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Criminal Procedure Code, 1973 — Section 482 — Prevention of Food Adulteration Act, 1954

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IV (2006) CCR 416 (Jharkhand H.C.)

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Criminal Procedure Code, 1973 — Sections 438, 125.

IV (2006) CCR 99 (SC)

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IV (2006) CCR 234 (SC)

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Criminal Procedure Code, 1973 — Sections 24(8), 482.

IV (2006) CCR 298 (Kerala H.C.)

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IV (2006) CCR 343 (Rajasthan H.C.)

ATTEMPT TO COMMIT OFFENCE — Rape — No attempt of penetration to slightest degree — Appellant neither undressed himself nor even asked prosecutrix to undress — There was no question of penetration — Conviction under Sections 376/511, IPC wholly illegal and unsustainable.

Indian Penal Code, 1860 — Sections 376/511.

IV (2006) CCR 115 (SC)

— — (See Charge for minor offence where major offence not proved)

IV (2006) CCR 115 (SC)

ATTEMPT TO MURDER — Common intention — NDPS — Recovery of Poppy Husk — Contraband material recovered from possession of accused not produced in Court as link evidence to show actually samples were drawn from alleged material — Plea that when police party tried to stop jeep, driver turned jeep and started firing at police party — Accused-appellant acquitted of charge under Section 307, IPC and Section 27 of Arms Act because neither country-made 315 bore pistol used in crime by accused and cartridges recovered produced in Court nor any expert opinion produced in that regard.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 8, 15, 42 — Indian Penal Code, 1860 — Sections 307, 34 — Arms Act, 1959 — Section 27.

IV (2006) CCR 343 (Rajasthan H.C.)

BAIL — Cancellation of — Judicial discipline in bail matters — Non-disclosure of earlier bail application — Suppression of vital facts — Clear breach of judicial discipline — Such practice creates an unhealthy tradition — Abuse of the process of Court — *Vide Harjit Singh v. State of Punjab*, IV (2002) SLT 777=III (2002) CCR 187 (SC), relied upon — No hesitation to cancel the bail order.

Criminal Procedure Code, 1973 — Section 439(2).

IV (2006) CCR 436 (Orissa H.C.)

— Grant of — Murder — Disappearance of evidence — Unlawful assembly — Delay in lodging FIR — No post-mortem conducted — Case based on extra judicial confession (See *Murder*)

IV (2006) CCR 379 (Punjab & Haryana H.C.)

— Grant of — Negligent conduct with respect to fire or combustible matter or explosive substance — Seizure of seven live explosive shells and number of empty shells — Statement of custom house agent shows there was no 100% physical checking of imported scraps, possibility that some of scraps contained live explosives which remained unnoticed, cannot be ruled out — Knowledge of live explosives cannot be imposed at applicant at this stage due to lack of any positive evidence — Investigation Officer failed to collect any evidence in investigation to prove conscious possession of applicant in respect of explosive live shells allegedly recovered from premises of firm — Applicant enlarged on bail with conditions.

Criminal Procedure Code, 1973 — Section 439 — Indian Penal Code, 1860 — Sections 285, 286 — Explosive Substances Act — Sections 3, 5.

IV (2006) CCR 341 (Allahabad H.C.)

— Grant of — NDPS — Petitioner along with another accused found to be in possession of 3200 ampules of morphine (Buprenorphine Hydrochloride) and 60 ampules of Ophenorgon — Considering preparation seized as a whole is not commercial quantity or small quantity under item 239 r/w item 169 and offence, if proved, will not come under Section 22(c) or 22(a) but only under Section 22(b) — Petitioner already in prison for 110 days — Petitioner released on bail with conditions.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 37, 22(a), 22(c), 18(c), 16(c).

IV (2006) CCR 418 (Kerala H.C.) (DB)

— Grant of — POTA — Second application for bail can be taken up for consideration if it is pointed out to Trial Court there is substantial change in circumstances which calls for fresh look to case of applicant to consider whether he deserves to be released on bail or not.

Prevention of Terrorism Act, 2004 — Criminal Procedure Code, 1973 — Section 439.

IV (2006) CCR 371 (Bombay H.C.) (DB)

- Grant of by Inspecting Judge — Sustainability — Inspecting Judges have no right and duty to consider bail applications during inspection — In course of inspection, High Court Judge required to examine whether Courts are functioning within norms laid down by High Court — Mostly, inspection is to be confined to administrative functioning of Courts and its officers — In course of inspection, High Court Judge cannot pass any order on interim applications such as bail petitions or transfer applications or applications for interim injunction, howsoever justified they may be — Orders on bail applications are passed under provisions of Cr.P.C. or various other enactments, which provide for grant of bail — Such orders passed as part of judicial work — Inspecting Judge not supposed to pass any judicial order in individual cases in course of inspection — As accused already released on bail, this Court need not pass any order.

Indian Penal Code, 1860 — Sections 469, 467, 468, 218, 120B — Prevention of Corruption Act.

IV (2006) CCR 156 (SC)

- MCOC Act — Grant of — Facilitating organised crime and receiving illegal gratification — Not necessary at this stage to examine or decide upon relative scope of Sections 3(2) and 24 of MCOC Act as to in what circumstances action of public servant will be considered as “rendering any help or support in commission of organised crime, whether before or after commission of such offence by member of organised crime syndicate or abstains from taking lawful measures under Act” falling under Section 24 of MCOC Act, or considered as “conspiring or attempting to commit or advocating, abetting or knowingly facilitating commission of organised crime or any act preparatory to organised crime” falling under Section 3(2) of MCOC Act — Appellant retired from service in year 2003 — He has been in Jail for more than two years and nine months — Trial likely to take several years as there are more than 800 witnesses to be examined — Having regard to nature of involvement alleged and role attributed to appellant in charge-sheet — Fit case for grant of bail to appellant — Order of High Court set aside — Special Court directed to enlarge appellant on bail with conditions.

Criminal Procedure Code, 1973 — Section 439 — Maharashtra Control of Organised Crime Act, 1999 — Sections 3(i)(ii), 3(2), 3(4), 3(5), 4, 24 — Prevention of Corruption Act, 1947 — Sections 7, 13(1)(d) — Indian Penal Code, 1860 — Sections 120B, 255, 258, 259, 260, 263A, 420, 471, 472, 474 read with Section 34.

IV (2006) CCR 185 (SC)

COFEPOSA — Preventive Detention — Challenge against detention order — Relevant document not supplied **(See Preventive Detention)**

IV (2006) CCR 225 (SC)

- Preventive Detention — Denial of, Right to make effective representation — Non-supply of legible copies of documents to detenu **(See Preventive Detention)**

IV (2006) CCR 225 (SC)

CHARGE — Alteration — Charge can be altered at any stage — But in view of order passed on same date order relating to alteration of charge cannot be passed by Trial Court.

IV (2006) CCR 179 (SC)

CHARGE FOR MINOR OFFENCE WHERE MAJOR OFFENCE NOT PROVED — Rape, Attempt to Commit Offence, Kidnapping, Outraging Modesty of Woman — Appreciation of evidence — Before appellant could ravish prosecutrix, she raised alarm and immediately thereafter, her father PW 1 and other co-villagers residing in vicinity assembled at spot and appellant and prosecutrix came out of Gumti — No offence under Sections 376/511, IPC made out — Crime committed by accused was at initial stage of preparation — Offence

committed squarely covers ingredients of Sections 366 and 354, IPC — Appellant was charged under Sections 376/511, IPC but on invoking provisions of Section 222, Cr.P.C., accused charged with major offence can always be convicted for minor offence, if necessary ingredients of minor offence present — Indian Penal Code, 1860 — Sections 376/511, 366, 354.

IV (2006) CCR 115 (SC)

CHEATING — Criminal Breach of Trust — Absence of — Entrustment of property between complainant and applicants (*See Criminal Breach of Trust*)

IV (2006) CCR 304 (Madhya Pradesh H.C.)

— Public to give information of certain offences — Misappropriation of amounts collected for Gujarat victims by duping people by respondents — Section 39, Cr.P.C. does not provide any authority to petitioner complainants to give information in regard to offence under Section 420, IPC — Court below justified in rejecting complaint insofar as offence punishable under Section 420, IPC is concerned.

Indian Penal Code, 1860 — Section 420 — Criminal Procedure Code, 1973 — Section 39.

IV (2006) CCR 306 (Andhra Pradesh H.C.)

COMMON INTENTION — Dacoity, Attempt to commit dacoity when armed with deadly weapons — Prosecution could not establish appellant was also carrying deadly weapon with him at time of alleged dacoity when he intruded into house of complainant along with his other co-accused persons — His conviction under Section 398, IPC legally unsustainable — Prosecution has proved beyond reasonable doubt that appellant along with other co-accused persons intruded into house of complainant and participated in committing of dacoity for which he was tried — Appellant liable for conviction under Sections 395/34, IPC.

Indian Penal Code, 1860 — Sections 395/34, 397, 398.

IV (2006) CCR 376 (Delhi H.C.)

— Essence of liability to be found in existence of common intention animating accused leading to doing of criminal act in furtherance of such intention — For applying Section 34 it is not necessary to show some overt act on part of accused — When accused is convicted under Section 302, read with Section 34, in law it means accused is liable for act which caused death of deceased in same manner as if it was done by him alone.

Indian Penal Code, 1860 — Section 34.

IV (2006) CCR 103 (SC)

— Intention to Cause Death, Trespass, Grievous Hurt — Only one injury inflicted on head of deceased — No eye-witness as to who assaulted on head — No role ascribed to other appellants *i.e.* respondent Nos. 2 to 6 — No question of applying Section 34, IPC.

IV (2006) CCR 103 (SC)

— Murder, Abetment, Wrongful Confinement — Contradiction between ocular evidence and medical evidence — Injuries suffered by deceased do not indicate any depressed injury to be present if heavy object, *i.e.* stone weighing about 25 to 30 kgs. dropped on person's head — PW 3, who conducted post-mortem examination, stated profuse bleeding internally and no profuse bleeding externally — He did not observe oozing of blood either from mouth or nose — Injuries noticed by PW 3 inconsistent with theory of offence committed in manner projected by prosecution — No credence given to evidence of PW 1 as to manner in which incident occurred — High Court also gone wrong in observing no positive evidence on record to show accused No. 1 is crippled — High Court proceeded on supposition that since polio attack is always to legs and not to hands, person capable of lifting stone weighing about 25 to 30 kgs. with his hands — Disability certificate of appellant No. 1 that he was unable to travel without assistance of escort, produced — Negatives in respect of disability of appellant No. 1 showing attack by polio filed — It is improbable for him to lift stone

weighing 25 to 30 kgs. — Circumstances taken up together create sufficient doubt regarding prosecution case and manner in which victim killed — Conviction and sentence of appellant set aside.

Indian Penal Code, 1860 — Section 302 read with Sections 34, 302 read with Section 114, Section 342.

IV (2006) CCR 130 (SC)

COMPENSATION — Payment of — Dishonour of Cheque — Legal Representative — Impleadment of — Death of person who issued cheque — No legal proceedings could be initiated against his L.Rs. *(See Dishonour of Cheque)*

IV (2006) CCR 296 (Bombay H.C.)

CONSENT — Given under fear of injury or misconception of fact — Such consent obtained cannot be construed to be valid consent.

Indian Penal Code, 1860 — Section 90.

IV (2006) CCR 109 (SC)

CONSTITUTIONAL LAW — Free Legal Aid — Obligation of State — By virtue of Art. 39(A) of Constitution, State obliged to provide legal assistance even in case of trial before Magistrate or other Courts where accused after trial may be convicted and sentenced to undergo imprisonment or to pay fine — Considering right enshrined under Art. 22(1) coupled with directive principles of State Policy, enshrined under Art. 39(A) of Constitution, right of accused to engage lawyer of his choice at expense of State before Magistrate Court could be traced under Section 303, Cr.P.C. — State has taken steps for providing free legal aid to accused person and formulated certain procedure to identify and empanel Advocates for each Court so as to enable accused to engage Advocate, if he faces trial in that Court.

Constitution of India, 1950 — Arts. 21, 22, 22(1), 39(A), 226 — Criminal Procedure Code, 1973 — Sections 303, 304.

IV (2006) CCR 360 (Madras H.C.)

— Right of Accused — Accused cannot be compelled to be witness against himself
.. *(See Dishonour of Cheque)*

IV (2006) CCR 310 (Bombay H.C.) (DB)

— Right to make effective representation — Preventive Detention — Refusal on part of detaining authority to supply legible copies of 'relevant' documents to detenu for making effective representation infringes detenu's right under Article 22(5) of Constitution.

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1) — Constitution of India, 1950 — Art. 22(5).

IV (2006) CCR 225 (SC)

— Right of person against whom proceedings are instituted to be defended — Accused entitled to engage lawyer of his own choice — Such right cannot be refused on ground that Advocate whose services were opted by accused to defend him not empanelled in Court.

Criminal Procedure Code, 1973 — Section 303 — Constitution of India, 1950 — Art. 22(1).

IV (2006) CCR 360 (Madras H.C.)

— Right to speedy trial — Denial of — Appellant case pending for more than two and half decades *(See Corruption)*

IV (2006) CCR 141 (SC)

— Right to speedy trial — No doubt, quick justice is *sine qua non* of Article 21 of Constitution but when grave miscarriage of justice pointed out, ground of delay of disposal of cases or otherwise would scuttle miscarriage of justice.

Constitution of India, 1950 — Art. 21.

IV (2006) CCR 163 (SC)

- Right to speedy trial read into Art. 21 of Constitution as essential part of fundamental right to life and liberty guaranteed and preserved under our Constitutional Law.

IV (2006) CCR 141 (SC)

- Speedy Trial — Right to life and personal liberty — Law regarding in India and in USA — Discussed

IV (2006) CCR 141 (SC)

CORRUPTION — Appeal against Acquittal — Seizure of tainted notes and cashew-nut bag from check gate office — Denial of said seizure by respondent — Investigation Officer in his evidence stated that cashew-nut bag detained by accused respondent not kept either in office room or in adjoining room or on Verandah — Prosecution evidence that respondent accepted tainted notes before his hands washed with sodium carbonate solution becomes doubtful — No independent witness examined by prosecution, which throws serious doubt on genuineness of prosecution case — No infirmity in impugned judgment warranting interference by this Court.

Criminal Procedure Code, 1973 — Sections 378(1), 378(2) — Prevention of Corruption Act — Section 5(1)(d) r/w Section 5(2).

IV (2006) CCR 359 (Orissa H.C.)

- Illegal Gratification — Accused alleged to have demanded Rs. 8,000/- from complainant for getting him transferred to another school — No whisper of evidence in this regard — No evidence on record to corroborate version given by complainant — None of witnesses who joined trap could testify about any demand of bribe or its acceptance — No cogent or reliable evidence to show accused made any demand for illegal gratification of Rs. 8,000/- or it was accepted by him as illegal gratification — Defence version more probable — Acquittal of accused maintained for reasons other than given by Special Judge.

Prevention of Corruption Act, 1988 — Sections 7, 13(1)(d), 13(2).

IV (2006) CCR 397 (Himachal Pradesh H.C.)

- Quashing of proceedings — Illegal gratification — Right of speedy trial — Appellant facing criminal prosecution for more than two and a half decades — Not even single PW examined — No lapse on part of appellant — Permitting State to continue with prosecution and trial any further would be total abuse of process of law — Appellant submitted that orders of discharge by High Court and subsequently by Special Judge, Anti-corruption, became final and binding because respondents did not challenge said orders — That respondents could not be permitted to prosecute appellant on same cause of action and facts and circumstances for third time — That repeated filing of challans by respondents without any sanction caused immense mental, physical and emotional stress and harassment for more than 26 years — Criminal proceedings quashed.

Constitution of India, 1950 — Art. 21 — Jammu & Kashmir Prevention of Corruption Act — Section 5(2) — Ranbir Penal Code — Section 21.

IV (2006) CCR 141 (SC)

CRIMINAL BREACH OF TRUST — Cheating — Absence of — Entrustment of property between complainant and applicants — Transaction of out and out sale — Only consideration required to be paid which was not paid by applicants — Before payment of such amount of consideration they left their place of business and residence — Such act may amount to cheating complainant — By no stretch of imagination, it can be said they committed offence of criminal breach of trust — Trial Magistrate erred in framing charge of offence under Section 409, IPC — Impugned order framing charge under Section 409, IPC set aside — Order with regard to framing of charge under Section 420, IPC affirmed.

Indian Penal Code, 1860 — Sections 405, 406, 409, 420.

IV (2006) CCR 304 (Madhya Pradesh H.C.)

- Public to give information relating to offence under Section 409, IPC — Accused alleged to have collected or intended to collect funds for Gujarat victims — Petitioner not made out any case as to how accusation attracts provisions of Section 409, IPC and relationship between accused and persons from whom amount alleged to have collected — Allegations do not attract provisions of Section 409, IPC.

Criminal Procedure Code, 1973 — Section 309(viii) — Indian Penal Code, 1860 — Section 409.

IV (2006) CCR 306 (Andhra Pradesh H.C.)

- Revision — Improper framing of charge — Charge-sheet not exhibited — No endeavour made by prosecution to prove entrustment and criminal breach of trust — Minor errors in impugned judgment, cannot be ground to set aside judgment of Trial Court.

Criminal Procedure Code, 1973 — Section 401 — Indian Penal Code, 1860 — Section 408.

IV (2006) CCR 410 (Orissa H.C.)

CRIMINAL TRIAL — Burden of proving everything essential to establishment of charge against accused always rests on prosecution — There is presumption of innocence in favour of accused until contrary is proved.

IV (2006) CCR 403 (Delhi H.C.)

- It is well settled in criminal trial investigation proceeded by an FIR on basis of written complaint or otherwise disclosing offence said to be committed by accused.

IV (2006) CCR 163 (SC)

- Plea of guilt — Not legal to allow accused to plead guilty when stage of pleading guilty had passed.

Criminal Procedure Code, 1973 — Sections 225 to 237.

IV (2006) CCR 337 (Punjab & Haryana H.C.) (DB)

- Trial “in camera” — Trial in camera would not only be in keeping with self-respect of victim of crime and in tune with legislative intent but also likely to improve quality of evidence of prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in open Court under gaze of public.

Criminal Procedure Code, 1973 — Sections 327(3), 482 — Immoral Traffic (Prevention) Act, 1956 — Sections 5(ia), 5(c), 5(d) — Indian Penal Code, 1860 — Sections 366, 109, 341.

IV (2006) CCR 298 (Kerala H.C.)

CRUELTY — Dowry Death — Presumption — Death of deceased occurred otherwise than under normal circumstances — No discrepancy in evidence of witnesses who have spoken about dowry demand, torture and harassment, though they were cross-examined at length. **(See Dowry Death)**

IV (2006) CCR 134 (SC)

- Murder of Wife by Strangulation — Ill-treatment of deceased due to non-fulfillment of demand of Rs. 25,000/- **(See Murder)**

IV (2006) CCR 169 (SC)

DNA TEST — Evidentiary value **(See Evidence)**

IV (2006) CCR 258 (Delhi H.C.) (DB)

DACOITY — Attempt to commit dacoity when armed with deadly weapons, Common

Intention — Appreciation of Evidence — Prosecution could not establish appellant was also carrying deadly weapon with him at time of alleged dacoity when he intruded into house of complainant along with his other co-accused persons — His conviction under Section 398, IPC legally unsustainable — Prosecution has proved beyond reasonable doubt that appellant along with other co-accused persons intruded into house of complainant and participated in committing of dacoity for which he was tried — Appellant liable for conviction under Sections 395/34, IPC — Impugned judgment of conviction passed by Court below against appellant modified.

Indian Penal Code, 1860 — Sections 395/34, 397, 398.

IV (2006) CCR 376 (Delhi H.C.)

— Common Intention — Sentence — Reduction to period already undergone by appellant — Reasons.

Indian Penal Code, 1860 — Sections 395, 34.

IV (2006) CCR 376 (Delhi H.C.)

DEATH CAUSED BY RASH AND NEGLIGENT DRIVING — Collision between Tempo and motorcycle as a result deceased driving motorcycle died — Lack of proper investigation — Testimony of PW 3, Head Constable leads to only conclusion that vehicle (truck) driven by petitioner at high speed — This in itself does not mean petitioner was driving vehicle rashly or negligently — Testimony of PW 3 leads to ambiguities and doubts — Incident happened behind PW 3 — Quite probable that he never saw impact but on hearing sound, looked in that direction and saw result of same and came to conclusion that truck must have been driven at high speed — Location of point of impact not clear because site plan purportedly drawn up by Investigating Officer not exhibited — Investigating Officer himself not been examined as witness — Rough sketch prepared by Investigating Officer not introduced in evidence as it is at variance with testimony of PW 3 — Factum of non-examination of Investigating Officer would be to detriment of prosecution case and in favour of defence — Apart from allegation of having driven truck at high speed, which itself is unclear expression, nothing on record to establish petitioner drove vehicle rashly and/or negligently or did any act which amounts to rash and/or negligent act — Petitioner not liable to be convicted under provisions of Sections 279 and 304A, IPC — Courts below committed grave error in convicting petitioner — Impugned order set aside and petitioner entitled to acquittal.

Indian Penal Code, 1860 — Sections 279, 304A.

IV (2006) CCR 403 (Delhi H.C.)

DEFAMATION — Quashing of Proceedings — Telecast of commentary on T.V. Channel to harm reputation of Chief Minister, Ministers or officials — This Court after hearing parties, was of view that public interest would be best served in directing broadcast to be made in concerned TV Channel by appellants in manner as indicated by Court — Learned Counsel for appellants stated to show *bona fides* appellants shall make necessary broadcast within time indicated — Learned Counsel for parties agreed all proceedings relating to broadcast shall be withdrawn and not be pursued.

Criminal Procedure Code, 1973 — Sections 482, 200 r/w Section 199 — Indian Penal Code, 1860 — Section 499.

IV (2006) CCR 168 (SC)

DE NOVO TRIAL (See *Dishonour of Cheque*)

IV (2006) CCR 424 (Bombay H.C.)

DISHONOUR OF CHEQUE — Evidence on Affidavit — Objection as to document being tendered in evidence to be taken at appropriate time to enable party to cure defect and resort to such mode of proof as would be regular — Objection as to document being irregular or

insufficient cannot be allowed to be raised at any stage subsequent to marking of document as an exhibit — If party tendering documents with affidavit does not opt to lead further evidence to cure defect, it should be left to Court either to decide objection then and there or as indicated by Supreme Court in *Bipin Panchal's* case, mark such document for identification and decide it in final judgment.

Negotiable Instruments Act, 1881 — Sections 138 145(1), 145(2).

IV (2006) CCR 310 (Bombay H.C.) (DB)

- Evidence on Affidavit — Provisions contained in Section 145 not prospective but operate retrospectively — Code of Criminal Procedure and Evidence Act are general laws and rights created thereunder cannot be termed as substantive rights or vested rights of substantive nature causing any prejudice to accused by Amending Act of 2002 and in particular Section 145, Negotiable Instruments Act — Sub-sections (1) and (2) of Section 145, Negotiable Instruments Act fall within realm of procedural law, they would be applicable to pending cases since there is no vested right in accused in procedural law.

Negotiable Instruments Act, 1881 — Sections 138, 145(1), 145(2) — Criminal Procedure Code, 1973 — Section 461.

IV (2006) CCR 310 (Bombay H.C.) (DB)

- Evidence on Affidavit — Right of Accused — Accused cannot be compelled to be witness against himself — Exception contained in Sections 315 and 316 of Cr.P.C. protects rights of accused, who desires to be witness, as envisaged under Constitution — Sections 315 and 316, Cr.P.C. clearly demonstrate accused could be competent witness for defence and may give evidence on oath in disproof of charges made against him or any person charged together with him at same trial — He cannot be called as witness except on his own request in writing — Merely because Section 145(1), Negotiable Instruments Act does not expressly permit accused to do so, does not mean, Magistrate cannot allow accused to give his evidence on affidavit by applying same analogy unless there is just and reasonable ground to refuse such permission — There is no express bar on accused to give evidence on affidavit either in Act or in Code — No justified reason to refuse permission to accused to give his evidence on affidavit subject to provisions contained in Sections 315 and 316, Cr.P.C.

Negotiable Instruments Act, 1881 — Sections 138, 145(1) — Constitution of India, 1950 — Art. 20(3) — Criminal Procedure Code, 1973 — Sections 315, 316.

IV (2006) CCR 310 (Bombay H.C.) (DB)

- Evidence on affidavit — Right of complainant and accused under Sections 145(1) and 145(2), Negotiable Instruments Act — Section 145(1), Negotiable Instruments Act, gives complete freedom and option to complainant to give his evidence on affidavit making it further clear that such evidence shall be read in any inquiry, trial and other proceedings subject to all just exceptions — Sub-sections (1) and (2) of Section 145 create two distinct and separate rights, former in favour of complainant and latter for benefit of both, complainant and accused, besides right of Court to summon and examine any person giving evidence on affidavit — Right of accused under Section 145(2) is only to cross-examine person giving evidence on affidavit in respect of facts contained therein — It does not confer right on accused to seek direction to any person, giving evidence on affidavit, to step into witness box and give oral examination-in-chief in respect of matters stated on affidavit — Sub-section (2) cannot be interpreted as to render Sub-section (1) of Section 145 redundant — Right of prosecution to “examine” witness provided for in Section 145(2), means right of “examination-in-chief” and “re-examination” of person who has given his evidence on affidavit and has been cross-examined.

Negotiable Instruments Act, 1881 — Sections 138, 145(1), 145(2) [as amended by Negotiable Instruments (Amendment) and Misc. Provisions) Act, 2002.

IV (2006) CCR 310 (Bombay H.C.) (DB)

- Evidence on Affidavit — Scope of provision of Section 296(1), Cr.P.C. — It speaks of evidence of “formal character” — Evidence contemplated under Section 145(1), Negotiable Instruments Act cannot be termed as evidence of formal character — Provisions of Section 296, Cr.P.C. cannot be equated with provisions of Section 145(2) of Negotiable Instruments Act.

Criminal Procedure Code, 1973 — Section 296 — Negotiable Instruments Act, 1881 — Sections 138, 145(2).

IV (2006) CCR 310 (Bombay H.C.) (DB)

- Legal Representative — Impleadment of — Death of person who issued cheque — No legal proceedings could be initiated against his L.Rs. — Issue of process by Magistrate against applicants, without jurisdiction and abuse of process of Court — Applicants justified in claiming appropriate compensation — Complainant directed to pay Rs. 5,000/- as compensation to applicants.

Criminal Procedure Code, 1973 — Section 357 — Negotiable Instruments Act, 1881 — Sections 118, 138 r/w Section 142.

IV (2006) CCR 296 (Bombay H.C.)

- Legal Representative — Impleadment of — Proceedings cannot be filed against legal representative of person who issued cheque.

IV (2006) CCR 296 (Bombay H.C.)

- Practice and procedure followed in Metropolitan Magistrate Courts in Mumbai — In large number of cases, accused after service of summons file either revision or writ petitions/applications under Articles 226/227 of Constitution or Section 482, Cr.P.C. for quashing of process — Complainant, if complaint is against company, arraign all directors as accused in complaint as result of which revision or writ petition filed by accused becomes inevitable and proceedings delayed due to interim orders passed in revision or writ petitions — Service of summons on accused takes years and further delay in disposal of cases — In order to accomplish underlined object of Act, guidelines/directions issued by this Court.

Negotiable Instruments Act, 1881 — Section 138.

IV (2006) CCR 310 (Bombay H.C.) (DB)

- Summary Trial — Abridged form of regular trial — Resorted to in order to save time in trying “petty case” — Section 143 of Act empowers Court to try cases under Section 138 of Act in summary way — Choice is left to Magistrate to either try case strictly by following procedure contemplated by Sections 262 to 265, Cr.P.C. or to adopt procedure provided by Code.

Negotiable Instruments Act, 1881 — Sections 138, 143(1) — Criminal Procedure Code, 1973 — Sections 262 to 265.

IV (2006) CCR 424 (Bombay H.C.)

- Summary Trial — Conviction or commitment on evidence partly recorded by one Magistrate and partly by another — Case tried as regular summons case and not tried in summary way as contemplated under Sections 262 to 265, Cr.P.C. such case shall not be considered as tried in summary way, though triable summarily as provided for under Section 143(1) of Act, so as to attract provisions of Section 326(3), Cr.P.C. — Evidence recorded by one Magistrate in such case may be legally read in evidence by his successor — No *de novo* trial shall be necessary — Scope of provisions of Section 138, Negotiable Instruments Act and Sections 260 to 265 and 326(3), Cr.P.C. — Discussed.

Negotiable Instruments Act, 1881 — Sections 138, 143 — Criminal Procedure Code, 1973 — Sections 260 to 265, 326(1), 326(3).

IV (2006) CCR 424 (Bombay H.C.)

DISTINCTION — Provisions of Karnataka Act, 1985 and Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Under Section 3(3) of Karnataka Act approval of State Government mandatory — There is no such provision in COFEPOSA — Scope of provisions in two Acts and distinction discussed.

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Sections 3, 8 — Karnataka Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1985 — Sections 2(b), 3, 3(2), 3(3), 13.

IV (2006) CCR 212 (SC)

— Rashness & Negligence — Rashness conveys idea of doing reckless Act without considering any of its consequences whereas negligence connotes want of proper care.

IV (2006) CCR 403 (Delhi H.C.)

DOWRY DEATH — Cruelty — Presumption — Dead body of deceased found floating in well located in house of appellant — Death occurred otherwise than under normal circumstances — No discrepancy in evidence of witnesses who have spoken about dowry demand, torture and harassment, though they were cross-examined at length — Conviction as maintained by High Court needs no interference.

Indian Penal Code, 1860 — Sections 304B, 498A — Evidence Act, 1872 — Section 113B.

IV (2006) CCR 134 (SC)

— Framing of charge under Section 304B, IPC — Charges for offence under Sections 306, 498A r/w Section 34, IPC already framed against accused — Certificate of death filed by doctor stated probable cause of death to be cardio respiratory failure due to acute respiratory failure — In subsequent certificate different cause of death indicated — Trial Court held prosecution not explained as to how certificate sought to be brought on record after 4 years — Matter relating to production of certificate kept in abeyance to be decided after examination of doctor — Proper for Trial Court to defer question of framing charge under Section 304B, IPC after examination of doctor and relevance of subsequent certificate and its acceptability — High Court failed to consider relevant aspects and dismissed application — Impugned judgment set aside.

Indian Penal Code, 1860 — Sections 304B, 306, 498A r/w Section 34.

IV (2006) CCR 179 (SC)

— Ingredients of offence — Discussed.

Indian Penal Code, 1860 — Sections 304B.

IV (2006) CCR 134 (SC)

— Presumption under Section 113B, Evidence Act (*See Evidence*)

IV (2006) CCR 134 (SC)

DRUGS AND COSMETICS — Quashing of FIR and Proceedings — Seizure of misbranded medicines — Case instituted by police official is without jurisdiction — Everything done by informant in violation of Section 32 and Section 22(2) of Act — No counter affidavit filed by Drugs Inspector to substantiate that they actually participated in raid and search and seizure made in their presence — Search and seizure made without obtaining search warrant — Mandatory provision not complied with — Investigation by police wholly illegal and without jurisdiction — Proceedings quashed.

Drugs and Cosmetics Act, 1940 — Sections 9, 9A, 9B, 9C, 9D, 13(1)(a), 13(1)(b), 13(1)(c), 22, 22(2), 32, 37 — Indian Penal Code, 1860 — Sections 307, 467, 468, 471, 420, 120B — Criminal Procedure Code, 1973 — Sections 94, 482.

IV (2006) CCR 355 (Patna H.C.)

ESSENTIAL COMMODITIES — Reduction of sentence to period already undergone — Sale of huge quantity of seeds to public for more than 1½ years without licence **(See Sentence)**

IV (2006) CCR 200 (SC)

EVIDENCE — Additional Evidence — Powers of Appellate Court — Application under Section 391, Cr.P.C. should not be considered in isolation but after hearing parties on merits — Such application should not be disposed of in isolation without hearing appeal on merits as there may be cases of failure of justice.

Criminal Procedure Code, 1973 — Sections 391, 482 — Indian Penal Code, 1860 — Section 304A.

IV (2006) CCR 350 (Madhya Pradesh H.C.)

— Adverse inference — Non-examination of material witnesses — Adverse inference to be drawn.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 8, 50 — Evidence Act, 1872 — Section 114 Illustration (g).

IV (2006) CCR 150 (SC)

— Burden of proof — Murder — Committed in secrecy inside house — Initial burden to establish case would be upon prosecution, but nature and amount of evidence to be led by it to establish charge cannot be of same degree as is required in other cases of circumstantial evidence — Burden would comparatively be of lighter character.

Evidence Act, 1872 — Section 106, Illustration (b).

IV (2006) CCR 169 (SC)

— Burden of proof — Plea of *alibi* — As and when such defence is raised, other defences given up ordinarily — Despite provisions of Section 103, Evidence Act, even if *alibi* is not proved, prosecution cannot rest its case only in terms thereof — Even if *alibi* not proved, Court shall not record judgment of conviction unless prosecution established its case.

Evidence Act, 1872 — Section 103.

IV (2006) CCR 150 (SC)

— Child witness — Murder by Throttling **(See Murder)**

IV (2006) CCR 205 (SC)

— Circumstantial evidence — Murder, Common Intention — Chain of circumstances not proved by prosecution beyond reasonable doubt **(See Murder)**

IV (2006) CCR 413 (Madras H.C.) (DB)

— Circumstantial evidence — Murder, Rape — Circumstantial evidence absolutely inconsistent and incompatible with innocence of respondent — By acquitting respondent despite being convinced that there was no doubt in prosecution case, Trial Court mauled justice, its decision shocked judicial conscience of Court — Impugned judgment set aside.

IV (2006) CCR 258 (Delhi H.C.) (DB)

— Circumstantial Evidence — Murder by Throttling — Death of deceased homicidal in nature — Last seen evidence proved by prosecution **(See Murder)**

IV (2006) CCR 205 (SC)

— Circumstantial Evidence — Murder of Wife by Strangulation — Circumstances unerringly point to guilt of accused and inconsistent with his innocence **(See Murder)**

IV (2006) CCR 169 (SC)

— Circumstantial evidence — Principle of law regarding — Discussed.

IV (2006) CCR 169 (SC)

- Circumstantial evidence — Triple Murder — None of circumstances established and sufficient either singly or cumulatively and good enough to convict any of 3 appellants
..... *(See Murder)*

IV (2006) CCR 438 (Delhi H.C.) (DB)

- Confession of co-accused — Admissibility — Statement of co-accused required to be corroborated by adduction of independent evidence.
Evidence Act, 1872 — Section 30.

IV (2006) CCR 234 (SC)

- DNA Test — Evidentiary value — In rape cases this test is conducted for establishing presence of semen of suspect in vagina of victim and also on her undergarments, etc. — DNA test is also very useful for establishing identity of dead person whose body is recovered in unidentifiable condition because of decomposition, etc. — DNA test also carried out to determine paternity of child whenever dispute arises in criminal cases as also in matrimonial disputes.

IV (2006) CCR 258 (Delhi H.C.) (DB)

- Dying Declaration — Evidentiary value — Exceptions to general rule against hearsay evidence — General principle as to admissibility — Discussed.
Evidence Act, 1872 — Section 32.

IV (2006) CCR 103 (SC)

- Dying Declaration — Veracity of statement of deceased — Situation in which person is on deathbed is so solemn and serene when he is dying that grave position in which he is placed, is reason in law to accept veracity of his statement — Requirements of oath and cross-examination dispensed with for this reason — Accused has no power of cross-examination — Once Court is satisfied that declaration was true and voluntary, it can base its conviction without any further corroboration — Rule requiring corroboration is merely rule of prudence.

IV (2006) CCR 103 (SC)

- Examination of witness — Witness cannot be faulted for his not being examined earlier and explanation, if at all, can be got only from investigating officer.

IV (2006) CCR 258 (Delhi H.C.) (DB)

- Last seen theory *(See Murder)*

IV (2006) CCR 205 (SC)

- “Last Seen Theory” — Comes into play when time-gap between time of death of deceased and time when accused and deceased last seen together is so small that possibility of any other person killing deceased becomes impossible.

IV (2006) CCR 438 (Delhi H.C.) (DB)

- Motive — Adequacy of motive is of little importance — It is seen from experience of Criminal Courts that atrocious crimes are committed for very slight motives.
Evidence Act, 1872 — Section 8.

IV (2006) CCR 258 (Delhi H.C.) (DB)

- Motive — Murder, Rape — Motive for crime, viz. infatuations with deceased and acts of stalking deceased, even if constitute weak motive would not make any difference
..... *(See Murder)*

IV (2006) CCR 258 (Delhi H.C.) (DB)

- Motive — Murder of brother- in-law by accused on suspicion that he killed his own wife, viz., sister of accused persons **(See Murder)**

IV (2006) CCR 238 (SC)

- Motive — Murder by Throttling — Circumstances clearly demonstrate appellant only committed murder and absence of motive immaterial.

IV (2006) CCR 205 (SC)

- Motive — Triple Murder — Motive pressed into service by prosecution on evidence of PW 3 for killing of deceased P, not reliable — No evidence to establish love affair between acquitted accused SS and Jyoti — Further motive for murders of NS and N, also totally imaginative and conjectural **(See Murder)**

IV (2006) CCR 438 (Delhi H.C.) (DB)

- Motive not very material in case of direct evidence but very important in case of circumstantial evidence.

IV (2006) CCR 238 (SC)

- Presumption as to absence of consent in prosecution for rape — If sexual intercourse committed by accused and if it is proved it was without consent of prosecutrix and prosecutrix states in her evidence she did not consent, Court shall presume she did not consent — Presumption introduced by Legislature in Evidence Act looking to atrocities committed against women.

Evidence Act, 1872 — Section 114A.

IV (2006) CCR 109 (SC)

- Presumption as to dowry death — Death of deceased occurred otherwise than under normal circumstances **(See Dowry Death)**

IV (2006) CCR 134 (SC)

- Presumption as to dowry death — No presumption under Section 113B, Evidence Act would be drawn against accused if it is shown after alleged demand, cruelty or harassment dispute stood resolved and there was no evidence of cruelty or harassment thereafter — Mere lapse of time by itself would not provide to accused defence if course of conduct relating to cruelty or harassment in connection with dowry demand shown to have existed in time not too late and not too stale before date of death of victim.

Evidence Act, 1872 — Section 113B — Indian Penal Code, 1860 — Section 304B.

IV (2006) CCR 134 (SC)

- Proof of marriage — Grant of maintenance **(See Maintenance)**

IV (2006) CCR 102 (SC)

- Relevancy of facts forming part of same transaction — Circumstance may not be very strong or compelling circumstance by itself — Same cannot be ruled out as being innocuous and irrelevant — It would be admissible under Section 6 of Evidence Act.

Evidence Act, 1872 — Section 6.

IV (2006) CCR 258 (Delhi H.C.) (DB)

EXAMINATION OF ACCUSED — After closure of prosecution evidence before accused is called for his defence, it is very important step in criminal trial — This examination is not empty formality — Underlying object is to enable accused to explain any circumstance appearing in evidence against him — This important step in trial is based on maxim *audi alteram partem*, i.e. hear other side or both sides — No man shall be condemned unheard — Each and every accused must be examined separately and distinctly — Answers given by accused shall not be scribbled, it may throw light on question of guilt or otherwise of

accused and in some cases, truth may be crystallised by such answer — Answers so recorded shall be legible and in understandable handwriting — Revision petitioner deprived of proper opportunity to explain in one answer all materials — Examination of accused not in accordance with requirement of Section 313, Cr.P.C. and it prejudiced accused — Conviction and sentence recorded by Trial Court set aside.

Criminal Procedure Code, 1973 — Section 313.

IV (2006) CCR 335 (Karnataka H.C.)

- Common questions framed and asked to all accused persons did not subserve requirements of Section 313, Cr.P.C.

Criminal Procedure Code, 1973 — Section 313.

IV (2006) CCR 234 (SC)

- Scope of Section 313, Cr.P.C. — Examination of accused under Section 313, Cr.P.C. is not intended to be idle formality — It has to be carried out in interest of justice and fair play of accused.

Criminal Procedure Code, 1973 — Sections 313, 482.

IV (2006) CCR 364 (Jharkhand H.C.)

EXAMINATION OF WITNESS THROUGH COMMISSIONER — Power of Court —

Dispensing attendance of witness — Essential to meet ends of justice — Where such witness disabled to attend Court due to hazardous condition of their health or due to old age, etc. in such cases, Court has to exercise its power to examine witness to see that no such miscarriage of justice does take place — Injured and doctor to be examined in this case — Judgment of acquittal rendered by Additional Civil and Sessions Judge set aside with direction to proceed in accordance with law, as provided under Section 284, Cr.P.C. either by securing injured or examining her through Court Commissioner at costs of prosecution.

Criminal Procedure Code, 1973 — Sections 284, 284(2).

IV (2006) CCR 374 (Karnataka H.C.) (DB)

EXEMPTION FROM PERSONAL APPEARANCE — Offence under Section 417, IPC —

Petitioner's left leg amputated above his knee and present complaint case was brought about by his father — Prayer rejected by Court below on ground that petitioner used to visit certain places by using artificial leg and used to attend Courts in two other cases — Prayer also rejected by Sessions Judge — Prayer of petitioner allowed under Section 205, Cr.P.C. with direction to appear through his Counsel and petitioner to remain physically present if presence required for reasons to be recorded — In such case he would not avoid to attend Court.

Criminal Procedure Code, 1973 — Sections 205, 482.

IV (2006) CCR 294 (Jharkhand H.C.)

EXPRESSION — “Business” — Implies continuity.

IV (2006) CCR 234 (SC)

- “Examine” — Meaning of word under Section 145(2) of Act — It would mean and include “examination-in-chief”, “cross-examination”, “re-examination” and “examination by Judge”.

Negotiable Instruments Act, 1881 — Section 145(2).

IV (2006) CCR 310 (Bombay H.C.) (DB)

- “High speed” — Meaning — “High speed” is relative term — It was for prosecution to bring on record material to establish as to what is meant by “high speed” — *Vide State of Karnataka v. Satish*, case

IV (2006) CCR 403 (Delhi H.C.)

- “Normal circumstances” — Meaning.
Indian Penal Code, 1860 — Section 304B.

IV (2006) CCR 134 (SC)

- “Soon before” — Meaning.
Indian Penal Code, 1860 — Sections 304B — Evidence Act, 1872 — Section 114, Illustration (a).

IV (2006) CCR 134 (SC)

- EXPLOSIVE SUBSTANCES** — Bail granted — Statement of custom house agent shows there was no 100% physical checking of imported scraps, possibility that some of scraps contained live explosives which remained unnoticed, cannot be ruled out — Knowledge of live explosives cannot be imposed at applicant at this stage due to lack of any positive evidence.
Criminal Procedure Code, 1973 — Section 439 — Indian Penal Code, 1860 — Sections 285, 286 — Explosive Substances Act — Sections 3, 5.

IV (2006) CCR 341 (Allahabad H.C.)

- FRAMING OF CHARGE** — Framing of charge under Section 304B, IPC (*See Dowry Death*)

IV (2006) CCR 179 (SC)

- Not empty formality — When there is no charge and legally accused has no notice on what accusation he is being tried, in such cases, there is no trial at all in eye of law and trial is vitiated.
Criminal Procedure Code, 1973 — Sections 464, 465.

IV (2006) CCR 366 (Kerala H.C.) (DB)

- Revision — Not open for prosecution to challenge same after conclusion of trial and pray for modification at revisional stage.

IV (2006) CCR 410 (Orissa H.C.)

- GRIEVOUS HURT** — Intention to Cause Death — Common Intention, Trespass — only one injury inflicted on head of deceased (*See Intention to Cause Death*)

IV (2006) CCR 103 (SC)

- IMMORAL TRAFFIC** — Non-disclosure of identity of victim (*See Dishonour of Cheque*)

IV (2006) CCR 298 (Kerala H.C.)

- IMPRISONMENT FOR NON-PAYMENT OF FINE** — Sentence of imprisonment of life means R.I. for life — In case where substantive sentence of imprisonment which Court can impose for offence is only R.I. then as enjoined by Section 66 of IPC, imprisonment for non-payment of fine imposed for said offence can only be R.I. and not simple imprisonment.
Indian Penal Code, 1860 — Section 66.

IV (2006) CCR 366 (Kerala H.C.) (DB)

- INFORMATION IN COGNIZABLE CASES** — Section 154, Cr.P.C. casts statutory duty upon police officer to register case, as disclosed in complaint and then to proceed with investigation — Police officer cannot embark upon inquiry as to whether information laid by informant is reliable and genuine or otherwise and refuse to register case on ground information is not credible — Reliability, genuineness and credibility of information not condition precedent for registering case under Section 154, Cr.P.C. — In present case complaint discloses cognizable offences under Sections 147, 148, 149, 448, 452, 323, 395, IPC

— SHO of Police Station registered case only under Sections 452, 380, 323, 34, IPC — Grave miscarriage of justice committed by SHO of concerned Police Station in not registering FIR on basis of offence disclosed in complaint — Trial Magistrate accepted charges mechanically without application of mind — High Court justly corrected error committed by two Courts — Impugned order of High Court does not suffer from any infirmities.

Criminal Procedure Code, 1973 — Sections 154, 209, 216.

IV (2006) CCR 163 (SC)

INHERENT POWERS — Proceedings against person appearing guilty of offence — Issue of process — High Court merely directed Trial Judge to proceed in matter in accordance with law — Same evidently did not mean High Court already concluded processes must be issued — Sessions Judge proceeded on wrong premise in holding as no charge-sheet filed against appellants by police same was not sufficient to refuse to issue summons — Question necessary was as to whether any case made out for exercise of extraordinary jurisdiction by Court in view of fact whether prosecution would be able to bring home charge — Court at that stage may not enter into merit of matter — Court not bound by opinion of Investigating Officer — It is required to apply tests on touchstone of materials brought on record — Power under Section 319, Cr.P.C. not to be exercised in mechanical manner — High Court did not have any occasion to consider merit of matter — Matter remitted back to Trial Judge with direction to consider question in light of observations made.

Criminal Procedure Code, 1973 — Sections 319, 482.

IV (2006) CCR 220 (SC)

INTENTION TO CAUSE DEATH — Common Intention, Trespass, Grievous Hurt — Alteration in conviction — Dying declaration — Voluntary, trustworthy and credible and not tutored — No material brought on record to show why PWs 9 and 10 being relatives would falsely implicate accused and shield actual culprit — Prosecution clearly established vital blow given by accused No. 1 by iron pipe and wooden stick — According to prosecution, only one injury inflicted on head of deceased — No eye-witness as to who assaulted on head — No role ascribed to other appellants *i.e.* respondent Nos. 2 to 6 — No question of applying Section 34, IPC because prosecution itself is to effect that accused persons wanted to extract confession from deceased he had stolen bicycle — No material brought on record that accused persons shared any common object to either cause injury to deceased or kill him — Correct provision for conviction would be Section 304 Part I, IPC — Custodial sentence of 10 years would meet ends of justice — Conviction under Section 342 as well as sentence maintained — Sentences shall run concurrently — Section 34, IPC has no application for offence punishable under Section 304 Part I, IPC — Accused persons 2, 4 and 6 convicted under Section 342 read with Section 34, IPC as also Section 325 read with Section 34, IPC — Corresponding sentences imposed by Trial Court and maintained by High Court need no interference.

Indian Penal Code, 1860 — Sections 304 Part I, 342, 325 read with Section 34.

IV (2006) CCR 103 (SC)

INTERPRETATION OF STATUTES — No part of statute can be interpreted in manner that would render any other part redundant, as Legislature could never have intended to enact redundant provisions.

IV (2006) CCR 310 (Bombay H.C.) (DB)

JURISDICTION OF COURT — Proceedings against person appearing guilty of accused — Jurisdiction of Court limited — Court can exercise extraordinary power but cautiously.

Criminal Procedure Code, 1973 — Section 319.

IV (2006) CCR 220 (SC)

KIDNAPPING — Ingredients of offence — Appellant at about 1.30 a.m., forcibly took

prosecutrix/victim to his Gumti with intention of committing illicit intercourse — Offence committed by appellant would fall under Section 366, IPC — Indian Penal Code, 1860 — Section 366.

IV (2006) CCR 115 (SC)

— — (See *Charge for minor offence where major offence not proved*)

IV (2006) CCR 115 (SC)

KNOWLEDGE TO CAUSE DEATH — Alteration in conviction — Plea of self-defence — Appreciation of evidence — Appellant No. 1 acquitted of offence — Accused Nos. 2 and 3, and wife of appellant No. 2 (accused No. 4), tried jointly for alleged commission of murder of deceased under Section 302 read with Section 34, IPC — Trial Judge acquitted accused No. 1 and convicted accused No. 4 only under Section 324, IPC — It is wholly unlikely that accused No. 1 wanted to murder deceased owing to property dispute — Deceased had nothing to do with property in dispute, although he might have been siding with PW 1 — Plea of self-defence could not have been rejected on premise that Exhibit D1 not proved — Receipt of Exhibit D1 is not in dispute — It was sent by post and received by Investigating Officer — High Court could not have refused to consider defence raised by accused, particularly, when theory that all accused persons came at bus stop with intention to kill deceased not accepted by Trial Court — Both accused gave one blow each — Blow given by appellant No. 1 although was on vital part, but it is to be borne in mind that when person loses his sense, he may act violently — That by itself not ground to reject plea of self-defence — Appellants are guilty of commission of offence under Section 304 Part II and not under Section 302, IPC — Judgment of conviction altered accordingly — Accused sentenced to undergo 10 years R.I.

Indian Penal Code, 1860 — Sections 304 Part II, 302, 324, 34.

IV (2006) CCR 138 (SC)

— Conviction on basis of plea of guilt — Alteration in conviction — Plea of guilty recorded after charge framed — Not justified — Stage for recording statements of accused or their fresh plea passed — Case scheduled for recording prosecution evidence — Statements of accused recorded not covered by provisions of Section 313(1)(a), Cr.P.C. which entitled Court to put such questions to accused as considered necessary, at any stage and without previously warning accused — Learned Judge cut short trial by recording statements of four of accused admitting their guilt and proceeded to convict them under Section 304 Part II, IPC — Two remaining accused acquitted — Course adopted by trial Judge not legal — This was not stage to go back to stage of charge and record pleas of some of accused as trial Judge has done.

Criminal Procedure Code, 1973 — Sections 241, 313, 386(a) — Indian Penal Code, 1860 — Section 304 Part II.

IV (2006) CCR 337 (Punjab & Haryana H.C.) (DB)

LOCUS STANDI TO FILE COMPLAINT — Misappropriation of amount alleged to be collected for Gujarat victims — As law abiding citizen, petitioner has *locus standi* and every right to bring to notice of Court when certain offences committed — Conduct of petitioner appreciated in lodging complaint but it is not well founded — He should have come forward with cogent and clinching evidence if really interested in unearthing fraud — Complaint is as vague as anything and does not satisfy requirements of criminal jurisprudence.

Indian Penal Code, 1860 — Sections 409, 420 — Criminal Procedure Code, 1973 — Section 39.

IV (2006) CCR 306 (Andhra Pradesh H.C.)

MCOC ACT — Bail — Grant of — Not necessary at this stage to examine or decide upon relative

scope of Sections 3(2) and 24 of MCOG Act as to in what circumstances action of public servant will be considered — Facilitating organised crime and receiving illegal gratification .

.....
..... (See Bail)

IV (2006) CCR 185 (SC)

MAINTENANCE — Grant of — Proof of marriage — Magistrate categorically recorded finding that S failed to establish her marriage with petitioner as well as failed to establish alleged second marriage — As marriage not established between petitioner and S — Question of grant of maintenance under Section 125, Cr.P.C. does not arise.

Criminal Procedure Code, 1973 — Section 125 — Indian Penal Code, 1860 — Section 494.

IV (2006) CCR 102 (SC)

MATRIMONIAL LAW — Maintenance — Award of — Grant of anticipatory bail to Jeth and Jethani on imposition of condition for payment of Rs. 2,000/- p.m. for maintenance to victim — While deciding bail application, it is not jurisdiction of Court to decide civil disputes between parties — Matter remitted to High Court for fresh consideration.

IV (2006) CCR 99 (SC)

MAXIM — “*Nemo moriturus proesumitur mentiri*” — A man will not meet his maker with lie in his month”.

IV (2006) CCR 103 (SC)

MEDICAL JURISPRUDENCE — “Depressed fracture” — As described by Cox in his “Medical Jurisprudence and Toxicology “while dealing with head injuries.

IV (2006) CCR 130 (SC)

MURDER — Attempt to Murder, Intentional Insult to Invoke Breach of Peace, Common Intention — Reversal of judgment of acquittal by High Court — Not justified — Appreciation of evidence — Dispute regarding ownership of land between deceased and A1 — Appellant alleged to have assaulted him with hammer — PWs 3 and 4 assaulted by other accused with bamboo sticks — Deceased succumbed to his injuries same day — Trial Judge on cogent reasons opined prosecution not able to prove its case and noticed various discrepancies in recording its judgment of acquittal — Dispute as to whether land where allegedly occurrence took place belonged to deceased — Testimonies of PWs 3 and 4 not reliable — Why statement of PW 2 not recorded even after police officer came to spot, not disclosed — Doctor who prepared injury report of PW 2, was not Radiologist — Prosecution not proved that accused No. 1 did not own any cart or oxen and borrowed bullocks from accused No. 4, except statement of PW 2 — Mahazar report not legally proved — Appellant had no axe to grind — Prosecution not proved he had any motive except being friend of accused No. 1 — Hammer not ordinarily used for agricultural operations — High Court not properly dealt with judgment of acquittal — Impugned judgment of High Court unsustainable — Set aside.

Indian Penal Code, 1860 — Sections 302, 307, 504 r/w Section 34 — Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 — Section 2.

IV (2006) CCR 181 (SC)

— Bail granted — Case against petitioner based on extra judicial confession, which is weak evidence by itself and not sufficient to base conviction.

Criminal Procedure Code, 1973 — Section 439 — Indian Penal Code, 1860 — Sections 302, 201 r/w Section 149.

IV (2006) CCR 379 (Punjab & Haryana H.C.)

— Common Intention, Abetment, Wrongful Confinement — Contradiction between ocular evidence and medical evidence — Injuries suffered by deceased do not indicate any

depressed injury to be present if heavy object, *i.e.* stone weighing about 25 to 30 kgs. dropped on person's head — PW 3, who conducted post-mortem examination, stated profuse bleeding internally and no profuse bleeding externally — He did not observe oozing of blood either from mouth or nose — Injuries noticed by PW 3 inconsistent with theory of offence committed in manner projected by prosecution — No credence given to evidence of PW 1 as to manner in which incident occurred — High Court also gone wrong in observing no positive evidence on record to show accused No. 1 is crippled — High Court proceeded on supposition that since polio attack is always to legs and not to hands, person capable of lifting stone weighing about 25 to 30 kgs. with his hands — Disability certificate of appellant No. 1 that he was unable to travel without assistance of escort, produced — Negatives in respect of disability of appellant No. 1 showing attack by polio filed — It is improbable for him to lift stone weighing 25 to 30 kgs. — Circumstances taken up together create sufficient doubt regarding prosecution case and manner in which victim killed — Conviction and sentence of appellant set aside.

Indian Penal Code, 1860 — Section 302 read with Sections 34, 302 read with Section 114, Section 342.

IV (2006) CCR 130 (SC)

— Common Intention, Disappearance of Evidence — Circumstantial evidence — Chain of circumstances not proved by prosecution beyond reasonable doubt — Prosecution case is that on date of occurrence mother of deceased had illicit relation of accused — Occurrence of illicit relationship witnessed by deceased — First accused mother of deceased caught hold of deceased and slapped her and pushed her on account of which deceased dashed against wall and she died — No eye-witnesses to prove motive relied upon by prosecution — Evidence of PWs 1 and 6 dismantles case of prosecution — Recovery of prosecution of MO 1 (gunny bag containing slate and other object) cannot be taken into account since police arrested — Appellant only after lapse of two months — Prosecution not connected all links in chain of circumstances and miserably failed to prove case against appellant — Appellant acquitted of charges.

Indian Penal Code, 1860 — Section 302 r/w Sections 34, 201.

IV (2006) CCR 413 (Madras H.C.) (DB)

— Cruelty — Murder of Wife by Strangulation — Circumstantial Evidence — Post-mortem examination conducted on body of deceased disclosed she died due to asphyxia as result of compression of neck and not on account of snake bite — Allegation of demand of Rs. 25,000/- by appellant and his parents from parents of deceased — Ill-treatment of deceased due to non-fulfillment of same — Deceased had told her parents about being ill-treated and occasionally not given food whenever she visited her parental home — Dead body of deceased purposely placed in sitting posture with her back taking support of wall so that no one may suspect that she had actually been killed as result of strangulation and may believe in version of snake bite given by appellant and his parents — Recovery of some articles of deceased made at instance of appellant — Circumstances enumerated unerringly point to guilt of accused and they are inconsistent with his innocence — High Court perfectly right in allowing appeal filed by State and in convicting appellant under Section 302, IPC and sentencing him thereunder.

Indian Penal Code, 1860 — Sections 302, 498A — Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 — Section 2(a).

IV (2006) CCR 169 (SC)

— Culpable homicide not amounting to murder — Alteration in conviction — Evidence on record re-appreciated — Single blow on abdomen — No further assault or even attempt — Medical record proved blow was not given with great force — Not fit case to convict under Section 302, IPC — Judgment modified.

Indian Penal Code, 1860 — Sections 302 and 304 Part I.

IV (2006) CCR 389 (Uttaranchal H.C.) (DB)

- Disappearance of Evidence — Motive — Murder of brother-in-law by accused on suspicion that he killed his own wife, viz., sister of accused persons — There is clear evidence of L that accused B caught hold of deceased by his arm and accused M severed his head from body by Kirpan — Medical evidence, Police Inspector's evidence etc., corroborate this version — Submission that merely because co-accused J and S acquitted, entire prosecution case to be rejected, cannot be accepted — No reason to set aside conviction of accused M and B — Considering fact that because of some enmity due to suspicion about deceased's death two years after her marriage to K could have been motive for crime, sentence reduced to life imprisonment from death sentence under Section 302, IPC.

Indian Penal Code, 1860 — Sections 302, 201.

IV (2006) CCR 238 (SC)

- Murder by Throttling — Circumstantial Evidence — Death of deceased homicidal in nature — Last seen evidence proved by prosecution — No reason for PWs to falsely implicate appellant — At instance PW 2 case under Section 326, IPC pending against appellant — Possibility of intercourse before death not ruled out — PW 3 child witness stated about manner in which appellant was recoiling on body of deceased which shows amorous adventure he was making — PW 3 capable of deposing before Court of law — Appellant was man of strong physique — He knew Judo Karate — Undergarments of appellant smeared with blood of different group — In view of evidence available on records, motive takes back seat — If attention of appellant not drawn to reports of forensic laboratory, same does not vitiate judgment of conviction and sentence as he was not prejudiced thereby — Test identification parade not necessary as sufficient description of appellant given in FIR and he was arrested soon thereafter — Judgment of Sessions Judge and High Court affirmed — Circumstances brought on record by prosecution clearly demonstrate appellant alone committed murder and absence of motive immaterial.

Indian Penal Code, 1860 — Sections 302, 326.

IV (2006) CCR 205 (SC)

- Murder of wife in secrecy inside house — Initial burden of proof to establish case upon prosecution (*See Evidence*)

IV (2006) CCR 169 (SC)

- Rape — Appeal against Acquittal — Circumstantial evidence proved beyond any doubt by unimpeachable evidence — Circumstances form complete chain to lead to conclusion that respondent committed rape upon deceased and then murdered her — Thirteen circumstances pressed into service by prosecution for establishing guilt of accused — Circumstance Nos. 1, 2 and 3 collectively are regarding motive for crime, viz. infatuations with deceased and acts of stalking deceased, even if constitute weak motive would not make any difference — Circumstance No. 4 is regarding accused seen in morning on 23.1.1996 at Delhi University with his motorcycle and helmet with visor and Circumstance No. 5 is regarding respondent seen outside flat of deceased around 4.50 p.m. — Respondent followed deceased upto her house on fateful day and in evening, when her parents were not at home, entered her house, raped and killed her — PW 2 is reliable witness, who had seen accused outside flat of deceased — Circumstance No. 6 that accused reached late to attend his class at Indian Law Institute to create plea of *alibi* — Circumstance No. 7, viz. mother of deceased expressed her suspicion at accused of committing crime immediately after incident is also relevant circumstance — Circumstance No. 8, viz. that on interrogation after incident of accused there was swelling and tenderness on his right hand — Circumstance No. 12 is explanation given by accused that he suffered injury as result of fall from motor cycle — Trial Court needlessly rejected opinion of Radiologist, by taking upon itself exercise of re-writing medical jurisprudence contrary to expert opinion of Radiologist — Circumstance No. 9 is DNA test to effect that in vaginal swabs and vaginal slides of deceased and

underwear she was wearing at time of incident, semen of accused was present — DNA of sperm matched with DNA of blood of accused — Circumstance No. 11 is regarding 19 injuries on person of deceased besides 3 broken ribs, are suggestive of massive force used — Circumstance No. 10 is that visor of helmet of accused was broken while he was assailing deceased with his helmet — Circumstance No. 13 is influence of father of accused in derailing initial investigation — Circumstantial evidence absolutely inconsistent and incompatible with innocence of respondent — No circumstance brought on record by respondent suggesting his innocence or possibility of anyone else having committed ghastly acts — By acquitting respondent despite being convinced that there was no doubt in prosecution case, Trial Court mauled justice, its decision shocked judicial conscience of Court — Impugned judgment set aside — Respondent convicted for commission of offences punishable under Section 302 and 376, IPC.

Indian Penal Code, 1860 — Sections 302, 376.

IV (2006) CCR 258 (Delhi H.C.) (DB)

- Triple Murder by father — Death Sentence — Confirmation of — Denial of justified — Murder of three persons by father and his two sons — Death Reference made by Trial Court set aside — Three accused-appellants acquitted of all charges framed against them — Circumstantial evidence — Evidence of “last seen” of witness PW 3 does not inspire confidence — Star witness PW 3 not reliable and trustworthy either on aspect of last seen circumstance or on conspiracy aspect — Motive pressed into service by prosecution on evidence of PW 3 for killing of deceased P, not reliable — No evidence to establish love affair between acquitted accused SS and Jyoti — Further motive for murders of NS and N, also totally imaginative and conjectural — Seizure of three-wheeler and finding of blood from its back seat does not link any of appellants with crime alleged to have been committed by them — It cannot be accepted that despite so many persons having travelled in that scooter blood would have remained stuck to seat and its group could be ascertained by FSL people — None of circumstances established and sufficient either singly or cumulatively and good enough to convict any of 3 appellants — Despite there being no evidence adduced by prosecution Trial Judge reached imaginative conclusions regarding love affair between deceased P and J and between acquitted accused SS and J, hatching of conspiracy between appellants for getting rid of P and killing of NS and N to remove evidence of murder of P as imagined to be seen by by them — Appellants found guilty without any sufficient and reliable evidence by Additional Sessions Judge and also slapped one of appellants with extreme penalty of death — Circumstances relied upon by prosecution not established beyond reasonable doubt — Death reference made by Trial Court answered in negative — Judgment of conviction in its entirety set aside and appellants acquitted of charges framed against them.

Indian Penal Code, 1860 — Section 302.

IV (2006) CCR 438 (Delhi H.C.) (DB)

- Unlawful Assembly, Kidnapping, Mischief — Prosecution case not trustworthy — Enmity and bad blood between rival groups established beyond doubt — Evidence of only two interested witnesses, viz., PWs 1 and 2 on record — No immediate report regarding occurrence lodged to police — Evidence on record scrutinised by this Court and it is concluded that story about making effort to lodge report earlier does not appear to be true — Namberdar and Chowkidar alleged to have accompanied PW 1 to Police Station not examined as witnesses — Allegation that police favourably disposed towards appellants belied by fact that some of appellants illegally detained by police who were ultimately released by Warrant Officer appointed by High Court in *habeas corpus* petition — Circumstances of case indicate PWs 1 and 2 may not have seen occurrence in which SS either abducted or killed — Taking advantage of his disappearance false case belatedly concocted against appellants — Truthfulness of two eye-witnesses examined by prosecution doubtful — Appellants entitled to benefit of doubt and acquitted of all charges levelled against them.

Indian Penal Code, 1860 — Section 302 read with Section 149, Section 364 read with Section 149, Section 436 read with Section 149, Sections 148, 427 read with Section 149.

IV (2006) CCR 193 (SC)

NDPS — Bail — Grant of — Petitioner along with another accused found to be in possession of 3200 ampules of morphine (Buprenorphine Hydrochloride) and 60 ampules of Ophenorgon — Considering preparation seized as a whole is not commercial quantity or small quantity under item 239 r/w item 169 and offence, if proved, will not come under Section 22(c) or 22(a) but only under Section 22(b) — Petitioner already in prison for 110 days — Petitioner released on bail with conditions.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 37, 22(a), 22(c), 18(c), 16(c).

IV (2006) CCR 418 (Kerala H.C.) (DB)

— Offence committed under NDPS Act is grave one — Procedural safeguards to accused provided under statute require strict compliance — By reasons of provisions of NDPS Act Parliament has reposed confidence on Gazetted Officer — B being superintendent of Bureau was Gazetted Officer — If he was present, it was expected he would disclose his identity and would invoke his power under proviso to Section 42, NDPS Act.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 42 Proviso.

IV (2006) CCR 150 (SC)

— Recovery of Poppy Husk — Contraband material recovered from possession of accused not produced in Court as link evidence to show actually samples were drawn from alleged material — Plea that when police party tried to stop jeep, driver turned jeep and started firing at police party — Accused-appellant acquitted of charge under Section 307, IPC and Section 27 of Arms Act because neither country-made 315 bore pistol used in crime by accused and cartridges recovered produced in Court nor any expert opinion produced in that regard — Prosecution not able to establish its case beyond reasonable doubt.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 8, 15, 42 — Indian Penal Code, 1860 — Sections 307, 34 — Arms Act, 1959 — Section 27.

IV (2006) CCR 343 (Rajasthan H.C.)

— Seizure of Opium weighing 1.300 kgs. from accused — Benefit of doubt — Adverse inference drawn for non-examination of material witnesses — Recovery of contraband in presence of independent person assumes importance — Seizure witnesses, viz., PWs 1 and 2 cannot be said to be independent in that way — Those who witnessed occurrence not made witnesses — Even their names and addresses not taken — Accused gravely prejudiced by non-examination of independent witnesses — Signatures of seizure witnesses obtained on blank papers — Seizure of contraband becomes doubtful — Appellant entitled to benefit of doubt.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 8, 50 — Evidence Act, 1872 — Section 114 Illustration (g).

IV (2006) CCR 150 (SC)

— Seizure of Poppy Husk — Contraband material alleged to have been recovered from possession of accused and samples etc. not produced in Court creates doubt sufficient to draw presumption that prosecution not led satisfactory evidence about alleged recovery of contraband material from accused-appellants before Court — No independent Motbir witness is available — Out of 6 witnesses, statement of PW 1, Seizing Officer, creates doubt in prosecution story with regard to sending samples to FSL — Entries in Malkhana register also doubtful — Conviction of guilt recorded by Trial Court against accused- appellants quashed and set aside.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 8, 15, 42, 42(1)(d).

IV (2006) CCR 383 (Rajasthan H.C.)

— Small or commercial quantity — Determination of — Personal use — Appeal against conviction and sentence — Appellant found in possession of 110 ampules of Buprenorphine — Small quantity specified by Central Government as 1 gram — Each ampule contains only 2 ml. and each ml. contains only .3 mg — Total quantity found in possession of appellant was only 66 mg, less than 1/10th of limit of small quantity specified under notification — Further quantity of psychotropic substance recovered was for personal use — Evident from fact two syringes recovered along with ampules — Burden on accused in this respect need not be discharged in manner as prosecution is to prove case beyond reasonable doubt — It is enough, he satisfies judicial mind by preponderance of probability — Offence committed by accused falls under Section 27 of NDPS Act — This Court sentences him under Section 27(b) which provides 6 months as maximum period of imprisonment — Appellant already in jail for nearly 6 years — Directed that appellant be released unless required in other cases — Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 22, 27, 27(b) — Narcotic Drugs and Psychotropic Substances Rules, 1985 — Rule 66.

IV (2006) CCR 100 (SC)

OFFENCE PROVED INCLUDED IN OFFENCE CHARGED — In case where accused is charged with major offence and said charge not proved, accused may be convicted of minor offence, though he was not charged with it.

Criminal Procedure Code, 1973 — Section 222.

IV (2006) CCR 115 (SC)

OUTRAGING MODESTY OF WOMAN — Scope of provision of Section 354, IPC — Essence of woman's modesty is her sex — Culpable intention of accused is crux of matter — Reaction of woman relevant, but its absence not always decisive — It is virtue which attaches to female on account of her sex.

Indian Penal Code, 1860 — Section 354.

IV (2006) CCR 115 (SC)

— — (*See Charge for minor offence where major offence not proved*)

IV (2006) CCR 115 (SC)

POTA — Bail — Second application — No legal impediment in way of any accused facing trial under POTA to file fresh application even if his earlier application rejected — Court bound to consider it on its own merits keeping in mind settled law that second application for bail can be taken up for consideration if it is pointed out to Trial Court there is substantial change in circumstances which calls for fresh look to case of applicant to consider whether he deserves to be released on bail or not — Impugned order quashed and set aside with directions.

Prevention of Terrorism Act, 2004 — Criminal Procedure Code, 1973 — Section 439.

IV (2006) CCR 371 (Bombay H.C.) (DB)

PLEA OF ALIBI (*See Evidence*)

IV (2006) CCR 150 (SC)

IV (2006) CCR 258 (Delhi H.C.) (DB)

PLEA OF GUILT (*See Knowledge to Cause Death*)

IV (2006) CCR 337 (Punjab & Haryana H.C.) (DB)

POWERS OF APPELLATE COURT — To take additional evidence necessary to pronounce judgment (*See Evidence*)

IV (2006) CCR 350 (Madhya Pradesh H.C.)

POWERS OF COURT — Dispensing attendance of witness — Such power can be exercised so that no miscarriage of justice takes place — Examination of witness can be done through appointment of Court Commissioner.

IV (2006) CCR 374 (Karnataka H.C.) (DB)

POWERS OF HIGH COURT AGAINST JUDGMENT OF ACQUITTAL — High Court shall not ordinarily overturn judgment if two views are possible.

IV (2006) CCR 181 (SC)

PRACTICE AND PROCEDURE — Law does not envisage person being convicted for offence without any sentence being imposed on him — Rule is sentence should follow conviction.

IV (2006) CCR 366 (Kerala H.C.) (DB)

— Minor discrepancies and minor defects in prosecution case is not good ground for rejecting entire prosecution case.

IV (2006) CCR 238 (SC)

PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES — Cancellation of registration of Ultrasound Centre — Challenged — Petitioner already resorted to the statutory remedy of filing on appeal — Criminal proceedings also pending — Not a bar to decide appeal — Second respondent directed to decide the appeal within stipulated time.

Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 20(2), 20(3), 21, 22, 23, 25, 27 — Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules — Rules 19, 19(1), 19(2), 19(3).

IV (2006) CCR 352 (Uttaranchal H.C.) (DB)

PREVENTIVE DETENTION — COFEPOSA — Effective Representation — No delay in disposing subsequent representation or in communicating decision on such representation to vitiate order of detention.

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1), 8 — Constitution of India, 1950 — Art. 22(5).

IV (2006) CCR 225 (SC)

— COFEPOSA — Relevant document — What amounts to — Relevant document not withheld to vitiate detention order — Document in question neither relevant nor necessary to decide whether detenu indulged in smuggling or other prejudicial activity — Said document not relevant to establish propensity or potentiality of detenu to continue his illegal activities — Document whereby EXIM benefits to one of companies controlled by detenu stopped, not 'relevant' document and non-consideration of which would vitiate detention order.

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Sections 3(1) — Constitution of India, 1950 — Article 32 — Customs Act, 1962 — Section 2(39).

IV (2006) CCR 225 (SC)

— COFEPOSA — Right to make effective representation — Non-supply of legible copies of documents to detenu — Detenu not hampered to make effective representation — High Court after examination of copies of documents found so — Having gone through representations made by detenu against his detention, this Court finds he was in no way hampered by fact that few of sheets/copies of documents were partly illegible.

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1) — Constitution of India, 1950 — Art. 22(5).

IV (2006) CCR 225 (SC)

— Right to make representation — Order of detention passed by High Court was in order — High Court's view about Detaining Authority not becoming *functus officio* the moment State

Government accords approval, correct — Detenu was intimidated of his right to make representation which was made and appropriately dealt with — In any event detenu did not avail opportunity granted to him to make representation to State Government — High Court's judgment irreversible.

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Sections 3, 8 — Karnataka Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1985 — Sections 2(b), 3, 3(2), 3(3), 13.

IV (2006) CCR 212 (SC)

PRINCIPLES OF CRIMINAL JURISPRUDENCE — Any one can set out or put criminal law into motion except where statute enacting or creating offence indicates to contrary.

IV (2006) CCR 306 (Andhra Pradesh H.C.)

PRINCIPLE OF "FALSUS IN UNO FALSUS IN OMNIBUS" — Not acceptable principle — In our country very often prosecution implicates not only real assailants but also implicates innocent persons so as to spread the net wide — Court can always discriminate and find out who were real assailants and who were not.

IV (2006) CCR 238 (SC)

PROCEEDINGS AGAINST PERSON APPEARING GUILTY OF OFFENCE — Jurisdiction of Court limited — Court can exercise extraordinary power but cautiously — While issuing processes Court should arrive at reasonable satisfaction that prosecution would be able to prove charges against whom processes sought to be issued — Criminal Procedure Code, 1973 — Section 319.

IV (2006) CCR 220 (SC)

— Power under Section 319, Cr.P.C. cannot be exercised in mechanical manner and to be exercised cautiously.

Criminal Procedure Code, 1973 — Sections 319, 482.

IV (2006) CCR 220 (SC)

PROCLAMATION FOR PERSON ABSCONDING — Unless warrant is issued, proclamation under Section 82, Cr.P.C. cannot be issued — Instead of issuing warrant against A4, Court issued summons — But when summons were served, Court did not issue any warrant to arrest A4 through concerned police — If warrant is returned, then only proclamation has to be issued — Magistrate directed to follow procedure under Section 82, Cr.P.C. and issue proclamation only after return of warrant for arrest of A4.

Criminal Procedure Code, 1973 — Section 82.

IV (2006) CCR 422 (Andhra Pradesh H.C.)

QUASHING OF COGNIZANCE AND CRIMINAL PROCEEDING — Report of Analyst not made over to petitioner as per Section 13(2) of Act and Rule 9(A) of Rules
..... **(See Adulteration)**

IV (2006) CCR 416 (Jharkhand H.C.)

QUASHING OF PROCEEDINGS — Corruption — Illegal gratification — Appellant facing criminal prosecution for more than two and a half decades — Not even single PW examined — No lapse on part of appellant **(See Corruption)**

IV (2006) CCR 141 (SC)

— Defamation — Telecast of commentary on T.V. Channel to harm reputation of Chief Minister, Ministers or officials **(See Defamation)**

IV (2006) CCR 168 (SC)

RAILWAYS — Unauthorised carrying on of business of procuring and supplying of railway tickets — Abetment in commission of offence — Appeal against acquittal — No independent evidence against respondents that they intentionally aided S and abetted in commission of offence under Section 143(1) of Railways Act — Entire prosecution is based on purported confession of S, which is not corroborated by any independent evidence — Documents maintained in reservation office not seized — No excess amount found at cash counter — No extra cash found on person of respondents — In reservation forms, handwriting of accused S allegedly found — Reservation forms might have been filled up by S but possibility that respondents working in different counters on two different occasions and might not have any hands therein cannot be ruled out — They were not expected to verify handwritings of person while issuing tickets — How handwriting of one person in different forms could have been checked by respondent is open to guess — Circumstances appearing against S and respondents concededly different — Except for one question similar questions put to S and respondents and similar answers recorded — Such common questions asked to all accused persons did not subserve requirements of Section 313, Cr.P.C. — High Court's observations unsustainable to said extent — State not able to show any illegality in judgment of High Court — No interference required by this Court.

Railway Act, 1989 — Section 143(1), 143(2) — Evidence Act, 1872 — Section 30 — Indian Penal Code, 1860 — Section 107.

IV (2006) CCR 234 (SC)

RAPE — Attempt to Commit Offence — No attempt of penetration to slightest degree — Appellant neither undressed himself nor even asked prosecutrix to undress — There was no question of penetration — Conviction under Sections 376/511, IPC wholly illegal and unsustainable.

Indian Penal Code, 1860 — Sections 376/511.

IV (2006) CCR 115 (SC)

— Consent obtained by accused from PW 1 prosecutrix under misconception of fact that he would marry her — This is not consent in law — Accused committed sexual intercourse and promised to marry her but he absconded despite promise made before Panchayat — That shows accused had no intention to marry her right from beginning — Prosecutrix, aged 16 years persuaded to sexual intercourse with assurance of marriage and she submitted to lust of accused — Such fraudulent consent cannot be said to be consent to condone offence of accused — Conviction and sentence awarded to appellant correct and no case made out for interference by this Court.

Indian Penal Code, 1860 — Sections 90, 375, 376, 417.

IV (2006) CCR 109 (SC)

— Ingredients of offence — Prosecutrix aged about 12 years — Her consent irrelevant — Important ingredient of offence under Section 375, IPC is penetration, which is missing in this case — Basic ingredients for proving charge of rape are accomplishment of act with force and penetration of male organ within labia majora or vulva with or without emission of semen — Even attempt at penetration into private part of victim completely, partially or slightly would be enough for purpose of Sections 375 and 376, IPC.

Indian Penal Code, 1860 — Sections 375, 376.

IV (2006) CCR 115 (SC)

— Murder — Appeal against Acquittal — Circumstantial evidence — DNA of sperm matched with DNA of blood of accused (*See Murder*)

IV (2006) CCR 258 (Delhi H.C.) (DB)

— — *See*

IV (2006) CCR 115 (SC)

RASH AND/OR NEGLIGENT DRIVING — Observations made by Court in cases involving such allegations — Investigations carried out are below par — Road accidents are on rise and many of these accidents result in fatalities — In cases of road accidents particularly which result in fatalities, investigation should be carried out in swift and scientific manner — Conclusions drawn by Court in cases involving rash and negligent driving — Discussed.

Indian Penal Code, 1860 — Sections 279, 304A.

IV (2006) CCR 403 (Delhi H.C.)

REVISION — Improper framing of charge — Not open for prosecution to challenge same after conclusion of trial and pray for modification at revisional stage — FIR lodged in 1987, charge framed in 1988, judgment delivered in 1995 — At this belated stage, no scope to question correctness of framing of charge — Petitioner not able to show any prejudice caused to him due to alleged improper framing of charge.

Criminal Procedure Code, 1973 — Section 401.

IV (2006) CCR 410 (Orissa H.C.)

— Re-appreciation of evidence on record — Not permissible — It is done only in some exceptional cases, *viz.*, where certain material evidence omitted or certain inadmissible evidence taken into consideration.

Criminal Procedure Code, 1973 — Section 401.

IV (2006) CCR 410 (Orissa H.C.)

SEIZURE OF GOODS ON PUBLIC ROAD — Detention of person — Authority of BSF — Learned SDJM took serious view of functioning of BSF and held BSF personnel were with their arms and might disobeyed all legal directions — Police was giving indulgence to them by acting on directions of BSF personnel — He directed release of accused at once — Submission that without granting opportunity to particular BSF personnel to place relevant facts for consideration, SDJM concluded that innocent person illegally detained — Trial still pending, SDJM had no jurisdiction to pass such order — Conclusions arrived at by SDJM not appropriate — Stage to decide whether detention of respondent and/or authority of BSF Assistant Commandant was yet to be tested in trial — Observations made by SDJM unsustainable, *i.e.* carrying sugar is not penal offence and/or BSF had no authority to seize sugar on public road — Occurrence nearly 7 years old — Appropriate to direct SDJM to complete trial of case expeditiously — Directions given by SDJM for conducting inquiry shall not be carried out.

IV (2006) CCR 166 (SC)

SELF-DEFENCE — Knowledge to Cause Death — Alteration in conviction — Blow given by appellant No. 1 although was on vital part, but it is to be borne in mind that when person loses his sense, he may act violently — That by itself not ground to reject plea of self-defence (*See Knowledge to Cause Death*)

IV (2006) CCR 138 (SC)

SENTENCE — Execution of — Setting off of period of detention undergone by accused as under trial prisoner against sentence for life imprisonment can arise only if order passed by appropriate Government either under Section 432, Cr.P.C. or Section 75, IPC r/w Section 433(b), Cr.P.C.

Criminal Procedure Code, 1973 — Sections 428, 432, 433(b).

IV (2006) CCR 366 (Kerala H.C.) (DB)

— Kidnapping, Outraging Modesty of Woman — Conviction of appellant under Sections 376/511, IPC wholly erroneous and unsustainable — Judgments of Trial Court and High

Court set aside — Appellant guilty of offences under Sections 366 and 354, IPC — Appellant sentenced to undergo five years' imprisonment under Section 366, IPC and two years' RI under Section 354, IPC — Both sentences to run concurrently.

Indian Penal Code, 1860 — Sections 366, 354.

IV (2006) CCR 115 (SC)

— Reduction of — Dowry Death, Cruelty — Custodial sentence reduced to 8 years which appellant claims to have undergone including remissions — He shall be immediately released from custody unless required in any other case.

Indian Penal Code, 1860 — Sections 304B, 498A.

IV (2006) CCR 134 (SC)

— Reduction of — Essential Commodities — Sale of huge quantity of seeds to public for more than 1½ years without licence — Appellants highlighted serious procedural lapses in conducting entire case — Appellant No. 1, proprietor of shop was not there when inspection carried out and Seed Inspector ought not to have carried out inspection in absence of appellant No. 1 — Respondents failed to show appellants ever sold seeds in market — No purchaser of seeds produced — It was first case registered in State of Tamil Nadu for violation under Seeds (Control) Order and sentence imposed is harsh and reduced to period already undergone — Learned Counsel for State submitted this concession is made keeping in view factors, *viz.*, appellant No. 2 was young boy of 17 years at time of commission of offence, small quantity of seeds seized, they have already undergone imprisonment of one month — Not proper for this Court to adjudicate and give findings on various issues raised by parties — Ends of justice would be met if sentence of appellants reduced to period already undergone by them — Seeds (Control) Order, 1983 — Clauses 3(1), 8(a), 8(b), 18(1) — Essential Commodities Act, 1955 — Sections 3(2)(i)(a), 3(2)(i)(h), 7(1)(a)(ii).

IV (2006) CCR 200 (SC)

SETTING ASIDE EX PARTE ORDER — Recall of order dismissing transfer application in default or for setting aside *ex parte* order passed on transfer application — Not maintainable — No legal bar to dismiss such application in default, if applicant not present on date fixed for its hearing nor there is any legal bar to allow such application *ex parte* if O.P. absent on date fixed for its hearing — There is no general provision in Cr.P.C. for setting aside any order of dismissal in default of application or for setting aside *ex parte* order passed on application except provision for setting aside *ex parte* order passed on application under Section 125, Cr.P.C. on showing sufficient cause — That provision limited to application under Section 125, Cr.P.C. and not of general application — Transfer application can be dismissed in default of applicant and can be allowed *ex parte* in absence of O.P. — There is no provision for restoration of transfer application or for setting aside *ex parte* order passed on transfer application — Applicant can move fresh transfer application if he has got sufficient ground.

IV (2006) CCR 380 (Allahabad H.C.)

SUMMARY TRIAL — Dishonour of Cheque — Conviction or commitment on evidence partly recorded by one Magistrate and partly by another — Case tried as regular summons case and not tried in summary way as contemplated under Sections 262 to 265, Cr.P.C. such case shall not be considered as tried in summary way, though triable summarily as provided for under Section 143(1) of Act, so as to attract provisions of Section 326(3), Cr.P.C.
(See *Dishonour of Cheque*)

IV (2006) CCR 424 (Bombay H.C.)

— Dishonour of Cheque — Summary trial resorted to in order to save time in trying “petty case” — Section 143 of Act empowers Court to try cases under Section 138 of Act in summary way — Choice is left to Magistrate to either try case strictly by following procedure contemplated by Sections 262 to 265, Cr.P.C. or to adopt procedure provided by

Code.

Negotiable Instruments Act, 1881 — Sections 138, 143(1) — Criminal Procedure Code, 1973 — Sections 262 to 265.

IV (2006) CCR 424 (Bombay H.C.)

TRANSFER OF CASE — Case is transferred if there is reasonable apprehension on part of party to case that justice will not be done *vide Gurcharan Dass* case.

Criminal Procedure Code, 1973 — Section 407.

IV (2006) CCR 298 (Kerala H.C.)

UNLAWFUL ASSEMBLY — Person not armed with deadly weapons cannot be convicted under Section 148, IPC with aid of Section 149, IPC for mere reason that they were members of unlawful assembly.

Indian Penal Code, 1860 — Sections 148, 149.

IV (2006) CCR 366 (Kerala H.C.) (DB)

WITHDRAWAL FROM PROSECUTION — Attempt to Murder, Rioting — Additional Sessions Judge permitted withdrawal from prosecution on application moved by Public Prosecutor under Section 321, Cr.P.C. — Order of High Court dismissing revision petition passed in 1991 — Appellant never challenged that order in last 15 years before this Court — Appellant wholly unjustified in making any grievance in respect of prosecution already withdrawn against respondent No. 3 long time ago and said order affirmed by High Court and no proceedings taken against said judgment of High Court — High Court based its order on report of DIG, CID who conducted inquiry at instance of Court and submitted report — On basis of inquiry report, High Court directed Superintendent of Police to take action for registration of case and conduct investigation and inquiry in accordance with law — No infirmity in impugned order passed in writ petition and order in MCC passed by Madhya Pradesh High Court — No interference called for.

Criminal Procedure Code, 1973 — Section 321 — Indian Penal Code, 1860 — Sections 147, 307.

IV (2006) CCR 188 (SC)

— Scope of provision of Section 321, Cr.P.C. — Discretion to withdraw from prosecution is primarily that of Public Prosecutor and none else — He cannot surrender that discretion to any one — Public Prosecutor may withdraw from prosecution not merely on ground of paucity of evidence but on other relevant factors as well in order to further broad ends of justice, public order, peace and tranquility — High Court came to conclusion that application for withdrawal of prosecution and grant of consent were not based on extraneous considerations.

Criminal Procedure Code, 1973 — Section 321.

IV (2006) CCR 188 (SC)

WORDS AND PHRASES — “Penetrate”.

IV (2006) CCR 115 (SC)

WRONGFUL CONFINEMENT — Murder, Common Intention, Abetment — Contradiction between ocular evidence and medical evidence — Injuries suffered by deceased do not indicate any depressed injury to be present if heavy object, *i.e.* stone weighing about 25 to 30 kgs. dropped on person’s head — PW 3, who conducted post-mortem examination, stated profuse bleeding internally and no profuse bleeding externally — He did not observe oozing of blood either from mouth or nose — Injuries noticed by PW 3 inconsistent with theory of offence committed in manner projected by prosecution — No credence given to evidence of PW 1 as to manner in which incident occurred — High Court also gone wrong in observing no positive evidence on record to show accused No. 1 is crippled — High Court proceeded

on supposition that since polio attack is always to legs and not to hands, person capable of lifting stone weighing about 25 to 30 kgs. with his hands — Disability certificate of appellant No. 1 that he was unable to travel without assistance of escort, produced — Negatives in respect of disability of appellant No. 1 showing attack by polio filed — It is improbable for him to lift stone weighing 25 to 30 kgs. — Circumstances taken up together create sufficient doubt regarding prosecution case and manner in which victim killed — Conviction and sentence of appellant set aside.

Indian Penal Code, 1860 — Section 302 read with Sections 34, 302 read with Section 114, Section 342.

IV (2006) CCR 130 (SC)

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- Art. 22(5) [See *COFEPOSA, 1974 — Sections 3(1), 8*]

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IV (2006) CCR 115 (SC)

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IV (2006) CCR 337 (Punjab & Haryana H.C.) (DB)

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IV (2006) CCR 424 (Bombay H.C.)

- **Sections 284, 284(2)** — Examination of witness through Commissioner — Power of Court — Dispensing attendance of witness — Essential to meet ends of justice — Where such witness disabled to attend Court due to hazardous condition of their health or due to old age, etc. in such cases, Court has to exercise its power to examine witness to see that no such miscarriage of justice does take place — Injured and doctor to be examined in this case — Judgment of acquittal rendered by Additional Civil and Sessions Judge set aside with direction to proceed in accordance with law, as provided under Section 284, Cr.P.C. either by securing injured or examining her through Court Commissioner at costs of prosecution.

IV (2006) CCR 374 (Karnataka H.C.) (DB)

- **Section 296** — Negotiable Instruments Act, 1881 — Sections 138, 145(2) — Dishonour of cheque — Evidence on Affidavit — Scope of provision of Section 296(1), Cr.P.C. — It speaks of evidence of “formal character” — Evidence contemplated under Section 145(1), Negotiable Instruments Act cannot be termed as evidence of formal character — Provisions of Section 296, Cr.P.C. cannot be equated with provisions of Section 145(2) of Negotiable Instruments Act.

IV (2006) CCR 310 (Bombay H.C.) (DB)

- **Section 303** — Constitution of India, 1950 — Art. 22(1) — Right of person against whom proceedings are instituted to be defended — Accused entitled to engage lawyer of his own choice — Such right cannot be refused on ground that Advocate whose services were opted by accused to defend him not empanelled in Court.

IV (2006) CCR 360 (Madras H.C.)

- Constitution of India, 1950 — Arts. 21, 22, 22(1), 39(A), 226 — **Criminal Procedure Code, 1973 — Sections 303, 304** — Free Legal Aid to accused Person — By virtue of obligation of State enshrined under Art. 39(A) of Constitution, State obliged to provide legal assistance even in case of trial before Magistrate or other Courts where accused after trial may be convicted and sentenced to undergo imprisonment or to pay fine — Considering right enshrined under Art. 22(1) coupled with directive principles of State Policy, enshrined under Art. 39(A) of Constitution, right of accused to engage lawyer of his choice at expense of State before Magistrate Court could be traced under Section 303, Cr.P.C. — State has taken steps for providing free legal aid to accused person and formulated certain procedure to identify and empanel Advocates for each Court so as to enable accused to engage Advocate, if he faces trial in that Court.

IV (2006) CCR 360 (Madras H.C.)

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IV (2006) CCR 306 (Andhra Pradesh H.C.)

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IV (2006) CCR 234 (SC)

- **Section 313** — Examination of accused — After closure of prosecution evidence before accused is called for his defence, it is very important step in criminal trial — This examination is not empty formality — Underlying object is to enable accused to explain any circumstance appearing in evidence against him — This important step in trial is based on maxim *audi alteram partem*, i.e. hear other side or both sides — No man shall be condemned unheard — Each and every accused must be examined separately and distinctly — Answers given by accused shall not be scribbled, it may throw light on question of guilt or otherwise of accused and in some cases, truth may be crystallised by such answer — Answers so recorded shall be legible and in understandable handwriting — Revision petitioner deprived of proper opportunity to explain in one answer all materials — Examination of accused not in accordance with requirement of Section 313, Cr.P.C. and it prejudiced accused — Conviction and sentence recorded by Trial Court set aside.

IV (2006) CCR 335 (Karnataka H.C.)

- **Sections 313, 482** — Examination of accused — Recording of statements of accused under Section 313, Cr.P.C. — Petitioners allege as many as 17 witnesses were produced and examined on behalf of prosecution but not single witness implicated petitioners in murder of CS — Witnesses did not suggest directly or indirectly that these petitioners offered Rs. 5,00,000/- as contract for assassination of CS — Trial Court acted illegally and without jurisdiction introducing questions put to petitioners that they offered Rs. 5 lacs for said killing — Questions put to petitioner accused in their statements recorded under Section 313, Cr.P.C. not in consonance with materials collected in course of their trial which is irregular in law which can be cured — Examination of accused under Section 313, Cr.P.C. is not intended to be idle formality — It has to be carried out in interest of justice and fair play of accused — Statements of petitioners recorded by Court of 1st Additional Sessions Judge set aside with direction to record statements under Section 313, Cr.P.C. based upon substantive materials on record and putting distinct questions in accordance with law.

IV (2006) CCR 364 (Jharkhand H.C.)

- Negotiable Instruments Act, 1881 — Sections 138, 145(1) — Constitution of India, 1950 — Art. 20(3) — **Criminal Procedure Code, 1973 — Sections 315, 316** — Dishonour of cheque — Evidence on Affidavit — Right of Accused — Accused cannot be compelled to be witness against himself — Exception contained in Sections 315 and 316 of Cr.P.C. protects rights of accused, who desires to be witness, as envisaged under Constitution — Sections 315 and 316, Cr.P.C. clearly demonstrate accused could be competent witness for defence and may give evidence on oath in disproof of charges made against him or any person charged together with him at same trial — He cannot be called as witness except on his own request in writing — Merely because Section 145(1), Negotiable Instruments Act does not expressly permit accused to do so, does not mean, Magistrate cannot allow accused to give his evidence on affidavit by applying same analogy unless there is just and reasonable ground to refuse such permission — There is no express bar on accused to give evidence on affidavit either in Act or in Code — No justified reason to refuse permission to accused to give his evidence on affidavit subject to provisions contained in Sections 315 and 316, Cr.P.C.

IV (2006) CCR 310 (Bombay H.C.) (DB)

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IV (2006) CCR 220 (SC)

- Inherent Powers — Proceedings against person appearing guilty of offence — Issue of process — High Court merely directed Trial Judge to proceed in matter in accordance with law — Same evidently did not mean High Court already concluded processes must be issued — Sessions Judge proceeded on wrong premise in holding as no charge-sheet filed against appellants by police same was not sufficient to refuse to issue summons — Question necessary was as to whether any case made out for exercise of extraordinary jurisdiction by Court in view of fact whether prosecution would be able to bring home charge — Court at that stage may not enter into merit of matter — Court not bound by opinion of Investigating Officer — It is required to apply tests on touchstone of materials brought on record — Power under Section 319, Cr.P.C. not to be exercised in mechanical manner — High Court did not have any occasion to consider merit of matter — Matter remitted back to Trial Judge with direction to consider question in light of observations made — **Criminal Procedure Code, 1973 — Sections 319, 482.**

IV (2006) CCR 220 (SC)

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IV (2006) CCR 188 (SC)

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IV (2006) CCR 188 (SC)

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IV (2006) CCR 298 (Kerala H.C.)

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IV (2006) CCR 296 (Bombay H.C.)

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IV (2006) CCR 359 (Orissa H.C.)

- **Sections 391, 482** — Indian Penal Code, 1860 — Section 304A — Additional Evidence — Powers of Appellate Court to take additional evidence necessary to pronounce judgment — Application under Section 391, Cr.P.C. should not be considered in isolation but after hearing parties on merits — Such application should not be disposed of in isolation without hearing appeal on merits as there may be cases of failure of justice — Opinion of author Sarkar on Criminal Procedure that Appellate Court cannot decide, if additional evidence should be admitted unless it heard appeal on merits is based on case of *Varada Rajulu*, approved as correct view of legal position — Impugned order passed by Sessions Judge rejecting application under Section 391, Cr.P.C. moved by applicant in isolation, unsustainable and set aside with directions to consider application at time of hearing final arguments in criminal appeal.

IV (2006) CCR 350 (Madhya Pradesh H.C.)

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IV (2006) CCR 410 (Orissa H.C.)

- **Section 401** — Indian Penal Code, 1860 — Section 408 — Criminal breach of trust — Revision — Improper framing of charge — Charge-sheet not exhibited — No endeavour

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IV (2006) CCR 410 (Orissa H.C.)

- **Section 401** — Revision — Improper framing of charge — Not open for prosecution to challenge same after conclusion of trial and pray for modification at revisional stage — FIR lodged in 1987, charge framed in 1988, judgment delivered in 1995 — At this belated stage, no scope to question correctness of framing of charge — Petitioner not able to show any prejudice caused to him due to alleged improper framing of charge.

IV (2006) CCR 410 (Orissa H.C.)

- **Section 407** — Transfer of Case — Case is transferred if there is reasonable apprehension on part of party to case that justice will not be done *vide Gurcharan Dass* case.

IV (2006) CCR 298 (Kerala H.C.)

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IV (2006) CCR 366 (Kerala H.C.) (DB)

- Anticipatory Bail — Grant of — Imposition of condition — Propriety of — High Court granted anticipatory bail to petitioners imposing condition that accused would pay to victim daughter-in-law a sum of Rs. 2,000/- p.m. as maintenance — Applicant before High Court were Jeth and Jethani of victim — This Court fails to understand how they can be made liable to deposit Rs. 2,000/- p.m. for maintenance of victim — While deciding bail application, it is not jurisdiction of Court to decide civil disputes as between parties — Matter remitted to High Court for fresh consideration to pass appropriate order without imposing any condition of nature imposed by impugned order — **Criminal Procedure Code, 1973 — Sections 438, 125.**

IV (2006) CCR 99 (SC)

- Bail — Grant of — Facilitating organised crime and receiving illegal gratification — Not necessary at this stage to examine or decide upon relative scope of Sections 3(2) and 24 of MCOC Act as to in what circumstances action of public servant will be considered as “rendering any help or support in commission of organised crime, whether before or after commission of such offence by member of organised crime syndicate or abstains from taking lawful measures under Act” falling under Section 24 of MCOC Act, or considered as “conspiring or attempting to commit or advocating, abetting or knowingly facilitating commission of organised crime or any act preparatory to organised crime” falling under Section 3(2) of MCOC Act — Appellant retired from service in year 2003 — He has been in Jail for more than two years and nine months — Trial likely to take several years as there are more than 800 witnesses to be examined — Having regard to nature of involvement alleged and role attributed to appellant in charge-sheet — Fit case for grant of bail to appellant — Order of High Court set aside — Special Court directed to enlarge appellant on bail with conditions — **Criminal Procedure Code, 1973 — Section 439** — Maharashtra Control of Organised Crime Act, 1999 — Sections 3(i)(ii), 3(2), 3(4), 3(5), 4, 24 — Prevention of Corruption Act, 1947 — Sections 7, 13(1)(d) — Indian Penal Code, 1860 — Sections 120B, 255, 258, 259, 260, 263A, 420, 471, 472, 474 read with Section 34.

IV (2006) CCR 185 (SC)

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IV (2006) CCR 341 (Allahabad H.C.)

- Prevention of Terrorism Act, 2004 — **Criminal Procedure Code, 1973 — Section 439** — Bail — Second application — No legal impediment in way of any accused facing trial under POTA to file fresh application even if his earlier application rejected — Court bound to consider it on its own merits keeping in mind settled law that second application for bail can be taken up for consideration if it is pointed out to Trial Court there is substantial change in circumstances which calls for fresh look to case of applicant to consider whether he deserves to be released on bail or not — Impugned order quashed and set aside with directions.

IV (2006) CCR 371 (Bombay H.C.) (DB)

- **Section 439** — Indian Penal Code, 1860 — Sections 302, 201 r/w Section 149 — Bail — Murder — Disappearance of evidence — Unlawful assembly — Delay of about 24-25 days in lodging FIR — No post-mortem conducted — Sole piece of evidence with prosecution against petitioner and other co-accused is extra judicial confession made jointly by all seven accused in case — It is weak evidence and may not be sufficient to base conviction — Nothing incriminated recovered from petitioner — He is in custody since 21.4.2005 — Trial of case would take sufficient long time for its conclusion — Fit case to grant bail to accused petitioner.

IV (2006) CCR 379 (Punjab & Haryana H.C.)

- **Section 439(2)** — Bail — Cancellation of — Judicial discipline in bail matters — Non-disclosure of earlier bail application — Suppression of vital facts — Clear breach of judicial discipline — Such practice creates an unhealthy tradition — Abuse of the process of Court — *Vide Harjit Singh v. State of Punjab*, IV (2002) SLT 777=III (2002) CCR 187 (SC), relied upon — No hesitation to cancel the bail order.

IV (2006) CCR 436 (Orissa H.C.)

- Negotiable Instruments Act, 1881 — Sections 138, 145(1), 145(2) — **Criminal Procedure Code, 1973 — Section 461** — Dishonour of cheque — Evidence on Affidavit — Provisions contained in Section 145 not prospective but operate retrospectively — Code of Criminal Procedure and Evidence Act are general laws and rights created thereunder cannot be termed as substantive rights or vested rights of substantive nature causing any prejudice to accused by Amending Act of 2002 and in particular Section 145, Negotiable Instruments Act — Sub-sections (1) and (2) of Section 145, Negotiable Instruments Act fall within realm of procedural law, they would be applicable to pending cases since there is no vested right in accused in procedural law.

IV (2006) CCR 310 (Bombay H.C.) (DB)

- **Sections 464, 465** — Framing of Charge — Not empty formality — When there is no charge and legally accused has no notice on what accusation he is being tried, in such cases, there is no trial at all in eye of law and trial is vitiated.

IV (2006) CCR 366 (Kerala H.C.) (DB)

- Quashing of Proceedings — Defamation — Telecast of commentary on T.V. Channel to harm reputation of Chief Minister, Ministers or officials — This Court after hearing parties, was of view that public interest would be best served in directing broadcast to be made in concerned TV Channel by appellants in manner as indicated by Court — Learned Counsel for appellants stated to show *bona fides* appellants shall make necessary broadcast within

time indicated — Learned Counsel for parties agreed all proceedings relating to broadcast shall be withdrawn and not be pursued — **Criminal Procedure Code, 1973 — Sections 482, 200 r/w Section 199** — Indian Penal Code, 1860 — Section 499.

IV (2006) CCR 168 (SC)

- **Section 482** — Prevention of Food Adulteration Act, 1954 — Section 13(2) — Prevention of Food Adulteration Rules, 1955 — Rule 9(A) — Quashing of cognizance and criminal proceeding — Adulteration in salt — Report of Analyst not made over to petitioner as per Section 13(2) of Act and Rule 9(A) of Rules — Provisions not followed either by notice or by registered cover/letter to petitioner within 10 days of receipt of Analyst report — Proceedings vitiated and set aside.

IV (2006) CCR 416 (Jharkhand H.C.)

- **Section 482** — Prevention of Food Adulteration Act, 1954 — Sections 16(1)(a), 13(2) — Prevention of Food Adulteration Rules, 1955 — Rule 9(B) — Adulteration in Salt — Denial of legal right to accused to get sample re-analysed by Central Laboratory on receipt of report by petitioner within 10 days of report of Analyst — Salt recovered from store of hotel not meant for sale — No offence attracted under Section 16(1)(a) of Act — Impugned order taking cognizance of offence quashed.

IV (2006) CCR 416 (Jharkhand H.C.)

Customs Act, 1962

- Relevant document — What amounts to — Relevant document not withheld to vitiate detention order — Document in question neither relevant nor necessary to decide whether detenu indulged in smuggling or other prejudicial activity — Said document not relevant to establish propensity or potentiality of detenu to continue his illegal activities — Document whereby EXIM benefits to one of companies controlled by detenu stopped, not 'relevant' document and non-consideration of which would vitiate detention order — Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Sections 3(1) — Constitution of India, 1950 — Article 32 — **Customs Act, 1962 — Section 2(39)**.

IV (2006) CCR 225 (SC)

Drugs and Cosmetics Act, 1940

- **Sections 9, 9A, 9B, 9C, 9D, 13(1)(a), 13(1)(b), 13(1)(c), 22, 22(2), 32, 37** — Indian Penal Code, 1860 — Sections 307, 467, 468, 471, 420, 120B — Criminal Procedure Code, 1973 — Sections 94, 482 — Quashing of FIR and Proceedings — Seizure of misbranded medicines — Case instituted by police official is without jurisdiction — Everything done by informant in violation of Section 32 and Section 22(2) of Act — No counter affidavit filed by Drugs Inspector to substantiate that they actually participated in raid and search and seizure made in their presence — Search and seizure made without obtaining search warrant — Mandatory provision not complied with — Investigation by police wholly illegal and without jurisdiction — Proceedings quashed.

IV (2006) CCR 355 (Patna H.C.)

Essential Commodities Act, 1955

- Criminal Procedure Code, 1973 — Section 439 — Indian Penal Code, 1860 — Sections 285, 286 — **Explosive Substances Act — Sections 3, 5** — Bail — Grant of — Negligent conduct with respect to fire or combustible matter or explosive substance — Seizure of seven live explosive shells and number of empty shells — Statement of custom house agent shows there was no 100% physical checking of imported scraps, possibility that some of scraps contained live explosives which remained unnoticed, cannot be ruled out — Knowledge of live explosives cannot be imposed at applicant at this stage due to lack of any positive evidence — Investigation Officer failed to collect any evidence in investigation to prove conscious possession of applicant in respect of explosive live shells allegedly recovered from

premises of firm — Applicant enlarged on bail with conditions.

IV (2006) CCR 341 (Allahabad H.C.)

- Remission of Sentence — Reduction to period already undergone — Sale of huge quantity of seeds to public for more than 1½ years without licence — Appellants highlighted serious procedural lapses in conducting entire case — Appellant No. 1, proprietor of shop was not there when inspection carried out and Seed Inspector ought not to have carried out inspection in absence of appellant No. 1 — Respondents failed to show appellants ever sold seeds in market — No purchaser of seeds produced — It was first case registered in State of Tamil Nadu for violation under Seeds (Control) Order and sentence imposed is harsh and reduced to period already undergone — Learned Counsel for State submitted this concession is made keeping in view factors, *viz.*, appellant No. 2 was young boy of 17 years at time of commission of offence, small quantity of seeds seized, they have already undergone imprisonment of one month — Not proper for this Court to adjudicate and give findings on various issues raised by parties — Ends of justice would be met if sentence of appellants reduced to period already undergone by them — Seeds (Control) Order, 1983 — Clauses 3(1), 8(a), 8(b), 18(1) — **Essential Commodities Act, 1955 — Sections 3(2)(i)(a), 3(2)(i)(h), 7(1)(a)(ii).**

IV (2006) CCR 200 (SC)

Evidence Act, 1872

- **Section 6** — Relevancy of facts forming part of same transaction — Circumstance may not be very strong or compelling circumstance by itself — Same cannot be ruled out as being innocuous and irrelevant — It would be admissible under Section 6 of Evidence Act.

IV (2006) CCR 258 (Delhi H.C.) (DB)

- **Section 8** — Motive — Adequacy of motive is of little importance — It is seen from experience of Criminal Courts that atrocious crimes are committed for very slight motives.

IV (2006) CCR 258 (Delhi H.C.) (DB)

- **Section 30** [See *Railway Act, 1989 — Sections 143(1), 143(2)*]

IV (2006) CCR 234 (SC)

- Confession of co-accused — Admissibility — Statement of co-accused required to be corroborated by adduction of independent evidence — **Evidence Act, 1872 — Section 30.**

IV (2006) CCR 234 (SC)

- Dying Declaration — Evidentiary value — Exceptions to general rule against hearsay evidence — General principle as to admissibility — Discussed — **Evidence Act, 1872 — Section 32.**

IV (2006) CCR 103 (SC)

- Burden of proof — Plea of *alibi* — As and when such defence is raised, other defences given up ordinarily — Despite provisions of Section 103, Evidence Act, even if *alibi* is not proved, prosecution cannot rest its case only in terms thereof — Even if *alibi* not proved, Court shall not record judgment of conviction unless prosecution established its case — **Evidence Act, 1872 — Section 103.**

IV (2006) CCR 150 (SC)

- Burden of proof — Murder — Committed in secrecy inside house — Initial burden to establish case would be upon prosecution, but nature and amount of evidence to be led by it to establish charge cannot be of same degree as is required in other cases of circumstantial evidence — Burden would comparatively be of lighter character — **Evidence Act, 1872 — Section 106, Illustration (b).**

IV (2006) CCR 169 (SC)

- Dowry Death, Cruelty — Presumption — Dead body of deceased found floating in well located in house of appellant — Death occurred otherwise than under normal circumstances — No discrepancy in evidence of witnesses who have spoken about dowry demand, torture and harassment, though they were cross-examined at length — Conviction as maintained by High Court needs no interference — Indian Penal Code, 1860 — Sections 304B, 498A — **Evidence Act, 1872 — Section 113B.**

IV (2006) CCR 134 (SC)

- Presumption as to dowry death — No presumption under Section 113B, Evidence Act would be drawn against accused if it is shown after alleged demand, cruelty or harassment dispute stood resolved and there was no evidence of cruelty or harassment thereafter — Mere lapse of time by itself would not provide to accused defence if course of conduct relating to cruelty or harassment in connection with dowry demand shown to have existed in time not too late and not too stale before date of death of victim — **Evidence Act, 1872 — Section 113B** — Indian Penal Code, 1860 — Section 304B.

IV (2006) CCR 134 (SC)

- Expression “Soon before” — Meaning — Indian Penal Code, 1860 — Sections 304B — **Evidence Act, 1872 — Section 114, Illustration (a).**

IV (2006) CCR 134 (SC)

- **Section 114 Illustration (g)** *[See NDPS — Sections 8, 50]*

IV (2006) CCR 150 (SC)

- Presumption as to absence of consent in prosecution for rape — If sexual intercourse committed by accused and if it is proved it was without consent of prosecutrix and prosecutrix states in her evidence she did not consent, Court shall presume she did not consent — Presumption introduced by Legislature in Evidence Act looking to atrocities committed against women — **Evidence Act, 1872 — Section 114A.**

IV (2006) CCR 109 (SC)

Immoral Traffic (Prevention) Act, 1956

- Criminal Procedure Code, 1973 — Sections 327(3), 482 — **Immoral Traffic (Prevention) Act, 1956 — Sections 5(ia), 5(c), 5(d)** — Indian Penal Code, 1860 — Sections 366, 109, 341 — Trial “in camera” — Trial in camera would not only be in keeping with self-respect of victim of crime and in tune with legislative intent but also likely to improve quality of evidence of prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in open Court under gaze of public.

IV (2006) CCR 298 (Kerala H.C.)

Indian Penal Code, 1860

- Common Intention — Essence of liability to be found in existence of common intention animating accused leading to doing of criminal act in furtherance of such intention — For applying Section 34 it is not necessary to show some overt act on part of accused — When accused is convicted under Section 302, read with Section 34, in law it means accused is liable for act which caused death of deceased in same manner as if it was done by him alone — **Indian Penal Code, 1860 — Section 34.**

IV (2006) CCR 103 (SC)

- **Section 66** — Imprisonment for non-payment of fine — Sentence of imprisonment of life means R.I. for life — In case where substantive sentence of imprisonment which Court can impose for offence is only R.I. then as enjoined by Section 66 of IPC, imprisonment for non-payment of fine imposed for said offence can only be R.I. and not simple imprisonment.

IV (2006) CCR 366 (Kerala H.C.) (DB)

- Consent — Given under fear of injury or misconception of fact — Such consent obtained cannot be construed to be valid consent — **Indian Penal Code, 1860 — Section 90.**

IV (2006) CCR 109 (SC)

- **Section 107** *[See Railway Act, 1989 — Sections 143(1), 143(2)]*

IV (2006) CCR 234 (SC)

- Abetment — Doing something for offender is not abetment — Doing something with knowledge so as to facilitate him to commit crime or otherwise would constitute abetment — **Indian Penal Code, 1860 — Section 107.**

IV (2006) CCR 234 (SC)

- **Sections 120B, 255, 258, 259, 260, 263A, 420, 471, 472, 474 read with Section 34** *[See Criminal Procedure Code, 1973 — Section 439]*

IV (2006) CCR 185 (SC)

- **Sections 148, 149** — Unlawful Assembly — Person not armed with deadly weapons cannot be convicted under Section 148, IPC with aid of Section 149, IPC for mere reason that they were members of unlawful assembly.

IV (2006) CCR 366 (Kerala H.C.) (DB)

- **Sections 279, 304A** — Death Caused by Rash and Negligent Driving — Collision between Tempo and motorcycle as a result deceased driving motorcycle died — Lack of proper investigation — Testimony of PW 3, Head Constable leads to only conclusion that vehicle (truck) driven by petitioner at high speed — This in itself does not mean petitioner was driving vehicle rashly or negligently — Testimony of PW 3 leads to ambiguities and doubts — Incident happened behind PW 3 — Quite probable that he never saw impact but on hearing sound, looked in that direction and saw result of same and came to conclusion that truck must have been driven at high speed — Location of point of impact not clear because site plan purportedly drawn up by Investigating Officer not exhibited — Investigating Officer himself not been examined as witness — Rough sketch prepared by Investigating Officer not introduced in evidence as it is at variance with testimony of PW 3 — Factum of non-examination of Investigating Officer would be to detriment of prosecution case and in favour of defence — Apart from allegation of having driven truck at high speed, which itself is unclear expression, nothing on record to establish petitioner drove vehicle rashly and/or negligently or did any act which amounts to rash and/or negligent act — Petitioner not liable to be convicted under provisions of Sections 279 and 304A, IPC — Courts below committed grave error in convicting petitioner — Impugned order set aside and petitioner entitled to acquittal.

IV (2006) CCR 403 (Delhi H.C.)

- **Sections 279, 304A** — Rash and/or Negligent Driving — Observations made by Court in cases involving such allegations — Investigations carried out are below par — Road accidents are on rise and many of these accidents result in fatalities — In cases of road accidents particularly which result in fatalities, investigation should be carried out in swift and scientific manner — Conclusions drawn by Court in cases involving rash and negligent driving — Discussed.

IV (2006) CCR 403 (Delhi H.C.)

- **Sections 285, 286** *[See Criminal Procedure Code, 1973 — Section 439]*

IV (2006) CCR 341 (Allahabad H.C.)

- **Section 302** — Death Sentence — Confirmation of — Denial of Justified — Murder of three persons by father and his two sons — Death Reference made by Trial Court set aside — Three accused-appellants acquitted of all charges framed against them — Circumstantial evidence — Evidence of “last seen” of witness PW 3 does not inspire confidence — Star

witness PW 3 not reliable and trustworthy either on aspect of last seen circumstance or on conspiracy aspect — Motive pressed into service by prosecution on evidence of PW 3 for killing of deceased P, not reliable — No evidence to establish love affair between acquitted accused SS and Jyoti — Further motive for murders of NS and N, also totally imaginative and conjectural — Seizure of three-wheeler and finding of blood from its back seat does not link any of appellants with crime alleged to have been committed by them — It cannot be accepted that despite so many persons having travelled in that scooter blood would have remained stuck to seat and its group could be ascertained by FSL people — None of circumstances established and sufficient either singly or cumulatively and good enough to convict any of 3 appellants — Despite there being no evidence adduced by prosecution Trial Judge reached imaginative conclusions regarding love affair between deceased P and J and between acquitted accused SS and J, hatching of conspiracy between appellants for getting rid of P and killing of NS and N to remove evidence of murder of P as imagined to be seen by by them — Appellants found guilty without any sufficient and reliable evidence by Additional Sessions Judge and also slapped one of appellants with extreme penalty of death — Circumstances relied upon by prosecution not established beyond reasonable doubt — Death reference made by Trial Court answered in negative — Judgment of conviction in its entirety set aside and appellants acquitted of charges framed against them.

IV (2006) CCR 438 (Delhi H.C.) (DB)

- **Section 302 r/w Sections 34, 201** — Murder, Common Intention, Disappearance of Evidence — Circumstantial evidence — Chain of circumstances not proved by prosecution beyond reasonable doubt — Prosecution case is that on date of occurrence mother of deceased had illicit relation of accused — Occurrence of illicit relationship witnessed by deceased — First accused mother of deceased caught hold of deceased and slapped her and pushed her on account of which deceased dashed against wall and she died — No eye-witnesses to prove motive relied upon by prosecution — Evidence of PWs 1 and 6 dismantles case of prosecution — Recovery of prosecution of MO 1 (gunny bag containing slate and other object) cannot be taken into account since police arrested — Appellant only after lapse of two months — Prosecution not connected all links in chain of circumstances and miserably failed to prove case against appellant — Appellant acquitted of charges.

IV (2006) CCR 413 (Madras H.C.) (DB)

- Murder, Common Intention, Abetment, Wrongful Confinement — Contradiction between ocular evidence and medical evidence — Injuries suffered by deceased do not indicate any depressed injury to be present if heavy object, *i.e.* stone weighing about 25 to 30 kgs. dropped on person's head — PW 3, who conducted post-mortem examination, stated profuse bleeding internally and no profuse bleeding externally — He did not observe oozing of blood either from mouth or nose — Injuries noticed by PW 3 inconsistent with theory of offence committed in manner projected by prosecution — No credence given to evidence of PW 1 as to manner in which incident occurred — High Court also gone wrong in observing no positive evidence on record to show accused No. 1 is crippled — High Court proceeded on supposition that since polio attack is always to legs and not to hands, person capable of lifting stone weighing about 25 to 30 kgs. with his hands — Disability certificate of appellant No. 1 that he was unable to travel without assistance of escort, produced — Negatives in respect of disability of appellant No. 1 showing attack by polio filed — It is improbable for him to lift stone weighing 25 to 30 kgs. — Circumstances taken up together create sufficient doubt regarding prosecution case and manner in which victim killed — Conviction and sentence of appellant set aside — **Indian Penal Code, 1860 — Section 302 read with Sections 34, 302 read with Section 114, Section 342.**

IV (2006) CCR 130 (SC)

- Murder, Unlawful Assembly, Kidnapping, Mischief — Prosecution case not trustworthy — Enmity and bad blood between rival groups established beyond doubt — Evidence of only two interested witnesses, *viz.*, PWs 1 and 2 on record — No immediate report regarding

occurrence lodged to police — Evidence on record scrutinised by this Court and it is concluded that story about making effort to lodge report earlier does not appear to be true — Namberdar and Chowkidar alleged to have accompanied PW 1 to Police Station not examined as witnesses — Allegation that police favourably disposed towards appellants belied by fact that some of appellants illegally detained by police who were ultimately released by Warrant Officer appointed by High Court in *habeas corpus* petition — Circumstances of case indicate PWs 1 and 2 may not have seen occurrence in which SS either abducted or killed — Taking advantage of his disappearance false case belatedly concocted against appellants — Truthfulness of two eye-witnesses examined by prosecution doubtful — Appellants entitled to benefit of doubt and acquitted of all charges levelled against them — **Indian Penal Code, 1860 — Section 302 read with Section 149, Section 364 read with Section 149, Section 436 read with Section 149, Sections 148, 427 read with Section 149.**

IV (2006) CCR 193 (SC)

- Murder, Disappearance of Evidence — Motive — Murder of brother-in-law by accused on suspicion that he killed his own wife, *viz.*, sister of accused persons — There is clear evidence of L that accused B caught hold of deceased by his arm and accused M severed his head from body by Kirpan — Medical evidence, Police Inspector's evidence etc., corroborate this version — Submission that merely because co-accused J and S acquitted, entire prosecution case to be rejected, cannot be accepted — No reason to set aside conviction of accused M and B — Considering fact that because of some enmity due to suspicion about deceased's death two years after her marriage to K could have been motive for crime, sentence reduced to life imprisonment from death sentence under Section 302, IPC — **Indian Penal Code, 1860 — Sections 302, 201.**

IV (2006) CCR 238 (SC)

- Criminal Procedure Code, 1973 — Section 439 — **Indian Penal Code, 1860 — Sections 302, 201 r/w Section 149** — Bail — Murder — Disappearance of evidence — Unlawful assembly — Delay of about 24-25 days in lodging FIR — No post-mortem conducted — Sole piece of evidence with prosecution against petitioner and other co-accused is extra judicial confession made jointly by all seven accused in case — It is weak evidence and may not be sufficient to base conviction — Nothing incriminated recovered from petitioner — He is in custody since 21.4.2005 — Trial of case would take sufficient long time for its conclusion — Fit case to grant bail to accused petitioner.

IV (2006) CCR 379 (Punjab & Haryana H.C.)

- **Sections 302 and 304 Part I** — Murder — Culpable homicide not amounting to murder — Alteration in conviction — Evidence on record re-appreciated — Single blow on abdomen — No further assault or even attempt — Medical record proved blow was not given with great force — Not fit case to convict under Section 302, IPC — Judgment modified.

IV (2006) CCR 389 (Uttaranchal H.C.) (DB)

- Murder, Attempt to Murder, Intentional Insult to Invoke Breach of Peace, Common Intention — Reversal of judgment of acquittal by High Court — Not justified — Appreciation of evidence — Dispute regarding ownership of land between deceased and A1 — Appellant alleged to have assaulted him with hammer — PWs 3 and 4 assaulted by other accused with bamboo sticks — Deceased succumbed to his injuries same day — Trial Judge on cogent reasons opined prosecution not able to prove its case and noticed various discrepancies in recording its judgment of acquittal — Dispute as to whether land where allegedly occurrence took place belonged to deceased — Testimonies of PWs 3 and 4 not reliable — Why statement of PW 2 not recorded even after police officer came to spot, not disclosed — Doctor who prepared injury report of PW 2, was not Radiologist — Prosecution not proved that accused No. 1 did not own any cart or oxen and borrowed bullocks from accused No. 4, except statement of PW 2 — Mahazar report not legally proved — Appellant had no axe to grind — Prosecution not proved he had any motive except being friend of

accused No. 1 — Hammer not ordinarily used for agricultural operations — High Court not properly dealt with judgment of acquittal — Impugned judgment of High Court unsustainable — Set aside — **Indian Penal Code, 1860 — Sections 302, 307, 504 r/w Section 34** — Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 — Section 2.

IV (2006) CCR 181 (SC)

- Murder by Throttling — Circumstantial Evidence — Death of deceased homicidal in nature — Last seen evidence proved by prosecution — No reason for PWs to falsely implicate appellant — At instance PW 2 case under Section 326, IPC pending against appellant — Possibility of intercourse before death not ruled out — PW 3 child witness stated about manner in which appellant was recoiling on body of deceased which shows amorous adventure he was making — PW 3 capable of deposing before Court of law — Appellant was man of strong physique — He knew Judo Karate — Undergarments of appellant smeared with blood of different group — In view of evidence available on records, motive takes back seat — If attention of appellant not drawn to reports of forensic laboratory, same does not vitiate judgment of conviction and sentence as he was not prejudiced thereby — Test identification parade not necessary as sufficient description of appellant given in FIR and he was arrested soon thereafter — Judgment of Sessions Judge and High Court affirmed — Circumstances brought on record by prosecution clearly demonstrate appellant alone committed murder and absence of motive immaterial — **Indian Penal Code, 1860 — Sections 302, 326.**

IV (2006) CCR 205 (SC)

- **Sections 302, 376** — Murder, Rape — Appeal against Acquittal — Circumstantial evidence proved beyond any doubt by unimpeachable evidence — Circumstances form complete chain to lead to conclusion that respondent committed rape upon deceased and then murdered her — Thirteen circumstances pressed into service by prosecution for establishing guilt of accused — Circumstance Nos. 1, 2 and 3 collectively are regarding motive for crime, viz. infatuations with deceased and acts of stalking deceased, even if constitute weak motive would not make any difference — Circumstance No. 4 is regarding accused seen in morning on 23.1.1996 at Delhi University with his motorcycle and helmet with visor and Circumstance No. 5 is regarding respondent seen outside flat of deceased around 4.50 p.m. — Respondent followed deceased upto her house on fateful day and in evening, when her parents were not at home, entered her house, raped and killed her — PW 2 is reliable witness, who had seen accused outside flat of deceased — Circumstance No. 6 that accused reached late to attend his class at Indian Law Institute to create plea of *alibi* — Circumstance No. 7, viz. mother of deceased expressed her suspicion at accused of committing crime immediately after incident is also relevant circumstance — Circumstance No. 8, viz. that on interrogation after incident of accused there was swelling and tenderness on his right hand — Circumstance No. 12 is explanation given by accused that he suffered injury as result of fall from motor cycle — Trial Court needlessly rejected opinion of Radiologist, by taking upon itself exercise of re-writing medical jurisprudence contrary to expert opinion of Radiologist — Circumstance No. 9 is DNA test to effect that in vaginal swabs and vaginal slides of deceased and underwear she was wearing at time of incident, semen of accused was present — DNA of sperm matched with DNA of blood of accused — Circumstance No. 11 is regarding 19 injuries on person of deceased besides 3 broken ribs, are suggestive of massive force used — Circumstance No. 10 is that visor of helmet of accused was broken while he was assailing deceased with his helmet — Circumstance No. 13 is influence of father of accused in derailing initial investigation — Circumstantial evidence absolutely inconsistent and incompatible with innocence of respondent — No circumstance brought on record by respondent suggesting his innocence or possibility of anyone else having committed ghastly acts — By acquitting respondent despite being convinced that there was no doubt in prosecution case, Trial Court mauled justice, its decision shocked judicial conscience of Court — Impugned judgment set aside — Respondent convicted for

commission of offences punishable under Section 302 and 376, IPC.

IV (2006) CCR 258 (Delhi H.C.) (DB)

- Murder of Wife by Strangulation, Cruelty — Circumstantial Evidence — Post-mortem examination conducted on body of deceased disclosed she died due to asphyxia as result of compression of neck and not on account of snake bite — Allegation of demand of Rs. 25,000/- by appellant and his parents from parents of deceased — Ill-treatment of deceased due to non-fulfillment of same — Deceased had told her parents about being ill-treated and occasionally not given food whenever she visited her parental home — Dead body of deceased purposely placed in sitting posture with her back taking support of wall so that no one may suspect that she had actually been killed as result of strangulation and may believe in version of snake bite given by appellant and his parents — Recovery of some articles of deceased made at instance of appellant — Circumstances enumerated unerringly point to guilt of accused and they are inconsistent with his innocence — High Court perfectly right in allowing appeal filed by State and in convicting appellant under Section 302, IPC and sentencing him thereunder — **Indian Penal Code, 1860 — Sections 302, 498A** — Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 — Section 2(a).

IV (2006) CCR 169 (SC)

- **304A** [See *Indian Penal Code, 1860 — Sections 279, 304A*]

IV (2006) CCR 403 (Delhi H.C.)

- **Section 304A** [See *Criminal Procedure Code, 1973 — Sections 391, 482*]

IV (2006) CCR 350 (Madhya Pradesh H.C.)

- Dowry Death — Ingredients of offence — Discussed — **Indian Penal Code, 1860 — Sections 304B.**

IV (2006) CCR 134 (SC)

- Presumption as to dowry death — No presumption under Section 113B, Evidence Act would be drawn against accused if it is shown after alleged demand, cruelty or harassment dispute stood resolved and there was no evidence of cruelty or harassment thereafter — Mere lapse of time by itself would not provide to accused defence if course of conduct relating to cruelty or harassment in connection with dowry demand shown to have existed in time not too late and not too stale before date of death of victim — Evidence Act, 1872 — Section 113B — **Indian Penal Code, 1860 — Section 304B.**

IV (2006) CCR 134 (SC)

- Expression “Soon before” — Meaning — **Indian Penal Code, 1860 — Sections 304B** — Evidence Act, 1872 — Section 114, Illustration (a).

IV (2006) CCR 134 (SC)

- Expression “Normal circumstances” — Meaning — **Indian Penal Code, 1860 — Section 304B.**

IV (2006) CCR 134 (SC)

- Dowry Death — Framing of charge under Section 304B, IPC — Charges for offence under Sections 306, 498A r/w Section 34, IPC already framed against accused — Certificate of death filed by doctor stated probable cause of death to be cardio respiratory failure due to acute respiratory failure — In subsequent certificate different cause of death indicated — Trial Court held prosecution not explained as to how certificate sought to be brought on record after 4 years — Matter relating to production of certificate kept in abeyance to be decided after examination of doctor — Proper for Trial Court to defer question of framing charge under Section 304B, IPC after examination of doctor and relevance of subsequent certificate and its acceptability — High Court failed to consider relevant aspects and dismissed application — Impugned judgment set aside — **Indian Penal Code, 1860** —

Sections 304B, 306, 498A r/w Section 34.

IV (2006) CCR 179 (SC)

- Dowry Death, Cruelty — Presumption — Dead body of deceased found floating in well located in house of appellant — Death occurred otherwise than under normal circumstances — No discrepancy in evidence of witnesses who have spoken about dowry demand, torture and harassment, though they were cross-examined at length — Conviction as maintained by High Court needs no interference — **Indian Penal Code, 1860 — Sections 304B, 498A — Evidence Act, 1872 — Section 113B.**

IV (2006) CCR 134 (SC)

- Dowry Death, Cruelty — Sentence — Reduction — Custodial sentence reduced to 8 years which appellant claims to have undergone including remissions — He shall be immediately released from custody unless required in any other case — **Indian Penal Code, 1860 — Sections 304B, 498A.**

IV (2006) CCR 134 (SC)

- Intention to Cause Death, Common Intention, Trespass, Grievous Hurt — Alteration in conviction — Dying declaration — Voluntary, trustworthy and credible and not tutored — No material brought on record to show why PWs 9 and 10 being relatives would falsely implicate accused and shield actual culprit — Prosecution clearly established vital blow given by accused No. 1 by iron pipe and wooden stick — According to prosecution, only one injury inflicted on head of deceased — No eye-witness as to who assaulted on head — No role ascribed to other appellants *i.e.* respondent Nos. 2 to 6 — No question of applying Section 34, IPC because prosecution itself is to effect that accused persons wanted to extract confession from deceased he had stolen bicycle — No material brought on record that accused persons shared any common object to either cause injury to deceased or kill him — Correct provision for conviction would be Section 304 Part I, IPC — Custodial sentence of 10 years would meet ends of justice — Conviction under Section 342 as well as sentence maintained — Sentences shall run concurrently — Section 34, IPC has no application for offence punishable under Section 304 Part I, IPC — Accused persons 2, 4 and 6 convicted under Section 342 read with Section 34, IPC as also Section 325 read with Section 34, IPC — Corresponding sentences imposed by Trial Court and maintained by High Court need no interference — **Indian Penal Code, 1860 — Sections 304 Part I, 342, 325 read with Section 34.**

IV (2006) CCR 103 (SC)

- Criminal Procedure Code, 1973 — Sections 241, 313, 386(a) — **Indian Penal Code, 1860 — Section 304 Part II** — Plea of Guilt — Conviction on basis of plea of guilt — Alteration in conviction — Knowledge to cause death — Plea of guilty recorded after charge framed — Not justified — Stage for recording statements of accused or their fresh plea passed — Case scheduled for recording prosecution evidence — Statements of accused recorded not covered by provisions of Section 313(1)(a), Cr.P.C. which entitled Court to put such questions to accused as considered necessary, at any stage and without previously warning accused — Learned Judge cut short trial by recording statements of four of accused admitting their guilt and proceeded to convict them under Section 304 Part II, IPC — Two remaining accused acquitted — Course adopted by trial Judge not legal — This was not stage to go back to stage of charge and record pleas of some of accused as trial Judge has done.

IV (2006) CCR 337 (Punjab & Haryana H.C.) (DB)

- Knowledge to Cause Death — Alteration in conviction — Plea of self-defence — Appreciation of evidence — Appellant No. 1 acquitted of offence — Accused Nos. 2 and 3, and wife of appellant No. 2 (accused No. 4), tried jointly for alleged commission of murder of deceased under Section 302 read with Section 34, IPC — Trial Judge acquitted accused

No. 1 and convicted accused No. 4 only under Section 324, IPC — It is wholly unlikely that accused No. 1 wanted to murder deceased owing to property dispute — Deceased had nothing to do with property in dispute, although he might have been siding with PW 1 — Plea of self-defence could not have been rejected on premise that Exhibit D1 not proved — Receipt of Exhibit D1 is not in dispute — It was sent by post and received by Investigating Officer — High Court could not have refused to consider defence raised by accused, particularly, when theory that all accused persons came at bus stop with intention to kill deceased not accepted by Trial Court — Both accused gave one blow each — Blow given by appellant No. 1 although was on vital part, but it is to be borne in mind that when person loses his sense, he may act violently — That by itself not ground to reject plea of self-defence — Appellants are guilty of commission of offence under Section 304 Part II and not under Section 302, IPC — Judgment of conviction altered accordingly — Accused sentenced to undergo 10 years R.I. — **Indian Penal Code, 1860 — Sections 304 Part II, 302, 324, 34.**

IV (2006) CCR 138 (SC)

- Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 8, 15, 42 — **Indian Penal Code, 1860 — Sections 307, 34** — Arms Act, 1959 — Section 27 — Recovery of Poppy Husk — Contraband material recovered from possession of accused not produced in Court as link evidence to show actually samples were drawn from alleged material — Plea that when police party tried to stop jeep, driver turned jeep and started firing at police party — Accused-appellant acquitted of charge under Section 307, IPC and Section 27 of Arms Act because neither country-made 315 bore pistol used in crime by accused and cartridges recovered produced in Court nor any expert opinion produced in that regard — Prosecution not able to establish its case beyond reasonable doubt.

IV (2006) CCR 343 (Rajasthan H.C.)

- **Sections 307, 467, 468, 471, 420, 120B** *[See Drugs and Cosmetics Act, 1940 — Sections 9, 9A, 9B, 9C, 9D, 13(1)(a), 13(1)(b), 13(1)(c), 22, 22(2), 32, 37]*

IV (2006) CCR 355 (Patna H.C.)

- Outraging Modesty of Woman — Scope of provision of Section 354, IPC — Essence of woman's modesty is her sex — Culpable intention of accused is crux of matter — Reaction of woman relevant, but its absence not always decisive — It is virtue which attaches to female on account of her sex — **Indian Penal Code, 1860 — Section 354.**

IV (2006) CCR 115 (SC)

- Kidnapping — Ingredients of offence — Appellant at about 1.30 a.m., forcibly took prosecutrix/victim to his Gumti with intention of committing illicit intercourse — Offence committed by appellant would fall under Section 366, IPC — **Indian Penal Code, 1860 — Section 366.**

IV (2006) CCR 115 (SC)

- Criminal Procedure Code, 1973 — Sections 327(3), 482 — Immoral Traffic (Prevention) Act, 1956 — Sections 5(ia), 5(c), 5(d) — **Indian Penal Code, 1860 — Sections 366, 109, 341** — Trial "in camera" — Trial in camera would not only be in keeping with self-respect of victim of crime and in tune with legislative intent but also likely to improve quality of evidence of prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in open Court under gaze of public.

IV (2006) CCR 298 (Kerala H.C.)

- Sentence — Kidnapping, Outraging Modesty of Woman — Conviction of appellant under Sections 376/511, IPC wholly erroneous and unsustainable — Judgments of Trial Court and High Court set aside — Appellant guilty of offences under Sections 366 and 354, IPC — Appellant sentenced to undergo five years' imprisonment under Section 366, IPC and two years' RI under Section 354, IPC — Both sentences to run concurrently — **Indian Penal**

Code, 1860 — Sections 366, 354.

IV (2006) CCR 115 (SC)

- Rape — Consent obtained by accused from PW 1 prosecutrix under misconception of fact that he would marry her — This is not consent in law — Accused committed sexual intercourse and promised to marry her but he absconded despite promise made before Panchayat — That shows accused had no intention to marry her right from beginning — Prosecutrix, aged 16 years persuaded to sexual intercourse with assurance of marriage and she submitted to lust of accused — Such fraudulent consent cannot be said to be consent to condone offence of accused — Conviction and sentence awarded to appellant correct and no case made out for interference by this Court — **Indian Penal Code, 1860 — Sections 90, 375, 376, 417.**

IV (2006) CCR 109 (SC)

- Rape — Ingredients of offence — Prosecutrix aged about 12 years — Her consent irrelevant — Important ingredient of offence under Section 375, IPC is penetration, which is missing in this case — Basic ingredients for proving charge of rape are accomplishment of act with force and penetration of male organ within labia majora or vulva with or without emission of semen — Even attempt at penetration into private part of victim completely, partially or slightly would be enough for purpose of Sections 375 and 376, IPC — **Indian Penal Code, 1860 — Sections 375, 376.**

IV (2006) CCR 115 (SC)

- Rape, Attempt to Commit Offence — No attempt of penetration to slightest degree — Appellant neither undressed himself nor even asked prosecutrix to undress — There was no question of penetration — Conviction under Sections 376/511, IPC wholly illegal and unsustainable — **Indian Penal Code, 1860 — Sections 376/511.**

IV (2006) CCR 115 (SC)

- Charge for minor offence where major offence not proved — Rape, Attempt to Commit Offence, Kidnapping, Outraging Modesty of Woman — Appreciation of evidence — Before appellant could ravish prosecutrix, she raised alarm and immediately thereafter, her father PW 1 and other co-villagers residing in vicinity assembled at spot and appellant and prosecutrix came out of Gumti — No offence under Sections 376/511, IPC made out — Crime committed by accused was at initial stage of preparation — Offence committed squarely covers ingredients of Sections 366 and 354, IPC — Appellant was charged under Sections 376/511, IPC but on invoking provisions of Section 222, Cr.P.C., accused charged with major offence can always be convicted for minor offence, if necessary ingredients of minor offence present — **Indian Penal Code, 1860 — Sections 376/511, 366, 354.**

IV (2006) CCR 115 (SC)

- **Sections 395, 34** — Dacoity, Common Intention — Sentence — Reduction to period already undergone by appellant — Reasons.

IV (2006) CCR 376 (Delhi H.C.)

- **Sections 395/34, 397, 398** — Dacoity, Attempt to commit dacoity when armed with deadly weapons, Common Intention — Appreciation of Evidence — Prosecution could not establish appellant was also carrying deadly weapon with him at time of alleged dacoity when he intruded into house of complainant along with his other co-accused persons — His conviction under Section 398, IPC legally unsustainable — Prosecution has proved beyond reasonable doubt that appellant along with other co-accused persons intruded into house of complainant and participated in committing of dacoity for which he was tried — Appellant liable for conviction under Sections 395/34, IPC — Impugned judgment of conviction passed by Court below against appellant modified.

IV (2006) CCR 376 (Delhi H.C.)

- **Sections 405, 406, 409, 420** — Criminal Breach of Trust, Cheating — Absence of — Entrustment of property between complainant and applicants — Transaction of out and out sale — Only consideration required to be paid which was not paid by applicants — Before payment of such amount of consideration they left their place of business and residence — Such act may amount to cheating complainant — By no stretch of imagination, it can be said they committed offence of criminal breach of trust — Trial Magistrate erred in framing charge of offence under Section 409, IPC — Impugned order framing charge under Section 409, IPC set aside — Order with regard to framing of charge under Section 420, IPC affirmed.

IV (2006) CCR 304 (Madhya Pradesh H.C.)

- Criminal Procedure Code, 1973 — Section 401 — **Indian Penal Code, 1860** — **Section 408** — Criminal breach of trust — Revision — Improper framing of charge — Charge-sheet not exhibited — No endeavour made by prosecution to prove entrustment and criminal breach of trust — Minor errors in impugned judgment, cannot be ground to set aside judgment of Trial Court.

IV (2006) CCR 410 (Orissa H.C.)

- Criminal Procedure Code, 1973 — Section 309(viii) — **Indian Penal Code, 1860** — **Section 409** — Criminal breach of trust — Public to give information relating to offence under Section 409, IPC — Accused alleged to have collected or intended to collect funds for Gujarat victims — Petitioner not made out any case as to how accusation attracts provisions of Section 409, IPC and relationship between accused and persons from whom amount alleged to have collected — Allegations do not attract provisions of Section 409, IPC.

IV (2006) CCR 306 (Andhra Pradesh H.C.)

- **Sections 409, 420** — Criminal Procedure Code, 1973 — Section 39 — *Locus standi* to file complaint — Misappropriation of amount alleged to be collected for Gujarat victims — As law abiding citizen, petitioner has *locus standi* and every right to bring to notice of Court when certain offences committed — Conduct of petitioner appreciated in lodging complaint but it is not well founded — He should have come forward with cogent and clinching evidence if really interested in unearthing fraud — Complaint is as vague as anything and does not satisfy requirements of criminal jurisprudence.

IV (2006) CCR 306 (Andhra Pradesh H.C.)

- **Section 420** — Criminal Procedure Code, 1973 — Section 39 — Cheating — Public to give information of certain offences — Misappropriation of amounts collected for Gujarat victims by duping people by respondents — Section 39, Cr.P.C. does not provide any authority to petitioner complainants to give information in regard to offence under Section 420, IPC — Court below justified in rejecting complaint insofar as offence punishable under Section 420, IPC is concerned.

IV (2006) CCR 306 (Andhra Pradesh H.C.)

- Bail — Grant by Inspecting Judge — Sustainability — Inspecting Judges have no right and duty to consider bail applications during inspection — In course of inspection, High Court Judge required to examine whether Courts are functioning within norms laid down by High Court — Mostly, inspection is to be confined to administrative functioning of Courts and its officers — In course of inspection, High Court Judge cannot pass any order on interim applications such as bail petitions or transfer applications or applications for interim injunction, howsoever justified they may be — Orders on bail applications are passed under provisions of Cr.P.C. or various other enactments, which provide for grant of bail — Such orders passed as part of judicial work — Inspecting Judge not supposed to pass any judicial order in individual cases in course of inspection — As accused already released on bail, this Court need not pass any order — **Indian Penal Code, 1860** — **Sections 469, 467, 468, 218, 120B** — Prevention of Corruption Act.

IV (2006) CCR 156 (SC)

- Maintenance — Grant of — Proof of marriage — Magistrate categorically recorded finding that S failed to establish her marriage with petitioner as well as failed to establish alleged second marriage — As marriage not established between petitioner and S — Question of grant of maintenance under Section 125, Cr.P.C. does not arise — Criminal Procedure Code, 1973 — Section 125 — **Indian Penal Code, 1860 — Section 494.**

IV (2006) CCR 102 (SC)

- Quashing of Proceedings — Defamation — Telecast of commentary on T.V. Channel to harm reputation of Chief Minister, Ministers or officials — This Court after hearing parties, was of view that public interest would be best served in directing broadcast to be made in concerned TV Channel by appellants in manner as indicated by Court — Learned Counsel for appellants stated to show *bona fides* appellants shall make necessary broadcast within time indicated — Learned Counsel for parties agreed all proceedings relating to broadcast shall be withdrawn and not be pursued — Criminal Procedure Code, 1973 — Sections 482, 200 r/w Section 199 — **Indian Penal Code, 1860 — Section 499.**

IV (2006) CCR 168 (SC)

Jammu & Kashmir Prevention of Corruption Act

- Section 5(2) [See *Constitution of India, 1950 — Art. 21*]

IV (2006) CCR 141 (SC)

Karnataka Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1985

- Sections 2(b), 3, 3(2), 3(3), 13 [See *COFEPOSA, 1974 — Sections 3, 8*]

IV (2006) CCR 212 (SC)

- Distinction — Provisions of Karnataka Act, 1985 and Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Under Section 3(3) of Karnataka Act approval of State Government mandatory — There is no such provision in COFEPOSA — Scope of provisions in two Acts and distinction discussed — Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Sections 3, 8 — **Karnataka Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1985 — Sections 2(b), 3, 3(2), 3(3), 13.**

IV (2006) CCR 212 (SC)

Maharashtra Control of Organised Crime Act, 1999

- Sections 3(i)(ii), 3(2), 3(4), 3(5), 4, 24 [See *Cr.P.C., 1973 — Section 439*]

IV (2006) CCR 185 (SC)

Narcotic Drugs and Psychotropic Substances Act, 1985

- Sections 8, 15, 42 — Indian Penal Code, 1860 — Sections 307, 34 — Arms Act, 1959 — Section 27 — Recovery of Poppy Husk — Contraband material recovered from possession of accused not produced in Court as link evidence to show actually samples were drawn from alleged material — Plea that when police party tried to stop jeep, driver turned jeep and started firing at police party — Accused-appellant acquitted of charge under Section 307, IPC and Section 27 of Arms Act because neither country-made 315 bore pistol used in crime by accused and cartridges recovered produced in Court nor any expert opinion produced in that regard — Prosecution not able to establish its case beyond reasonable doubt.

IV (2006) CCR 343 (Rajasthan H.C.)

- Sections 8, 15, 42, 42(1)(d) — Seizure of Poppy Husk — Contraband material alleged to have been recovered from possession of accused and samples etc. not produced in Court creates

doubt sufficient to draw presumption that prosecution not led satisfactory evidence about alleged recovery of contraband material from accused-appellants before Court — No independent Motbir witness is available — Out of 6 witnesses, statement of PW 1, Seizing Officer, creates doubt in prosecution story with regard to sending samples to FSL — Entries in Malkhana register also doubtful — Conviction of guilt recorded by Trial Court against accused- appellants quashed and set aside.

IV (2006) CCR 383 (Rajasthan H.C.)

- Seizure of Opium weighing 1.300 kgs. from accused — Benefit of doubt — Adverse inference drawn for non-examination of material witnesses — Recovery of contraband in presence of independent person assumes importance — Seizure witnesses, viz., PWs 1 and 2 cannot be said to be independent in that way — Those who witnessed occurrence not made witnesses — Even their names and addresses not taken — Accused gravely prejudiced by non-examination of independent witnesses — Signatures of seizure witnesses obtained on blank papers — Seizure of contraband becomes doubtful — Appellant entitled to benefit of doubt — **Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 8, 50 — Evidence Act, 1872 — Section 114 Illustration (g).**

IV (2006) CCR 150 (SC)

- Appeal against conviction and sentence — Appellant found in possession of 110 ampules of Buprenorphine — Small or commercial quantity — Determination of — Personal use — Small quantity specified by Central Government as 1 gram — Each ampule contains only 2 ml. and each ml. contains only .3 mg — Total quantity found in possession of appellant was only 66 mg, less than 1/10th of limit of small quantity specified under notification — Further quantity of psychotropic substance recovered was for personal use — Evident from fact two syringes recovered along with ampules — Burden on accused in this respect need not be discharged in manner as prosecution is to prove case beyond reasonable doubt — It is enough, he satisfies judicial mind by preponderance of probability — Offence committed by accused falls under Section 27 of NDPS Act — This Court sentences him under Section 27(b) which provides 6 months as maximum period of imprisonment — Appellant already in jail for nearly 6 years — Directed that appellant be released unless required in other cases — **Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 22, 27, 27(b) — Narcotic Drugs and Psychotropic Substances Rules, 1985 — Rule 66.**

IV (2006) CCR 100 (SC)

- **Sections 37, 22(a), 22(c), 18(c), 16(c)** — Bail — Grant of — Petitioner along with another accused found to be in possession of 3200 ampules of morphine (Buprenorphine Hydrochloride) and 60 ampules of Ophenorgon — Considering preparation seized as a whole is not commercial quantity or small quantity under item 239 r/w item 169 and offence, if proved, will not come under Section 22(c) or 22(a) but only under Section 22(b) — Petitioner already in prison for 110 days — Petitioner released on bail with conditions.

IV (2006) CCR 418 (Kerala H.C.) (DB)

- Offence committed under NDPS Act is grave one — Procedural safeguards to accused provided under statute require strict compliance — By reasons of provisions of NDPS Act Parliament has reposed confidence on Gazetted Officer — B being superintendent of Bureau was Gazetted Officer — If he was present, it was expected he would disclose his identity and would invoke his power under proviso to Section 42, NDPS Act — **Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 42 Proviso.**

IV (2006) CCR 150 (SC)

Narcotic Drugs and Psychotropic Substances Rules, 1985

- Appeal against conviction and sentence — Appellant found in possession of 110 ampules of Buprenorphine — Small or commercial quantity — Determination of — Personal use — Small quantity specified by Central Government as 1 gram — Each ampule contains only 2

ml. and each ml. contains only .3 mg — Total quantity found in possession of appellant was only 66 mg, less than 1/10th of limit of small quantity specified under notification — Further quantity of psychotropic substance recovered was for personal use — Evident from fact two syringes recovered along with ampules — Burden on accused in this respect need not be discharged in manner as prosecution is to prove case beyond reasonable doubt — It is enough, he satisfies judicial mind by preponderance of probability — Offence committed by accused falls under Section 27 of NDPS Act — This Court sentences him under Section 27(b) which provides 6 months as maximum period of imprisonment — Appellant already in jail for nearly 6 years — Directed that appellant be released unless required in other cases — Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 22, 27, 27(b) — **Narcotic Drugs and Psychotropic Substances Rules, 1985 — Rule 66.**

IV (2006) CCR 100 (SC)

Negotiable Instruments Act, 1881

- Criminal Procedure Code, 1973 — Section 357 — **Negotiable Instruments Act, 1881 — Sections 118, 138 r/w Section 142** — Legal Representative — Impleadment of — Dishonour of Cheque — Death of person who issued cheque — No legal proceedings could be initiated against his L.Rs. — Issue of process by Magistrate against applicants, without jurisdiction and abuse of process of Court — Applicants justified in claiming appropriate compensation — Complainant directed to pay Rs. 5,000/- as compensation to applicants.

IV (2006) CCR 296 (Bombay H.C.)

- **Section 138** — Dishonour of Cheque — Practice and procedure followed in Metropolitan Magistrate Courts in Mumbai — In large number of cases, accused after service of summons file either revision or writ petitions/applications under Articles 226/227 of Constitution or Section 482, Cr.P.C. for quashing of process — Complainant, if complaint is against company, arraign all directors as accused in complaint as result of which revision or writ petition filed by accused becomes inevitable and proceedings delayed due to interim orders passed in revision or writ petitions — Service of summons on accused takes years and further delay in disposal of cases — In order to accomplish underlined object of Act, guidelines/directions issued by this Court.

IV (2006) CCR 310 (Bombay H.C.) (DB)

- **Sections 138, 143** — Criminal Procedure Code, 1973 — Sections 260 to 265, 326(1), 326(3) — Dishonour of Cheque — Summary Trial — Conviction or commitment on evidence partly recorded by one Magistrate and partly by another — Case tried as regular summons case and not tried in summary way as contemplated under Sections 262 to 265, Cr.P.C. such case shall not be considered as tried in summary way, though triable summarily as provided for under Section 143(1) of Act, so as to attract provisions of Section 326(3), Cr.P.C. — Evidence recorded by one Magistrate in such case may be legally read in evidence by his successor — No *de novo* trial shall be necessary — Scope of provisions of Section 138, Negotiable Instruments Act and Sections 260 to 265 and 326(3), Cr.P.C. — Discussed.

IV (2006) CCR 424 (Bombay H.C.)

- **Sections 138, 143(1)** — Criminal Procedure Code, 1973 — Sections 262 to 265 — Dishonour of Cheque — Summary Trial — Abridged form of regular trial — Resorted to in order to save time in trying “petty case” — Section 143 of Act empowers Court to try cases under Section 138 of Act in summary way — Choice is left to Magistrate to either try case strictly by following procedure contemplated by Sections 262 to 265, Cr.P.C. or to adopt procedure provided by Code.

IV (2006) CCR 424 (Bombay H.C.)

- **Sections 138, 145(1)** — Constitution of India, 1950 — Art. 20(3) — Criminal Procedure Code, 1973 — Sections 315, 316 — Dishonour of cheque — Evidence on Affidavit — Right of Accused — Accused cannot be compelled to be witness against himself — Exception

contained in Sections 315 and 316 of Cr.P.C. protects rights of accused, who desires to be witness, as envisaged under Constitution — Sections 315 and 316, Cr.P.C. clearly demonstrate accused could be competent witness for defence and may give evidence on oath in disproof of charges made against him or any person charged together with him at same trial — He cannot be called as witness except on his own request in writing — Merely because Section 145(1), Negotiable Instruments Act does not expressly permit accused to do so, does not mean, Magistrate cannot allow accused to give his evidence on affidavit by applying same analogy unless there is just and reasonable ground to refuse such permission — There is no express bar on accused to give evidence on affidavit either in Act or in Code — No justified reason to refuse permission to accused to give his evidence on affidavit subject to provisions contained in Sections 315 and 316, Cr.P.C.

IV (2006) CCR 310 (Bombay H.C.) (DB)

- **Sections 138, 145(1), 145(2)** — Criminal Procedure Code, 1973 — Section 461 — Dishonour of cheque — Evidence on Affidavit — Provisions contained in Section 145 not prospective but operate retrospectively — Code of Criminal Procedure and Evidence Act are general laws and rights created thereunder cannot be termed as substantive rights or vested rights of substantive nature causing any prejudice to accused by Amending Act of 2002 and in particular Section 145, Negotiable Instruments Act — Sub-sections (1) and (2) of Section 145, Negotiable Instruments Act fall within realm of procedural law, they would be applicable to pending cases since there is no vested right in accused in procedural law.

IV (2006) CCR 310 (Bombay H.C.) (DB)

- **Sections 138 145(1), 145(2)** — Dishonour of cheque — Evidence on Affidavit — Objection as to document being tendered in evidence to be taken at appropriate time to enable party to cure defect and resort to such mode of proof as would be regular — Objection as to document being irregular or insufficient cannot be allowed to be raised at any stage subsequent to marking of document as an exhibit — If party tendering documents with affidavit does not opt to lead further evidence to cure defect, it should be left to Court either to decide objection then and there or as indicated by Supreme Court in *Bipin Panchal's* case, mark such document for identification and decide it in final judgment.

IV (2006) CCR 310 (Bombay H.C.) (DB)

- **Sections 138, 145(1), 145(2) [as amended by Negotiable Instruments (Amendment) and Misc. Provisions) Act, 2002** — Dishonour of cheque — Evidence on affidavit — Right of complainant and accused under Sections 145(1) and 145(2), Negotiable Instruments Act — Section 145(1), Negotiable Instruments Act, gives complete freedom and option to complainant to give his evidence on affidavit making it further clear that such evidence shall be read in any inquiry, trial and other proceedings subject to all just exceptions — Sub-sections (1) and (2) of Section 145 create two distinct and separate rights, former in favour of complainant and latter for benefit of both, complainant and accused, besides right of Court to summon and examine any person giving evidence on affidavit — Right of accused under Section 145(2) is only to cross-examine person giving evidence on affidavit in respect of facts contained therein — It does not confer right on accused to seek direction to any person, giving evidence on affidavit, to step into witness box and give oral examination-in-chief in respect of matters stated on affidavit — Sub-section (2) cannot be interpreted as to render Sub-section (1) of Section 145 redundant — Right of prosecution to “examine” witness provided for in Section 145(2), means right of “examination-in-chief” and “re-examination” of person who has given his evidence on affidavit and has been cross-examined.

IV (2006) CCR 310 (Bombay H.C.) (DB)

- Criminal Procedure Code, 1973 — Section 296 — **Negotiable Instruments Act, 1881** — **Sections 138, 145(2)** — Dishonour of cheque — Evidence on Affidavit — Scope of provision of Section 296(1), Cr.P.C. — It speaks of evidence of “formal character” — Evidence

contemplated under Section 145(1), Negotiable Instruments Act cannot be termed as evidence of formal character — Provisions of Section 296, Cr.P.C. cannot be equated with provisions of Section 145(2) of Negotiable Instruments Act.

IV (2006) CCR 310 (Bombay H.C.) (DB)

- **Section 145(2)** — Expression — “Examine” — Meaning of word under Section 145(2) of Act — It would mean and include “examination-in-chief”, “cross-examination”, “re-examination” and “examination by Judge”.

IV (2006) CCR 310 (Bombay H.C.) (DB)

Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

- **Section 20(2), 20(3), 21, 22, 23, 25, 27** — Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules — Rules 19, 19(1), 19(2), 19(3) — Cancellation of registration of Ultrasound Centre — Challenged — Petitioner already resorted to the statutory remedy of filing on appeal — Criminal proceedings also pending — Not a bar to decide appeal — Second respondent directed to decide the appeal within stipulated time.

IV (2006) CCR 352 (Uttaranchal H.C.) (DB)

Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules

- Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 20(2), 20(3), 21, 22, 23, 25, 27 — **Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules — Rules 19, 19(1), 19(2), 19(3)** — Cancellation of registration of Ultrasound Centre — Challenged — Petitioner already resorted to the statutory remedy of filing on appeal — Criminal proceedings also pending — Not a bar to decide appeal — Second respondent directed to decide the appeal within stipulated time.

IV (2006) CCR 352 (Uttaranchal H.C.) (DB)

Prevention of Corruption Act, 1947

- Criminal Procedure Code, 1973 — Sections 378(1), 378(2) — **Prevention of Corruption Act — Section 5(1)(d) r/w Section 5(2)** — Appeal against Acquittal — Seizure of tainted notes and cashew-nut bag from check gate office — Denial of said seizure by respondent — Investigation Officer in his evidence stated that cashew-nut bag detained by accused respondent not kept either in office room or in adjoining room or on Verandah — Prosecution evidence that respondent accepted tainted notes before his hands washed with sodium carbonate solution becomes doubtful — No independent witness examined by prosecution, which throws serious doubt on genuineness of prosecution case — No infirmity in impugned judgment warranting interference by this Court.

IV (2006) CCR 359 (Orissa H.C.)

- **Sections 7, 13(1)(d)** [See *Criminal Procedure Code, 1973 — Section 439*]

IV (2006) CCR 185 (SC)

Prevention of Corruption Act, 1988

- **Sections 7, 13(1)(d), 13(2)** — Illegal Gratification — Accused alleged to have demanded Rs. 8,000/- from complainant for getting him transferred to another school — No whisper of evidence in this regard — No evidence on record to corroborate version given by complainant — None of witnesses who joined trap could testify about any demand of bribe or its acceptance — No cogent or reliable evidence to show accused made any demand for illegal gratification of Rs. 8,000/- or it was accepted by him as illegal gratification — Defence version more probable — Acquittal of accused maintained for reasons other than given by

Special Judge.

IV (2006) CCR 397 (Himachal Pradesh H.C.)

Prevention of Food Adulteration Act, 1954

- **Sections 7(5), 16(1)(a)(i)** — Prevention of Food Adulteration Rules, 1955 — Rule 44(h) — Adulteration in Turmeric Powder — Microscopic examination of sample not sufficient to conclude sample is actually adulterated — Sample found in conformity with standard prescribed — Rule 44(h) prohibits mixture of foreign substance in turmeric powder which is duty of Food Inspector to prove — It is neither proved there was some foreign substance in sample nor that mixture was done deliberately — Applicant stated he got turmeric grind in factory and presence of foreign rice starch cell may be there — It cannot be said act of adulterating foreign substance done deliberately — Courts below erred in law in holding applicant guilty for commission of offence of violation of Rule 44(h) and Section 16(1)(a)(i) of Act.

IV (2006) CCR 432 (Madhya Pradesh H.C.)

- Criminal Procedure Code, 1973 — Section 482 — **Prevention of Food Adulteration Act, 1954** — **Section 13(2)** — Prevention of Food Adulteration Rules, 1955 — Rule 9(A) — Quashing of cognizance and criminal proceeding — Adulteration in salt — Report of Analyst not made over to petitioner as per Section 13(2) of Act and Rule 9(A) of Rules — Provisions not followed either by notice or by registered cover/letter to petitioner within 10 days of receipt of Analyst report — Proceedings vitiated and set aside.

IV (2006) CCR 416 (Jharkhand H.C.)

- Criminal Procedure Code, 1973 — Section 482 — **Prevention of Food Adulteration Act, 1954** — **Sections 16(1)(a), 13(2)** — Prevention of Food Adulteration Rules, 1955 — Rule 9(B) — Adulteration in Salt — Denial of legal right to accused to get sample re-analysed by Central Laboratory on receipt of report by petitioner within 10 days of report of Analyst — Salt recovered from store of hotel not meant for sale — No offence attracted under Section 16(1)(a) of Act — Impugned order taking cognizance of offence quashed.

IV (2006) CCR 416 (Jharkhand H.C.)

Prevention of Food Adulteration Rules, 1955

- Criminal Procedure Code, 1973 — Section 482 — Prevention of Food Adulteration Act, 1954 — Section 13(2) — **Prevention of Food Adulteration Rules, 1955** — **Rule 9(A)** — Quashing of cognizance and criminal proceeding — Adulteration in salt — Report of Analyst not made over to petitioner as per Section 13(2) of Act and Rule 9(A) of Rules — Provisions not followed either by notice or by registered cover/letter to petitioner within 10 days of receipt of Analyst report — Proceedings vitiated and set aside.

IV (2006) CCR 416 (Jharkhand H.C.)

- Criminal Procedure Code, 1973 — Section 482 — Prevention of Food Adulteration Act, 1954 — Sections 16(1)(a), 13(2) — **Prevention of Food Adulteration Rules, 1955** — **Rule 9(B)** — Adulteration in Salt — Denial of legal right to accused to get sample re-analysed by Central Laboratory on receipt of report by petitioner within 10 days of report of Analyst — Salt recovered from store of hotel not meant for sale — No offence attracted under Section 16(1)(a) of Act — Impugned order taking cognizance of offence quashed.

IV (2006) CCR 416 (Jharkhand H.C.)

- Prevention of Food Adulteration Act, 1954 — Sections 7(5), 16(1)(a)(i) — **Prevention of Food Adulteration Rules, 1955** — **Rule 44(h)** — Adulteration in Turmeric Powder — Microscopic examination of sample not sufficient to conclude sample is actually adulterated — Sample found in conformity with standard prescribed — Rule 44(h) prohibits mixture of foreign substance in turmeric powder which is duty of Food Inspector to prove — It is neither

proved there was some foreign substance in sample nor that mixture was done deliberately — Applicant stated he got turmeric grind in factory and presence of foreign rice starch cell may be there — It cannot be said act of adulterating foreign substance done deliberately — Courts below erred in law in holding applicant guilty for commission of offence of violation of Rule 44(h) and Section 16(1)(a)(i) of Act.

IV (2006) CCR 432 (Madhya Pradesh H.C.)

Railway Act, 1989

— Unauthorised carrying on of business of procuring and supplying of railway tickets — Abetment in commission of offence — Appeal against acquittal — No independent evidence against respondents that they intentionally aided S and abetted in commission of offence under Section 143(1) of Railways Act — Entire prosecution is based on purported confession of S, which is not corroborated by any independent evidence — Documents maintained in reservation office not seized — No excess amount found at cash counter — No extra cash found on person of respondents — In reservation forms, handwriting of accused S allegedly found — Reservation forms might have been filled up by S but possibility that respondents working in different counters on two different occasions and might not have any hands therein cannot be ruled out — They were not expected to verify handwritings of person while issuing tickets — How handwriting of one person in different forms could have been checked by respondent is open to guess — Circumstances appearing against S and respondents concededly different — Except for one question similar questions put to S and respondents and similar answers recorded — Such common questions asked to all accused persons did not subserve requirements of Section 313, Cr.P.C. — High Court's observations unsustainable to said extent — State not able to show any illegality in judgment of High Court — No interference required by this Court — **Railway Act, 1989 — Section 143(1), 143(2)** — Evidence Act, 1872 — Section 30 — Indian Penal Code, 1860 — Section 107.

IV (2006) CCR 234 (SC)

Ranbir Penal Code

— Section 21 [See Constitution of India, 1950 — Art. 21]

IV (2006) CCR 141 (SC)

Seeds (Control) Order, 1983

— Clauses 3(1), 8(a), 8(b), 18(1) [See Essential Commodities Act, 1955 — Sections 3(2)(i)(a), 3(2)(i)(h), 7(1)(a)(ii)]

IV (2006) CCR 200 (SC)

Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970

— Section 2 [See IPC, 1860 — Sections 302, 307, 504 r/w Section 34]

IV (2006) CCR 181 (SC)

— Section 2(a) [See IPC, 1860 — Sections 302, 498A]

IV (2006) CCR 169 (SC)
