772 of 2005 decided on September 22, 2006]

Applicability of the Doctrine *Res Ipsa Loquitur*

The Court had, in the instance case, to determine whether on the facts and circumstances of the case the labour court misdirected itself in not invoking the doctrine *Res Ipsa Loquitur*. The bus driven by the workman- driver, while overtaking, hit another bus causing death of 4 passengers and injuries to 56. The Supreme Court held that the Labour Court had erred in the facts and circumstances of the present case in not invoking the doctrine of *Res Ipsa Loquitur*. The Court observed that the principal function of the maxim is to prevent injustice, which would result if the management is compelled to prove the precise cause of accident, particularly when the

respondent- driver has knowledge of the accident. Once the maxim is found to be applicable, the burden of proof would shift on the delinquent. The driver has to show the plea of inevitability, *i. e.*, the accident could not have been avoided by exercise of ordinary care and caution. Since no such attempt was made in the present case, the matter was remitted to the Labour Court to decide whether on the facts and circumstances of the case the maxim *Res Ipsa Loquitur* applies or not.

(The Managing Director Northeast K., R. T. C. v. Devidas Manikrao Sadananda (Civil Appeal No. 4147 Of 2006; Decided on 15th September, 2006)

Candidates should not suffer owing to a mistake on the part of the State

In the instant case Andhra Pradesh Public Service Commission advertised 19 posts for recruitment to the post of Deputy Superintendent of Police. In pursuant thereto the respondents appeared at the written examination and also at the interview. State of A. P., however, asked the Commission to fill up only 10 posts, which were accordingly complied with. Non-filling of the said posts was challenged as in violation of Rules. It was held by the Tribunal that the mistake on the part of the State being admitted, applicants were entitled to the relief prayed for. Before issuing the direction to the Commission the State should have consulted the Director General Police. The State Commission ought to have selected 19 candidates strictly following the rule of reservation instead of 10 candidates. This decision was subsequently upheld by the High Court while rejecting the writ petition filed by the Commission. The Supreme Court while upholding the decision rendered by the Tribunal as well as of the High Court, held that the candidates should not suffer owing to a mistake on the part of the State. [*Andhra Pradesh Public Service Commission v. P. Chandra Moulesware Reddy & Ors. Civil Appeal No. 4124 of 2006, decided on September 14, 2006*].

Writ Petition maintainable in contractual matters

The Orissa High Court had dismissed a writ petition challenging the cancellation of the tender for export of iron ore by the second respondent on the ground that it involved the enforcement of a contract qua contract and was not maintainable in writ proceedings. In appeal, the Supreme Court pointed out that if any action on the part of the State is violative of the equality clauses in article 14 of the Constitution of India, a writ petition would be maintainable even in the contractual field. The court drew a distinction between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the court's scrutiny is more intrusive, in the latter the court may not ordinarily exercise its discretionary jurisdiction of judicial review unless it was found to be violative of article 14. Even where a matter involves some disputed questions of fact, it could not be laid down as an absolute rule that such a writ petition is not maintainable, and that the party should approach a civil court. Thus the terms of an invitation to tender may not be open to judicial scrutiny but the courts can scrutinise the award of contract by the government or its agencies in exercise of their power of judicial review to prevent arbitrariness or favouritism. Yet the court may refuse to exercise its jurisdiction if there is no involvement of public interest. Similarly the court would not enforce a specific performance of contract by issuing a writ of mandamus since damages under s 63 of the Specific Relief Act may be an adequate

remedy for breach of contract. Thus in the given case, when the respondents refused to supply iron ore to the appellants prior to the expiry of the contractual period could constitute a ground for breach of contract but were not considered so arbitrary as to attract the provisions of article 14; the court making clear that the parties could pursue other remedies available in law. [*Noble Resources Ltd v. State of Orissa, Civil Appeal No. 4108 of 2006*, decided on September 13, 2006.]

The jurisdiction of the superior court is to interpret rule and not to supplant or supplement the same

In the present case Special Leave Petition was filed to challenge the order passed the Madras High Court directing the UPSC and Archeological Survey of India (ASI) in an appointment matter where certain appointment for the post of Superintending Archaeologist was made and the case of 4th respondent was not considered by the Service Commission on the ground that he did not fulfill the essential qualifications, to make the appointment. Writ petition filled by the 4th respondent challenging his non-consideration was allowed by the high court. While setting aside the order of the High Court, the Supreme Court held that what was permissible for recruitment to the post of Deputy Superintending Archaeologist need not necessarily be held to be permissible for recruitment of Superintending Archaeologist. The Court further observed that even in common parlance Archaeology and Epigraphy contain two different disciplines. It is used both in the broader and narrower sense. Although the term 'Archaeology' may include a science of Epigraphy, for the purpose of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the regulations framed there under, essential qualifications required for holding the post may have to be construed differently.

[*Sanjay Kumar Manjul v. The Chairman, UPSC & Ors. Civil, Appeal No. 4098 of 2006*, decided on September 13, 2006].

State of Punjab & Ors. v. Shri Ganpat Raj

In the instant case the Respondent herein moved the High Court of Punjab & Haryana at Chandigarh praying, *inter alia*, to issue a writ in the nature of mandamus directing the present appellants to pay interest @ 18% on delayed payment of pension, arrears of pension, DGRC, computation of pension and arrears of GPF arrears and other retirement benefits. Subsequently, the writ petition was sent to Lok Adalats for settlement being a pension matter and the matter was allowed without any settlement compromise between the parties. Appellant contested the claim and filed written statement to the writ petition in the High Court. Lok Adalat awarded 12% interest for the delayed payments. In view of this, the High Court dismissed the writ petition though it accepted that the disposal by the Lok Adalat was not the proper course, yet it was held that on merits respondents was entitled to relief. The Supreme Court while allowing the appeal held that in the circumstances mentioned hereinabove the inevitable result is that appeal has to be allowed. The apex court requested the High Court to dispose of the writ petition within a period of three months from the date of receipt of this order. (Civil Appeal No. 4089 of 2006, decided on 12th September 2006).

Oriental Insurance Company Ltd. v. Munimahesh Patel

In the present case the wife of complainant (Respondent herein) had obtained a Janata Personal Accident Policy for which a premium was paid and accepted and the policy was issued. The insured died on account of an accident by way of falling into a well and drowning. When the appellant-Company did not settle the claim, a

complaint was filed before the State Consumer Redressal Commission. State Commission dismissed the complaint leaving the complainant to take appropriate proceeding for establishing claim and for seeking the reliefs in the Court of competent jurisdiction. Aggrieved by this, the complainant filed an appeal before the National Commission, which allowed the appeal. The Appellant herein challenged the decision of the National Commission before the Supreme Court on the ground that the principle of good faith, which is inherent in insurance, was not there and the complainant was guilty of making false statement in the proposed form of insurance. The Supreme Court while allowing the appeal held that the National Commission having accepted that there was wrong declaration of the nature of occupation of the person insured should not have granted the relief in the manner it was done. Accordingly, the Supreme Court set aside the decision of the National Commission and restored the decision rendered by the State Commission. (Civil Appeal No. 4091 of 2006, decided on 12th September 2006).

The law helps the vigilant

An order of eviction was passed by the Rent Controller under section 11 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 when the tenant failed to deposit the arrears of rent from March 1990 to July 1997, in spite of ample opportunities. The Madras High Court held that though she hasn't paid the arrears on or before the time given by the Court, she had filed a lodgment schedule and hence she was showing due diligence to discharge her liability. Disagreeing with this view, the Supreme Court held that there is no reason as to why the tenant lodged the schedule on the very last date of the time given by the court and that too instead of depositing the arrears as such. Hence the tenant was deliberately avoiding the payment. Rent Controller's order of eviction is upheld. [*Maragathammal v. Kamalammal*, Civil Appeal No. 4053 of 2006 decided on September 11, 2006.]

Persons holding no post are not entitled to any scale of pay

The Supreme Court in *State of M.P. v. Yogesh Chandra Dubey*, Civil Appeal No. 3982/2006 ruled that persons not holding any post are not entitled to any scale of pay.

In the instant case the court noted that the respondents were not appointed in terms of the statutory rules. Their services were taken by the officers only to meet the exigencies of the situation. No post was sanctioned. Vacancies were not notified.

After criticizing the practice and noting that it is illegal, the court ordered thus: -

“However, keeping in view the peculiar facts and circumstances of this case, we may observe that the State should take steps to fill up the vacant post, if any, as expeditiously as possible, in which event, the cases of the respondents may be considered together with other eligible candidates.

(State of M.P. v. Yogesh Chandra Dubey, Civil Appeal No. 3982/2006 decided on September 08, 2006)

Varying the age of retirement – discretion of management not permissible

The UP State Electricity Board (Employees' Retirement) Regulations, 1975 gives discretion to the management to retain the employee in service after the age of compulsory retirement (58 years presently) with the previous sanction of the Board in writing, but he must not be retained after the age of 60 years except in very special circumstances. The Supreme Court did not entertain the argument that following the UP Electricity Reforms Act, 1999 the petitioner became an employee of the State and hence entitled to continue in service until 60 years, since this matter was not argued nor decided by the High Court. The court held that there was no discretion to the management for extending the age of retirement of an individual employee under the rules and dismissed the appeal.

[Tej Bahadur Ram v. State of UP, Civil Appeal No. 3976 of 2006, decided on September 7, 2006.]

Mere deposit of interest does not absolve the assessee from paying penalty under the Income Tax Act

Under s 139(4) of the Income tax Act 1961 (the Act), an assessee is permitted to file the return prior to the assessment in the permissible period along with interest. However, under s 271(1)(a) a penalty could be imposed for a delay in filing the returns. The Supreme Court has clarified that merely because s 139(4) enables the assessee to file his return at any time before assessment is made, it does not mean that his liability to pay penalty under s 271(1)(a) is erased. The court clarified that interest is the accretion on capital while penalty is a punishment imposed on a wrong-doer.

[Amin Chand Pyarelal versus Inspector Asstt. Commissioner, Income Tax, Civil Appeal No. 4114 of 2001, decided on September 5, 2006.]

The Offence under Section 304B IPC

The Supreme Court in *Ram Badan Sharma v. State of Bihar*, Cr. App. No. 1493/2004 had analyzed Section 304B IPC and observed thus: -

There are three main ingredients of this offence; (a) that, there is a demand of dowry and harassment by the accused on that count; (b) that, the deceased died; and (c) that, the death is under unnatural circumstances within seven years of the marriage. When these factors were proved by reliable and cogent evidence, then the presumption of dowry death under Section 113-B of the Evidence Act clearly arose. The aforementioned ingredients necessarily attract Section 304-B IPC.

X X X X X

In cases where it is proved that it was neither a natural death nor an accidental death, then the obvious conclusion has to be that it was an unnatural death either homicidal or suicidal. But, even assuming that it is a case of suicide, even then it would be death which had occurred in unnatural circumstances. Even in such a case, Section 304-B IPC is attracted.

In the instant case the court concluded that appellants were rightly convicted by the High Court and the appeals were dismissed.

Commissioner of Customs, Mumbai v. Toyo Engineering India Ltd.

In the instant case pertaining to Heading 98.01 of First Schedule of the Custom Tariff Act, 1975, wherein the assessee was engaged in setting up of industrial unit and imported various special equipments and application was filed for grant of benefit under the Project Import Scheme under the Project Import Regulation of the above-mentioned Act, the Revenue Authorities rejected the request of assessee on the ground that the imported goods was property of assessee and could be used for other work elsewhere after the completion of said project. The Supreme Court, while upholding the decision of Custom Excise and Gold (Control) Appellate Tribunal which overruled the decision of Assistant Collector as well as of Appellate Authority, held that the CEGAT was justified in holding that the assessee would be eligible to the benefit asked for as the construction equipments imported by the assessee were used in the initial setting up of the plant, thereby, fulfilling the requirement needed for getting benefit under the Heading 98.01 of First Schedule of the Custom Tariff Act, 1975.(Civil Appeal No. 2532 of 2001 decided on 31st August 2006).

Vires of Rule permitting withholding of pension upheld

The vires of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 was challenged before the SC. The said Rule provided that the Governor has the right of withholding pension, in whole or in part, permanently or for a specified period and also has the right of ordering the recovery from a pension of the whole or part any pecuniary loss caused to the Government if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence during the period of his service invaliding service rendered don re-employment after retirement. The court clarified that even when the right to property was considered a fundamental right, a rule that took away the right to claim pension on certain specified grounds and after following a due procedure, could not be held to be ultra vires the Constitution.

[*State of West Bengal v. Haresh C. Banerjee*, Civil Appeal No. 2579 of 1998, decided on August 30, 2006]

Trademark Infringement

In the instant case, the court had to interpret the provisions of Trade and Merchandise Marks Act, 1958. The court held that to determine infringement, when a prima facie case is made out and balance of convenience is in favour of the appellant, it may not be necessary to show more than loss of goodwill and reputation to fulfil the condition of irreparable injury. If the first two pre-requisites are fulfilled, in trade mark actions irreparable loss can be presumed to have taken place. If an infringement is established the onus would be on the defendants to show that he is entitled thereto either by acquiescence on the part of the proprietor or he himself has acquired a right thereto. In a case of infringement of trademark, injunction would ordinarily follow where it is established that the defendant had infringed the trademark and had not been able to discharge its burden as regard the defense taken by it. The court restrained the respondents from using the trademark including the trade name 'Ramdev Masala' in any of their products but, however, permitted them to carry on their business in any other name insofar as manufacturing of spices is concerned.

(*Ramdev Food Products Pvt. Ltd. v. Arvindbhai Rambhai Patel and others*) (Civil Appeal Nos. 8815-8816 of 2003 (with Civil Appeal No. 8817 of 2003 decided on August 29, 2006]).

Principle of Natural Justice cannot be applied in the straight jacket formula

In the instant case wherein the Appellant challenged the decision of the High Court which upheld the order passed by the Director of Education (Appellate Authority) regarding the dismissal of Appellant as Head Master who was on probation on the ground of intentional serious dereliction of duty, misappropriation of funds etc., the Supreme Court while confirming the decision of the High Court, held that the contention of the appellant cannot be accepted that no copy of the enquiry report has been furnished to him thereby causing violation of principle of natural justice. The Court observed that it is now well-settled principle of law that doctrines of principle of natural justice are not embodied in the Rule. It cannot be applied in the straight jacket formula. To sustain the complaint of violation of the principle of natural justice one must establish that he has been prejudiced by non-observance of principle of natural justice. So, in the present case, as appellant has not been able to show as to how he has been prejudiced by non-furnishing of the copy of the enquiry report, accordingly, petition is liable to be dismissed. (*Om Prakash Mann v. Director of Education (basic) & Ors.* Civil Appeal No. 6014 of 2004 decided on 29th August 2006).

Section 20 of the Specific Relief Act explained

Dealing with a case for specific performance of contract for sale of land pending in a proceeding before the authority under the Land Ceiling Regulation) Act, 1976, the court had occasion to clarify the scope of the powers under section 20 of the Specific Relief Act. Clarifying that the section confers a discretionary jurisdiction upon the courts, the courts said that with the passage of time, the contract could get frustrated or where an increase in land prices takes place, these could be relevant factors for refusing to exercise jurisdiction. The court emphasised that the court are not precluded from taking into consideration subsequent events. Further, while exercising its discretionary jurisdiction, the orders of the competent authorities (before whom a matter is pending) must be taken into consideration. In exercising its appellate jurisdiction, courts do not normally interfere with the discretionary jurisdiction exercised by the courts below. Thus the courts set aside the decision of the Division bench of the High Court ordering the specific performance of a contract of sale of land and restored the orders of the trial judge and Single Judge of the High Court refusing to exercise discretion to enforce specific performance of the contract.

M. Meenakshi v Metadin Agarwal (D) by LRs, Civil Appeal Nos. 2023, 2024 and 8265 of 2004 decided on August 29, 2006.

The Legality of the Retrospective Renewal of Lapsed Licence

The question for consideration in the instant case was the validity of the application for renewal of licence filed after the expiry of the stipulated period. The respondent village cooperative society has filed the licence renewal application to run private market to the appellant corporation of Kochi after the expiry of the period stipulated under the Kerala Municipality Act, 1994. The Supreme Court found that the view taken by the Kerala High Court that there is no bar in making an application beyond the stipulated time is not correct. The question of renewal of licence retrospectively after the expiry of the period during which the society had unauthorisedly carried on activities is not contemplated in law.

[*Corporation of Kotchi v. Elamkulam Village Co-operative Society Ltd. & Anr.*, Civil Appeal No. 4938 of 2000 with 3212 of 2006 decided on August 29, 2006].

Right of Representation by a Legal Practitioner

The respondent has sought permission to take assistance of a legal practitioner in Departmental Enquiry Proceeding against him. This prayer was rejected by the National Seeds Corporation under Rule 31(7) of the National Seeds Corporation (Conduct, Discipline, and Appeal) Rules, 1992. By setting aside the order of Karnataka High Court granting permission to take assistance of a legal practitioner, the Supreme Court observed:

1. A delinquent employee has no absolute right to be represented in a departmental proceeding by a lawyer unless the facts involved in the disciplinary proceeding were of complex nature in which the assistance of a lawyer could be permitted.
2. The permission depends upon the factual scenario.
3. The employees has to explain the factual position with reference to the documents sought to be utilized against him and he has to show as to how a legal practitioner would be in a better position to assist the employee so far as the document in question are concerned.

(The Management of National Seeds Corporation Ltd. v. K. V. Rama Reddy (Civil Appeal No. 4335 of 2006); Decided on 24th August 2006)

Case under exception 4 under Section 300 IPC

The Supreme Court in *Pappu v. State of M.P.* (2006) 7 Scale 24 ruled thus: -

“The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offender’s having taken undue advantage or acted in a cruel or unusual manner and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found.”

This came to be reiterated in *Surendra & Other v. State of Maharashtra*, Cr. App. No. 506 of 2005 (decided on August 24, 2006) wherein the appellants’ conviction under S.302 r/w S.34 was changed to S.304 Part I read with S.34.

The Onus of Workman reinstated

By reiterating a series of judgments, the Supreme Court upheld the principle that the burden of proof is on the workman to show that he had worked for 240 days in a given year. In the present case, the workman had no evidence to prove that he had ever been in service of the appellant company though he claimed to have served the company for 8 years. According to him, his service was terminated in non-compliance with sec. 25F of the Industrial Dispute Act, 1947. The Supreme Court by reiterating the onus of workman to prove that he had worked for 240 days in a year set aside the orders directing the company to reinstate the workman passed by the labour court and the Division Bench of the Karnataka High Court.

[Krishna Bhagya Jala Nigam Ltd. v. Mohammad Rafi, Civil Appeal No. 3639 of 2006 decided on August 24, 2006]

Eviction Order under section 14(ii)(e) of Delhi Rent Control Act

The respondent tenant was ordered by the Additional Rent Controller to evict the rented premises since there is a bonafide need for the appellant and his family for residence. The respondent’s contention that the appellant has alternative accommodation in the name of his wife was rejected on the ground that the appellant cannot be compelled to occupy the property of his wife. This order was reversed by the Delhi high Court holding that an alternative residential accommodation cannot be ignored if it is owned by the wife and hence there is no bonafide need of residence. Reversing the order of the High Court and restoring the eviction order of the

Additional Rent Controller, the Supreme Court held that when the tenant herself believes that the alternative accommodation for the appellant is not suitable for residence, the appellant's petition cannot be rejected only on the ground that there is accommodation in the name of his wife.

[*Pushkar Singh v. Ansuiya*, Civil Appeal No. 3582 of 2006, judgment decided on August 22, 2006.]

Subjective Satisfaction of Detaining Authority

The argument that the detaining authority had acted on her predecessor's observation were nullified since the detaining authority had given reasoned orders based on the subjective satisfaction and since the detenu's business was of such a nature that knowledge of English language was a must that order did not vitiate Art. 22 (5) of the Constitution and moreover as abundant caution the court gave Marathi transcripts within 10 days.

[*Shettal Manoj Gore v. State of Maharashtra & Ors.* Writ Petition (Criminal) No. 26 of 2006 decided on August 22, 2006]

Murder

The court upheld the rule laid in *Virsa Singh's* case that even if the intention was just to cause bodily injury but that bodily injury is sufficient to cause death in the ordinary course of nature, the offence would be murder.

[*Settu & Ors. v. State of Tamil Nadu*, Cr. App. No. 865 of 2006 decided on August 22, 2006.]

Liability of Insurer to Prove Owner's Negligence

The Court held that in motor vehicle accident cases it is the liability of the insurer (the Insurance Co.) to prove the disqualification of the driver. The Insurer has to prove that the insured (the owner of vehicle) was guilty of negligence and failed to exercise reasonable care in appointing the driver. The court held that the insured is absolved from any liability since he had examined the driving licence, took the test of driving and found that the driver was competent. Hence no breach of sec. 149(2)(a)(ii).

One insurer has to take liability under such circumstances.

[*Lal Chand v. Oriental Insurance Co. Ltd.* Civil Appeal No. 3623 of 2006 decided on 22nd August, 2006]

Distinction between private and public religious institutions

Land ceiling was prescribed in respect of religious and charitable endowments through an amendment in the Land Reforms Act in 1981 in the state West Bengal. The amendment drew a distinction between private and public charitable institutions. Lands that were held to belong to a private religious institution were to be clubbed were deemed to be lands owned by the author of the trust or endowment for the purposes of calculation of land ceiling. Clarifying the distinction the court held that religious endowments are of two kinds: if the dedication is for the use of the public at large or a specified class, the endowment is public. However when the property is set apart for the worship of a family god, in which the public are not interested, if the grant is made in favour of an individual and not a deity (and reflected in the land records), if the temple is situated within the residence of the donor the endowment is a private one. It is a question of fact whether a temple is a private or a public one. As the High Court had not examined relevant documents to determine this question, the court remanded the matter to it for consideration afresh.

[*State of West Bengal v. Sri Sri Lakshmi Janardan Thakur*, Civil Appeal No. 3563 of 2006 (arising out of SLP (C) No. 1613 of 2004, decided on August 21, 2006.)]

Award of interest is the discretion of court

The present appeal arise out of an order passed by the High Court of Orissa wherein the High Court partly allowed the appeal filed by the Oriental Insurance Co. Ltd by reducing the rate of interest from 12 per cent to 6 per cent per annum from the date of award passed by the arbitrator till the date of deposit of amount in the court. The Supreme Court held that it is well settled that the award of interest is in the discretion of court and, normally, when interest is granted, the appellate, revisional or writ court would not interfere with exercise of discretion unless the discretion has been exercised arbitrarily or capriciously. It further held that like grant of interest, rate of interest is also in the discretion of the court and in the absence of any agreement between the parties, usually, the court would not interfere with rate of interest unless it is convinced that the discretion of the lower court was *ex facie* bad in law. Accordingly, the Supreme Court set aside the order of High Court, and upheld the order passed by the arbitrator which granted the interest at the rate of 12 per cent per annum all throughout, i.e., for pre-reference period, *pendent elite* and post award period. (*M/s Manalal Prabhudayal v. Oriental Insurance Co. Ltd.* Civil Appeal No. 3537 of 2006, decided on 18th August 2006).

Termination simpliciter and punitive termination distinguished

A case dealing with the termination of “Daily Wage Constables” of the CRPF when a permanent battalion was installed in their place was the setting for the court to distinguish between termination simpliciter and punitive termination of employment. The court explained that an order of termination based on misconduct without holding a departmental enquiry is to be treated as “founded” on the allegations of misconduct and therefore needed to be set aside as it was punitive in nature, and was bad in law, as it did not afford an opportunity to the terminated employee to defend himself. Yet, if an enquiry was not held and at the same time the employer did not want to continue the employee against whom there were complaints, it would be a case of the misconduct or indiscipline not being the foundation of the order but at the most the “motive” for it, and no stigma attaches to the employee. In such a case a simple order of termination would be valid. While pointing out the distinction between the ‘foundation’ and ‘motive’ was at times difficult to establish, the court held that the termination of the ‘Daily Wage Constables’ in the instant case was valid.

[*Jai Singh v. Union of India*, Civil Appeal No. 510 of 2006, decided on August 18, 2006].

Substance of an Order Determine Period of Limitation

Under the scheme of the Punjab Redemption of Mortgages Act, 1913, the Collector, who is the competent authority should deal with the matter judiciously and his decision must be recorded on merits. As far the question of limitation is concerned, not the form in which the order is couched by the Collector but the substance will determine the application of the period of limitation prescribed by the Limitation Act.

[*Jundal (Dead) by L.R.S. & Ors. v. Munshi & ors.* Civil Appeal Nos. 14185 - 14188 of 1996 decided on August 18, 2006]

Appellate power of High Court

The Supreme Court held three important points:

- (i) The power of the high court in an appeal from acquittal is no different from its power in an appeal from conviction.
- (ii) The witnesses testimony cannot be ignored only because they were related to the deceased.
- (iii) Death by single blow does not bring a convicted under S. 304. all the circumstances have to be taken into consideration.

[*Pulicherla Nagaraju @ Nagaraja Reddy v. State of A.P.*, Cr. App. No. 945 of 2004 decided on August 18, 2006.]

Legal Heir entitled to maintain suit for specific performance

The court held that while there is a *Clause I legal heir* as per the Schedule to Sec. 8 of the Hindu Succession Act, 1956, [in the instance case the wife of the deceased who has not re-married after her husband's death], the sister of the deceased is not competent to bring a suit as legal heir for the specific performance of contract of sale. When the deceased's wife is alive and not remarried, it is she who can file a suit for specific performance as a legal heir of the original agreement holder (husband). In such circumstances, the deceased's sister is not entitled to maintain a suit as legal heir of the deceased.

[*Dyaneshwar Ramachandra Rao Patange v. Bhagirathibai*, Civil Appeal No. 66 of 2000 decided on August 18, 2006]

Jurisdiction of High Courts

The Court held that when the facts were seriously disputed by the appellant and no factual finding could be recovered without considering the evidence adduced by the parties, it was not an appropriate case in which the High Court ought to have exercised its Writ jurisdiction. The parties could have approached a civil court of competent jurisdiction to adjudicate the matter.

[*Food Corporation of India and Ors. v. Harmesh Chand*, Civil Appeal No. 3593 of 2006 decided on August 9, 2006.]

Amalgamation of two classes of people for reservation would be unreasonable

In the instant case, wherein the action of the Jharkhand Government in ordering amalgamation of two classes, namely, Backward Class and Extremely Backward Class, was done without any study, data or materials, was challenged, the Supreme Court held that such amalgamation is not permissible as the Govt. did not provide any material on record which would have justified the amalgamation of two classes of people. The Court observed that the amalgamation of two classes of people for reservation would be unreasonable as treating two different classes as equal would be in violation of the mandate of Article 14 of the Constitution which mandates "treat similar similarly and treat different differently". The Court also directed the Jharkhand Government to appoint an Expert Commission or a Body as has been provided for in the *Mandal Commission's Case* which can enquire into the matter regarding the complaints of under/over inclusion within a class or classes and make binding recommendations.

[*Atyant Pichhara Barg Chhatra Sangh & Anr. v. Jharkhand State Vaishya Federation & Others*. Civil Appeal No. 3430 of 2006, decided on August 8, 2006 August 8, 2006]

Principles of Sustainable Development applied

Can an artificial temple tank in a village be taken over and used for the construction of a shopping challenge. The Supreme Court noted that such questions were to be considered in the light of the principles of sustainable development, articulated by the court in recent decisions, which balances the ecological impact with the need for economic development. In the present case, the court noted that the temple tank was an artificial one and had fallen into disuse and was filled with water only during heavy rains. The court noted that the duty to maintain natural water storage and to restore those that had fallen into disuse did not apply to artificial tanks. As there were no water scarcity in the village and as it already had five other tanks used for water storage, the court permitted the construction to continue. The court however directed the State and Gram Panchayat to maintain the other tanks and ensure that there was no water scarcity.

[*Mrs. Susetha v. State of Tamil Nadu* Civil Appeal No. 3418 of 2006 (arising out of SLP (Civil) No. 4502 of 2006), decided on August 8, 2006.]

Regularisation of persons working temporarily in projects rejected

When persons are working, not against any sanctioned posts, but on a project on a temporary basis, and where their recruitment is not done pursuant to any advertisement or through an Employment Exchange, such persons are not entitled to claim regularisation of their services. Following the precedents of several recent cases, notably the Constitution Bench decision in *Secretary, State of Karnataka v. Umadevi* (2006) 4 SCC 1, the court noted that ad hoc employees have no claim to be regularised. The court noted that the project to give temporary project employment to the respondents was meant to provide technical education to agriculturalists, and was intended to be a time-bound one. The court thus set aside the judgement of the High Court wherein the appellants had been directed to create posts and regularise the services of the respondents.

[*Principal, Mehar Chand Polytechnic v. Anu Lumba*, Civil Appeal No. 7051 of 2002. decided on August 8, 2006.]

Punishment imposed by disciplinary authorities – role of courts

In several cases the court has reiterated that industrial tribunals and labour courts ought not interfere with the quantum of punishment imposed by disciplinary authorities unless there exist sufficient reasons for such interference. In the given case, the misconduct stood duly established in the enquiry conducted by the management. The court held that the imposing of lesser punishment in lieu of dismissal by the courts below was misplaced. However, in light of the particular facts of the case where among seven persons charged with misconduct the respondent alone was dismissed, the court in the interests of justice directed that the respondent also given the benefit of a voluntary retirement scheme offered to the six others.

[*Anand Regional Co-op Oil S. Union Ltd v. Shaileshkumar Harshadbhai Shah*, Civil Appeal No. 3417 of 2006, arising out of SLP (C) No. 18951 of 2005, decided on August 8, 2006.]

Quid pro quo in the strict sense was not always a sine qua non for a fee

The apex court while holding that the ‘cess’ imposed under the Andhra Pradesh Rural Development Act, 1996 is in substance a ‘fee’, has observed, relying on the judgements rendered in the recent past, that: “there has been a sea change in the concept of a fee and now it is no longer regarded necessary that (i) some specific service must

be rendered to the particular individual or individuals from whom the fee is being realized, and what has to be seen is whether there is a broad and general correlationship between the totality of the fee on the one hand, and the totality of the expenses of the services on the other; (ii) there need not be an exact or mathematical correlation between the amount realized as a fee and the value of the services rendered. A broad correlation between the two is sufficient to sustain the levy". The court accordingly upheld the constitutional validity of the Andra Pradesh Rural Development Act, 1996. (*M/s. Vijayalashmi Rice Mill & Ors. v. The Commercial Tax Officers, Palakol & Ors.*, Civil Appeal Nos. 5120 – 5132 of 1999, decided on August 07, 2006).

Kerala Private Forests (Vesting and Assignment) Act, 1971

P.K. Balasubramanyan, J, speaking for himself and on behalf of S.B. Sinha, J, has held that only the land, to an extent planted prior to the appointed day, is excluded from vesting in the State, whereas the land which was not planted prior to the appointed day will stand vested in the State as per the Kerala Private Forests (Vesting and Assignment) Act, 1971. (*Kumari Varma v. State of Kerala & Ors.*, Civil Appeal No 3371/2006, Arising out of SLP (C) No. 3341 – 3342 /2005, decided on August 4, 2006)

Scope of S. 48 of Madras Marumakkattayam Act, 1932

A division bench of the Supreme Court observed that before Sec. 48 could be applied, it must be shown that the property was either bequeathed, gifted or purchased by a person in the name of his wife and one or more children together. A purchase by the wife of the deceased husband 'from out of the funds left behind by her husband' must deemed to be her property and as such is not covered by sec. 48 of the Madras Marumakkattayam Act, 1932. The Court also found that the High Court was not justified in modifying the decree of the lower court on questions which did not arise for its consideration.

[*Radha Amma & Anr. v. C. Balakrishnan Nair & Ors.* , Civil Appeal No. 2955 of 2000 decided on August 2, 2006].

Maxim 'falsus in uno falsus in omnibus

The Supreme Court in *Syed Ibrahim v. State of A.P* Cr. App. No. 798 of 2006 observed thus: -

"The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution x x x x x

The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence"

Holding that the number of witnesses is of no consequence in proving the case, in the instant case because of the inconsistencies in the evidence given by the father of the deceased the Supreme Court reversed the High court's judgment and acquitted the appellant. [*Syed Ibrahim v. State of A.P* Cr. App. No. 798 of 2006 decided on July 27, 2006]

Veracity of Dying Declarations

The court held that it is not necessary that the dying declaration should be recorded by a magistrate of course if it is so done it will add to its veracity but when two dying declarations were consistent they were held to be reliable.

[*Rajendra & Ors. v. state of Maharashtra*, Cr. App. No. 1619 of 2005 decided on July 27, 2006.]

Sadhu Singh v. Darshan Singh & Anr.

While dealing with an issue pertaining to the recounting of votes under election laws, wherein the Appellant won the election for the post of Sarpanch by a margin of 11 votes and subsequently election petition was filed alleging that while counting ballot papers, 147 votes were wrongly rejected and that the 25 votes polled in favour of respondent were wrongly counted in favour of appellant by inter-mingling them with ballot papers, the Supreme Court held that in these circumstances the Election Tribunal and the High Court were justified in directing the recounting of votes. The Court further observed that in the circumstances wherein the Presiding Officer did not assign any reason for declaring a huge number of votes as invalid, the order of the Election Tribunal as well as of High Court directing for the recounting of votes were perfectly legal and valid. (Civil Appeal No. 3165 of 2006, decided on July 26, 2006).

Vijay v. State of Maharashtra & Others

In the present case, the Appellant was elected as a member of Gram Panchayat in the year 2000 and subsequently as Sarpanch of the village and also as Councillor of Zilla Parishad. However, in view of an Amendment in Bombay Village Panchayats Act, 1958, in 2003, he was declared to have disqualified for such post by the Additional Collector, which was also subsequently reaffirmed by the Additional Commissioner and by the High Court. While upholding the decision rendered by the High Court, the Supreme Court observed that as the Amendment was clearly having retrospective effect so the bar created to hold the post of member of Panchayat would bring within its purview also those who were continuing to hold post. Accordingly, the disqualification was held legal and proper. (Civil Appeal No. 3164 of 2006, decided on July 26, 2006).

Validity of Prospective Overruling Upheld

Central Governments' Notification dated 23.12.1996 enhanced the wage limit for coverage of an employee from Rs. 3000/- to Rs. 6500/- by amending section 2(9)b of Employees' State Insurance Act. The amendment was quashed by a single bench of the Calcutta high court. A division bench overturned the judgment upholding the amendments. Further the high court ordered the employers to implement the amendment w.e.f. 16.03.04 though the amendment otherwise came into operation from 01.01.97. The ESI challenged this prospective overruling. The Supreme Court justified the judgment on the following grounds:

1. The employers have spent large amount of money and was providing better medical facilities to the workmen during the period under dispute; hence the object and purpose of ESI Act is fully satisfied.
2. None of the employees have complained about medical services provided by the employer during this period.
3. If the corporation is now allowed to recover from the erstwhile covered employees it would severely affect industrial relations.
4. The High Court's order does not amount to postponing the enforcement of Notification.
5. No party shall be prejudiced for the Act of court and no law should impose undue hardship and compel a man to do what he cannot possibly do.

[*ESI Corporation & Ors. v. Jardine Henderson Staff Association & Ors.* Civil Appeal No. 1726 of 2005 decided on July 25, 2006.]

Fixing Dates for Entrance Examinations for Medical and Dental Colleges

The manner in which the entrance examinations to various dental and medical colleges are conducted came for scrutiny in the given case. Dealing with a dental college which advertised its availability of seats, conducted its entrance examination and declared the selection of successful candidates, all within a short span of ten days, the court held that the exam had not been held in a proper manner and further directed that the candidates selected be subjected to a fresh assessment of merit by the Department of Dentistry, AIIMS. The Court also declared that it was high time that the Dental Council of India as well as the Medical Council of India fix in advance the approximate dates during which the entrance examination is to be held by various colleges and observed that these two bodies along with the All India Council for Technical Education and other authorities that regulate admission in various colleges, to ensure that no irregularities are committed in the matter of admissions.

[Dr. Romil B Shah versus State of Gujarat Cr. Appl. No. 3151 of 2006 and KM Shah Dental College v. State of Gujarat Cr. Appl. No. 3152 of 2006, decided on July 25, 2006]

Necessary action should be taken in case of violation of Building Regulations and byelaws

This petition, in the form of PIL, was filed alleging that the construction of certain multy storied building was sanctioned illegally and contrary to the provision of Act. It was held by the high court that the writ petitioner and some of his supporters had violated sanctioned plans while making construction of building. Directions were issued that cases of not only of the builder who have violated the norms fixed by Byelaws but also all those who have violated the norms fixed by Byelaws, sanctioned plans and undertakings shall be examined. Appeal filed by the Development Authority alleging that certain observations made against the officers thereof were uncalled for and that they were not given any opportunity to be heard in the matter. It was held by the apex court that without adequate material inference has been drawn by the high court about the laxity of the authorities. Disposing the appeal the apex court directed for the deletion of such directions for initial action. (*Ranchi Regional Development Authority v. Sushil Kumar Mahto &Ors.* Civil Appeal No.3087 of 2006, Arising out of SLP (C) NO.7815 OF 2004 decided on July 21, 2006)

‘Preference’ made for additional qualifications explained

Where an advertisement for selection of candidates to the post of Medical Officer of Homeopathy indicates that in addition to requisite qualifications, “preference will be given to degree holders”, can the claims of diploma holders be completely ignored? The Court has held that the only meaning that such a preference indicates is that additional weightage has to be given to higher qualified candidates. It does not indicate that a higher qualified candidate would automatically be entitled to be selected and appointed to the post. The court has clarified that preference to additional qualifications would mean other things being quantitatively and qualitatively equal, those having additional qualifications would be preferred. Preference cannot mean an absolute en bloc preference akin to reservation irrespective of inter se merit ad suitability.

[State of UP versus Om Prakash Cr. Appl. Nos. 5757-5759 of 2002 decided on July 21, 2006.]

Delay in FIR not fatal to the case

The Supreme Court held that since the rape was reported three months after the commission the medical examination could not conclusively prove the commission of rape. But that did not matter since the court in rape cases repeatedly maintains that it is very difficult for the victim to report it immediately. So delay in FIR is not fatal to the case.

[Dildar Singh v. State of Punjab, Cr. App. No. 549 of 2005 decided on July 20, 2006]

Infirmary

The Supreme Court found no infirmity in the order of the high court which the court sentenced the accused u/s 302 and 201 IPC merely on circumstantial evidence as no eyewitness was present.

[*Gdusulu Ellaiah v. State of Andhra Pradesh*, Cr. App. No. 300 of 2005 decided on July 20, 2006.]

FIR cannot state all facts

It was held that FIR is not an encyclopedia of all facts so if source of light was not mentioned that did not shake the prosecution theory. And it was again reiterated that if one of the witness was related to the deceased but his story seems true the court has to take abundant caution and not disregard him as interested party.

[*S. Sudershan Reddy and Ors. v. State of Andhra Pradesh* Cr. App. No. 639 of 2005 decided on July 20, 2006]

Investigation into a cognizable offense is possible despite the absence of sanction

In *State of Karnataka v. Pastor P. Raju* Cr. App. No. 814 of 2006, the Supreme Court set aside the quashing of Cr. prosecution against the respondent u/s 153 B IPC saying that the embargo of the requirement of sanction under S.196 (1A) Cr. PC is not applicable to investigation stage.

Sanction for prosecution may be insisted upon when it comes to be taken cognizance of by the magistrate.

[*State of Karnataka v. Pastor P. Raju* Cr. App. No. 814 of 2006, decided on July 17, 2006]

Loss of Confidence in a workman

Cases where bus conductors have either not issued tickets to passengers or issued tickets of lower denomination have been frequent. Where the management after holding a due enquiry dismisses the workman only to be reinstated by the Labour Courts, have been described as ‘Misplaced sympathy’ in several cases. In the given case, a conductor was found to have misappropriated a small amount. Yet the court has held that loss of confidence caused by such incidents is the primary factor to determine punishment and not the amount of money misappropriated. The Court also reiterated that where the charges against the workman are proved, the courts ought not to interfere with the order of dismissal, as loss of confidence in the workman is also established.

[*Divisional Controller NEKRTC versus H Amaresh* CA No. 7993 of 2004 decided on July 17, 2006.]

Regularisation of irregularly appointed workmen as a one-time measure

The Constitution Bench in *Secretary, State of Karnataka v Umadevi* (2006) 4 SCC 1 had clarified the law with respect to absorption, regularisation or permanent continuance of temporary, contractual or ad hoc employees in public employment. The said judgement had also directed the instrumentalities to regularise as a one-time measure the services of irregularly appointed workmen who had worked in duly sanctioned posts but not under the cover of the orders of the Courts or Tribunals. In the given case relating to employees of the Mineral Exploration Corporation who were designated as temporary/contingent employees, the Supreme Court held that these workmen had been doing work of a permanent nature and were shifted from project to project in the work of exploring minerals. Relying on the direction given by the Constitution Bench in the abovementioned case, the Supreme Court directed that each individual

case be examined to ascertain if the workman can be regularised, subject to the direction passed by the Court in this case.

[*Mineral Exploration Corporation Employees' Union v Mineral Exploration Corporation Limited* CA No. 2027-2028 of 2000, decided on July 26, 2006.]

Distinction between Exception 1 and Exception 4 under S. 300 IPC.

In *Lachman Singh v. State of Haryana*, Cr. App. No. 349 of 2005 the Supreme Court reiterated the distinction between exception 1 and exception 4 under Section 300 IPC thus:

“While in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men’s sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A ‘sudden fight’ implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side.”

[*Lachman Singh v. State of Haryana*, Cr. App. No. 349 of 2005 decided on July 28, 2006]

Hypothecated property - No charge under S. 405 IPC

The Supreme Court in *M/s I.O.C. v. M/s NEPC India Ltd.* Cr. App. No. 834/2002 ruled that there could be no offence of cheating in respect of hypothecated property as there is no entrustment. The court observed:

Thus, as the possession of the aircraft remained all along with NEPC India in its capacity as the owner and the Deed of Hypothecation merely created a charge over the aircrafts with a right to take possession in the event of default, it cannot be said that there was either entrustment of the aircrafts or entrustment of the dominion over the aircrafts by IOC to NEPC India. The very first requirement of section 405, that is the person accused of criminal breach of trust may have been “entrusted with the property” or “entrusted with any dominion over property” is, therefore, absent.

The court further ruled that a petition under S. 482 Cr PC could be maintained as there were allegations of offences under Ss. 415 and 425 IPC in that the NEPC Ltd. removed the engines from the aircrafts hypothecated to I.O.C and they failed to pay the debt despite an agreement to do so.

[*M/s. Indian Oil Corporation v. M/s. NEPC India Ltd., & Ors.* Cr. App. No. 834 of 2002 decided on July 20, 2006].

No party should suffer because of the due compliance with the orders of the Court

In the instant case the apex court while upholding the orders of the High Court as just, pragmatic, fair and judicious, has held that it would be unfair and unjust to make the employer to pay contribution towards ESIC since in lieu of the contribution to ESIC, the employer provided medical facilities as per the directions of the High Court and it would

cause extreme and grave hardship to the employer if it is required to pay contribution for the past for no fault of its own. He cannot be made to suffer because of the due compliance with the orders of the court. (*Employees State Insurance Corporation v. Distilleries and Chemical Mazdoor Union & Ors*, Civil Appeal No. 1727/2005, decided on July 17, 2006).

Standard Chartered Bank Ltd. v. Dr. B.N. Raman

S.H. Kapadia, J speaking form himself and on behalf of Arijit Pasayat J, while remitting the matter back to the State Commission for reconsideration, has observed that in an action to recover an amount payable in a foreign currency, five dates compete for selection by the court as the proper date for fixing the rate of exchange at which the foreign currency amount has to be converted into the currency of the country in which the action has been commenced and decided. These dates are: (i) the date on which the amount became due and payable; (ii) the date of the commencement of the action; (iii) the date of the decree; (iv) the date when the court orders execution to issue, and (v) the date when the decretal amount is paid or realized. It was further laid down that the court has to select a date which puts the plaintiff in the same position in which he would have been, had the defendant discharged his obligation when he ought to have done, bearing in mind that the rate of exchange is a fluctuating factor. Apart from these observations, the apex court also advised the agencies under the Consumer Protection Act, 1986 that while dealing with such cases, they should keep in mind not only the precedents but also the economic situation of the country. Encashment of dollar denominated deposits, according to the apex court, have certain economic implications. (Civil Appeal No. 2982/2006, Arising out of SLP (C) No. 19723/2004, decided on July 14, 2006).

Factors that would make the Court to impose a lesser sentence

The *State of Madhya Pradesh v. Santosh Kumar*, Crl. App. No. 762 of 2006, the Supreme Court emphasized that the 'adequate and special reasons' which would permit the court to impose a sentence less than the prescribed minimum would depend upon several factors and no straight jacket formula can be indicated.

In the instant case the only reason indicated by the High Court is the young age of the accused and the fact that he belongs to a schedule tribe. They are just inadequate. The victim of rape in this case is a 6 years old girl. In fact this situation calls for a more stringent punishment under section 376(2) IPC. The High Court's order was therefore set aside.

(*State of Madhya Pradesh v. Santosh Kumar*, Crl. App. No. 762 of 2006, decided on July 14, 2006).

Compensation for Accidents

U.P. State Road Transport Corpn. v. Krishna Bala & Ors., Civil appeal No. 4267 of 2002, In cases of fatal accidents, for claims, the highest multiplier has to be for the age group of 21 to 25 years when an ordinary Indian citizen starts independently earning and the lowest would be in respect of a person in the age group of 60 to 70 which is the normal retirement age.

In the present case since the age of the deceased was 36 years the multiplier was decided at 13 instead of 22 (years of service left) which was decided by the Tribunal and upheld by the High Court. [*U.P. State Road Transport Corpn. v. Krishna Bala & Ors.*, Civil appeal No. 4267 of 2002, decided on July 13, 2006]

Abatement of Appeals

In *State of A.P. v. Narasimha Kumar*, Crl. App. Asc. 1446-1450 of 2004, the Supreme Court reiterated that an appeal against a sentence combined with a sentence of fine may be treated as a sentence of the fine whcih may abate or the death of the appellant.

The Court relied on *Harnam Singh v. State of Himachal Pradesh*, 1975(3) Sec. 343 which was based on S. 431 of Cr. Pr. Code 1898.

(*State of A.P. v. Narasimha Kumar*, CrI. App. Asc. 1446-1450 of 2004, Decided on July 13, 2006).

Alteration of the service conditions of the workmen would not be considered as ‘touching the business of the society’

Section 79 of the Punjab Co-operative Societies Act, 1961 mandates that no suit shall be instituted against a co-operative society or any of its officers in respect of any act touching the business of the society until the expiration of three months from the date of issue of notice. In the instant case, the Plaintiff – Union filed the suit seeking declaration to the effect that the members of the plaintiff – union was entitled to the benefit of the Variable Dearness Allowance on the basic wages plus fixed allowance in accordance with Para 317 (ii) of the Third Wage Report with consequential relieves. Defendant took the stand that since the notice as required under Section 79 of the Act was not issued, the suit is not maintainable. The trial court held that the issuance of notice was mandatory. The said decision of the trial court was reversed by the First Appellate Court and the Order of the Appellate Court was confirmed by the High Court. Upholding the said order of the High Court, the apex court has observed that the alteration of the conditions of the service of the workman would not be covered by the expression ‘touching the business of the society’ and hence issuance of notice is not mandatory. (*Morinda Cooperative Sugar Mills Ltd. v. Morinda Coop. Sugar Mills Workers Union*, Civil Appeal No. 4488 of 2004, decided on July 12, 2006).

Public Interest Litigation – Tendency to misuse the process of court should be discouraged

In the case, *Kushum Lata v. Union of India*, Civil Appeal No. 6527/2004 the appellant has styled the petition as PIL though it related to a tender where she herself claimed to be a tenderer. She was the party in another petition questioning the legality of the auction. The Supreme Court in these circumstances upheld the dismissal of this petition by the Allahabad High Court and observed as follows:

It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

The Court’s observations on the present scenario of misusing this weapon are worth-quoting. The Court observed:

The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting *bona fide* and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

[*Kushum Lata v. Union of India*, Civil Appeal No. 6527/2004 decided on July 12, 2006]

Appeal against a consent decree is not maintainable

Two important issues involved in this case are (i) whether the appeal against the consent decree is maintainable? And (ii) whether the compromise statement of the appellant's counsel and respondent's counsel recorded by the court is a valid compromise in terms of Order XXIII, Rule 3 of the Code of Civil Procedure?

The apex court while answering the first issue negatively, has observed that the validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made and no appeal is maintainable against a consent decree having regard to the specific bar contained in section 96 (3) CPC. The only remedy available to a party to a consent decree to avoid such consent decree is to approach the court, under proviso to Rule 3 of Order 23, which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. The court answered the second issue affirmatively and observed that: the words 'by parties' occurred in Order XXIII, Rule 3 refer not only to parties in person, but their attorney holders or duly authorized pleaders. And, therefore, the statement of the counsels of both the parties recorded by the court is a valid compromise in terms of Order XXIII, Rule 3 of the Code of Civil Procedure. (*Pushpa Devi Bhagat (D) Th. LR. Smt. Sudhna Rai v. Rajinder Singh & Ors, Civil Appeal No. 2869 of 2006 arising out of SLP (C) No. 13894/2004* decided on July 11, 2006).

Applicability of Exc. 4 of Sec. 300 IPC

Pappu v. State of Madhya Pradesh, Cr. App. No. 751 of 2006, the court was examining the pivotal plea relating to the applicability of exception 4 of Section 300 IPC. The court held thus:

It cannot be laid down as a rule of universal application that whenever one blow is given, section 302 IPC is ruled out. It would depend on the weapon used, the size of it in some cases, force with which the blow was given, part of the body it was given, and several such relevant factors.

The court upheld the judgment of the trial court which was applied by the High Court to convict the appeal under section 304 Part II IPC, instead of section 302 IPC.

(*Pappu v. State of Madhya Pradesh*, Cr. App. No. 751 of 2006, Decided on 11th July, 2006)

Couples entering into Intercaste Marriages should be Protected

The Supreme Court in *Lata Singh v. State of U.P. and Another*, Crl. App. No. 208 of 2004 observed that the couples entering into intercaste marriages are usually harassed by the relatives. In fact intercaste marriage is a step towards destruction of caste system in our country. Therefore, the couples entering into intercaste marriages should be afforded protection by the Police. (*Lata Singh v. State of U.P. and Anr. Criminal Appeal No. 208 of 2004*, decided on July 7, 2006.)

Appellate Court's power to re-appreciate evidence

The Supreme Court in *V.N. Ratheesh v. State of Kerala*, Crl. App. No. 1375 of 1999, reiterated its ruling in *Bhagwan Singh and Ors. v. State of M.P.*, 2002(2) S.C. 567 which runs as follows:

In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence whether the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed by offence or not.

(*V.N. Ratheesh v. State of Kerala*, Crl. App. No. 1375 of 1999, decided on July 6, 2006).

A woman can not commit gang rape

In *Priya Patel v. State of M.P.*, CrI. App. No. 754 of 2006, the Supreme Court categorically ruled that the offences of rape and gang rape cannot be committed by a woman in as much as the provisions in the IPC speak of man committing this offence against a woman. It was a case wherein the wife of the perpetrator of the crime did not prevent him from committing rape of the prosecutrix though she had the opportunity to do so. (*Priya Patel v. State of M.P.*, CrI. App. No. 754 of 2006 decided on July 6, 2006.)

Equality can't be claimed in illegalities

In the instant case, the Petitioners, along with others, have filed application for grant of licenses for retail sale of Indian Made Foreign Liquor (IMFL). However, the Cabinet, owing to the public outcry has taken a decision not to issue any fresh licenses. Despite the same, the authorities have processed certain application for the grant of licenses whereas the Petitioners applications were rejected. Petitioner challenged the same in the Special Leave Petition.

The Apex Court under the fact and circumstances of the case and relying upon the assurance given by the Addl. Solicitor General that the steps would be taken to cancel the license issued illegally, has held that in a case of this nature where the State has the exclusive privilege and the citizen has no fundamental right to carry on business in liquor, in our opinion, the policy which would be applicable is the one which is prevalent on the date of grant and not the one on which the application had been filed. If a policy decision had been taken on 16:06:2005 not to grant license, no license could have been granted after the said date. Thus, the grant of license in favour of some of the applicants was illegal and the equality can't be claimed in illegalities. (*Kuldeep Singh v. Govt. of NCT of Delhi*, Civil Appeal No. 2802 of 2006 arising out of S.L.P. (Civil) Nos. 24704-24705, decided on July 6, 2006).

Applicability of Section 14 of Limitation Act in the Arbitration & Conciliation Act, 1996

A two- judge bench of the Supreme Court in a recent case held that Section 14 of the Limitation Act, 1963 is applicable to the Arbitration & Conciliation Act, 1996.

Section 14 of the Limitation Act excludes the time of bonafide proceedings in a court without jurisdiction for computing the period of limitation. Since the Arbitration & Conciliation Act do not expressly exclude the applicability of Section 14, it can be read into the provisions of the same. (*State of Goa v. Western Builders*, Criminal Appeal Nos. 1458-1465 of 2004, decided on July 5, 2006.)

Charge under 302/149

In *Bunnilal Chaudhary v. State of Bihar*, Criminal Appeal No. 605 of 2005, the appellant Bunnilal Chaudhary along with others was sentenced under 302/149 for murdering one Shambhu Raut. But due to the prosecution witnesses turning hostile and the change in disposition of one PW10 the honourable court dealt with the definition of culpable homicide in detail and come to the conclusion that since the case falls within the third part of section 299 and so was punishable under the second part of section 304 IPC as culpable homicide not amounting to murder. The charges under 149 were dropped and the others were acquitted. (*Bunnilal Chaudhary v. State of Bihar*, Criminal Appeal No. 605 of 2005, decided on July 5, 2006)

Umesh Singh v. Arya Samaj Sewa Sadan

The Supreme Court while upholding the Full Bench decisions of the Punjab and Haryana High Court, has held that the expressions ‘for his own occupation’ and ‘residential purpose’ occurred in Section 13 (3) (a) (i) of the Haryana Urban (Control of Rent) and Eviction Act, 1973, in relation to a juristic person, would also include the use of a building for all non-commercial purposes. Accordingly it was held that the running of a library by the respondent Arya Samaj Sewa Sadan would be covered by the provisions of Section 13 (3) (a) (i) of the above said Act. (*Umesh Singh v. Arya Samaj Sewa Sadan*, Civil Appeal No. 6495 of 2005, decided on July 4, 2006).

Commissioner of Police as Executive Magistrate

A.N. Roy v. Suresh Sham Singh, Cr. Appeal No. 703-714 of 2006, Power of State under section 20 of Cr. PC to appoint Commissioner of Police as Executive Magistrate of Brihan Bombay. Responding to the High Court’s contention that the Commissioner of Police can only be conferred with the powers of the Executive Magistrate in terms of S. 20(5) of the Code but it not entitled to be appointed even as an Executive Magistrate under 2(1) of the Code the Supreme Court held thus:

Once the Commissioner of Police is appointed as an Executive Magistrate in Brihan Bombay, he can be appointed as an Additional District Magistrate, who shall have the powers of the District Magistrate for the purpose of the District Magistrate for the purpose of section 18 and 20 of the Act. [Immoral Traffic (Prevention) Act, 1956]. (*A.N. Roy v. Suresh Sham Singh*, Cr. Appeal No. 703-714 of 2006, d ecided on July 4, 2006)

High Court cannot issue directions to investigate a case from a particular angle

Responding to a question whether a High Court under S. 482 Cr. P.C. could issue directions for investigation

into a criminal case, the Supreme Court answered thus:

“It cannot issue directions to investigate the case from a particular angle or by a particular agency. In the instant case, not only the High Court had asked reinvestigation into the matter, but also directed examination of the witnesses who had not been cited as prosecution witnesses. It furthermore directed prosecution of the Appellant which was unwarranted in law.”

The Court remanded the case to the High Court for consideration of the matter afresh. (*Popular Muthiah v. State represented by Inspector of Police*, Cr. App. No. 107 of 2003 decided on July 4, 2006.)

A cheque issued as a security would not come within the purview of S. 138 of Negotiable Instruments Act

In *Narayana Menon v. State of Kerala*, Cr. App. No. 1012 of 1999 the Supreme Court ruled that a cheque issued by the accused as a security to the complainant would not come under the purview of S. 138 of N.I.Act.

In this case the appellant took the stand that nothing was due and the cheque in question was issued by way of security. This was held to be probable. If the defence is acceptable as probable the cheque cannot be held to have issued in discharge of debt. The accused discharges the burden of proving his case by making the defence acceptable as probable. (*M.S.Narayana Menon @ Mani v. State of Kerala & Anr.* Criminal Appeal No. 1012 of 1999 decided on July 4, 2006)

Dying Declaration not to be disregarded easily

The Supreme Court held that the high court found fault with the dying declaration only because he did not mentioned PW3 i.e. his son was also there. The court felt the high court erred in this and restored life imprisonment given by trial court.

[*Heera Lal Yadav v. State of M.P. & Ors.* Cr. App. No. 546 of 2000 decided on July 4, 2006]

Exclusion of Jurisdiction of Civil Courts

The Supreme Court has reiterated the position that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusions must be explicitly expressed or clearly implied. It has also further held that where a statute has given finality to the orders of a special tribunal, the Civil Court’s jurisdiction is held to be excluded if there is an adequate remedy to do what the Civil Courts would normally do in a suit. Dealing with the provisions of the Haryana Ceiling on Land Holdings Act 1972 (the Act) which provides that no Civil Court shall have the jurisdiction to entertain or proceed with a suit for specific performance of the contract for transfer of land which affects the right of the State Government to the surplus area under the Act, or settle any matter which under the Act is required to be settled, decided or dealt with by a designated

authority. The Supreme Court held that in the given Act, the entitlement, choice of land and allotment of land are matters which are to be dealt with specifically by the authorities under the Act. Further there is provision under the Act there is a forum created to ventilate grievances and thus it could be concluded that a suit in a Civil Court is not maintainable.

[Devinder Singh versus State of Haryana, CA No. 4552 of 2000, decided on July 4, 2006.]

Andra Pradesh Public Service Commission v. K Sudharshan Reddy & Others

In the instant case, the apex court has held that its order passed in an earlier case was intended to protect not only the appointment of candidates appointed on the strength of 5% weightage given to the Telugu medium students but also all their service conditions. In an earlier case, the Supreme Court had declared the recruitment made to Group – II (A) Services by the Andra Pradesh Public Service Commission, upon completion of the process of selection wherein 5% weightage marks were awarded to candidates who had obtained their basic qualifications in Telugu medium as violative of Art. 14 and Art. 16 (1) of the Constitution. However, the court had observed, in the said case, that ‘those Telugu Medium Graduates who have already been appointed on the strength of such weightage and who are working on their concerned posts should not be disturbed and their appointments will not be adversely affected by the present judgment’. In the present case, the challenge was that the State has acted contrary to the law by giving the advantage of weightage marks while preparing the merit list for preparation of the seniority list in view of the aforesaid judgment of this court. It was contended that the protection given to Telugu medium students was only to the extent of their appointment and that did not include any condition that such candidates were to be given the benefit of weightage of 5% of the total marks also for the purpose of computing seniority. The apex court while rejecting the said contention, has observed that: ‘the court intended to protect not only the appointment of such candidates but also all their service conditions, which include their right to seniority as had accrued to them at the time of their initial appointment’. It was further observed that the said intention of this court was quite clear from the language used. If this court had intended that the weightage given to the concerned candidates was not to count towards their position in the merit list, it would have said so explicitly. (*Andra Pradesh Public Service Commission v. K Sudharshan Reddy & Others, Civil Appeal No. 4202/2003 with A.P. Public Service Commission v. Y.T.Naidu & Ors. Civil Appeal No.4201/2003, decided on July 4, 2006*).

Seniority of the Employee for Promotion should be counted from the date of regularization not from the the date of initial appointment

A two-judge bench of Supreme Court (Dr. A.R.Lakshman and Altamas Kabir, jj) while allowing the appeal and setting aside the order passed by the high court, has directed the respondents to re-determine the seniority of the appellants in relation to the promotion from the date on which their services were regularised and not from the date of their initial appointment under Rule 10 (a)(i)(1) of the Tamil Nadu State and Subordinate Services Rules. (*K. Madalaimuthu & another v. State of Tamil Nadu and others, Civil Appeal Nos. 2791-2793/2002, decided on July 4, 2006*).

Burden of proof upon workman to establish that he has worked 240 days

The question of upon whom the burden of proof will lie to determine if a workman has worked 240 days in a year, entitling him to claim certain benefits under the Industrial Disputes Act, 1947, has arisen in several cases in the past few years. The Supreme Court has declared that it is for the claimant to lead evidence to show that he had in fact worked for 240 days in order to avail of retrenchment compensation. Filing an affidavit or merely stepping into the witness box and examining himself cannot be regarded as sufficient evidence. The burden can be discharged when the workman adduces cogent oral and documentary evidence. The mere non-production of muster rolls by the employer per se without any plea of the suppression by the claimant cannot provide the basis for the tribunal to draw an adverse reference against the employer in such cases. In the given case where xerox copies of the workman's attendance and salary registers were produced, the workmen merely made oral statement, without any thing more, to the effect that they had been working for more than 240 days. The Court held that they had not discharged the burden upon them to prove that they had worked for more than 240 days.

[Surendranagar Distt. Panchayat v Ganagaben Laljibahi CA No. 6383 of 2005, decided on July 3, 2006.]

Prescription of a minimum as bench mark for passing a competitive examination
is
proper and interview is the best mode of assessing suitability of a candidate

Holding Rule 7 of the Kerala Judicial Services Rules 1991, empowering the High Court of Kerala to hold examinations written and oral for the preparation of list of suitable candidates for judicial service, constitutional, the Supreme Court in *K.H. Siraj v. High Court of Kerala* Civil Appeals No. 2539-2540 of 2005 ruled on 23.05.2006 thus:

“The very concept of examination envisaged by Rule 7 is a concept justifying prescription of a minimum as bench mark for passing the same. In addition, further requirements are necessary for assessment of suitability of the candidate and that is why power is vested in a high powered body like High Court to evolve its own procedure as it is the best Judge in the matter.”

About ‘interview’, the Court observed:

In our opinion, the interview is the best mode of assessing the suitability of a candidate for a particular position. While the written examination will testify the candidates’ academic knowledge, the oral test alone can bring out or disclose his overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership etc. which are also essential for a judicial officer.

The Court’s following observations are also relevant:

“Thus, it is seen that apart from the amplitude of the power under Rule 7 it is clearly open for the High Court to prescribe bench marks for the written test and oral test in order to achieve the purpose of getting the best available talent. There is nothing in the Rules barring such a procedure from being adopted. It may also be mentioned that executive instructions can always supplement the Rules which may not deal with every aspect of a matter. Even assuming that Rule 7 did not prescribe any particular minimum, it was open to the High Court

to supplement the Rule with a view to implement them by prescribing relevant standards in the advertisement for selection.”

Habitual Criminal

The Supreme Court reiterated the definition of ‘Habitual Criminal’ thus:

“A person is said to be a habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and *prima facie* there should be continuity in the commission of those offences.”

The Supreme Court ordered release of the detainee, since he could not be termed a habitual criminal (*R. Kalavathi v. The State of T.N.*, Criminal Appeal No. 698 of 2006, decided on July 3, 2006).

Offense under S.366 IPC

It has been ruled by the Supreme Court in *Gabru v. State of M.P*, Cr. App. No. 791 of 1998 (May 12, 2006) that mere taking away a woman may not amount to an offense under S.366 IPC. Responding to the facts in the case the court said thus: -

“That does not ipso fact prove the fact that from the very beginning the accused – appellant had any intention of inducing the

prosecutrix to forcibly marry him or the other accused or she was induced or seduced to illicit intercourse with the accused – appellant

or with the other person whose company he left at Gunabad.”

Serving of Notice under S.138 of N.I. Act

In *Vinod Shivappa v. Nanda Belliappa*, Cr. App. Nos. 1255 to 1261 of 2004, the Supreme Court was dealing with the question whether in the case of a person not receiving the notice for payment under S.138 of Negotiable Instruments Act, the Court could treat it as served. The Supreme Court said thus: -

“It is no doubt true that the receipt of the notice has to be proved, but as held by this Court consistently, refusal of notice amounts to service of notice. Similarly in a case where notice is not claimed even though sent by registered post, with the aid of Section 27 of the General Clauses Act, the drawer of the cheque may be called upon to rebut the presumption which arises in favour of service of notice.”

(Decided on May 25, 2006)

Payment in respect of letters of credit – leave to defend the suit

The High Court in *UBS AG v. State Bank of Patiala* Civil Appeal No. 2577 of 2006 revoked the leave granted to the respondent to defend the suit that arise as a result of the appellant bank paying the money covered by the letter of credit to the beneficiary through the beneficiary was playing fraud on the respondent bank (Decided on May 10, 2006)

Liability to pay minimum wages

A two judge bench of the Supreme Court comprising Arijit Pasayat and Tarun Chatterjee JJ decided a short but interesting question in this case: Can the Minimum Wages Act, 1948 (the Act) which empowers the State Government to notify minimum wages for selected scheduled employments, be extended to those employments which have not been notified under the Act? Observing that the Act allows the State Government to both add to the scheduled employments to which the Act extends and also to notify the minimum wages for these scheduled employments, the court held that the power to fix minimum wages is limited under the Act to only scheduled employments and not to others. Thus the court set aside the decision of the Division Bench of the High Court directing the payment of minimum wages to the security staff provided by the appellant at the premises of the principal employer *ie* Msyore Kirloskar, since this was not a scheduled employment.

Earlier, aggrieved by the orders of the Authority under the Act directing payment of minimum wages, a Single Judge of the High Court had set aside the orders and directed payment, on *ex-gratia* grounds, by the principal employer to the workman of a sum of Rs. 1,00,000. On appeal, a Division Bench of the High Court had set aside the order of the Single Judge and held that since the list of scheduled employments covered the activities of the principal employer there was no need to establish that the providing ‘security services’ also be notified as a scheduled employment. The Division Bench also held that when a person provides labour or services for

another for remuneration and does so at wages below a minimum wage, it would amount to ‘forced labour’ and be in violation of the person’s fundamental rights (a position elucidated in the celebrated case of *People’s Union of Democratic Rights v Union of India* AIR 1982 SC 1473). The Supreme Court was of the view that for the Act to apply and for the liability of the employer to pay minimum wages to arise, there must be explicit mention of the employment in the schedule to the Act, and the fixation of minimum wages by the State Government for that category of employment. There was also no question of joint or several liability to pay such minimum wages upon the employer of the security staff nor upon the principal employer. However, since the order of Single Judge directing *ex-gratia* payment to the workmen had not been appealed by the principal employer in the present case, the respondent was directed to make the payment. (*Lingegowd Detective & Security Chamber (P) Limited v. Mysore Kirloskar Limited & Ors*, Civil Appeal No. 4494 of 2000, with CA Nos. 4495-4498 of 2000, Decided on May 4, 2006.)

Services of an ad-hoc employee cannot be confirmed on a regular basis

A two judge bench of Supreme Court (Justice S.B. Sinha and Justice P.K. Balasubramanyan) while modifying the judgement and order passed by the high court, which upheld the decision of the labour court for reinstatement of an ad hoc employee whose services had been terminated on a regular basis and she had been re-appointed after a gap of one or two days with a view to defeat the object of the Industrial Dispute Act, 1947, the Supreme Court held that even if she is reinstated in her service on an ad hoc basis, her service can not be regularised in view of a recent Constitution bench decision of this court in the case of *Secretary, State of Karnataka v. Uma Devi* (2006(4) SCALE197). However, in view of the peculiar facts and circumstances of the case, the court modified the ruling of the high court by directing the corporation to compensate the employee by payment of a sum of Rs. 25,000/ instead of the order for reinstatement with back wages. (*Haryana State Electricity Development Corporation v. Manni*, SLP (Civil) No.14929 of 2004, decided on May 02,2006).

Attempt to commit rape – punishment

In *Guddu @ Santosh v. State of M.P.* Cr. App. No. 1491 of 2005, the Supreme Court upheld the conviction of the appellant under S.376/511 by the Division Bench of the High Court and awarded 5 years imprisonment in the place of 10 years imprisonment awarded by the High Court.

It is interesting to see that it was a case in which the accused was acquitted by the trial judge for lack of evidence of rape. A Division Bench of M.P High Court convicted the accused u/s 376/511 but awarded 10 years imprisonment wrongly. (Decided on April 27, 2006)

The Board of Directors can subsequently ratify an order of dismissal of an employee

While setting aside the judgement and an order of the high court which held the dismissal of an employee of Maharashtra State Mining Corporation by the Managing Director of the said corporation as illegal and improper on the ground that such order of dismissal was not passed by a competent authority and subsequent ratification of the same by the Board of Directors, which is a competent authority, could not rectify such defect, the Supreme Court held that such an act of the Managing Director as subsequently ratified by the Board of Director was legal and proper in the eyes of law. The court said that the high court was right when it held that an act by a legally incompetent authority is invalid, but it was entirely wrong in holding that such an invalid act cannot be subsequently ‘rectified’ by the competent authority i.e, the Board of Director in the instant case. (*Maharashtra State Mining Corporation v. Sunil s/o Pundikaro Pathak*, SLP (Civil) No.20513 of 2005, decided on April 24, 2006)

Hostile Witness’s Statement

In State of *J&K v. S. Mohan Singh*, Cr. App. No.487 of 2000 the Supreme Court reversed the acquittal of the accused in the murder case by the High Court. In fact the trial court convicted the accused u/s 302 and sentenced them to life imprisonment.

The Supreme Court upheld the trial court’s judgment though two prosecution witnesses could not be produced by the prosecutor despite its efforts. It accepted the evidence of another prosecution witness who did not support the prosecution fully observing thus: -

“In our opinion, this witness has supported the prosecution case to a great extent, excepting the part played by the respondents, in his statement made in court and as he was gained over by the defense, he did not support the prosecution case in relation to part played by the respondents though presence of respondent no: I.S. Mohan Singh in the meeting has been admitted by him.”

The court also supported its decision relying on other persecution witnesses though they were interested witnesses.

Lengthy Judgments and References to Precedents

The judgment in *Jayasingh v. K.K. Velayutham*, Cr. App. No.1368/2004 assumes importance. The facts of the case can be stated thus: -

“The appellant, an official in the PWD of T.N. Govt., in pursuance of a court order removed the kiosk run by the wife of the respondent in the interest of maintenance of public health. Though the respondent’s complaint was rejected by the trail court, his revision petition to the T.N. High Court was allowed directing to proceed against the appellant. His arguments that he removed the kiosk in pursuance of a court order and that sanction to prosecute here under S.197, Cr. P.C. was not obtained by the respondent etc. were turned down.”

The Supreme Court on appeal reversed the revision and ruled that in the facts of the case sanction to prosecute the appellant u/s 197 was to be obtained from the government.

What makes it interesting is the length of the judgment and the frequent references to the recent precedents. This chain of precedents in fact serves no purpose other than making the judgment lengthy and clumsy. One or two precedents may serve the purpose.

Anil Kumar Vitthal Shete v. State of Maharashtra
I.A. No. 126 in Writ Petition (Civil) No. 1022 of 1989 dated April 28, 2006

The lack of uniformity in the working conditions of judicial officers had been the subject matter of controversy in the *All India Judges Association v. Union of India* (1992) 1 SCC 119. The directions given by the Supreme Court had resulted in the setting up of the First National Judicial Pay Commission by the Government of India under the Chairmanship of Mr. Justice K.J. Shetty. The Shetty Commission restructured and rationalized judicial officers' cadres into three uniform cadres broadly covering District judges, Civil Judges (Senior Division) and Civil Judges (Junior Division). While the Commission had made wide ranging recommendations regarding the placement of members of the subordinate judiciary into one of the three categories, including placing the Chief Judge and Additional Chief Judge of Small Causes Courts in the cadre of District Judges, with respect to the placement of Judges of the Small Causes Courts, it had been left to the respective High Courts to determine.

The present petition and applications arose from the Judges of Small Causes Courts of Maharashtra and Gujarat who were placed by their respective High Courts in Category 2 above Civil Judges (Senior Division). The Supreme Court rejected their petition after considering the principles relating to integration and unification of different cadres. The Court reiterated that it is a policy decision on the part of an employer to fix service conditions of his/her employees, and this a pure administrative function. Holding that the High Court had considered the question with due care and in the proper perspective, it upheld the decision of the High Courts that the petitioners were to be placed in Category 2. The Supreme Court also noted that considering the fact that Judge Small Causes Courts was a promotional post from Civil Judges (Senior Division), the petitioners had been placed above Civil Judges (Senior Division) in the same category. Thus the merger of cadres was achieved while maintaining inter se horizontal and vertical relativity amongst them. The Supreme Court thus upheld the decision of the Full Court on its Administrative Side. Other I.A.s dealing with other related matters, including the placement of Chief Judge, Small Causes Court, Ahmedabad in Category 1 with District Judges, and the placement of Assistant Judges of Gujarat in the cadre along with Civil Judges (Senior Division) were also disposed of on the same grounds.

Extension of service is not a legal right

The instant case is filed by the legal representatives of a deceased employee of State Bank of India against the Bank. The case mainly involved two questions: matter of extension of service beyond superannuation and matter of promotion. As regards to the first issue, the Court reiterated that *the purpose of giving extension of service is to promote the interest of the bank and not to confer any privilege or favour on the retiring officer. Merely because the officer has put in the requisite number of years of service, that does not earn him the extension.*

In the second matter, the court found that the employee was governed by Bank's Modified Policy of 1984, which mandates evaluation of past performance of the officer and assessment of his potentials. The Court did not heed to the argument of institutional bias and found that the employee's behaviour in the interview was either proved his ignorance or proved his obstructive attitude: hence no fault with the interview committee's finding that the employee was not fit for promotion. Further the present case does not involve any question of the retrospective application of the policy of 1989.

The court thus upheld the finding of the high court that the action of the Bank was not liable to be interfered with on any ground and hence, the legal representatives are not entitled for any monetary relief for the benefits of an extension

which ought to have been granted to the employee. (*D. C. Aggarwal (Dead) by LRs. v. State Bank of India and another* decided on 27th April 2006 by learned JJ. B. N. Srikrishna and Lokeshwar Singh Panta)

Puran Das v. Union of India
(Civil Appeal Nos. 5024-5025 of 1998) Decided on Feb 23, 2006

The substantial question involved in this case was whether an order of the High Court to reinstate a suspended or dismissed employee and to grant consequential relief would confer any right on such employee to claim promotion with effect from the date on which their juniors were promoted.

In appeal before the Supreme Court the petitioner contended that he was denied an opportunity to appear in the test since he was kept under suspension and thereafter dismissed. And the appellant has strongly relied upon the observation of the Supreme Court made in *C.O. Arumugam and Others v. State of Tamil Nadu and Ors.* The Hon'ble Supreme Court upon perusal of the facts, has distinguished it from *C.O. Arumugam's* case and observed that in *C. O. Arumugam's* case, powers were qualified at the time when consideration was made for promotion but in this case the appellant was not qualified. When the consideration was made for promotion. The qualifying written and practice test for promotion were held in July and August, 1975, but the appellant became eligible to appear in the test only in 1986. Hence, the court observed that since the appellant was not qualified on the date when considerations were made, he has got no right to be promoted from the date when his juniors were promoted.

Applicability of Promissory Estoppel
Mahabir Vegetable Oils Pvt. Ltd and Anr. v. State of Haryana & Ors
(Civil Appeal No. 1635 of 2006) Decided on March 10, 2006

In this case the applicability of promissory estoppel and the extent thereof was called in question. The appellant relying on incentive by way of sales tax exemption promised by the state government altered their position by investing heavily by setting up industry in backward areas of the state. However, amendments was carried out in 1996 and prior to 2001 to the Haryana General Sales Tax, 1973 which took away the right of the appellant to sales tax exemption with retrospective effect. The Supreme Court in appeal held that the promise/ representations made by way of a statute, continues to operate in the field. An entrepreneur, who set up an industry in a backward area unless otherwise prohibited, is entitled to alter his positions pursuant to or in furtherance of the promises or representations made by the state.

National Council for Teacher Education & Anr v. Committee of Management & Ors.
(Civil Appeal No. 1546 of 2005) Dated: 7.3.2005

Justice S. B. Sinha, speaking for himself and on behalf of P.P. Naolekar J., has observed that a Regulation having been validly framed in accordance with the provisions of the National Council for Technical Education Act, 1993, indisputably, were required to be complied with.

In the instant case, the Respondent herein is an institution which imparts teacher's education. The application filed by it for getting the required recognition was incomplete. But, however, the deficiencies were made good only after the expiry of the last date prescribed under the Regulation validly framed. Owing to this delay, the Council has refused to accord recognition for the academic year 2005-2006. The same was challenged before the High Court in Writ Petition on the ground that the date fixed by the regulation is not mandatory and that the institutions similarly situated having been granted recognition. The Hon'ble High Court allowed the Petition.

In Appeal, the Supreme Court has set aside the Order passed by the High Court and observed that even if the

Regulations are directory in nature, substantial compliance thereof was necessary. Proceeding further it was observed that only because some illegalities had been committed by the Council in respect of other institutions, the same may not by itself be a ground for perpetrating the illegalities.

Purpose of Punishment is Deterrence

The Supreme Court in *Shailesh Jasvantbhai & Anr. v. State of Gujarat & Ors.* Cr. App. No. 118 of 2006 reiterated that criminal law should ensure protection of society by imposing punishment proportionate to the gravity of the offence committed by the accused. The Court emphasized thus:

“Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.”

Prosecution witness turning to be Defense Witnesses:
Order of acquittal by M.P High Court set aside.

The Supreme Court in *State of Madhya Pradesh v. Badri Yadav & Anr.* Cr. App. No. 1642 of 2005 set aside an order of acquittal rendered by the M.P. High Court on the basis of evidence given by two witnesses who first gave evidence as P-Ws and then by way of affidavits changed the version to support as Defense witnesses.

The Court also criticized the High Court which despite noting the peculiar situation reversed the order of conviction rendered by the District Court. The Supreme Court also directed the District Court to initiate action against the witnesses under Section 193 IPC.

Sanction under S.197 Cr. P.C. (Decided on March 24, 2006)

In *Sankaram Moitra v. Sadhna Das* Cr. App. No.330 of 2006 by majority (Justice Sabharwal, CJI and Justice P. K. Balasubramanian) held that if the act was done by the public official in performance of his duty or in purported performance of duty, Section 197 (1) cannot be by-passed by reasoning that killing a man could never be done in an official capacity and consequently S.197 (1) could not be attracted.

Justice C.K. Thakker (minority) did not agree. He ruled that the ‘act said to have been committed by public officer must have reasonable connection with the duty sought to be discharged by such public officer’.

It was a case against police officer on the allegation that he had beaten the husband of the respondent to death.

Jurisdiction of the court to interpret a statute can be invoked only in case of ambiguity

A two judge bench of Supreme Court (Justice H.K.Sema and Justice Dr.AR Lakshmananan) allowing a Special Leave Petition, setting aside the judgement and order of the high court in a service matter, while interpreting Regulation 5 (5) and 7 (3) of the Indian Police Service (Appointment by Promotion) Regulations, 1955 held that the jurisdiction of the court to interpret a statute can be invoked only in the case of ambiguity. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or

read something into it, which is not there in the statute itself. (*Gurpreet Singh Bhullar & Anr. v. Union of India*, S.L.P. (C) No.904 of 2006, decided on March 8, 2006)

No compensation in case of property which belongs to State

While setting aside the judgement and order passed by the high court whereby the high court directed the state to pay compensation to the petitioner, the Supreme Court held that in a matter where the land in question was sold by the grandfather of the petitioner (respondent herein) by the registered deed of sale in favour of state, the petitioner (respondent herein) cannot claim any right, title or interest in the said property and accordingly not entitled to any compensation on the ground of acquisition of lands which belong to the state. (*State of U.P. & Ors. v. Kashi Prasad Dwivedi & Ors.* SLP (C) Nos.2068 of 2005, decided on March 06, 2006).

***Sunita Jain v. Union of India* Cr. App. No. 245 of 2006 Decided on Feb 24, 2006**

The question was whether preventive detention was vitiated since bail application was not furnished to the accused. The court held that non furnishing of a copy of the application bail cannot be said to be a ground which impaired the subjective satisfaction of the detaining authority. It was held that all the documents placed before the detaining authority are not required to be supplied, only those which are relevant and vital are to be supplied. The appeal was dismissed.

***The Haryana State Agricultural Marketing Board Vs. Subash Chand & Another* (Civil Appeal No. 127 of 2006, Dated: 24.02.2006)**

S.B. Sinha. J., while setting aside both the judgement of the High Court and the award passed by the Labour Court-cum-Industrial Tribunal, has held that if the service of an employee is terminated in terms of the stipulation in the contract of employment, such termination falls within the purview sub-clause (bb) of clause (oo) of Section 2 of the Industrial Dispute Act, 1947 and that would not amount to retrenchment and hence Section 25-G of the Act is not applicable.

***Andra Pradesh State Road Transport Corporation & Ors Vs. G. Srinivas Reddy & Ors* (Civil Appeal No. 3424 of 2006, Dated: 24.02.2006)**

The Supreme Court, while considering the question of absorption of contract labourers, has observed that the question whether a contract labour system is genuine or mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder has to be adjudicated only by the Industrial Tribunal/ Labour Court and not by the High Court in its Writ Jurisdiction.

It was further observed that, when the High Court dispose of the matter, without examining the issues raised, with a direction to the authority 'to consider' the matter/representation, such an order 'to consider' should not be interpreted or understood as an order directing grant of relief sought in the representation which otherwise could not have been granted.

In Disciplinary Proceedings High Court Exercises a Limited Power

In this case, the appellant is a company registered under the Company Act, 1956. The respondent was appointed as an Assistant Field Officer. There were allegations of misconducts. A preliminary enquiry was conducted and a charge

sheet was framed against him. Enquiry Officer recommended punishment for commission of misconducts. Appellant company issued a show cause notice as to why two increments of pay from his salary should not be directed to be withheld permanently. Another show cause notice in supercession of the earlier notice, was issued on the ground that charges which were proved against 1st respondent being serious in nature, punishment of freezing two increments was found to be very mild. Upon consideration of cause shown, services of 1st respondent was terminated. The respondent questioned the legality of the order by filing a writ petition in the high court. The high court interfered with the quantum of punishment directing his reinstatement with continuity in service with full back wages holding that punishment of 'withholding of two increments of pay permanently' should be imposed on him. Allowing the appeal the apex court held that the respondent not only defalcated a huge amount but also misappropriated some bags of seeds. Hence, in the facts and circumstance of the case, it was improper for the high court to interfere with quantum of punishment. (*M/s. Maharashtra State Seeds Corp. Ltd. v. Haridas & Anr.* Civil Appeal No. 3071 of 2004, decided on February 24, 2006.)

Ushabhai & Others V. M/s. Balkrishna Biharilal & Ors.
(Civil Appeal No. 1233 of 2006, Dated: 23.02.2006)

Where a mortgage deed is subsequently executed in favour of a tenant, upon redemption of mortgage by the heirs of the mortgagor, the relationship of landlord and a tenant will be restored and the landlord can claim eviction on the ground of bonafide need.

In this case a suit premises was let out on a monthly rent of Rs. 50/-. Later, The Landlord took some money from the tenant and executed a mortgage deed in favour of him. Thereafter, the Landlord effected a partition of his property including the suit premises, which fell in the share of his son, Mahesh Parasai. On his death, his widow and sons got the mortgage redeemed in their favour after tendering the mortgage money and instituted a suit for eviction on the ground of bonafide necessity. The trial court has held that the mortgage has not been redeemed and no case of bonafide need was made out. Whereas the First Appellate Court has allowed the appeal on the ground of bonafide need. The High Court, in the second appeal, has ruled that, there was complete surrender of tenancy in favour of the defendant because of mortgage. The present appeal is against this order.

The Supreme Court has set aside the said order of the high court, and held that upon redemption of mortgage, the earlier position of Landlord and tenant will be restored. However, the matter was remitted back to the high court with a direction to examine the issue of bona fide need of the Landlord.

Chief administrator of PUDA and another V. Mrs. Shabnam Virk
(Civil Appeal Nos. 3967-3968 of 2004 Dated: 23.02.2006)

Justice Arijit Pasayat, speaking for him self and on behalf of Tarun Chatterjee, J., has observed: "When a Person had accepted the allotment of the house and undertook to abide by all the terms and conditions of the letter of allotment, he/she shall be liable to pay the amount specified in the letter of allotment but he/she cannot claim the allotment of the house at the price fixed tentatively in the advertisement inviting applications for allotment.

Ramesh Kumari v. State (NCT of Delhi) & Ors.
Cr. App No. 1229 of 2002 Decided on Feb. 21, 2006

In the present case the police had refused to register a complaint inspite of all efforts of the appellant to Police Commissioner level. A contempt petition was filed by her in the High Court. The High Court was of the view that the appellant has alternative remedy available to her without indicating what is the alternative remedy. The Supreme

Court without entering into merit of the case held that under section 154 Cr. PC the police was duty bound to register “information” of a cognizable offence. Genuineness or otherwise of the information can only be considered after registration of the case since the word ‘information’ in the section is not qualified by any such requirement. The Supreme Court directed the CBI to register and investigate the case, since there was allegation against the police personnel, within three months. The Delhi High Court was also requested to expedite the disposal of contempt petition within three months.

Time Limit Under Section 134 of Limitation Act, 1963 is Mandatory in Nature

Appellant filed the suit on the basis of a promissory note executed by respondent, which was decreed in his favour by the trial court. Subsequently, in execution proceedings, the appellant purchased the judgment debtor (respondent’s) property in court auction which was confirmed. Respondent while seeking to set aside the said sale, argued for the entitlement to benefits under Tamil Nadu Debt Relief Act, which was dismissed as the Respondent failed to made out his case under the Debt Relief Act. Appellant filed petition for delivery of possession after six years. Respondent contended that the execution petition was filed beyond the statutory limitation period of one year as prescribed under section 134 of the Limitation Act, 1963. However trial court overruled the objection and ordered for delivery. The high court while entertaining the revision petition interpreting Order XXI Rule 64 of CPC, set aside the sale. The Supreme Court while confirming the decision of high court held that appellant is not entitled to relief in view of Section 134 of Limitation Act. Accordingly, the Supreme Court dismissed the Appeal with no costs. (*Balakrishnan v. Maliyandi Konar*, Civil Appeal No. 2062/ 2000 decided on 17th Feb., 2006).

State of Andhra Pradesh v. S. Rayappa & Ors. Cr. Apps. Nos. 1401-1402 of 1999 Decided on Feb 14, 2006

In this case 23 accused in all were put to trial under sections 148/ 302/ 149 IPC. A – 21 died before the trial commenced. A – 1 to A – 20, A – 22 and A – 23 faced the trial. The trial court convicted A – 2, 3, 6, 12 and 14 u/s 148 and sentenced them to rigorous imprisonment for three years. A – 2, 3, 6, 12 and 14 were found guilty under S.302 and sentenced to rigorous imprisonment for life. The high court acquitted the accused as, according to the prosecution, witnesses were close relatives hence interested witnesses and PW-2 was not mentioned in the inquest report. The Supreme Court categorically held that in order to avoid harassment no witnesses come forth. In this if scenario if relative witness are assailed as interested witnesses no conviction would be possible. The only thing that is to be done in that the testimony of the relative witnesses should be examined cautiously. It was further held that every discrepancy in the witness statement, which does not materially affect the prosecution case, is not fatal to the prosecution case. The order of the trial court convicting the respondents was restored.

Admiralty Suit

In this case there was a Charter Party Agreement between the parties to carry on board the vessel M. V. Fortune Express under the six split bill of lading 642 logs from the port of Sarawak, Malaysia for discharge at the port of Calcutta, India. As per stowage plan, 578 logs were lying on the deck of the vessel. At the time of the discharge of the cargo lying on the deck of the vessel, it was found that 456 logs out of 578 logs were missing and had been short-landed. The plaintiff claimed a decree of the proportionate value of 456 logs, port and other charges, custom duty and proportionate insurance payment. As per the plaintiff’s allegation, the logs, which were to be carried on the vessel owned by the defendants, has not been delivered at the port of destination. The plaintiff filed admiralty suit in the Calcutta High Court in admiralty jurisdiction. The plaintiff prayed for arrest of the vessel along with her tackle, apparel and furniture. The defendants filed an application under Order VII, Rule 11, CPC alleging that the High Court had no jurisdiction to entertain the suit and that the suit does not disclose any cause of action. Allowing the

application, the Division Bench of the High Court held that under the forum selection clause the Singapore Court alone will have jurisdiction to entertain suit, and passed an order of permanent stay of the suit and discharging the bank guarantee. In appeal before the apex court, it was held that the High Court has committed an error in passing the order of permanent stay and discharging the bank guarantee and stay of suit with the aid of Section 10 of CPC was not justified. Further, Clause 19 of bill of lading can not be relied upon for absolving the carrier from his liability for any damage or loss caused to goods carried on ship. [*Mayar (H.K.) Ltd. & Ors v. Owners & Parties, Vessel M. V. Fortune Express & Ors*, Civil Appeal No. 867 of 2006, arising out of Special Leave Petition (Civil) No. 17906 of 2004, decided on January 30, 2006]

Ravi Kumar alias Kutti Ravi v. State of Tamil Nadu
Cr. App. No. 630 of 2005 Decided on 22nd Jan, 2006

The death of a lady was caused by pouring kerosene on her and burning. She gave a dying declaration naming the accused. The defense argument that her dying statement was in Telegu and was translated into Tamil by the doctor hence it may not be admissible was set aside by the court. The other argument that in the hospital entry register it was initially registered as a cause of suicide was also rejected as the doctor put the defense that the deceased's father was not clear about the event when he brought his daughter to the hospital hence for the sake of entry the doctor registered it as suicide. But after getting a clear picture of event, he erased the same and noted accordingly. Hence the Supreme Court upheld the conviction of the accused.

Operation of S.300 Cr. P.C. Explained

The Supreme Court in *State of Karnataka v. C. Nagarajaswamy*, Cr. App. No.1279 of 2002 and *State of Karnataka v. M.K. Vijayalakshmi*, Cr. App. No. 137 of 2003 explained that a trial without sanction, though completed, cannot operate as a ground for preventing another trial of the same case after obtaining sanction for prosecution from the authority concerned. S.300 Cr. P.C. will not be applicable inasmuch as the first trial without sanction does not amount to trial. (Decided on October 07, 2005)

Reason for sending copy of FIR to Magistrate

The Supreme Court in *Girishchandra Mahto @ Girish Mahto v. State of Jharkhand*, Cr. App. No.31 of 2006 reiterated that the purpose of sending the copy of FIR to the Magistrate under S.157 Cr. PC is to avoid any possibility of improvement in the prosecution story and also to enable the magistrate to have a watch on the progress of the investigation.

The Court also pointed out that delay on the part of prosecution to send the FIR promptly would not be the sole basis for throwing out the entire prosecution case being fabricated if the prosecution has produced reliable evidence to prove its case. (Decided on January 06, 2006)

More allegations of police torture may not invite the Court's awarding of compensation as public law remedy

Turning down request for award of compensation allegedly for police torture, which could not be established in an independent investigation by the CBI, the Supreme Court ruled that in such cases it would not award compensation under the public law. It reviewed its precedents and reiterated the position.

The Court with a view to avoid police overreach suggested the following:

- (a) Police training should be re-oriented, to bring in a change in the mindset and attitude of the Police personnel in regard to investigations, so that they will recognize and respect human rights, and adopt thorough and scientific investigation methods.
 - (b) The functioning of lower level Police Officers should be continuously monitored and supervised by their superiors to prevent custodial violence and adherence to lawful standard methods of Investigation.
 - (c) Compliance with the eleven requirements enumerated in D.K. Basu (supra) should be ensured in all cases of arrest and detention.
 - (d) Simple and fool-proof procedures should be introduced for prompt registration of first information reports relating to all crimes.
 - (e) Computerization, video-recording, and modern methods of records maintenance should be introduced to avoid manipulations, insertions, substitutions and ante-dating in regard to FIRs, Mahazars, inquest proceedings, Post-mortem.
- Reports and Statements of witnesses etc. and to bring in transparency in action.
- (f) An independent investigating agency (preferably the respective Human Rights Commissions or CBI) may be entrusted with adequate power, to investigate complaints of custodial violence against Police personnel and take stern and speedy action followed by prosecution, wherever necessary.

The endeavour should be to achieve a balanced level of functioning, where police respect human rights, adhere to law, and take confidence building measures (CBMs), and at the same time, firmly deal with organized crime, terrorism, white-collared crime, deteriorating law and order situation etc.

(*Sube Singh v. State of Haryana*, Writ Petition (Cr.) No.237 of 1998 dated February 03, 2006)

A person working on short term contract basis cannot be said to be a Government servant

In *Union Public Service Commission v. Girish Jayanti Lal Vaghela & Others* (Civil Appeal No.933 of 2006, decided on Feb. 02, 2006), the Supreme Court had to consider the question whether a person working on a short term contract basis can be said to be a Government servant. In this case the respondent was engaged or hired on contract to work as Drugs Inspector for a period of six months from the date of joining or till a candidate selected by UPSC joined on regular basis whichever was earlier. An advertisement was issued by the UPSC for making regular selection for the post of Drugs Inspector. Under the relevant recruitment rules made in exercise of powers conferred by proviso to Article 309 of the Constitution, the upper age limit for making direct recruitment is 30 yrs, which is relaxable for Government servants upto five years in accordance with the instructions or orders issued by the Central Government. Since the respondent had become over-age by two years he submitted an application to the Administrator, Union Territory of Daman and Diu for issuing him an age relaxation certificate. The Administrator refused to grant the age relaxation certificate. The Central Administrative Tribunal dismissed the application of the respondent filed against the order of the Administrator and held that the respondent was on a short term contract basis with the Government and was not appointed by following the recruitment rules and further that the intention of the Government was to provide relaxation in age only to regular Government servants and not to those who have been appointed on ad hoc basis dehors the rules. The High Court allowed the appeal of the respondent and directed the Administrator to issue an age relaxation certificate to respondent. The Supreme Court, after referring to several of its earlier decisions rejected the view taken by the High Court and held that, a person working on short term contract basis cannot be said to be a Government servant.

High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority

In *Govt. of A.P. & Ors. v Mohd. Nasrullah Khan* (Civil Appeal No.1318 of 2005, decided Jan. 31, 2006) the State of Andhra Pradesh preferred an appeal against the judgment and order of the Division Bench of the High Court of Andhra Pradesh. The respondent in this case was working as Head Constable at Shamshabad Police Station of Ranga Reddy District. A disciplinary inquiry was initiated against the respondent for grave misconduct in committing theft of the C. C.T.V. lens. The Inquiry officer found the respondent guilty of the misconduct. The Disciplinary Authority on receipt of the Inquiry Report and considering the reply to the show cause notice, dismissed the respondent from service. The A. P. High court directed that the respondent be reinstated into service with backwages. The Supreme Court held that the High Court has committed patent error of law, which has resulted in miscarriage of justice. The Court said that it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority.

Section 3 of the UP Public Moneys (Recovery of Dues) Act, 1972 cannot be utilized for recovery of loans taken under a “State-sponsored scheme”.

In *Iqbal Naseer Usmani v. Central Bank of India* (Civil Appeal No. 657 of 2006) (decided on 19.01.06) the respondent bank instead of executing the decree obtained against the appellant, approached the Tehsildar, Gonda for issuing a certificate of recovery under the provisions of Section 3 of the U.P. Public Moneys (Recovery of Dues) Act, 1972. The appellant challenged the action taken by the Revenue authority in a writ petition before the High Court. The High Court dismissed the writ petition. The Supreme Court held that since the loan taken by the appellant was not under or in relation to a “state-sponsored scheme”, it would not be recoverable by recourse to the machinery under Section 3 of the Act.

A Balance Sheet of aggravating and mitigating circumstances has to be drawn up while awarding death sentence

In *Union of India & Ors v. Devendra Nath Rai* (Civil Appeal No. 206 of 2003) decided on 10.01.06), the Union of India, Chief of Army Staff appealed against the judgment of a division Bench of the Allahabad High Court directing the authorities to reconsider the question of death sentence awarded to the respondent accused. The Supreme Court held that the High Court has not attempted to do the exercise of preparing a balance sheet of aggravating and mitigating circumstances against the accused and has come to an abrupt conclusion about the case being not covered by the rarest of rare category.

Union of India and Ors. v. Kali Dass Batish & Anr
(CJI, B.N.Srikrishna, R.V.Raveendran JJ) Civil Appeals 7575-7576/2004

The case pertained to pleas for judicial review by the two respondents, (originally in the High courts of Himachal Pradesh and Jharkand respectively), whose names were included among the seven recommended for appointment as Judicial Members by selection committee, under section 6 (3) of the CAT Act, 1986. The selection committee chaired by the then CJI had in July 2001 recommended them for appointment from the names of 121 persons considered for selection to the vacancies. After a process of requisite verification of antecedents through the Intelligence Bureau all necessary papers were forwarded to the CJI for his concurrence in November 2001. CJI concurred with the proposal submitted to him in due course. In accordance with the approved proposal, the respondents were not appointed.

The Supreme Court held that mere inclusion of a candidate's name in the selection list gives *him* no right, and if there is no right there could be no occasion to maintain a writ petition for the enforcement of the non-existent right. The Court also indicated that however wide the power of judicial review, under A.226 or A. 32 there is a recognized limit to the exercise of this power. Importantly, the judgment seeks to extend the traditional immunity from the right to judicial

review in areas where prerogative powers exist viz., “relating to the making of treaties, the defence of the realm, the prerogative of mercy, the grant of honours, the dissolution of Parliament and the appointment of ministers” to cases where decisions are based on the recommendation of the CJI.

(Decided on January 5, 2006)

*The Property of a notified person stands attached
simultaneously with the issue of notification*

In *Ashwin S. Mehta and Anr. v. Custodian & Ors.*, the Supreme Court in an appeal against a judgment and order passed by the Special Court constituted under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 held that:

- 1. The attachment of the arrest of notified persons would be automatic upon the issue of notification under the Act.**
- 2. The principle of lifting the corporate veil ipso facto would not apply to the individuals.**

(Decided on Jan 03, 2006, Civil Appeal Nos. 672 – 675, 676 – 680 and 681 of 2004)

T. Subramanian v. State of Tamil Nadu
Cr. App No. 186 of 2000

The court reversed the judgment of the Madras High Court, which had convicted the appellant under Sec. 5 91) (d) r/w Sec. 5 (2) of the Prevention of Corruption Act, 1947. The Court held that if two contrary views are possible from the very same evidence (as in the present case), it cannot be said that the prosecution proved beyond a reasonable doubt that the money received by the appellant is by way of illegal gratification

State of Maharashtra v. Rashid B. Mulani

Cr. App. No. 557 of 1999

The court reversing the judgment of the high court convicted the accused u/s 161 I.P.C. and under Sec. 5 (2) r/w Sec. 5 (1) (d) of the Prevention of Corruption Act, 1947 and held that if two views are possible and the views of the High Court acquitting the accused cannot be said to be wholly improbable, the court will not interfere with the decision of the high court. But where

the material on record leads to only one conclusion viz., the guilt of the accused, the judgment of the High Court will not be sustained. It is conclusively proved that accepting Rs.300/- was not towards Tagai loan but as illegal gratification and hence the conviction.

R. Janakiraman v. State represented by Inspector of Police, CBI, SPE, Madras.

Cr. App. No. 773 of 2000

The court upheld the judgment of the High Court of Madras convicting and sentencing the accused under Sec. 5 (1) (e) r/w Sec. 5(2) of the Prevention of Corruption Act, 1947. The contention that the oral evidences of prosecution witnesses are contrary to the documentary evidences and therefore, should be excluded under Sec. 92 of the Evidence Act, 1872 was rebutted and it was held that the rule contained in Sec. 92 of the Evidence Act will apply only to the parties to the instrument or their successors in interest. Strangers to the contract (which would include the prosecution in a criminal proceeding) are not barred from establishing a contemporaneous oral agreement contradicting or varying the terms of the instrument. The bar is to oral evidence to disprove the terms of a contract, and not to disprove the contract itself, or to prove that the document was not intended to be acted upon and that intention was totally different as in the case under comment.

It was further held where several offences are charged against an accused person and if an appeal is prepared against an order of acquittal by the state and no appeal is filed by the convicted person against his conviction it is only the order of acquittal which is to be considered by the appellate court and not the order of conviction and *vice versa*. Therefore, the assumption that the whole case is before the High Court when it entertains an appeal against conviction is not well founded and as such it cannot be pressed into service in construing the expression "alter the finding".

The court further held that travelling allowance is not a source of income to the government servant.

Magistrate can order Investigation by the Police

The Supreme Court in *Mohd. Yousuf v. Smt. Afaq Jahan*, Cr. App. No.2 of 2006 ruled as follows:-

The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words

while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter. (Decided on 02.01.2006)

| [1](#) | [2](#) | [3](#) | [4](#) |