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Indian Penal Code, 1860 — Sections 304 Part I, 324 read with Section 34, Section 302 r/w Section 34.

IV (2006) CCR 1 (SC)

— Murder, Hurt, Common intention, Culpable homicide not amounting to murder — Appellants not armed — Evidence is not clear that they restrained movement of deceased when there was quarrel — No definite evidence that common intention was murder — Fact that two co-accused armed with knife and Lathi is of relevance and significance — They came together and left together — Conviction altered from Section 302 to one under Section 304 Part II, IPC r/w Section 34, IPC — Custodial sentence of 7 years would meet ends of justice.

Indian Penal Code, 1860 — Section 302, 323, 304 Part II r/w Section 34.

IV (2006) CCR 26 (SC)

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Indian Penal Code, 1860 — Sections 143, 147, 148, 324, 447 — Criminal Procedure Code, 1973 — Section 320(8).

IV (2006) CCR 91 (Kerala H.C.)

— Quashing of FIR — Cruelty — Compounding of offence — Offence under Section 498A, IPC non-compoundable — In view of settlement between parties and to ensure that parties are not discouraged from settling matter, FIR quashed.

India Penal Code, 1860 — Section 498A — Criminal Procedure Code, 1973 — Sections 320 and 482.

IV (2006) CCR 189 (Bombay H.C.)

ANTICIPATORY BAIL — Grant of — Abetment of Suicide — In suicidal note left by deceased husband, ingredients required for *prima facie* satisfying test of abetment hardly available in this case — Suicidal note may explain mental state of deceased or hardships/difficulties faced by him during past but not ingredients of Section 107, IPC — Fact that at instance of wife case under Section 498A, IPC was registered and allegations that she was pressing hard for divorce, anticipatory bail granted by this Court — This Court is of opinion that it is fit case in which applicants be given benefit of Section 438, Cr.P.C. with conditions — This shall remain in force for period of 6 weeks.

Criminal Procedure Code, 1973 — Section 438 — Indian Penal Code, 1860 — Sections 306 and 107.

IV (2006) CCR 107 (Chhattisgarh H.C.)

— Grant of — Co-accused granted bail on similar allegations — Appellant directed to be released on bail subject to condition.

Criminal Procedure Code, 1973 — Section 438.

IV (2006) CCR 80 (SC)

APPEAL AGAINST ACQUITTAL — Competence of private party as distinguished from State to invoke jurisdiction of this Court under Art. 136 of Constitution — Appeal against judgment of acquittal by High Court at instance of interested private party, Maintainable — Appellate power vested in this Court under Art. 136 of Constitution not to be confused with ordinary appellate power exercised by Appellate Courts and Appellate Tribunals under specific statutes.

Constitution of India, 1950 — Art. 136.

IV (2006) CCR 84 (SC)

— Murder, Rioting, Unlawful Assembly — Grant of leave to appeal — Refusal — High Court passed unreasonable order — It was not brought to notice of High Court that complainant's revision petition pending challenging acquittal when application for grant of leave to appeal taken up — In view of settled principles of law, appropriate to direct High Court to hear both applications for grant of leave as filed by State and revision application filed by informant — Same to be considered in accordance with law.

Indian Penal Code, 1860 — Sections 148, 302 r/w Section 149 — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(2).

IV (2006) CCR 84 (SC)

— Refusal to grant leave to file appeal against acquittal — No reasons given by High Court — High Court as first Court of Appeal ought to have re-appreciated entire evidence on record independently and returned its findings objectively as regard guilt or otherwise of accused — It has failed to do so — Primary ground for acquittal seems to be eye-witnesses did not make any effort to save deceased and their presence is doubtful — High Court completely oblivious to fact that by such refusal, close scrutiny of order of acquittal, by Appellate Forum, has been lost once and for all — Absence of reasons has rendered High Court order unsustainable.

Criminal Procedure Code, 1973 — Section 378(1), 378(3).

IV (2006) CCR 84 (SC)

— When two views are possible from evidence on record and Trial Court accepted one out of same, no reason to interfere with same by this Court that too after lapse of two decades from date of occurrence.

Criminal Procedure Code, 1973 — Section 378 — Indian Penal Code, 1860 — Sections 307, 326.

IV (2006) CCR 210 (Orissa H.C.)

ATTEMPT TO MURDER — Grievous Hurt — Evidence of injured victim-PW 13, reliable — Witnesses cross-examined at length and nothing infirm elicited to cast even slightest doubt on their veracity — No suggestion of any motive for false implication — Totality of evidence of witnesses, especially evidence of injured victim coupled with medical evidence, makes it clear and sufficient to hold accused committed offence in manner and at place as alleged by prosecution.

Indian Penal Code, 1860 — Sections 307, 326.

IV (2006) CCR 124 (Calcutta H.C.) (DB)

— Grievous Hurt — Testimony of injured eye witness as sole witness to occurrence — Assessment of evidence — Trial Court doubted her veracity because of discrepancies and there being no corroborative evidence — Several discrepancies noted relating to actual weapon of offence — Trial Court granted benefit of doubt to accused — Trial Court committed no illegality or perversity in appreciating evidence and circumstances — No evidence on record that PW 2 had no injury on her palms — When two views are possible from evidence on record and Trial Court accepted one out of same, no reason to interfere with same by this Court that too after lapse of two decades from date of occurrence.

Criminal Procedure Code, 1973 — Section 378 — Indian Penal Code, 1860 — Sections 307, 326.

IV (2006) CCR 210 (Orissa H.C.)

- Murder, Common Intention — Motive set up by prosecution against accused having committed crime, does not satisfy conscience of Court — Recoveries of weapons used in commission of crime by S accused cannot be taken into consideration against accused A — Prosecution failed to lead any evidence about use of pistol in commission of crime — No Ballistic Expert gave opinion that any bullet was fired from pistol, which according to prosecution used by accused A in present occurrence as well as no bullet recovered from body of deceased during post-mortem examination conducted by PW 1 — Order of conviction and sentence recorded against accused/appellant set aside and he is acquitted.

Indian Penal Code, 1860 — Sections 302, 307 r/w Section 34.

IV (2006) CCR 253 (Punjab & Haryana H.C.) (DB)

- Sentence — Modification of — Injury caused to complainant on right calf by appellant by firing — Attempt in order to be criminal need not be penultimate act — It is sufficient to justify conviction under Section 307, IPC if there is present an intent coupled with some overt act in execution thereof — Not essential bodily injury capable of causing death should be inflicted — Section makes distinction between act of accused and its result, if any — Court to see whether act irrespective of result, done with intention or knowledge and under circumstances mentioned in section — Considering nature of injury caused imprisonment cannot be termed to be harsh — However, fine reduced to Rs. 15,000/- to be paid within 6 months.

Indian Penal Code, 1860 — Section 307.

IV (2006) CCR 22 (SC)

- BAIL** — Cancellation — Different considerations to be weighed while considering application for grant of bail and cancellation of bail already granted — Order of bail can be cancelled on existence of cogent and over-whelming circumstances but not on re-appreciation of evidence as done by High Court — No supervening circumstances brought to notice to warrant recalling of order dated 11.1.2002 — Principles to be kept in mind for recalling order of bail set out in *Dolat Ram* case — Impugned order unsustainable, set aside.

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

IV (2006) CCR 61 (SC)

- Cancellation of — Rejection of bail is on one footing, however, cancellation of same once granted is harsh order because it takes away liberty of individual — It is not to be lightly resorted to.

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

IV (2006) CCR 215 (Punjab & Haryana H.C.)

- Cancellation of — Theft, dishonestly receiving stolen property — Suppression of material fact of pendency of bail application before High Court and stating no bail application pending either before Sessions Court or High Court — *Bona fide* mistake due to illiteracy — Notice issued to applicant to show cause as to why bail granted to him by Second ASJ be not cancelled as same obtained by suppression of facts — Non-bailable warrant issued for production of applicant — Report of ASJ shows after filing of charge-sheet on instructions of wife of applicant, application under Section 439, Cr.P.C. filed and mentioned no other application for bail pending before any competent Court or High Court — Bail application filed with said endorsement and believing it to be true and correct, it was entertained and applicant released on bail by said Court — Due to wrong instructions furnished by wife of applicant, application filed before Sessions Court and applicant released on bail during pendency of application before High Court — Both applicant and his wife are illiterate persons — Even after getting application filed before High Court wife could not understand subsequent application cannot be entertained by Court below — Explanation submitted by applicant accepted and it is deemed proper to drop proceedings at this stage — No case of wilful suppression of facts but *bona fide* mistake due to illiteracy and not knowing technicalities of law by wife of applicant — Matter regarding cancellation of bail and initiation of proceedings under Contempt of Courts Act dropped — Show cause notice discharged.

Criminal Procedure Code, 1973 — Section 439 — Indian Penal Code, 1860 — Sections 379, 411.

IV (2006) CCR 95 (Chhattisgarh H.C.)

- Grant of — Juvenile — Criminal conspiracy, disappearance of evidence, criminal intimidation, common intention (*See Juvenile*)

IV (2006) CCR 166 (Delhi H.C.)

- Grant of — Modification of condition — Deposit of amount of Rs. 2,50,000/- alleged to be misappropriated by appellant — Condition for furnishing surety bond for Rs. 50,000/- — Deposit of Rs. 2.50 lacs not warranted, as part of conditions for granting bail — Direction to deposit Rs. 2.50 lacs deleted — Order passed by Single Judge granting bail confirmed.

IV (2006) CCR 47 (SC)

- Grant of — Suspension of sentence pending appeal — Murder, Common Intention — Co-accused, to whom stab-injury by knife attributed, already released on bail — Only allegation against appellant is he caused injury with piece of brick — Appellant entitled to be enlarged on bail — Sentence passed against appellant pending criminal appeal suspended — Criminal Procedure Code, 1973 — Section 389 — Indian Penal Code, 1860 — Section 302 r/w Section 34.

IV (2006) CCR 50 (SC)

- Grievous Hurt — Appellants in jail for about one year — No likelihood of appeal being heard in near future — Just and proper to release appellants on bail pending appeal with conditions.
Indian Penal Code, 1860 — Section 326.

IV (2006) CCR 58 (SC)

- Monitoring of, by Supreme Court — Bail extended from time to time by Supreme Court to monitor trial for 6 months — No further need of monitoring same — Bail directed to continue for duration of case on same terms and conditions — Further, open to CBI to apply for cancellation of bail, if petitioner is deliberately protracting trial or taking unnecessary adjournments.
Criminal Procedure Code, 1973 — Sections 437, 173. (*Fodder Scam Cases*)

IV (2006) CCR 80 (SC)

- Murder, Attempt to Murder, Hurt, Obscenity, Common Intention — Place of occurrence is house of applicants and complainant party had gone to house of applicants at about 10 p.m. — They were armed with deadly weapons like Tabbal and Tangia and on some hot exchanges, quarrel took place and they received injuries in which person died — Fit case to enlarge applicants on bail with conditions.
Criminal Procedure Code, 1973 — Section 439 — Indian Penal Code, 1860 — Sections 302, 307, 323, 294/34.

IV (2006) CCR 170 (Chhattisgarh H.C.)

- Murder, Disappearance of Evidence, Common Intention — Except memorandum and statement of witness about recovery of Chappal, no other evidence against applicants to connect them with offence — Fit case to enlarge applicants on bail with condition.
Criminal Procedure Code, 1973 — Section 439 — Indian Penal Code, 1860 — Sections 302, 201, 34.

IV (2006) CCR 137 (Chhattisgarh H.C.)

- Obscenity, Criminal Intimidation, Mischief, Accused alleged to have terrorize inhabitants by use of arms and misbehaved with womenfolk — Applicant in jail since 14.4.2005 — Applicant not named in FIR and implicated in this offence on basis of subsequent diary statements of witnesses — Nothing recovered from his possession and all offences are bailable except offence under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes Act — Fit case where applicant should be extended facility of bail with conditions.
Criminal Procedure Code, 1973 — Section 439 — Indian Penal Code, 1860 — Sections 294, 506, 427 — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1988 — Section 3(1)(x) — Arms Act, 1959 — Section 25.

IV (2006) CCR 50 (Chhattisgarh H.C.)

- Rape — Applicant is Juvenile — Prosecutrix examined by Medical Officer, who after examination did not find any external or internal injury — Hymen was intact and no bleeding or injury — Applicant entitled to be enlarged on bail with conditions.

Criminal Procedure Code, 1973 — Section 439 — Indian Penal Code, 1860 — Section 376.

IV (2006) CCR 205 (Chhattisgarh H.C.)

- Second bail application — Case triable by Magistrate — Trial not concluded within 60 days from first date fixed for taking evidence — Perusal of Section 437(6), Cr.P.C. shows it is not necessary in each and every case, accused to be released on bail if trial not concluded within period of 60 days by Magistrate — Petitioner habitual offender — Not entitled to be released on bail under Section 437(6), Cr.P.C.

Criminal Procedure Code, 1973 — Sections 439, 437(6).

IV (2006) CCR 233 (Rajasthan H.C.)

- Suspension of sentence pending appeal — Dowry death — Appellant convicted and sentenced to undergo RI for 10 years — Post-mortem report states no external injury found — Lungs, liver and spleen found in diseased condition — Cause of death is shock followed by chronic illness — Just and proper to enlarge appellant on bail.

Criminal Procedure Code, 1973 — Section 437.

IV (2006) CCR 49 (SC)

- Theft of Electricity — Loss to department-alleged to be caused by appellant to tune of Rs. 14 lacs — Petitioner already in custody for last more than one month and will face proceedings in accordance with law — His indefinite custody not called for — Petitioner ready to deposit Rs. 2 lacs in Court and furnish security of Rs. 14 lacs in first instance, which will be treated as security for remaining amount after amount of Rs. 2 lacs deposited — Amount will be kept in fixed deposit initially for period of 1 year — If petitioner succeeds in legal proceedings, amount will be refunded to him and security discharged — If petitioner loses, amount will be available to comply with any order — Petitioner granted bail to satisfaction of Chief Justice Magistrate.

Electricity Act, 2003 — Section 30 — Indian Penal Code, 1860 — Section 379 — Criminal Procedure Code, 1973 — Section 439.

IV (2006) CCR 143 (Punjab & Haryana H.C.)

- BIGAMY** — Adultery, Abetment — Essentials to be proved for offence under Section 494, IPC — On assessment of evidence on record, SDJM found prosecution could not prove that UD is legally married wife of petitioner and offence under Section 494, IPC not made out on complained act of her marriage with somebody else — Further, when petitioner has failed to prove that he is husband of accused, offence under Section 497 not made out — Taking note of contradiction so also other prevaricating evidence of P.Ws., SDJM did not find evidence to be credible — Nothing on record to dislodge that presumption — Reason assigned by SDJM not found to be suffering from perversity to be termed as illegality — No reason to interfere with assessment of evidence and findings recorded by SDJM in disbelieving case of complainant — Order of acquittal pronounced by SDJM upheld.

Indian Penal Code, 1860 — Sections 494, 497 and 109.

IV (2006) CCR 106 (Orissa H.C.)

- Cheating — Quashing of proceedings sought on ground that complaint against husband for offence of bigamy filed by father of subsequent wife and not by wife of appellant
..... (See *Quashing of proceedings*)

IV (2006) CCR 81 (SC)

- Complaint to be filed by “person aggrieved” — Written authorisation from mother not necessary for son to file complaint on behalf of his mother — Second respondent-son himself was aggrieved by act of bigamy — He narrated in detail, his personal grievances because of second marriage of his father — He himself is aggrieved and this is in addition to personal grievances of his mother — Allegations in complaint *prima facie* constitute offence under Section 494, I.P.C. — No

authorisation from aggrieved wife required — Not necessary to mention in complaint that complaint is filed on behalf of his mother, even if it is filed at her request — Son is entitled to file complaint even on his own behalf.

Indian Penal Code, 1860 — Sections 494 and 34 — Criminal Procedure Code, 1973 — Section 198(1) Proviso (c).

IV (2006) CCR 111 (Kerala H.C.)

BREACH OF PEACE CONCERNING LAND OR WATER (See Revisional Jurisdiction)

IV (2006) CCR 167 (Gauhati H.C.)

CHILD LABOUR — Victim at time of incident was minor and below 14 years — Provisions of Child Labour Act applicable for forced domestic labour to provisions of Section 374, IPC — Even under general law, contract or agreement with minor is void
. (See *Unlawful Compulsory Labour*)

IV (2006) CCR 230 (Madhya Pradesh H.C.)

COFEPOSA — Preventive detention order — Challenge against — Incumbent, in law, upon detaining authority to serve relied upon documents on same date *i.e.* on 21.2.2006 itself *pari pasu* along with grounds of detention — This having not been done — Detention order void *ab initio* — Same struck down — Detenu be set at liberty.

IV (2006) CCR 99 (Delhi H.C.) (DB)

— Preventive detention — Challenge against — Non-consideration of retraction of co-detenu by detaining authority (See *Preventive detention*)

IV (2006) CCR 99 (Delhi H.C.) (DB)

COGNIZANCE OF OFFENCE — Limitation — Obscenity, Criminal Intimidation, Common Intention — Period of limitation for taking Cognizance of offence is one year.

IV (2006) CCR 171 (Orissa H.C.)

— Powers of Magistrate — When Magistrate receives complaint, he is not bound to take cognizance even if offence alleged in complaint discloses commission of offence.

IV (2006) CCR 197 (Gauhati H.C.)

COGNIZANCE UPON COMPLAINT — Forgery, Criminal Conspiracy — Corruption — Sanction for prosecution — Cognizance upon complaint filed for prosecution of appellants shall be considered only after sanction is obtained

Indian Penal Code, 1860 — Sections 467, 468, 471A r/w Section 120B — Prevention of Corruption Act, 1988 — Sections 13(2), 13(1)(d).

IV (2006) CCR 24 (SC)

COMMON INTENTION — Enactment on principle of joint liability in doing of criminal Act — Section 34, IPC is only rule of evidence and does not create substantive offence — Distinctive feature of section is element of participation in action— Direct proof of common intention seldom available and such intention can only be inferred from circumstances appearing from proved facts of case and proved circumstances — Scope and applicability of Section 34, IPC discussed.

Indian Penal Code, 1860 — Section 34.

IV (2006) CCR 26 (SC)

— Existence of common intention — Question of fact — Criminal trial, conviction and sentence — Appeal — Scope of Section 34, IPC — Interpretation — ‘Common intention’ can be formed previously or in course of occurrence and is to be proved mainly as a matter of influence — No common intention to cause injury.

Indian Penal Code, 1860 — Section 34.

IV (2006) CCR 239 (Uttaranchal H.C.)

— Murder — Accused-appellant acting in furtherance of common intention — Trial Court acquitted

accused A3 on ground mere presence of accused not sufficient to hold him guilty — High Court confirmed conviction and sentence of A1 and A2 — Appeal against — As per statement of PWs 1 to 3 evident all 3 accused were going on scooter and motorcycle saw deceased — Exchange of hot words which ultimately converted into serious attack by A1 — Injuries caused death of deceased — Perusal of statement of PWs shows accused appellant in furtherance of common intention of A1 tried to prevent PWs 2 and 3 from intervening in matter — PW 3, who wanted to intervene, prevented by causing knife injury by accused-appellant — No doubt accused-appellant acting in furtherance of common intention and prevented PWs 2 and 3 to save deceased — He facilitated commission of offence — Section 34 attracted and accused-appellant rightly convicted under Section 302 r/w Section 34, IPC.

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

IV (2006) CCR 89 (SC)

— Murder, Cruelty — Death of deceased to administration of poison by appellant No. 1 and not by appellant Nos 2 and 3 — Conviction of appellant Nos. 2 and 3 under Sections 302/34, IPC not justified.

IV (2006) CCR 66 (Orissa H.C.) (DB)

— Murder, Cruelty, — Dying Declarations — Death of deceased due to sustenance of 90% burn injuries — Dispute between deceased and family of appellant — She categorically deposed stating about maltreatment at hands of appellants on account of non-fulfilment of their demand of dowry — Conviction and sentence of both appellants upheld under Section 498A, IPC.

IV (2006) CCR 91 (SC)

COMPOUNDING OF OFFENCE — Cruelty — FIR Quashed — Compromise between parties
..... (See *Quashing of FIR*)

IV (2006) CCR 189 (Bombay H.C.)

— Degree of wrong done to State through commission of offence appears to be basis, whether offence would be compoundable or not — Principle of generalisation — Where interest of public not rightly affected, complainant may be permitted to come to compromise with party against whom he originally complained of and offence being those mentioned under Section 320, Cr.P.C. — In case of non-compoundable offence, and not mentioned under Section 320, Cr.P.C., Court should consider facts and circumstances of each case and allow parties to compromise to restore amicable and harmonious relationship between parties, which otherwise would likely to result in enduring feud.

Criminal Procedure Code, 1973 — Sections 320, 320(1), 320(2), 320(8).

IV (2006) CCR 91 (Kerala H.C.)

— Rioting, Unlawful Assembly, Hurt, Trespass (See *Amicable settlement of dispute*)

IV (2006) CCR 91 (Kerala H.C.)

CONSTITUTIONAL LAW — Protection against arrest and detention — Representation — Documents supplied to detenu in language known to him — No breach of Art. 22(5) of Constitution.

IV (2006) CCR 67 (SC)

— Protection in case of arrest — Right to representation — Documents supplied to detenu in language known to him — No breach of Art. 22(5) of Constitution.

IV (2006) CCR 67 (SC)

— Right of accused to be silent — Process of conducting scientific tests on accused does not amount to compelling witness to give evidence against him.

Constitution of India, 1950 — Arts. 20, 20(3).

IV (2006) CCR 88 (Madras H.C.)

— Right to be Defended by Legal Practitioner — Accused does not have sufficient means to engage

Pleader — Provisions of Section 304, Cr.P.C. never come in way of right of accused to be defended by Advocate of his choice — Under provisions of Article 22(1) of Constitution also accused of offence has got legal right to engage any Lawyer of his own choice — This freedom of accused cannot be taken away by Court only on ground that legal aid already provided to accused in case — Accused can always on later stage of trial engage Counsel of his choice if circumstances permit him.

Criminal Procedure Code, 1973 — Sections 303, 304 — Legal Services Authorities Act, 1997 — Sections 13, 29 — M.P. Legal Services Authorities Regulations, 1997 — Regulation 33 — Constitution of India, 1950 — Article 22(1).

IV (2006) CCR 85 (Madhya Pradesh H.C.)

— Special Leave to Appeal — Art. 136 of Constitution neither confers on anyone right to invoke jurisdiction of this Court nor inhibits anyone from invoking Court's jurisdiction — Power is vested in this Court but right to invoke Court's jurisdiction vested in no one — Exercise of power of this Court not circumscribed by any limitation as to who may invoke it — Article 136 of Constitution is of composite structure power-cum-procedure, power in that it vests jurisdiction in this Court and procedure in that it spells a mode of hearing.

Constitution of India, 1950 — Art. 136.

IV (2006) CCR 84 (SC)

CONTEMPT OF COURT — Limitation for actions for contempt — One year — No Court shall initiate any proceedings of contempt either on its own motion or otherwise after expiry of period of one year from date on which contempt alleged to have been committed — Contempt proceedings moved after lapse of more than 3½ years — Writ petition yet to come for admission and disposal of stay matter.

Contempt of Courts Act, 1971 — Section 20.

IV (2006) CCR 74 (Uttaranchal H.C.)

— Standard of proof required in proceedings of criminal contempt is that of any other criminal proceedings — Contempt proceedings are quasi-criminal — Charge required to be proved beyond reasonable doubt and not on probabilities.

IV (2006) CCR 43 (SC)

— Speech made in seminar by appellant-politician on question of desirability of application of Consumer Protection Act to doctors — Different newspapers carried different versions — Case of two versions, one published in newspaper B on basis of which appellant found guilty of contempt and other version appeared in other newspapers — Without clear finding based on material on record that version appeared in newspaper B is correct, not possible to uphold conclusion that appellant is guilty of contempt of Court — Appellant filed affidavit asserting it is farthest from his mind to denigrate judiciary as a whole or as institution — Impugned judgment of High Court upholding appellant guilty of contempt and sentence of fine set aside.

IV (2006) CCR 43 (SC)

CONTRACT — Child Labour — Contract or agreement with minor is void — Acquittal of respondents on ground of agreement between respondents and victim for domestic work *prima facie* appears illegal.

IV (2006) CCR 230 (Madhya Pradesh H.C.)

CONVICTION — Modification — Attempt to Murder/Common Intention, Grievous Hurt/Common Intention — Offence under Section 326 is minor offence in relation to that under Section 307, IPC — It is trite where Court convicts accused for major offence, it should not again convict him for minor offence — Order of conviction under Section 307, IPC affirmed by which accused sentenced to R.I. for 10 years and order of conviction and sentence set aside under Section 326, IPC.

Indian Penal Code, 1860 — Sections 307/34, 326/34.

IV (2006) CCR 124 (Calcutta H.C.) (DB)

CROSS-EXAMINATION OF WITNESS (See Practice and Procedure)

IV (2006) CCR 46 (Kerala H.c.)

CRIMINAL TRIAL — Appreciation of Evidence — Court has impressed upon Trial Courts to adopt rational approach in scrutinising evidence — Not proper to reject case for want of corroboration by independent witness — If case made out is otherwise true and acceptable.

IV (2006) CCR 131 (Gauhati H.C.) (DB)

— Monitoring of, by Supreme Court — Bail — Bail extended from time to time by Supreme Court to monitor trial for 6 months — No further need of monitoring same — Bail directed to continue for duration of case on same terms and conditions — Further, open to CBI to apply for cancellation of bail, if petitioner is deliberately protracting trial or taking unnecessary adjournments.
Criminal Procedure Code, 1973 — Sections 437, 173. (*Fodder Scam Cases*)

IV (2006) CCR 80 (SC)

— Reasonable order — Significance — Reasons are live links between mind of decision taker to controversy in question and decision or conclusion arrived at — Reasons substitute subjectivity by objectivity — Right to reason is indispensable part of sound judicial system to indicate application of mind to matter before Court.

IV (2006) CCR 84 (SC)

— Right of Private Defence — Burden of Proof — In all circumstances injuries on person of accused need not be explained but different standard would be applied in case where specific plea of right of private defence raised — It may be true in event prosecution discharges its primary burden of proof, onus would shift on accused but same would not mean burden can be discharged only by examining D.Ws.

IV (2006) CCR 1 (SC)

CRUELTY — Abetment of Suicide — Appreciation of evidence — Death of deceased on account of burn injuries — Victim set herself on fire on being driven to commit suicide due to ill-treatment meted out to her, though angle of unlawful demands is not there
. (*See Abetment of Suicide*)

IV (2006) CCR 64 (Bombay H.C.)

— Abetment of suicide — Conviction set aside as dying declaration of deceased not reliable
. (*See Abetment of suicide*)

IV (2006) CCR 236 (Gauhati H.C.)

— Dowry Death, Common Intention — Factum of dowry demand denied by all PW witnesses except father of deceased (*See Dowry Death*)

IV (2006) CCR 57 (Patna H.C.) (DB)

— Dowry Death — Presumption — Death of deceased on account of dowry demand and maltreatment meted out to her (*See Dowry Death*)

IV (2006) CCR 184 (Punjab & Haryana H.C.) (DB)

— Dowry demand — Dispute as to territorial jurisdiction (*See Territorial Jurisdiction*)

IV (2006) CCR 194 (Patna H.C.)

— Murder, Common Intention — Death of deceased due to sustenance of 90% burn injuries — Categorical statement of deceased about maltreatment at hands of appellants on account of non-fulfilment of their demand of dowry (*See Murder*)

IV (2006) CCR 91 (SC)

— Murder of wife by burn injuries — Accused subjected his wife to torture and assault.
. (*See Murder*)

IV (2006) CCR 13 (Patna H.C.) (DB)

— Quashing of FIR on ground of Compromise between parties

..... (See *Quashing of FIR*)

IV (2006) CCR 189 (Bombay H.C.)

CULPABLE HOMICIDE — Trespass — Reduction of — Sentence by High Court — Legality
..... (See *Sentence*)

IV (2006) CCR 82 (SC)

CULPABLE HOMICIDE NOT AMOUNTING TO MURDER — Murder — Alteration in conviction — Accused had no intention to kill deceased — No pre-meditation on part of appellant No. 1 — Case of sudden fight between parties — This would attract Section 304 Part I, IPC and not Section 302, IPC (See *Alteration in Conviction*)

IV (2006) CCR 1 (SC)

— Murder — Alteration in conviction — Suicidal pact between appellant and wife
..... (See *Suicidal Pact*)

IV (2006) CCR 1 (Delhi H.C.) (DB)

— Murder, Hurt, Common intention — Alteration in conviction — Appellants not armed — Evidence is not clear that they restrained movement of deceased when there was quarrel — No definite evidence that common intention was murder — Fact that two co-accused armed with knife and Lathi is of relevance and significance — They came together and left together — Conviction altered from Section 302 to one under Section 304 Part II, IPC r/w Section 34, IPC — Custodial sentence of 7 years would meet ends of justice.

Indian Penal Code, 1860 — Section 302, 323, 304 Part II r/w Section 34.

IV (2006) CCR 26 (SC)

CUSTODY OF CHILD — Minor girl allegedly kidnapped is traced and produced before Magistrate — She has to be sent to her lawful guardian — Any dispute as to who is her lawful guardian or minor girl reluctant to go with lawful guardian, appropriate order for interim custody of victim girl to be made by Judicial Magistrate before whom she may be produced — Where minor girl allegedly kidnapped for purpose of marrying her without consent of lawful guardian, paramount consideration in such cases is welfare of victim girl — Magistrate gave tentative custody of girl to grand parents — They were not lawful guardians when parents of girl available — Victim girl is not property or vehicle seized in criminal case — Such order for interim custody can be reviewed as many times as circumstances require — Victim girl expressed her desire to go with her parents *i.e.* revision petitioners — This Court is of opinion that she shall be given to interim custody of revision petitioners by imposing certain conditions.

Criminal Procedure Code, 1973 — Sections 397(2), 482.

IV (2006) CCR 173 (Karnataka H.C.)

CUSTOMS — Summoning of person to give evidence and produce documents — Even without summons any person can appear before Customs Officer and can give statement — When statement is recorded under Section 107 of Act, person who gives statement must be informed of purpose of recording such statement.

Customs Act, 1962 — Sections 107, 108.

IV (2006) CCR 46 (Kerala H.C.)

DEATH CAUSED BY RASH AND NEGLIGENT ACT — Victim travelling on roof of bus and in so doing, he received injury on his head by branch of tree and subsequently expired — No *prima facie* case of rash and negligent driving against driver of vehicle in question — Even if it is accepted conductor gave such proposal to deceased, then also it cannot be said *prima facie* case under Section 304A, IPC made out so far as conductor is concerned — No criminal liability can be attached with this act allegedly done by conductor — At best it can give rise to civil responsibility — Concerned passenger also contributed to negligence.

Indian Penal Code, 1860 — Sections 279, 304A — Criminal Procedure Code, 1973 — Section 401 r/w Section 482.

IV (2006) CCR 234 (Calcutta H.C.)

DEATH SENTENCE — Confirmation of — Murder, Kidnapping, Criminal Conspiracy — Approver's evidence fully corroborated by other items of evidence and death of A caused by appellants, clearly established by prosecution — Appellants along with their mother and with help of approver alleged to have kidnapped 13 children and caused death of 9 out of them — They also attempted to kidnap yet another child but their attempt failed — Mother of appellants died in 1997 — Evidence adduced by prosecution proved beyond reasonable doubt that appellants were responsible for series of kidnapping of children and murders and rightly found guilty of these offences — Approver KS was present when many of murders took place and he had not given full details of crimes — Approver himself admitted he bribed police many times and saved appellants from clutches of law — Murder committed by appellants proved by satisfactory evidence — No reason to interfere with order of conviction passed by Sessions Court and confirmed by High Court — No mitigating circumstances in favour of appellant, except for fact that they are women — Appellants indulged in criminal activities for very long period and continued it till caught by police — Appellants had been menace to society and not committing murders under any compulsion but casually and killed all children least bothering about their lives or agony of their parents — Conviction and death penalty imposed on them confirmed.

Indian Penal Code, 1860 — Section 302 r/w Section 120B, Section 364.

IV (2006) CCR 29 (SC)

DEBTOR AND CREDITOR RELATIONSHIP (*See Dishonour of Cheque*)

IV (2006) CCR 245 (Karnataka H.C.)

DIRECTORS — Vicarious liability of directors — Offence by company — Requirement of Section 141 of Negotiable Instruments Act (*See Dishonour of Cheque*)

IV (2006) CCR 8 (SC)

DISCHARGE OF ACCUSED — Accused alleged to have overstayed without proper residential permit — Case registered against her under Section 14 of Act and Clause 7(2) of Order, 1948 — Whether subsequently permission granted to her to have effect of regularising earlier period of overstay — Whether there was violation of condition of residential permit requiring application for extension of period to be made fifteen days before — These are all questions of law and fact — At this stage both Courts below have sufficient material to proceed against petitioner for her alleged overstay beyond permit period.

Foreigners Order, 1948 — Clause 7(2) r/w Section 14 of Foreigners Act, 1946 — Criminal Procedure Code, 1973 — Sections 239, 482, 397, 399.

IV (2006) CCR 213 (Karnataka H.C.)

DISHONOUR OF CHEQUE — Complaint — Maintainability — Authorisation to file complaint — Complaint filed by Managing Director of Company — As per Articles of Association, Managing Director empowered to represent company in legal proceedings — Revision petitioner-company also placed copy of resolution empowering Managing Director to file complaint or to represent company in legal proceedings by or against company — Sessions Judge erroneously allowed appeal and set aside conviction solely on ground that revision petitioner not produced proper authorisation — No substantive sentence is called for — Accused granted relief by setting aside substantive sentence and modifying compensation into fine with default sentence for non-payment of fine amount.

Negotiable Instruments Act, 1881 — Section 138.

IV (2006) CCR 139 (Karnataka H.C.)

— Enforceability of time barred debt — Question of limitation, if raised as defence by accused may be considered at stage of trial and not at threshold of criminal prosecution.

Negotiable Instruments Act, 1881 — Section 138 — Limitation Act, 1963 — Section 18.

IV (2006) CCR 51 (Orissa H.C.)

— Holder in due course — “Debtor and creditor relationship” — Legally recoverable debt or

liability — Determination — Loan given by husband of appellant-complainant to accused — On request of husband of appellant cheque issued in favour of wife-appellant by accused — Appellant becomes creditor and for all practical purposes, she would be entitled to seek prosecution of accused under Section 138 of Negotiable Instruments Act — Approach of Appellate Court is perverse — Judgment of acquittal of first Appellate Court set aside confirming judgment of conviction passed by Trial Court — Respondent/accused found guilty of offence punishable under Section 138, Negotiable Instruments Act.

Negotiable Instruments Act, 1881 — Sections 138, 139.

IV (2006) CCR 245 (Karnataka H.C.)

— Ingredients required to be proved for making out case under Section 138 of Act — *Vide M/s. Kusum Ingots and Alloys Ltd. case, I (2000) CCR 260 (SC)=II (2000) SLT 375=I (2000) BC 300 (SC).*

Negotiable Instruments Act, 1881 — Section 138, 139, 118(b).

IV (2006) CCR 20 (Bombay H.C.)

— Issue of Process — Aggrieved person can prefer revision against order of Magistrate issuing process — In view of alternative remedy of revision against order issuing process, petition under Section 482, Cr.P.C. not maintainable.

Negotiable Instruments Act, 1881 — Section 138 — Criminal Procedure Code, 1973 — Sections 202, 347(2), 482.

IV (2006) CCR 121 (Bombay H.C.)

— Joint trial — Transfer of complaint and joint trial of two complaint cases (*See Joint trial*)

IV (2006) CCR 25 (SC)

— Notice — Presumption of service of Notice — “Giving Notice” is not same as receipt of notice — Giving is process of which receipt is accomplishment — To raise presumption of deemed notice, there should be clear averment in complaint that complainant sent statutory notice of demand intimating dishonour of cheque and accused was evading service — In absence of such averment, presumption of deemed notice could not be raised — Notice sent by registered post to correct address of accused and same deemed to have been served on accused in terms of Section 27, General Clauses Act — Presumption available under Section 27 of General Clauses Act cannot be rebutted either by way of mere suggestion or mere denial in statement under Section 313, Cr.P.C. — Courts below rightly concluded notice duly served on accused.

Negotiable Instruments Act, 1881 — Section 138 — General Clauses Act, 1897 — Section 27.

IV (2006) CCR 20 (Bombay H.C.)

— Offence by company — Quashing of issuance of processes — Vicarious liability of directors — No specific averments in complaint against appellants except stating they are directors in company — Primary responsibility is on complainant to make necessary averments in complaint to make accused vicariously liable — Complaint demonstrates statutory requirement of Section 141 of Negotiable Instruments Act not complied with — It raises a legal fiction — By reason of said provision person although not personally liable for commission of offence would be vicariously liable therefor — Such vicarious liability can be inferred so far as company registered or incorporated under Companies Act only if requisite statements, which are required to be averred in complaint petition, made so as to make accused therein vicariously liable for offence committed by company — Not only averments made in complaint petition does not meet said statutory requirements, sworn statement of witness made by son of respondent does not contain any statement that appellant was incharge of business of company — In cases of summons Court requires strict compliance of statutory requirements — Issue of processes against appellants quashed.

Negotiable Instruments Act, 1881 — Sections 138, 139, 141.

IV (2006) CCR 8 (SC)

— Presumption — Existing debt or liability — Burden of proof on accused-respondent — No inconsistencies in evidence of complainant that cheques issued by accused in discharge of his

liability — Complainant denied suggestion that he had taken 3 blank cheques without date and amount from accused as security — As regards date, Section 118(b) of Act provides only when contrary is proved, negotiable instrument is presumed to have been made on date shown on instrument — Accused failed to rebut said presumption — Once it is accepted and held cheque was complete in all respects by accused, no reason not to infer that accused also completed same as to amount written thereon — Entire plea of accused that cheque given by way of security fails once accused issued cheques in manner stated by complainant — Both Courts below rightly came to conclusion that case of complainant proved beyond reasonable doubt against accused.

Negotiable Instruments Act, 1881 — Sections 138, 139 and 118(b).

IV (2006) CCR 20 (Bombay H.C.)

- Presumption — Legally recoverable debt — Whenever private complaint filed seeking prosecution of accused for offence under Section 138 of Act, if issuance of cheque and signature on cheque accepted and admitted by accused, initial presumption to be raised by Court in favour of complainant that cheque in question issued towards legally recoverable debt or liability — This presumption is rebuttable presumption — Such rebuttal evidence to be placed before Court by accused.

Negotiable Instruments Act, 1881 — Sections 138, 139.

IV (2006) CCR 245 (Karnataka H.C.)

- Presumption available under Section 139 of Act in favour of complainant is rebuttable presumption but same cannot be rebutted only by suggestions or statements given by accused under Section 313, Cr.P.C. — Accused chose not to step in witness box to try to rebut said presumption.

Negotiable Instruments Act, 1881 — Sections 138, 139 — Criminal Procedure Code, 1973 — Section 313.

IV (2006) CCR 20 (Bombay H.C.)

- Quashing of proceedings — Limitation to file complaint — Complaint barred by time — It is matter of evidence and Single Judge not justified in quashing proceedings by holding that complaint was barred by time.

Negotiable Instruments Act, 1881 — Sections 138, 138(b) — Criminal Procedure Code, 1973 — Section 482.

IV (2006) CCR 42 (SC)

- Quashing of Proceedings — Notice — Service — Notice sent by registered post not served upon applicant/accused — It shall not be presumed that there is sufficient service regarding notice sent by UPC — It cannot be taken into account under Section 27 of General Clauses Act that there was sufficient service upon accused/applicants — Impugned order passed by Court below liable to be quashed.

Negotiable Instruments Act, 1881 — Section 138 — General Clauses Act, 1897 — Section 27.

IV (2006) CCR 128 (Allahabad H.C.)

- Quashing of Summons — Cheques issued by company to respondent when petitioner was not Director of Company, had resigned more than 9 years before cheques in question issued — Petitioner also placed on record clinching evidence *viz.* certified copy of Form No. 32 to show she was not Director at relevant time — Such document is conclusive of fact that petitioner resigned *w.e.f.* 20.8.1994 — She was not incharge or responsible for day-to-day affairs of company and could not be so — Criminal complaints against petitioner quashed.

Criminal Procedure Code, 1973 — Section 482 — Negotiable Instruments Act, 1881 — Section 138.

IV (2006) CCR 61 (Delhi H.C.)

- Revision — Suspension of sentence — Relief without surrender and undergoing confinement, pending disposal of criminal revision (***See Revision***)

IV (2006) CCR 8 (Madras H.C.)

- Undated cheque given as security — It can be looked at stage of trial whether cheque was given in blank or in security.
Negotiable Instruments Act, 1881 — Section 138.

IV (2006) CCR 128 (Allahabad H.C.)

- — (See *Transfer Petition*)

IV (2006) CCR 36 (SC)

DISTINCTION — ‘Murder’, ‘Culpable homicide’ and ‘culpable homicide not amounting to murder’ — Scope and provisions of Section 299 Clause (b) and Section 300 Clauses (2) and (3), IPC — Discussed.

Indian Penal Code, 1860 — Sections 299 Clause (b), 300 Clause (2), 300(3).

IV (2006) CCR 74 (SC)

DOWRY DEATH — Bail granted suspending sentence — Post-mortem report states no external injury found — Lungs, liver and spleen found in diseased condition — Cause of death is shock followed by chronic illness.

IV (2006) CCR 49 (SC)

- Cruelty, Common Intention, Appreciation of Evidence — Conviction and sentence — Sustainability — No evidence to prove dowry demand by in-laws of deceased except testimony of father of victim, interested witness — Even brother and mother of deceased denied any demand of dowry — All P.W. witnesses except P.W. 8 discloses that there was cordial and good relationship between deceased and also denied factum of dowry demand — They further deposed that deceased died as a result of being hit by train on railway line passing through village — Unsafe and imprudent to sustain conviction of appellants on single testimony of witness who is not only highly interested but also not above being gained over — Conviction and sentence set aside.

Indian Penal Code, 1860 — Sections 304B, 498A, 34 — Dowry Prohibition Act, 1961 — Section 3.

IV (2006) CCR 57 (Patna H.C.) (DB)

- Cruelty — Presumption — Injuries on region of face suffered by deceased when she was in house of appellant — Due to demand of dowry and maltreatment she ended her life — No explanation has come forward from learned Counsel for appellant as to injuries on person of deceased — She was suspecting illicit relationship of her husband with wives of his brothers — Apart from statement of D.Ws. 1 and 2, appellant brought no cogent and convincing evidence to rebut case of prosecution — No case made out against appellants *viz.*, JS, TK and HK — Benefit of doubt given to them and they are acquitted of all charges framed against them — Appeal allowed *qua* these appellants.

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

IV (2006) CCR 184 (Punjab & Haryana H.C.) (DB)

DOWRY DEMAND — Cruelty — Quashing of Proceedings sought on grant of territorial jurisdiction (See *Quashing of Proceedings*)

IV (2006) CCR 181 (Jharkhand H.C.)

- Quashing of FIR — Territorial Jurisdiction (See *Quashing of FIR*)

IV (2006) CCR 191 (Allahabad H.C.) (DB)

EVIDENCE — Circumstantial Evidence — Fingerprints found on neck of dead body of deceased allegedly murdered by strangulation, not attempted to be proved by employing technic in matter of detection of fingerprints and development of same to prove case of prosecution that person (wife) was murdered by particular assailant (husband) by strangulation — Recommendations given by this Court to Government to tone up investigating agency by applying and developing forensic science in field of investigation and crime detection.

IV (2006) CCR 34 (Karnataka H.C.) (DB)

- Disappearance of Evidence — Evidence on record that information with regard to death of deceased sent to her parents' home and her brother was present at her cremation — Conviction under Section 201, IPC, unsustainable.

Indian Penal Code, 1860 — Section 201.

IV (2006) CCR 57 (Patna H.C.) (DB)

- Discovery evidence — Recovery of article and illegal liquor from possession of appellant, doubtful — Article produced before Court below does not belong to crime — Further, recovery made of two bladders from possession of appellant and one bag in which these two bladders were packed, but it has come in evidence of PW 3 and PW 4 one bottle was there containing liquor — Type of recovery does not inspire confidence — Conviction and sentence set aside.

IV (2006) CCR 239 (Uttaranchal H.C.)

- Dying Declaration — Admissibility — It is not requirement of Section 32, Evidence Act that doctor who records dying declaration of deceased must give his official seal in order to render it admissible.

Evidence Act, 1872 — Section 32.

IV (2006) CCR 66 (Orissa H.C.) (DB)

- Dying Declaration — Evidentiary value — While accepting dying declaration Court must insist that it should be of such a nature as to inspire full confidence of Court in its truthfulness and correctness — Further Court to decide fitness of mind of deceased.

Evidence Act, 1872 — Section 32.

IV (2006) CCR 236 (Gauhati H.C.)

- Dying declaration — Law does not provide dying declaration should be made in any prescribed manner or in form of questions and answers — Only because dying declaration not recorded by Magistrate, same by itself, may not be ground to disbelieve entire prosecution case — When statement of injured is recorded, in event of her death, same may also be treated as FIR — Dying declaration must be voluntary and not tutored — It is admissible in evidence in special circumstances.

Evidence Act, 1872 — Section 32.

IV (2006) CCR 91 (SC)

- Dying Declaration — Reliability and authenticity — Abetment of suicide — Cruelty — Death of deceased by putting fire on her person by herself — Seriousness of her injuries corroborated by evidence of PWs 4 and 5 indicate that she was too weak and feeble to make statement — True that all three witnesses declared hostile, open to accused-Petitioner to rely their testimony for purpose of improbabilising evidence of doctor — All witnesses categorically stated dying declaration not recorded in their presence — Dying declaration lacks credibility and reliability.

Indian Penal Code, 1860 — Sections 306, 498A — Evidence Act, 1872 — Section 32.

IV (2006) CCR 236 (Gauhati H.C.)

- Evidence of Approver — To be viewed with suspicion especially when it is seriously suspected that he is suppressing some material facts — When Court suspected evidence of approver, pardon given to him itself could be withdrawn and he could be tried along with other accused — But unfortunately provisions contained in Cr.P.C. do not enable Court to take such strong action — If approver is wilfully concealing anything essential or giving false evidence or not complied with conditions on which tender of pardon made, approver can be tried for offence in respect of which he had been given pardon.

Criminal Procedure Code, 1973 — Sections 306, 308, 308 proviso.

IV (2006) CCR 29 (SC)

- Law is well settled that accused should be given opportunity to adduce evidence — Calling for official witnesses of ranks, *i.e.* Under Secretary to Government, for purpose of production of certain documents would not be just and proper and that may rather delay proceeding of case.

IV (2006) CCR 243 (Orissa H.C.)

- Motive — Failure to prove motive not fatal to case of prosecution, if evidence of witnesses appears to be truthful and convincing — Existence of motive is only one of circumstances to be kept in mind while appreciating evidence adduced by prosecution.

IV (2006) CCR 16 (SC)

- Motive — Murder — Death caused by single fatal injury on neck — Land dispute became genesis of occurrence.

IV (2006) CCR 131 (Gauhati H.C.) (DB)

- Onus of Proof — Right of Private Defence (*See Criminal Trial*)

IV (2006) CCR 1 (SC)

- Presumption as to dowry death (*See Dowry Death*)

IV (2006) CCR 184 (Punjab & Haryana H.C.) (DB)

- Result of local inquiry by Presiding Officer is not evidence.

IV (2006) CCR 152 (Kerala H.C.)

- Standard of proof — Departmental *vis-a-vis* criminal proceedings — Standard of proof required to establish, guilt in a criminal case is far higher than that of departmental proceedings where preponderance of evidence is required.

IV (2006) CCR 77 (Calcutta H.C.)

- Testimony of solitary witness — Reliability — No impediment in convicting person on sole testimony of single witness — Court is concerned with quality and not quantity of evidence which is necessary for proving or disproving fact.

IV (2006) CCR 13 (Patna H.C.) (DB)

- Two Dying Declarations — Reliability — Deceased was in fit state of body and mind to make conscious statement when she made oral dying declaration (*See Murder*)

IV (2006) CCR 66 (Orissa H.C.) (DB)

- Two dying Declarations — Reliability — Murder, Common Intention, Cruelty — Contradiction between two dying declarations relating to guilt of accused No. 2 — However, specific about guilt of accused No. 1 (*See Murder*)

IV (2006) CCR 91 (SC)

EXEMPTION FROM PERSONAL APPEARANCE — Non grant of by Magistrate — Non-bailable warrants issued could not be executed because he was untraceable — Issuance of process under Sections 82/83, Criminal Procedure Code — Legality — Petitioner not absconding or evading Court process — In fact appearing through Counsel — Petitioner one of accused persons in case under Sections 138/141, Negotiable Instruments Act — In view of judgments of this Court, laying down clear principle and procedure required to be followed, orders issuing non-bailable warrants and initiation of process under Sections 82/83 could not have been passed against petitioner — Petitioner assured his appearance before Trial Court — Impugned orders quashed.

Criminal Procedure Code, 1973 — Sections 82/83, 205.

IV (2006) CCR 178 (Delhi H.C.)

EXPLOSIVES — Seizure of Explosive Substance — Conviction — Challenge against — Conviction based on written statement of informant — Non-examination of informant — No cogent and reliable evidence adduced by prosecution to prove all appellants live jointly in house — Evidence on record shows it is alleged against appellants that powder kept in small “*puriya*” in small tin was recovered which appeared as explosive substance but there is no report of any Chemical Examiner to show powder recovered from house of appellants was explosive — Prosecution not able to prove its case beyond all reasonable doubts — Judgment and order of Court below set aside.

Explosive Substances Act, 1959 — Section 5 — Indian Penal Code, 1860 — Sections 353, 186 — Arms Act, 1959 — Sections 25A, 26, 35.

IV (2006) CCR 116 (Patna H.C.)

EXPRESSION — “Cause of action” — Means circumstance forming infraction of right or immediate occasion for action — It means situation or set of facts that entitles party to maintain action.

IV (2006) CCR 191 (Allahabad H.C.) (DB)

— “Cognizance” — Meaning — When Magistrate or Judge first takes cognizance of offence.
Criminal Procedure Code, 1973 — Section 190.

IV (2006) CCR 197 (Gauhati H.C.)

— “On her behalf” — Meaning.
Criminal Procedure Code, 1973 — Section 198(1) Proviso (c).

IV (2006) CCR 111 (Kerala H.C.)

— ‘Other proceedings’ — Meaning of — Principles of *ejusdem generis* would apply and would restrict meaning of words ‘other proceedings’ to proceeding in which evidence required to be adduced — Expression ‘other proceedings’ means proceedings initiated by Executive Magistrate under Section 133 or 145, Cr.P.C.
Criminal Procedure Code, 1973 — Section 310.

IV (2006) CCR 152 (Kerala H.C.)

— “Some person aggrieved” — Meaning — Any person who is member of group of “aggrieved persons” can file complaint for offences falling under Chapter XX of I.P.C. — Words “some person aggrieved” appearing in Section 198 of Code used to include also persons other than spouses — Apart from aggrieved husband or wife their son can be treated as person aggrieved by offence under Section 494, I.P.C. — He can also file complaint alleging offence of bigamy as person who belongs to group of “some person aggrieved” under Section 198(1), Cr.P.C.
Criminal Procedure Code, 1973 — Section 198(1).

IV (2006) CCR 111 (Kerala H.C.)

FIR — Registration of — Powers of Magistrate direct police officers to investigate into cognizable cases (*See Powers of Magistrate*)

IV (2006) CCR 19 (Allahabad H.C.)

FAMILY DISPUTE — Appropriate relief — To approach Civil Court — Dispute as to possession of property — Breach of peace — Claiming possession of property, sons and daughters filed suit against father in Court of Senior Civil Judge — This property is also subject matter of civil suit pending in Civil Court — Parties are already before Civil Court — Civil dispute has been given colour of criminal case — Criminal proceedings initiated under Section 145, Cr.P.C. to be quashed — Parties may approach Civil Court — Civil Court would be at liberty to grant interim relief, whether application for that purpose moved by plaintiffs or defendant.
Criminal Procedure Code, 1973 — Sections 482, 145.

IV (2006) CCR 46 (SC)

FOREIGNER — Overstayed without proper permit — Discharge of Accused — Accused alleged to have overstayed without proper residential permit — Case registered against her under Section 14 of Act and Clause 7(2) of Order, 1948 — Whether subsequently permission granted to her to have effect of regularising earlier period of overstay — Whether there was violation of condition of residential permit requiring application for extension of period to be made fifteen days before — These are all questions of law and fact — At this stage both Courts below have sufficient material to proceed against petitioner for her alleged overstay beyond permit period.
Foreigners Order, 1948 — Clause 7(2) r/w Section 14 of Foreigners Act, 1946 — Criminal Procedure Code, 1973 — Sections 239, 482, 397, 399.

IV (2006) CCR 213 (Karnataka H.C.)

FORENSIC SCIENCE— Development — Applicability to field of investigation and crime detection — Discussed.

IV (2006) CCR 34 (Karnataka H.C.) (DB)

FRAMING OF CHARGE — Mere dismissal of application under Section 482, Cr.P.C. does not take away right of accused to place materials at time when question of framing of charge taken up to show materials do not justify framing of charge.

Criminal Procedure Code, 1973 — Section 228.

IV (2006) CCR 60 (SC)

— Permissibility in law — Appellants had requisite knowledge of charges against them and they were not prejudiced in any manner — Not justifiable for trial Judge to frame alternative charge — Effect of framing of alternative charges vary from case to case — Appellants having not raised any grievance at any stage, they cannot be allowed to do so at this stage.

IV (2006) CCR 91 (SC)

“GAMBLING” AND “PRIZE COMPETITION” — “Kaun Banega Crorepati” is essentially based on giving answers to questions on various topics such as history, geography, sport, music, politics, cinema, science and technology, etc. — It would not fall within definition of “prize competition” or “gambling” — Meaning of words “prize competition” and “gambling” — Discussed.

Bombay Prevention of Gambling Act, 1887 — Sections 2(6), 4, 12, 12A — Prize Competition Act, 1955 — Sections 9, 10, 11, 12.

IV (2006) CCR 224 (Bombay H.C.)

GANG RAPE — Sentence — Reduction of sentence below statutory period — Legality of — Accused identified by respondent — Offence under Section 376(2)(g) considered very serious offence and mandates minimum punishment for 10 years for conviction thereunder, unless there are adequate and special reasons mentioned in judgment warranting punishment less than minimum punishment — Reduction of sentence by High Court to period already undergone, on ground that accused in custody for long *i.e.* since 25.4.2001, were semi-literate agricultural labourer coming from rural area — Does not separately or cumulatively, make out case for reduction of sentence — High Court showed unwarranted sympathy towards accused — Judgment of High Court set aside.

Indian Penal Code, 1860 — Section 376(2)(g).

IV (2006) CCR 14 (SC)

GRIEVOUS HURT — Attempt to Murder — Testimony of injured eye witness as sole witness to occurrence (*See Attempt to Murder*)

IV (2006) CCR 210 (Orissa H.C.)

— Bail — Granted — Appellants in jail for about one year — No likelihood of appeal being heard in near future — Just and proper to release appellants on bail pending appeal with conditions.

Indian Penal Code, 1860 — Section 326.

IV (2006) CCR 58 (SC)

HOUSE-TRESPASS — Post office being public place and Saturday being working day, entering post office does not satisfy basic ingredients of offence under Section 448, IPC.

Indian Penal Code, 1860 — Section 448.

IV (2006) CCR 171 (Orissa H.C.)

HURT — Grievous Hurt — Conviction — Legality — Injuries suffered by PWs 1, 2 and 5 — Identity of assailants doubtful — Evidence of PW 2 to effect that he could not identify assailants and as such prosecution ought to have treated him hostile — Courts below ought not to have held petitioners were assailants — Delay of more than one month in lodging complaint — Between said period witnesses could have put their heads together to implicate petitioners in crime — Unsafe to accept prosecution version — Conviction and sentence imposed upon petitioners set

aside.

Indian Penal Code, 1860 — Sections 323, 325 —

IV (2006) CCR 223 (Jharkhand H.C.)

- Murder, Intention to Cause Death— Death of deceased on account of injuries caused by appellants (*See Murder*)

IV (2006) CCR 74 (SC)

- Theft — Ingredients of theft not proved, however, injuries inflicted on PW 1, accused held guilty under Section 324, IPC and sentenced to fine of Rs. 20,000/- with directions.

IV (2006) CCR 84 (Karnataka H.C.)

INHERENT POWERS — Exercise of — Breach of Peace Concerning Land or Water — Local Inquiry — Bar against second revision — Exercise of inherent powers — Powers of Revisional Court are limited — If view taken by Executive Magistrate is plausible view and based on evidence, no interference by Revisional Court called for — Decision of Executive Magistrate under Sections 145, 148, Cr.P.C. is not based entirely on inspection report but based on evidence on record — No case for interference under Section 482, Cr.P.C. made out.

Criminal Procedure Code, 1973 — Sections 397, 397(3), 439, 482, 145, 146, 148.

IV (2006) CCR 167 (Gauhati H.C.)

- High Court not empowered to set aside concurrent findings of fact recorded by Courts below without adverting to evidence or recording reasons.

Criminal Procedure Code, 1973 — Section 482.

IV (2006) CCR 55 (SC)

- Quashing of charge sheet and summoning order — Cheating, Forgery, Criminal intimidation — Instant case not one of rare cases in which proceedings or charge sheet can be quashed — Arrest of applicant stayed during investigation and after submission of charge sheet, non-bailable warrant issued against him — Prayer of applicant for keeping order issuing non-bailable warrant in abeyance granted — Applicant may approach Court concerned and claim discharge through his Counsel — Non-bailable warrants issued against applicant shall be kept in abeyance and applicant shall not be arrested for period 6 weeks — During this intervening period, applicant permitted to claim discharge through his Counsel — Further, looking to facts and circumstances of case this Court do not find case for quashing of charge-sheet and consequent summoning order right at inception of trial.

Indian Penal Code, 1860 — Sections 420, 467, 468, 471, 504, 506 — Code of Criminal Procedure, 1973 — Section 482.

IV (2006) CCR 164 (Allahabad H.C.)

- Quashing of proceedings — Cruelty, Hurt, Dowry Demand — Petition by wife disclosing offences under said sections of Indian Penal Code and Dowry Prohibition Act — Cognizance taken, order to proceed against accused and co-accused — Challenge by accused husband against such order — Various defences taken in application under Section 482, Cr.P.C. — At time of taking cognizance, neither Magistrate nor revisional Court can look into defence of accused or documents furnished by him — Magistrate only required to see whether complaint makes out offence and there is legal evidence to support same — On basis of annexures to application under Section 482, Court cannot hold alleged occurrence of offences false and order issuing processes illegal — No merit in application.

Criminal Procedure Code, 1973 — Section 482 — Indian Penal Code, 1860 — Sections 323, 494 and 498A/34 — Dowry Prohibition Act, 1961 — Sections 3 and 4.

IV (2006) CCR 211 (Patna H.C.)

INTENTION TO CAUSE DEATH — Alteration in conviction — Arrows shot from distance, not with any accuracy — One of such arrows hit deceased — Evidence of eye-witnesses established appellant had shot that arrow — No sudden quarrel as stated by appellant — Evidence shows

otherwise — Appellant to be convicted in terms of Section 304 Part I and not Section 302, IPC — Conviction altered accordingly — Custodial sentence of 10 years would meet ends of justice.

Indian Penal Code, 1860 — Section 304 Part I.

IV (2006) CCR 62 (SC)

— Murder, Hurt — Appellants assaulted deceased with knife which was concealed by him — Deceased succumbed to injuries during treatment.

Indian Penal Code, 1860 — Sections 302, 304 Part I, 326, 324.

IV (2006) CCR 74 (SC)

INVESTIGATION — Investigation or preliminary inquiry — Power of Magistrate — Scope of Section 159, Cr.P.C. — Section 159, Cr.P.C. confers power on Magistrate only to conduct inquiry and not to proceed to place and conduct local inspection — Words “at once proceed” occurring in Section 159, Cr.P.C. qualifies word ‘inquiry’ — Contention that in view of provision in Section 159, Cr.P.C., Magistrate has got power to proceed to the spot and hold inquiry not correct.

Criminal Procedure Code, 1973 — Section 159.

IV (2006) CCR 152 (Kerala H.C.)

— Report of police officer on completion of investigation — Further Investigation — Amount obtained fraudulently by putting forged signatures of informant — Section 173(8), Cr.P.C. provides provisions for further investigation of offence after police report submitted under Section 173(2), Cr.P.C. — Payments were made by petitioners on cheques presented before them bearing forged signatures of witnesses, police by placing additional memo of evidence requested before Court below by way of requisition to issue arrest warrant against petitioners — Impugned order calls for no interference at this stage as trial very much in progress.

Criminal Procedure Code, 1973 — Sections 173(2), 173(8).

IV (2006) CCR 55 (Jharkhand H.C.)

— To hold local inspection (*See Local Inspection*)

IV (2006) CCR 152 (Kerala H.C.)

JOINT TRIAL — Transfer of complaint and joint trial of two complaint cases — No prayer in petition filed under Section 482, Cr.P.C. seeking joint trial nor any independent petition filed by respondent seeking joint trial — Having regard to facts and circumstances, no ground to direct transfer of complaint and joint trial of two complaint cases — Allegations about forgery made in December, 2001 and complaint under Section 138, NI Act filed on 23.1.2002 — Respondent filed complaint two years later on 12.3.2003 — Proceedings in complaint filed under Section 138, NI Act are at final stage — High Court did not take into consideration these aspects, while passing impugned order — Impugned order for transfer set aside.

Negotiable Instruments Act, 1881 — Section 138 — Criminal Procedure Code, 1973 — Section 482.

IV (2006) CCR 25 (SC)

JUVENILE — Bail — Grant of — Juvenile — Criminal conspiracy, disappearance of evidence, criminal intimidation, common intention — Petitioner aged 16 years, denied bail by ASJ — Bail to be granted to juvenile except for three exceptions carved out by Section 18 of Juvenile Justice Act — This was first offence of petitioner — Petitioner’s father is Government servant and petitioner residing in well-knit family — Petitioner if released on bail would be living with his family and there is nothing to suggest that he would be exposed to hardened criminals — Case does not fall in any of three exceptions to Section 18 — Petitioner directed to be released on bail with conditions.

Juvenile Justice Act, 2000 — Section 18 — Indian Penal Code, 1860 — Sections 120B, 201, 506, 34.

IV (2006) CCR 166 (Delhi H.C.)

— Bail — Grant of — Rape (*See Bail*)

IV (2006) CCR 205 (Chhattisgarh H.C.)

KALENDRA (See *Quashing of Kalendra and consequential proceedings*)

IV (2006) CCR 54 (Punjab & Haryana H.C.)

KIDNAPPING — Criminal Conspiracy — No infirmity in order under challenge — Conviction upheld — Criticism with regard to non-examination of certain witnesses unsustainable — Non-production of jail record of A is not circumstance to militate against oral testimony of PW 2 — Corroborated by Constable IM — Where raid conducted to recover child in manner indicated by PW 1 and factum of recovery of child amply proved, non-joining of public witnesses to said raid, not of any consequence — Nothing on record to show case property tampered with or not secured during trial or it was not available — Criticism is based on misreading of evidence — Ransom demands delivered to father of child by accused AP and she also came to collect amount in exchange of child — It cannot be said she was oblivious of purpose of kidnapping — From analysis of evidence on record, it is found child was picked up by RA, neighbour of family and child was familiar with him — Child was last seen with this accused by PW 1 — Demand for ransom made and conveyed through S and repeated by M — Fact that child was recovered from custody of S in exchange of ransom amount, show prosecution able to establish its case beyond shadow of doubt — No infirmity in judgment under challenge — Judgment and order on sentence under challenge upheld.

Indian Penal Code, 1860 — Sections 363, 364A read with Section 120B — Criminal Procedure Code, 1973 — Section 428.

IV (2006) CCR 29 (Delhi H.C.) (DB)

— Murder, Criminal Conspiracy — Appellants along with their mother and with help of approver alleged to have kidnapped 13 children and caused death of 9 out of them
. (See *Death Sentence*)

IV (2006) CCR 29 (SC)

KNOWLEDGE TO CAUSE DEATH — Murder — Alteration in conviction — Accused inflicted grievous injuries and caused death of deceased with knowledge that such grievous injuries to deceased would cause his death without any intention to do so — Conviction and sentence imposed on accused under Section 302, IPC set aside and instead altered to conviction under Section 304 Part II, IPC with R.I. of 5 years.

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

IV (2006) CCR 144 (Madras H.C.) (DB)

LIMITATION — Action for contempt of Court — One year — No Court shall initiate any proceedings of contempt either on its own motion or otherwise after expiry of period of one year from date on which contempt alleged to have been committed.

IV (2006) CCR 74 (Uttaranchal H.C.)

— Cognizance of offence — Obscenity, Criminal Intimidation, Common Intention — Period of limitation prescribed is one year.

IV (2006) CCR 171 (Orissa H.C.)

— Enforceability of time barred cheque (See *Dishonour of Cheque*)

IV (2006) CCR 51 (Orissa H.C.)

— Rights of parties not meant to be destroyed but then it is meant to see parties do not resort to dilatory tactics within a time fixed by Legislature.

IV (2006) CCR 171 (Orissa H.C.)

LIQUOR — Unlawful possession of liquor — Alteration of Sentence — Seizure of 40 litres of illicit distilled liquor from appellant — Chemical Analysis Report is positive with finding that liquid contained 61.22 alcohol of illicit origin — Government suffered loss of Rs. 1,400/- towards revenue — Trial Court convicted appellant under Section 46A(a)(ii) of Act of 1909 — Challenge against — Non- examination of independent witnesses — There is no prohibition on conviction being recorded on basis of testimony of official witnesses if found to be trustworthy — Detail

finding of Trial Court why it was not possible for prosecution to examine independent witness — Further conviction under Section 46A(a)(ii) not maintainable as Court below proceeded on fact, offence committed by accused related to possession and Clause (a) relates to manufacture — Provisions of Section 46A(a)(i) applicable — Conviction accordingly altered — Considering quantum of illicit liquor seized sentence reduced to five months.

Bengal Excise Act, 1909 — Sections 46A(a)(i), 46A(a)(ii) & its proviso.

IV (2006) CCR 12 (SC)

“LOCAL INSPECTION” — Powers of Magistrate — Scope of Section 310, Cr.P.C. — Meaning of expression ‘other proceedings’ in Section 310, Cr.P.C. — Committal Magistrate considering final report of case exclusively triable by Court of Sessions under Section 209, Cr.P.C. has no jurisdiction to conduct local inspection in exercise of powers conferred on him under Section 310, Cr.P.C. at that stage.

Criminal Procedure Code, 1973 — Sections 208, 209, 310(1), 310(2), 319.

IV (2006) CCR 152 (Kerala H.C.)

— Though Magistrate has power to conduct local inspection that can only be for purpose of appreciating evidence on record and not be done in manner so as to reduce Magistrate as witness — Reasons given by Magistrate for conducting local inspection, not justified.

Criminal Procedure Code, 1973 — Section 310.

IV (2006) CCR 152 (Kerala H.C.)

LOTTERY TICKETS — Sale of — Quashing of Order — Prosecution of petitioners for selling of lottery tickets of other States in State of Jharkhand not offence since statute itself prohibiting business of selling lottery tickets of other States struck down by Patna High Court.

IV (2006) CCR 72 (Jharkhand H.C.)

MAINTENANCE — Mother — Challenge against quantum — Petitioner directed to pay sum of Rs. 1,000 p.m. as maintenance to O.P. No. 2, mother of petitioner — Petitioner earning about Rs. 7,000 p.m. — Family Court took into consideration relevant aspects and felt O.P. No. 2 is mother of petitioner and aged 65 years and awarded Rs. 1,000 as maintenance — No reason to interfere with amount awarded by Family Court.

Criminal Procedure Code, 1973 — Section 125.

IV (2006) CCR 177 (Jharkhand H.C.)

— Refusal of — Second revision petition — Maintainability — Maintenance rejected to wife as she separated from appellant-husband for no justifiable reason — Father of respondent was demanding sum of Rs. 30,000/- for sending her to house of appellant-husband — Revisional Court confirmed findings of fact recorded by trial Magistrate and dismissed revision — In petition under Section 482, Cr.P.C. in form of second revision, High Court awarded maintenance — Nothing in law empowers High Court to set aside concurrent findings of fact recorded by Courts below even without advert to evidence or recording reasons — Judgment of High Court perverse — Set aside.

Criminal Procedure Code, 1973 — Sections 125, 482.

IV (2006) CCR 55 (SC)

MAXIM — “*Falsus in uno, falsus in omnibus*” — Meaning — False is one thing, false is everything — Said maxim not applicable in our country.

IV (2006) CCR 131 (Gauhati H.C.) (DB)

MURDER — Appreciation of Evidence — Main witnesses not examined — Variation in statements of witnesses — Identity of accused in doubt — Circumstantial evidence of last seen theory not satisfactorily established — Absence of name of scribe and informant — Only MLC evidence of witnesses being discrepant and shaky — Not sufficient to prove alleged incriminating circumstances of last seen without any supporting or corroborating evidence — Benefit of doubt should be extended to accused.

Indian Penal Code, 1860 — Section 302.

IV (2006) CCR 206 (Uttaranchal H.C.) (DB)

- Attempt to Murder, Common Intention — Motive set up by prosecution against accused having committed crime, does not satisfy conscience of Court — Recoveries of weapons used in commission of crime by S accused cannot be taken into consideration against accused A
..... (See Attempt to Murder)

IV (2006) CCR 253 (Punjab & Haryana H.C.) (DB)

- Common Intention — Conviction on basis of testimony of solitary eye-witness — Justifiability — Prosecution case based solely on evidence of PW 1 mother of deceased — Her testimony not corroborated by any other witness as evidence of PW 2 discarded and other 2 witnesses turned hostile — Entire evidence leads to lurking suspicion about her being eye-witness — She invented false story about existence of motive — Narration of events before murder of son, untrue — Considerable doubt about timing of recording of FIR — Absence of blood stains on her clothes and PW 2 clothes raises serious suspicion having regard to nature of injuries of deceased — No doubt this Court observed conviction can be based on testimony of solitary eye-witness — However, Court must be satisfied testimony of solitary witness is of such sterling quality, Court finds it safe to base conviction on it — In doing so Court must test credibility of witness by reference to quality of evidence — Evidence must be free of any blemish or suspicion, must appear to be natural and so convincing Court has no hesitation in recording conviction on its basis — This Court does not find evidence of PW 1 of that quality — Judgment of acquittal does not deserve to be set aside.

Indian Penal Code, 1860 — Sections 302, 34.

IV (2006) CCR 16 (SC)

- Common Intention — Death of deceased by stabbing in furtherance of common intention — Trial Court acquitted accused A3 on ground mere presence of accused not sufficient to hold him guilty — High Court confirmed conviction and sentence of A1 and A2 — Appeal against — As per statement of PWs 1 to 3 evident all 3 accused were going on scooter and motorcycle saw deceased — Exchange of hot words which ultimately converted into serious attack by A1 — Injuries caused death of deceased — Perusal of statement of PWs shows accused appellant in furtherance of common intention of A1 tried to prevent PWs 2 and 3 from intervening in matter — PW 3, who wanted to intervene, prevented by causing knife injury by accused-appellant — No doubt accused-appellant acting in furtherance of common intention and prevented PWs 2 and 3 to save deceased — He facilitated commission of offence — Section 34 attracted and accused-appellant rightly convicted under Section 302 r/w Section 34, IPC.

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

IV (2006) CCR 89 (SC)

- Cruelty, Common Intention — Two dying Declarations — Death of deceased due to sustenance of 90% burn injuries — Dispute between deceased and family of appellant — She categorically deposed stating about maltreatment at hands of appellants on account of non-fulfilment of their demand of dowry — Deliberations taken in Panchayat proved by PWs 8 and 9 — Nothing pointed out to discard their testimonies — In her first dying declaration deceased exonerated her father-in-law — Her husband forced to bring her to hospital by neighbours — His culpability categorically stated by deceased in both dying declarations — Deceased categorically stated her husband put kerosene oil upon her and upon igniting, locked door of bathroom from outside — She was rescued by neighbours — Her first statement was voluntary and not tutored — Findings of Sessions Judge as also of High Court in regard to guilt of appellant No. 1 must be accepted — Keeping in view inconsistencies between two dying declarations benefit of doubt given to appellant No. 2 — Conviction and sentence of both appellants upheld under Section 498A, IPC — Conviction of appellant No. 2 under Section 302 r/w Section 34, IPC set aside.

Indian Penal Code, 1860 — Section 302 r/w Sections 34, 498A — Evidence Act, 1872 — Section 32.

IV (2006) CCR 91 (SC)

- Cruelty, Common Intention — Two dying declarations written and oral — Deceased was in fit

state of body and mind to make conscious statement when she made oral dying declaration — From report of Forensic Laboratory, it is clear that deceased died due to poisoning — It clearly lends corroboration to dying declaration made by deceased — On basis of evidence, coupled with written and oral dying declaration, this Court left with no doubt that deceased was poisoned to death and for this none but appellant No. 1 was responsible — No evidence that appellants Nos. 2 and 3 responsible directly or indirectly for administering poison to deceased — Conviction of appellants Nos. 2 and 3 under Sections 302/34, IPC not at all justified — As appellant No. 1 himself administered poison to deceased, his conviction should have been recorded directly under Section 302, IPC instead of holding him vicariously responsible for death of deceased under Sections 302/34, IPC — Conviction of appellant No. 1 altered to under Section 302, IPC — Sufficient evidence on record to show deceased made dying declaration not only before her relations but before P.W. 9-Doctor that for her failure to fulfil demand for dowry by appellants she used to be tortured frequently — Conviction of all appellants under Sections 498A/34, IPC maintained — Sentence passed accordingly.

Indian Penal Code, 1860 — Sections 302/34 and 498A/34 — Evidence Act, 1872 — Section 32.

IV (2006) CCR 66 (Orissa H.C.) (DB)

- Cruelty — Death by burn injuries — Accused subjected his wife to torture and assault — Accused developed illicit relationship with some other lady and wanted to remove his wife from way for getting married to another woman — Contention that deceased caught fire in process of cooking food does not appear to be probable as I.O. had not found any stove in P.O. and marks of burn on walls of room found by I.O. — Death of deceased caused by burn injuries not denied by defence — Evidence of only eye-witness being informant quite consistent and reliable and same cannot be doubted on facts and circumstances of case.

Indian Penal Code, 1860 — Sections 302 and 498A.

IV (2006) CCR 13 (Patna H.C.) (DB)

- “Culpable Homicide not Amounting to Murder” — Distinction, scope and interpretation of provisions of Sections 299 and 300, IPC.

Indian Penal Code, 1860 — Sections 299, 300.

IV (2006) CCR 62 (SC)

- Culpable homicide, Hurt, Common Intention — Alteration in conviction — Right of private defence exceeded by appellants in using more force than necessary upon deceased — Large number of litigations pending between parties — Appellants took possession of land from deceased in execution of decree — Deceased and D must be nurturing grudge against appellants — Investigating Officer did not make any investigation from point of view of defence — Investigation not fair — Appellant No. 1 not armed and at later stage of quarrel took out *ubhari* from bullock cart — Possibility of PW 3 and deceased being aggressors cannot be ruled out — Why occurrence took place in front of house of appellants not properly explained by PWs — No pre-meditation on part of appellant No. 1 — Case of sudden fight between parties — This would attract Section 304 Part I, IPC and not Section 302, IPC — Appellants directed to undergo R.I. for period of 10 years — Conviction of appellants under Section 302 r/w Section 34, IPC, unsustainable — Conviction and sentence imposed on them under Section 324 read with Section 34 upheld — Sentences to run concurrently.

Indian Penal Code, 1860 — Sections 304 Part I, 324 read with Section 34, Section 302 r/w Section 34.

IV (2006) CCR 1 (SC)

- Death of wife by strangulation — Homicidal death — Circumstantial evidence — Motive — Illicit relationship of respondent with another lady and bad habits — Except oral say of close relatives, which is not corroborated by P.Ws. 13 and 14, prosecution failed to establish circumstance relating to motive — In absence of positive evidence placed on record, mere statement of witnesses that they saw deceased and accused about a year back, cannot help prosecution to prove circumstance of ‘last seen together’ — Tests relating to circumstantial evidence not being satisfied, it is dangerous to hold accused guilty only on hypothetical basis or on assumptions and conjectures.

Indian Penal Code, 1860 — Section 302 — Evidence Act, 1872 — Sections 3 and 8.

IV (2006) CCR 34 (Karnataka H.C.) (DB)

- Intention to cause death, hurt — Appreciation of evidence — Appellant assaulted deceased with knife which was concealed by him — Deceased succumbed to injuries during treatment — During incident appellant No. 2 caused injuries to PW 12 and cut deceased on his back as well as on his right knee — Appellant No. 3 beat deceased on right hand causing grievous injury — Occurrence witnessed by PW 12 and PW 1, elder brother of deceased — Fatal injuries attributable to appellant No. 7 — He is convicted under Section 302, IPC — Appellant No. 2 to be convicted under Section 304 Part I, IPC and appellant No. 3 under Section 326, IPC — Conviction of appellant No. 2 in terms of Section 324, IPC is in order — Custodial sentence of 10 years would meet ends of justice so far appellant No. 2 is concerned — For appellant No. 3, custodial sentence of 3 years RI imposed — Appellant No. 2 sentenced to one year RI — Two sentences imposed on appellant No. 2 shall run concurrently.

Indian Penal Code, 1860 — Sections 302, 304 Part I, 326, 324.

IV (2006) CCR 74 (SC)

- Kidnapping, Criminal Conspiracy — Appellants along with their mother and with help of approver alleged to have kidnapped 13 children and caused death of 9 out of them
(See Death Sentence)

IV (2006) CCR 29 (SC)

- Knowledge to Cause Death — Alteration in conviction — Statement of accused made under Section 313, Cr.P.C. — Reliability — Exculpatory part of statement that accused is guiltless to be excluded in view of direct testimony of eye-witness-PWs 1 and 2 — Inculpatory part of statement of accused that deceased attempted to outrage modesty of wife of accused when she was alone at house supported with evidence of PW 1 herself — Inculpatory part of statement of accused supported by medical evidence — Investigating Officer deposed he saw grievous injury on private part of deceased — That deceased was found nude at time of occurrence deserves to be accepted — Motive behind occurrence that deceased attempted to outrage modesty of wife of accused found trustworthy — Testimony of PWs 1 and 2, eye-witnesses that accused armed with Aruval indiscriminately cut deceased and caused injuries which corroborates medical evidence cannot be disregarded — Accused and accused alone attacked deceased because of grave and sudden provocation given by deceased in light of evidence of eye-witnesses PWs 1 and 2 — Accused inflicted grievous injuries and caused death of deceased with knowledge that such grievous injuries to deceased would cause his death without any intention to do so — Conviction and sentence imposed on accused under Section 302, IPC set aside and instead altered to conviction under Section 304 Part II, IPC with R.I. of 5 years.

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

IV (2006) CCR 144 (Madras H.C.) (DB)

- Rioting, Unlawful Assembly — Death caused by single fatal injury on neck — Motive — Land dispute became genesis of occurrence — Plea of appellant-accused that he was minor and not present at place of occurrence, rejected — Two eye-witnesses categorically named accused as assailant who gave fist blow on person of deceased — It is completely reliable and corroborated by medical evidence on record — Trial Court justified in entirely rejecting plea of accused that he was minor at relevant point of time as transfer certificate from school was forged and obtained fraudulently — Defence evidence not reliable — Considering nature of injury sustained, intention to cause death is apparent — Conviction of accused-appellant under Section 302, IPC affirmed — No case for unlawful assembly or acting in furtherance of common object made out against other accused persons — Conviction unwarranted as this is case of causing single injury.

Indian Penal Code, 1860 — Sections 302, 147, 148, 149.

IV (2006) CCR 131 (Gauhati H.C.) (DB)

- Rioting, Unlawful Assembly, Wrongful Confinement, Right of Private Defence— Second appellant had reasonable apprehension that death or grievous hurt will be consequence on account of deceased party in dragging him to rice mill and threatening him to kill by throwing

him into fire (See *Right of Private Defence*)

IV (2006) CCR 217 (Madras H.C.) (DB)

- Rule laid down in *Virsa Singh's* case — Even if intention of accused was limited to infliction of bodily injury sufficient to cause death in ordinary course of nature and did not extend to intention of causing death, offence would be murder — Illustration (c) to Section 300, IPC clearly brings out this point.

Indian Penal Code, 1860 — Section 300 Illustration (c), 302.

IV (2006) CCR 62 (SC)

- Rule laid down in *Virsa Singh's* case — Even if intention of accused limited to infliction of bodily injury sufficient to cause death in ordinary course of nature and did not extend to intention of causing death, offence would be murder.

Indian Penal Code, 1860 — Sections 299, 300 Illustration (c).

IV (2006) CCR 74 (SC)

NDPS — “Authorised Testing Laboratory” — Certificate furnished by testing laboratory at Kandaghat is valid in law to test samples — High Court erroneously held that person who analysed sample was not Chemical Examiner as defined in Rule 2(c) r/w Rules 17 and 22 of NDPS Rules — Finding of High Court set aside and finding of Sessions Judge upheld — Accused directed to surrender to serve out remaining period of sentence.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 55 — Narcotic Drugs and Psychotropic Substances Rules — Rule 2(c) r/w Rules 17, 22.

IV (2006) CCR 52 (SC)

- Bailable Offence — Offences arising under NDPS Act punishable with imprisonment for less than 3 years are bailable one — Provision under Section 36A(1)(a) of Act is unambiguous — Special Court empowered to try only offences punishable with imprisonment for term of more than 3 years — Section 36A(1)(a) of Act r/w Section 4(2), Cr.P.C. empowers other Magistrates to try offences punishable with imprisonment less than 3 years in accordance with Cr.P.C. — Said provision went unnoticed by Courts below — There is flood of cases before Special Court resulting in delay in disposal of cases including bail applications — Magistrate Courts and District Courts should give effect to provisions under Section 36A(1)(a) of NDPS Act r/w Section 4(2) of Cr.P.C. Schedule I, Classification 2 in letter and spirit — Petitioner to be released on bail with conditions.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 8(c) r/w Sections 20(1)(ii)(A), 36A(1)(a) — Criminal Procedure Code, 1973 — Section 4(2) Schedule I, Classification 2.

IV (2006) CCR 103 (Madras H.C.)

- Controlled Substance — Ephedrine HCL I.P. is controlled substance as notified under notification issued under Section 2(vii-a) of Act — Said notification not covered under Section 77 of Act — No necessity for placing it before House of Parliament for necessary approval when Act was in force as on date of notification.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 77, 2(vii-a) and 25A r/w Sections 29, 9A.

IV (2006) CCR 256 (Madras H.C.)

- Difference in weight of sample — Not proved — Weight of sample was ‘about 50 gms’ — ‘About 50 gms’ necessarily means not exactly ‘50 gms’ — It is established by evidence that sample which was extracted was sent to Chemical Analyst — Evidence of independent witnesses falsified different in weight — Benefit of doubt cannot be given to respondent.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 20(b)(ii).

IV (2006) CCR 38 (SC)

- Search — Charas recovered from bag and not from person of respondent — Section 50, NDPS Act, not applicable — Even if Section 50, NDPS Act applicable, accused informed of his right to be

searched in presence of Gazetted Officer or Magistrate — Such information need not be in writing — Requirements of Section 50 of Act duly complied with.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 50.

IV (2006) CCR 38 (SC)

— Search of premises between sunset and sunrise at 3 a.m. — Neither any search warrant nor authorisation obtained — Nor were grounds for possible plea that if opportunity for obtaining search warrant or authorisation accorded evidence will escape, indicated — Non-compliance with provisions of Section 42 Proviso of NDPS Act — Trial stood vitiated.

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

IV (2006) CCR 60 (SC)

— Seizure of Illicit Liquor — Chance recovery of 1960 grams of charas — Not necessary to follow procedure contemplated under Sections 42, 50 of Act.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 42, 50.

IV (2006) CCR 56 (SC)

— Seizure of Illicit Liquor and charas — Contraband in question seized from possession of appellant No. 1 — Prosecution established case against said accused — Courts below rightly convicted said appellant — In regard to appellant No. 2, prosecution case is he was travelling in autorickshaw, along with three persons — Prosecution not produced any material whatsoever to establish either this appellant had knowledge that appellant No. 1 was carrying contraband or in any way conniving with said accused in carrying contraband — In absence of any such material to convict second appellant only on ground that he was found in autorickshaw, not justified — Courts below rightly acquitted other two accused on similar ground — Said benefit ought to have gone to appellant No. 2 also — Prosecution failed to establish its case against appellant No. 2.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 42, 50.

IV (2006) CCR 56 (SC)

— “Small Quantity” — Categorisation — Notification dated 19.10.2001 — Effect of — 1 kg. comes under small quantity — 1.20 kg. comes in between small and commercial quantity in respect of contraband scheduled as Item 55 — Public Prosecutor fairly stated offences punishable with imprisonment less than 3 years are bailable offences and persons alleged in respect of those offences entitled for bail.

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 36A(1)(a).

IV (2006) CCR 103 (Madras H.C.)

— Suspension of sentence pending appeal — Accused sentenced to undergo RI for 10 years and fine of Rs. 1 lac on each count — Appellant in jail since 1.3.1997 and already undergone more than 7 years of imprisonment — On appellant depositing amount of fine, execution of sentence of imprisonment suspended during pendency of appeal.

Criminal Procedure Code, 1973 — Section 389 — Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 8, 15.

IV (2006) CCR 41 (SC)

NOTICE — Presumption of service of notice under Section 138 of Negotiable Instruments Act
..... (See *Dishonour of Cheque*)

IV (2006) CCR 20 (Bombay H.C.)

OBSCENITY — Animosity between complainant-appellant and accused-respondents with regard to management and agreement to sell of rice mill — Case of complainant developed from stage to stage — Contradictions in evidence of prosecution witnesses — Facts and circumstances of case show accused-respondents might have committed offence but there is long gap between might have and must have — It would be travesty of justice to convert order of acquittal after 18 years of incident as incident alleged to have taken place on 24.3.1987 — About 19 years elapsed — Order of acquittal passed by Trial Court confirmed.

Criminal Procedure Code, 1973 — Section 374 — Indian Penal Code, 1860 — Sections 294, 323.

IV (2006) CCR 119 (Orissa H.C.)

- Criminal Intimidation, Common Intention — Scope of provisions of Sections 467, 468, Cr.P.C. — Limitation for taking cognizance of offence — Imprisonment for offence under Sections 294 and 448, IPC — All offences as per complaint allegedly committed in year 2001 — Cognizance taken in year 2004 — Both offences under Sections 294 and 448, IPC punishable with imprisonment for term not exceeding one year — Period of limitation for taking cognizance is also one year and thus barred by limitation by 27.3.2004 when Court below took cognizance — Reading of allegations made in complaint petition throws cloud of suspicion with regard to commission of any offence under Section 506, IPC — Allegations super-imposed and not believable — This Court has no hesitation to quash impugned order.

Criminal Procedure Code, 1973 — Sections 467, 468(2) — Indian Penal Code, 1860 — Sections 294, 506(1)/34.

IV (2006) CCR 171 (Orissa H.C.)

POLICE OFFICER'S POWER TO INVESTIGATE COGNIZABLE CASE — Territorial Jurisdiction — FIR alleged to have been registered where offence not committed
. (See *Territorial Jurisdiction*)

IV (2006) CCR 97 (Andhra Pradesh H.C.)

POWERS OF APPELLATE COURT — Appeal against acquittal — There is no embargo on power of Appellate Court in reviewing evidence upon which order of acquittal is based — Yet, golden thread which runs through web of administration of justice in criminal cases is that if two views are possible on evidence on record, one pointing to guilt of accused and other to innocence, view available to accused should be adopted — Unless there are compelling reasons, Appellate Court would be slow in disturbing order of acquittal passed by Trial Court.

IV (2006) CCR 34 (Karnataka H.C.) (DB)

- Court must decide appeal after perusing record — Hearing of parties is subject to appearance of Pleaders.

Criminal Procedure Code, 1973 — Section 386.

IV (2006) CCR 64 (Bombay H.C.)

POWER TO EXAMINE ACCUSED — Statement of accused under Section 313, Cr.P.C. by way of affidavit — Relevancy — Law regarding — Discussed.

Criminal Procedure Code, 1973 — Section 313.

IV (2006) CCR 144 (Madras H.C.) (DB)

POWERS OF HIGH COURT — Transfer of Case — High Court has no jurisdiction to make inter-State transfer.

IV (2006) CCR 37 (SC)

POWERS OF MAGISTRATE — Cognizance of offence — Practice and Procedure — Different modes of taking cognizance — When Magistrate receives complaint, he is not bound to take cognizance even if offence alleged in complaint discloses commission of offence — Whether Magistrate has or has not taken cognizance of offence will depend on circumstances of particular case including mode in which case sought to be instituted and nature of preliminary action, if any, taken by Magistrate — When complaint is prescribed before Magistrate, he can either direct investigation in terms of Section 156(3), Cr.P.C. or may decide to proceed with complaint — Act of proceeding with examination of complaint under Section 200, Cr.P.C. indicative of fact that Magistrate has taken cognizance of offence and decided to proceed accordingly — Scope of various provisions discussed — It is duty of Magistrate to assign cogent reason for opting to reject final report.

Criminal Procedure Code, 1973 — Sections 190, 190(1)(a), 190(1)(b), 190(1)(c), 191, 200, 201, 202, 203, 204, 156(3).

IV (2006) CCR 197 (Gauhati H.C.)

- Registration of FIR — Cruelty, Criminal Intimidation, Insult, Criminal Breach of Trust — Scope of provision of Section 156(3), Cr.P.C. — No scope for police officer to refuse registration of any information as an FIR which discloses cognizable offence — Police officer can investigate FIR of cognizable offence without order passed by Magistrate concerned — In case police refuses to register FIR, Magistrate may direct police to register FIR and order for investigation into such offences — By not following mandate of law not only Magistrate has committed miscarriage of justice but has given blow to person seeking justice from him, for inaction on part of police, for torture of his daughter at hands of accused — Glaring example of miscarriage of justice and flouting mandate of law — Impugned order quashed — ACMM directed to reconsider application under Section 156(3), Cr.P.C.

Criminal Procedure Code, 1973 — Sections 154, 156(1), 156(3) — Indian Penal Code, 1860 — Sections 323, 406, 498A, 504, 506.

IV (2006) CCR 19 (Allahabad H.C.)

PRACTICE AND PROCEDURE — Cross-examination of witness — Accused has no statutory right to cross-examine witness examined by prosecution thoroughly.

IV (2006) CCR 46 (Kerala H.C.)

- Evidence — Contradictory evidence — Duty of Court to separate grain from chaff and where chaff can be separated from grain, it would be open to Court to convict accused and where it is not feasible to separate truth from falsehood because grain and chaff are inextricably mixed up, to discard evidence *in toto*.

IV (2006) CCR 144 (Madras H.C.) (DB)

- General rule in criminal law is that any person, whether aggrieved or not, can set law in motion.

IV (2006) CCR 111 (Kerala H.C.)

PREVENTIVE DETENTION — Cofeposa — Challenge against — Non-consideration of retraction of co-detenu by detaining authority — Statement of co-detenu relied upon by Authority to arrive at subjective satisfaction — However, retraction by co-detenu not been placed before it and hence not considered — Such non-consideration/non-placement of material document renders subjective satisfaction of detaining authority defective — Order of detention struck down — Release of detenu directed.

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1).

IV (2006) CCR 99 (Delhi H.C.) (DB)

- Cofeposa — Detention order — Challenge against — Delay in passing order — Delay on part of authorities in taking necessary steps in issuance of detention order not established — Reasonable explanation — In view of voluminous record to be scanned and scrutinized before issuance of order of detention, order could not be issued earlier — Further such order could not be passed because application for compounding of offence pending — It was prayed pending consideration of application, no such proceedings should be resorted to — This explains why detention order could not be issued immediately by Detaining Authority.

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1).

IV (2006) CCR 67 (SC)

- Cofeposa — Detention order — Challenge against — Non-application of mind by Detaining Authority — No substance in submission — Detaining Authority applied its mind to material on record and on subjective satisfaction about compelling necessity to issue order of detention, issued order and grounds of detention — If Detaining Authority considered draft grounds of detention prepared by earlier Detaining Authority, will not by itself vitiate order if mind applied by Detaining Authority to relevant material on record and independent subjective satisfaction recorded on basis thereof.

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1).

IV (2006) CCR 67 (SC)

- Cofeposa — Preventive detention order — Legality — Challenge against — Detention order served on detenu on 20.2.2006 — Grounds of detention served on 21.2.2006 — Material and relied upon documents served on 24.2.2006 — Incumbent, in law, upon detaining authority to serve relied upon documents on same date *i.e.* on 21.2.2006 itself *pari passu* along with grounds of detention — This having not been done — Detention order void *ab initio* — Same struck down — Detenu be set at liberty.

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1).

IV (2006) CCR 99 (Delhi H.C.) (DB)

- Cofeposa — Representation — Documents supplied to detenu in language known to him — No breach of Art. 22(5) of Constitution — By way of abundant caution translated copies of documents in Marathi provided to him within 10 days of his request — All documents, statements and other materials furnished to detenu within statutory period.

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

IV (2006) CCR 67 (SC)

PRINCIPLES OF *EJUSDEM GENERIS* — Applicability — Expression— ‘other proceedings’ — Meaning of — Principles of *ejusdem generis* would apply and would restrict meaning of words ‘other proceedings’ to proceeding in which evidence required to be adduced — Expression ‘other proceedings’ means proceedings initiated by Executive Magistrate under Section 133 or 145, Cr.P.C.

Criminal Procedure Code, 1973 — Section 310.

IV (2006) CCR 152 (Kerala H.C.)

PRINCIPLE OF GENERALISATION — Applicability of Compounding of Offence (*See Compounding of Offence*)

IV (2006) CCR 91 (Kerala H.C.)

PROCEEDINGS AGAINST PERSON APPEARING GUILTY OF OFFENCE — Extra-ordinary power conferred on Courts and to be used very sparingly — Merely because some statements made against petitioners, they cannot be impleaded as accused in mechanical manner — Only if compelling situation is existing and there is any likelihood of order of conviction being passed against newly arrayed accused, they may be summoned to be arrayed as accused — Unless PWs cross-examined, it cannot be said their evidence is fully recorded — In absence of cross-examination of PWs 2 and 3, impugned order based on material collected during course of examination-in-chief cannot be sustained and set aside.

Criminal Procedure Code, 1973 — Section 319.

IV (2006) CCR 52 (Karnataka H.C.)

- Murder, Unlawful Assembly — Summons under Section 319, Cr.P.C. issued after entire evidence recorded and statements of accused under Section 313, Cr.P.C. recorded, arguments heard and judgment reserved — Police papers not supplied to them — Incident relates to year 1990 — Four accused convicted and it has attained finality — Appellants could not have been directed to be retried — Impugned judgment of High Court directing re-trial of appellants set aside and upheld to extent it set aside judgment and order of Court of Session convicting appellants.

Indian Penal Code, 1860 — Sections 302, 149 — Criminal Procedure Code, 1973 — Section 319.

IV (2006) CCR 48 (SC)

QUASHING OF CHARGE SHEET AND SUMMONING ORDER — Exercise of inherent powers (*See Inherent Powers*)

IV (2006) CCR 164 (Allahabad H.C.)

QUASHING OF CRIMINAL PROCEEDINGS — Hire Purchase Agreement — Vehicle purchased

under said agreement — Default in payment of instalments — Petitioner seized vehicle as per terms of hire purchase agreement — No offence committed by petitioner under above noted sections — Criminal proceedings initiated against petitioner not maintainable and quashed.

Indian Penal Code, 1860 — Sections 323, 341, 379, 506.

IV (2006) CCR 228 (Andhra Pradesh H.C.)

— Railway officials alleged to be involved in commission of offence under Forest Act in allowing illegal transportation of forest wood — Matter should be reported to concerned Divisional Railway Manager (DRM) — Lodging of offence report against petitioner who is none else than DRM, absolutely illegal and *mala fide* — Continuance of criminal proceeding for prosecution of petitioner, abuse of process of Court — Entire criminal prosecution against petitioner quashed.

Criminal Procedure Code, 1973 — Section 482 — Indian Forest Act, 1989 — Sections 33, 41, 42 (Bihar Amendment Act).

IV (2006) CCR 150 (Jharkhand H.C.)

QUASHING OF FIR — Cruelty — Compounding of offence — Offence under Section 498A, IPC non-compoundable — In view of settlement between parties and to ensure that parties are not discouraged from settling matter, FIR quashed.

India Penal Code, 1860 — Section 498A — Criminal Procedure Code, 1973 — Sections 320 and 482.

IV (2006) CCR 189 (Bombay H.C.)

— Cruelty, Criminal Breach of Trust — Investigation not started and no occasion to find out whether there was material to file charge-sheet or not — Too premature a stage for High Court to quash FIR holding FIR *prima facie* does not disclose any cognizable offence against any of respondents and allegations vague in nature — Impugned order of High Court set aside.

Criminal Procedure Code, 1973 — Section 482 — Indian Penal Code, 1860 — Sections 498A, 406.

IV (2006) CCR 53 (SC)

— Territorial Jurisdiction — Cruelty, Grievous Hurt, Attempt to Murder, Criminal Intimidation — Continuing Offence — After three to four months of solemnization of marriage dowry demand made in M.P. which was informed over telephone by victim to her mother in U.P. — No reference of any cause of action within State of U.P. is available — Telephonic conversation of year 2003 in between victim and mother is stray incident and cannot be regarded as incident immediate before occurrence of crime for treating it as continuance of offence — Offence committed at appropriate place of M.P., considered to be place of jurisdiction over matter — No cause of action arose within jurisdiction of State of Uttar Pradesh — Order will not affect right of police authority in transmitting FIR to appropriate police authority in M.P. for investigation.

Indian Penal Code, 1860 — Sections 498A, 326, 307 and 506 — Dowry Prohibition Act, 1961 — Sections 3 and 4 — Criminal Procedure Code, 1973 — Section 178.

IV (2006) CCR 191 (Allahabad H.C.) (DB)

QUASHING OF GR CASE — OP No. 2, aged about 24 years at relevant time, had affair with petitioner No. 1 prior to marriage and married him ignoring objections of her parents — They have been living happily as husband and wife and blessed with 3 children — No useful purpose will be served by allowing GR case to continue any further — Proceeding in GR quashed.

Criminal Procedure Code, 1973 — Section 482.

IV (2006) CCR 138 (Orissa H.C.)

QUASHING OF ISSUANCE OF PROCESSES — Dishonour of cheque — Offence by company — Vicarious liability of directors (*See Dishonour of Cheque*)

IV (2006) CCR 8 (SC)

QUASHING OF KALENDRA AND CONSEQUENTIAL PROCEEDINGS — Petitioner complainant dissatisfied with manner in which investigation carried out by police — He filed petition in this Court to direct investigating agency to expedite and complete investigation and to present challan

— Instead of conducting fresh investigation, as directed by Judicial Magistrate, police authorities initiated proceedings under Section 182, IPC against petitioner and presented Kalendra — Till date no verdict by any Court of competent jurisdiction holding allegations levelled by petitioner in FIR or in his criminal complaint are false or fabricated to his knowledge — In private criminal complaint filed by petitioner, *prima facie* view formed by Judicial Magistrate in terms whereof respondent Nos. 2 to 6 summoned and said complaint is now at stage of evidence and issue is *sub judice* — Neither desirable nor expedient for police authorities to conclude petitioner made false allegations inviting penal consequences under Section 182, IPC — Kalendra and consequential proceedings against petitioner quashed.

Indian Penal Code, 1860 — Sections 182, 324, 323, 326, 341, 148, 149 — Criminal Procedure Code, 1973 — Section 182.

IV (2006) CCR 54 (Punjab & Haryana H.C.)

QUASHING OF ORDER — Dispute as to territorial jurisdiction — Cruelty -- Offence of continuing nature (*See Territorial Jurisdiction*)

IV (2006) CCR 194 (Patna H.C.)

— Entering upon Defence — Petitioner facing trial for alleged commission of offences under Sections 147, 148, 323, 307, 506, 149, IPC and Sections 25, 27, Arms Act — Trial already commenced and some witnesses already examined — Petitions filed under Section 233, Cr.P.C. to summon five witnesses — Another petition filed under Section 91, Cr.P.C. to call for some documents from Under Secretary to Government — Court below after discussing materials available on record concluded issuing summons to official witnesses like Under Secretary to Government, not necessary and rather would not only delay proceedings of case but vexatious attempt — Court below however allowed petitioners to examine K and M as their witnesses — No illegality or infirmity in impugned order — No interference warranted.

Criminal Procedure Code, 1973 — Sections 91, 233, 482 — Indian Penal Code, 1860 — Sections 147, 148, 323, 307, 506, 149 — Army Act — Sections 25, 27.

IV (2006) CCR 243 (Orissa H.C.)

— Obscenity, Criminal Intimidation, Common Intention — Scope of provisions of Sections 467, 468, Cr.P.C. — Limitation for taking cognizance of offence — Imprisonment for offence under Sections 294 and 448, IPC — All offences as per complaint allegedly committed in year 2001 — Cognizance taken in year 2004 — Both offences under Sections 294 and 448, IPC punishable with imprisonment for term not exceeding one year — Period of limitation for taking cognizance is also one year and thus barred by limitation by 27.3.2004 when Court below took cognizance — Reading of allegations made in complaint petition throws cloud of suspicion with regard to commission of any offence under Section 506, IPC — Allegations super-imposed and not believable — This Court has no hesitation to quash impugned order.

Criminal Procedure Code, 1973 — Sections 467, 468(2) — Indian Penal Code, 1860 — Sections 294, 506(1)/34.

IV (2006) CCR 171 (Orissa H.C.)

— Sale of lottery tickets — Bihar Act of 1993 struck down by Patna High Court in case of *Iqbal Chand Khurana* — Doing business of selling lottery tickets of other States not offence — Prosecution of petitioners for selling of lottery tickets of other States in State of Jharkhand not offence since statute itself prohibiting business of selling lottery tickets of other States struck down by Patna High Court — Order passed by Judicial Magistrate refusing to discharge petitioners set aside.

Indian Penal Code, 1860 — Sections 290, 294A — Bihar Ban on Lotteries Act, 1993 — Sections 3, 4 — Criminal Procedure Code, 1973 — Section 482.

IV (2006) CCR 72 (Jharkhand H.C.)

QUASHING OF PROCEEDINGS — Bigamy, cheating — Complaint against husband for offence of Bigamy by father of subsequent wife on her behalf — Complainant's daughter filed affidavit before Magistrate, wherein she stated that at time of marriage she was major and she married appellant on her own free will — She is living happily and peacefully and has no complaint against him or his family members — Specific statement as to fact that written statement not

made under any pressure, undue influence, coercion, threat, force — Magistrate not justified in taking cognizance of case as same not filed by wife of appellant in her capacity as wife — Proceedings quashed.

Indian Penal Code, 1860 — Sections 494, 420 — Criminal Procedure Code, 1973 — Section 482.

IV (2006) CCR 81 (SC)

— Dishonour of Cheque — Question of limitation in filing complaint is question of fact — Quashing not justified and set aside.

IV (2006) CCR 42 (SC)

— Dishonour of Cheque — Service of notice — Presumption (*See Dishonour of Cheque*)

IV (2006) CCR 128 (Allahabad H.C.)

— Evasion of Customs Duty — Setting aside of departmental proceedings against petitioner and department accepted order of Tribunal as final — Prosecuting that person on basis of same set of facts before Criminal Court manifestly unjust and amounts to prosecution — Such prosecution liable to be quashed.

Criminal Procedure Code, 1973 — Section 401 r/w Section 482 — Customs Act, 1962 — Sections 135(1)(b)(ii), 135(1)(a)(i).

IV (2006) CCR 77 (Calcutta H.C.)

— Scope and object of — Guidelines regarding — Discussed.

Criminal Procedure Code, 1973 — Section 401 r/w Section 482.

IV (2006) CCR 77 (Calcutta H.C.)

— Territorial jurisdiction — Dowry Demand, Cruelty — Part of alleged offence *i.e.*, threatening and demand of dowry has taken place within territory of Bokaro (State of Jharkhand), while O.P. No. 2 was staying with her parents — Court not inclined to quash proceedings pending before Sub-Divisional Judicial Magistrate, Bokaro.

Criminal Procedure Code, 1973 — Section 482 — Dowry Prohibition Act, 1961 — Sections 3 and 4 — Indian Penal Code, 1860 — Section 498A.

IV (2006) CCR 181 (Jharkhand H.C.)

QUASHING OF SUMMONS — Dishonour of Cheque — Cheques issued by company to respondent when petitioner was not Director of Company, had resigned more than 9 years before cheques in question issued — Petitioner also placed on record clinching evidence *viz.* certified copy of Form No. 32 to show she was not Director at relevant time — Such document is conclusive of fact that petitioner resigned *w.e.f.* 20.8.1994 — She was not incharge or responsible for day-to-day affairs of company and could not be so — Criminal complaints against petitioner quashed.

Criminal Procedure Code, 1973 — Section 482 — Negotiable Instruments Act, 1881 — Section 138.

IV (2006) CCR 61 (Delhi H.C.)

RAPE — Attempt to commit offence — Reduction of — Ground — Offence committed 12 years ago and prosecutrix already married (*See Sentence*)

Indian Penal Code, 1860 — Section 376 r/w Section 511.

IV (2006) CCR 58 (SC)

— Bail granted to juvenile — No external or internal injury found — Hymen was intact and no bleeding or injury.

IV (2006) CCR 205 (Chhattisgarh H.C.)

— Conviction — Sustainability — Material contradiction in prosecution version — Place of incident within very short distance of house of prosecutrix — Prosecutrix not raised any alarm when she was being raped — Further, when she returned home, no efforts made by her or her family

members to inform villagers about incident — Conduct of prosecutrix and her family members deviant from normal conduct in such cases — In medical examination neither any injury nor any sign of sexual intercourse found — Prosecutrix filed affidavit denying charges against appellant — Prosecution failed to bring home charge against appellant beyond reasonable doubt — Judgment of Trial Court set aside.

Indian Penal Code, 1860 — Section 376.

IV (2006) CCR 11 (Jharkhand H.C.)

- Criminal Intimidation — Reduction of sentence unsustainable — Victim aged 14 years, alone at her house — Accused taking advantage of situation, committed crime (See Sentence)

IV (2006) CCR 50 (SC)

- Wrongful Confinement — Statement of prosecutrix corroborated in material particulars by other materials brought on record — Trial Court sentenced respondent to undergo 3 months' imprisonment — High Court acquitted accused on ground of alleged relationship between prosecutrix and respondent No. 1 — Alleged relationship is of no consequence, particularly having regard to manner in which entire incident took place — It is one thing to say that what sentence should be imposed, but it is another thing to say that only because lesser sentence imposed by Trial Court, same itself would be ground for acquitting respondent-accused — Matter remitted to High Court for fresh consideration — Further directions issued in regards to proceedings against respondent No. 2 as appeal against respondent 1 abates as he is already dead.

Indian Penal Code, 1860 — Sections 376, 342.

IV (2006) CCR 83 (SC)

RECALL OF PROCESS — Dishonour of Cheque — Petitioner alleges complainants were aware at time of transaction with petitioner that petitioner company is declared as sick industrial company under Section 3(1)(o) of SICA — In view of Supreme Court judgment in *Kusum Ingots and Alloys Ltd.*, I (2000) BC 300 (SC)=I (2000) CCR 260=II (2000) SLT 375, option available to petitioner is to go before learned Magistrate and get order — Since issue raised by petitioner on basis of said judgment of Supreme Court goes to root of matter, further proceedings stayed till issue decided by concerned Court.

Negotiable Instruments Act, 1881 — Section 138 — Sick Industrial Companies (Special Provisions) Act, 1985 — Sections 3(1)(o), 22, 22A.

IV (2006) CCR 80 (Bombay H.C.) (DB)

REGISTRATION OF CRIMINAL CASE — Payment of less salaries to employees, preparing false register and embezzlement of money by Managing Committee of College — Petitioners filed complaint to Senior Superintendent of Police making these allegations — Deputy Superintendent of Police found same proved — There was no hitch in registering case and to continue with investigation — Opinion of District Attorney (Legal) that no ground made out to register case, could not override fact finding inquiry report of Deputy Superintendent of Police — Complaint of petitioners along with inquiry report of Deputy Superintendent of Police sent to Senior Superintendent of Police with directions to register case if cognizable offences disclosed from documents.

Criminal Procedure Code, 1973 — Section 482 — Indian Penal Code, 1860 — Sections 406, 409, 415, 420, 467, 468, 471, 120B.

IV (2006) CCR 175 (Punjab & Haryana H.C.)

REVIEW OF ORDER — Murder, disappearance of evidence — Common intention — Magistrate in first order accepted police report mentioning "truth undetected" — In subsequent order on same date CJM took cognizance of offence — This amounts to review of earlier order, which is impermissible in law under Section 362, Cr.P.C. — Subsequent order taking cognizance is bad in law — Order of CJM quashed — Aggrieved person may pursue his remedy available in law.

Criminal Procedure Code, 1973 — Section 362 — Indian Penal Code, 1860 — Sections 302, 201, 34.

IV (2006) CCR 59 (SC)

REVISIONAL JURISDICTION — Inherent Powers, Breach of Peace Concerning Land or Water — Local Inquiry — Bar against second revision — Exercise of inherent powers — Powers of Revisional Court are limited — If view taken by Executive Magistrate is plausible view and based on evidence, no interference by Revisional Court called for — Decision of Executive Magistrate under Sections 145, 148, Cr.P.C. is not based entirely on inspection report but based on evidence on record — No case for interference under Section 482, Cr.P.C. made out.

Criminal Procedure Code, 1973 — Sections 397, 397(3), 439, 482, 145, 146, 148.

IV (2006) CCR 167 (Gauhati H.C.)

REVISION — Dishonour of Cheque — Suspension of sentence — Relief without surrender and undergoing confinement, pending disposal of criminal revision — Courts coming across difficulties of accused and more particularly in cases under Section 138, Negotiable Instruments Act and other compoundable offences where there is possibility of compounding of offence within short period — In such event, insisting upon accused concerned to undergo confinement for seeking relief of suspension of sentence, may result in miscarriage of justice.

Criminal Procedure Code, 1973 — Section 397(1) — Negotiable Instruments Act, 1881 — Section 138.

IV (2006) CCR 8 (Madras H.C.)

— Maintainability — Discharge of Accused — Rejection of prayer of accused for discharge by Magistrate under Section 245(1), Cr.P.C. — Criminal revision petition not maintainable.

Criminal Procedure Code, 1973 — Sections 244, 245(1).

IV (2006) CCR 46 (Kerala H.C.)

— Maintainability — Custody of Minor girl allegedly kidnapped is traced and produced before Magistrate — She has to be sent to her lawful guardian (*See Custody of Child*)

IV (2006) CCR 173 (Karnataka H.C.)

— Maintainability — Dishonour of Cheque — Issue of Process — Aggrieved person can prefer revision against order of Magistrate issuing process — In view of alternative remedy of revision against order issuing process, petition under Section 482, Cr.P.C. not maintainable.

Negotiable Instruments Act, 1881 — Section 138 — Criminal Procedure Code, 1973 — Sections 202, 347(2), 482.

IV (2006) CCR 121 (Bombay H.C.)

— Maintainability — Suspension of Sentence — Revision against concurrent finding of conviction and sentence — Accused need not surrender and undergo confinement — Filing revision without surrendering and confinement is well within power contemplated under Section 397(1), Cr.P.C. — Section 397(1), Cr.P.C. is very clear and there is no ambiguity as reading of words “direct that execution of any sentence or order be suspended”.

Criminal Procedure Code, 1973 — Section 397(1).

IV (2006) CCR 8 (Madras H.C.)

REVISION PETITION — Setting aside interlocutory order — Not maintainable — Order of Presiding Officer in revision petition setting aside interlocutory order of Magistrate is without jurisdiction.

Criminal Procedure Code, 1973 — Sections 397(2), 482.

IV (2006) CCR 173 (Karnataka H.C.)

RIGHT TO PRIVATE DEFENCE — Blows initially not hurled on deceased by appellants — They did so at later stage — But, appellant No. 1 suffered minor injuries — Appellant not able to show situation was such that he could reasonably apprehend his death — Appellants exceeded their right of private defence in using more force upon deceased than necessary.

IV (2006) CCR 1 (SC)

- Murder — Culpable homicide not amounting to murder, Hurt, Common Intention
. (See *Murder*)

IV (2006) CCR 1 (SC)

- Rioting, Unlawful Assembly, Wrongful Confinement, Murder — Second appellant had reasonable apprehension that death or grievous hurt will be consequence on account of deceased party in dragging him to rice mill and threatening him to kill by throwing him into fire — Second appellant inflicted only one stab injury and he cannot be said to have exceeded his right of private defence — Prosecution case that other appellants instigated him and thereafter he stabbed, will fall down to ground like deck of cards — Entire prosecution case thrown out accordingly.

Indian Penal Code, 1860 — Sections 147, 148, 341 r/w Section 149, Section 302 r/w Section 109.

IV (2006) CCR 217 (Madras H.C.) (DB)

SCIENTIFIC TEST — Polygraph, Nuero analysis and brain mapping test — Does not amount to testimonial compulsion — Misappropriation of huge sum of Rs. 594.88 crores by petitioner accused by sale of unlisted shares — Permission to conduct scientific tests on accused, viz. Polygraph, Narco Analysis and Brain Mapping Test and production of accused before FSL — Scientific tests are like MRI or CT Scan — Scientific value of such tests and credibility to be evaluated only during course of trial — Unless such tests conducted, investigating agency may not be in position to come out with clinching testimony against petitioner — Subjecting accused to undergo scientific tests will not amount to breaking his silence by force — Such prayer will not amount to seeking for police custody of accused for further interrogation — Such course does not amount to testimonial compulsion — ACMM granted relief as prayed for by respondent to secure ends of justice — No warrant for upsetting order passed by Court below.

Criminal Procedure Code, 1973 — Sections 167, 397, 401 — Constitution of India, 1950 — Art. 20.

IV (2006) CCR 88 (Madras H.C.)

SECOND REVISION PETITION — Maintainability — Maintenance — Refusal of — Maintenance rejected to wife as she separated from appellant-husband for no justifiable reason — Father of respondent was demanding sum of Rs. 30,000/- for sending her to house of appellant-husband — Revisional Court confirmed findings of fact recorded by trial Magistrate and dismissed revision — In petition under Section 482, Cr.P.C. in form of second revision, High Court awarded maintenance — Nothing in law empowers High Court to set aside concurrent findings of fact recorded by Courts below even without advertng to evidence or recording reasons — Judgment of High Court perverse — Set aside.

Criminal Procedure Code, 1973 — Sections 125, 482.

IV (2006) CCR 55 (SC)

SENTENCE — Modification of — Attempt to Murder — Nature of injury sufficient to justify conviction under Section 307, IPC (See *Attempt to Murder*)

IV (2006) CCR 22 (SC)

- Modification of — Dishonour of Cheque — As per Articles of Association, Managing Director empowered to represent company in legal proceedings (See *Dishonour of Cheque*)

IV (2006) CCR 139 (Karnataka H.C.)

- Reduction of — Challenge against — Culpable homicide not amounting to murder, hurt, house trespass — High Court while maintaining conviction reduced sentence for period already undergone — Perusal of record shows that respondent had undergone only 89 days and not 4 years sentence as submitted — No reason for reducing sentence for such serious offences — Impugned judgment of High Court set aside, while giving opportunity to respondent to argue appeal in High Court on merits.

Indian Penal Code, 1860 — Sections 304 Part II, 452, 323 r/w Section 34.

IV (2006) CCR 82 (SC)

- Reduction of — Legality — Rape — Criminal intimidation — Victim aged 14 years — Additional Sessions Judge punished accused with 10 years' RI and fine of Rs. 5,000/- — High Court by

impugned order reduced sentence for period already undergone, viz. 5 years 4 months and 14 days on ground that appellant accused was illiterate labourer aged 20 years at time of commission of offence — Victim was alone at her house — Accused taking advantage of situation, committed crime — Approach of High Court lacked sensitivity towards minor victim — Order of High Court set aside — Sentence awarded by Trial Court restored.

Indian Penal Code, 1860 — Sections 376, 506.

IV (2006) CCR 50 (SC)

- Reduction of — Rape, Attempt to commit offence — Ground — Offence committed 12 years ago and prosecutrix already married — Prosecutrix 7 years old at time of commission of offence — High Court reduced sentence of imprisonment from 3 years to 6 months and awarded compensation of Rs. 25,000/- — Ground of reduction of sentence taken by High Court unjustified — Impugned order reducing sentence of imprisonment from 3 years to 6 months and compensation of Rs. 25,000/- set aside — Sentence of imprisonment and fine awarded by Trial Court restored.

Indian Penal Code, 1860 — Section 376 r/w Section 511.

IV (2006) CCR 58 (SC)

- Reduction of — Sustainability — Unlawful possession of railway property — Accused unable to explain his possession either by purchase or otherwise — Accused pleaded guilty but prayed for leniency in sentence — Accused was blind, having wife and 3 children — Economic condition poor — He was repenting for offence — No error committed by Magistrate in showing leniency in sentence of accused.

Railway Property (Unlawful Possession) Act, 1966 — Section 3(a).

IV (2006) CCR 152 (Bombay H.C.)

- Reduction below statutory period — Gang Rape — Offence under Section 376(2)(g) considered very serious offence (*See Gang Rape*)

IV (2006) CCR 14 (SC)

- Suspension, Remission, Commutation — Court could not postpone execution of sentence till such time as revision petitioner-accused, moves appropriate Government under Sections 432 and 433, Cr.P.C., for remission or commutation of sentence or order Government to commute sentence.

Criminal Procedure Code, 1973 — Sections 432, 433 — Prevention of Food Adulteration Act, 1954.

IV (2006) CCR 226 (Kerala H.C.)

- Suspension of sentence pending appeal — NDPS — Accused sentenced to undergo RI for 10 years and fine of Rs. 1 lac on each count — Appellant in jail since 1.3.1997 and already undergone more than 7 years of imprisonment — On appellant depositing amount of fine, execution of sentence of imprisonment suspended during pendency of appeal.

Criminal Procedure Code, 1973 — Section 389 — Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 8, 15.

IV (2006) CCR 41 (SC)

- Unlawful possession of liquor — Alteration of Sentence — Seizure of 40 litres of illicit distilled liquor from appellant — Chemical Analysis Report is positive with finding that liquid contained 61.22 alcohol of illicit origin — Government suffered loss of Rs. 1,400/- towards revenue — Trial Court convicted appellant under Section 46A(a)(ii) of Act of 1909 — Challenge against — Non-examination of independent witnesses — There is no prohibition on conviction being recorded on basis of testimony of official witnesses if found to be trustworthy — Detail finding of Trial Court why it was not possible for prosecution to examine independent witness — Further conviction under Section 46A(a)(ii) not maintainable as Court below proceeded on fact, offence committed by accused related to possession and Clause (a) relates to manufacture — Provisions of Section 46A(a)(i) applicable — Conviction accordingly altered — Considering quantum of illicit liquor seized sentence reduced to five months.

Bengal Excise Act, 1909 — Sections 46A(a)(i), 46A(a)(ii) & its proviso.

IV (2006) CCR 12 (SC)

STRANGULATION (*See Suicidal Pact*)

IV (2006) CCR 1 (Delhi H.C.) (DB)

SUICIDAL PACT — Taking risk of death with one's own consent — Alteration in conviction — Murder, Culpable homicide not amounting to murder — Strangulation — Appellant held guilty under Section 302 for murder of his wife — Hence present appeal — Suicidal pact between appellant and wife, in furtherance whereof, deceased wife consumed Tik-20 — Wife panicked upon feeling choked and uncomfortable — At this time, accused, in order to prevent her from screaming, applied pressure on her neck — Wife died of asphyxia due to strangulation — Cannot be said appellant had intent to cause death — No premeditation on part of appellant to kill wife — Case of pact of suicide in which deceased partook — Act of strangulation done in heat of passion — Couple were happily married, no strained relations or motive, other than suicide pact — Exception 5 to Section 300, IPC attracted — Nothing to suggest that deceased resisted strangulation — Same shows she had consented to act of her husband — Benefit of Exception to be given — Case would, at highest, fall under Section 304, IPC — Conviction altered accordingly.
Indian Penal Code, 1860 — Sections 300 Exception 5, 302 and 304 (Part I).

IV (2006) CCR 1 (Delhi H.C.) (DB)

SUSPENSION OF SENTENCE PENDING APPEAL — Bail granted — Co-accused, already released on bail (*See Bail*)

IV (2006) CCR 50 (SC)

TERRITORIAL JURISDICTION — Criminal Conspiracy, Miscarriage, Cruelty — Cause of action — Section 177 provides every offence shall ordinarily be enquired into and tried by Court within whose jurisdiction it was committed — Complainant abused, beaten and tortured at Gangapur — Petitioner refused to hand over stridhan there only — Miscarriage also caused at Gangapur — No cause of action arose at Niwai — Niwai Court have no jurisdiction to deal same.
Criminal Procedure Code, 1973 — Sections 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 482 — Indian Penal Code, 1860 — Sections 120B, 313, 498A.

IV (2006) CCR 110 (Rajasthan H.C.)

— Cruelty, Grievous Hurt, Attempt to Murder, Criminal Intimidation — Continuing Offence — After three to four months of solemnization of marriage dowry demand made in M.P. which was informed over telephone by victim to her mother in U.P. — No reference of any cause of action within State of U.P. is available.

IV (2006) CCR 191 (Allahabad H.C.) (DB)

— Cruelty — Offence of continuing nature — Informant left her matrimonial home *i.e.* U.P. and presently residing at her parental home *i.e.* Patna, within local area of Magistrate, demand of dowry and also threat in case demand not met Second marriage of her husband shall be performed, made in Patna.

IV (2006) CCR 194 (Patna H.C.)

— Dowry Demand, Cruelty — Quashing of Proceedings — Part of alleged offence *i.e.*, threatening and demand of dowry has taken place within territory of Bokaro (State of Jharkhand), while O.P. No. 2 was staying with her parents — Court not inclined to quash proceedings pending before Sub-Divisional Judicial Magistrate, Bokaro.
Criminal Procedure Code, 1973 — Section 482 — Dowry Prohibition Act, 1961 — Sections 3 and 4 — Indian Penal Code, 1860 — Section 498A.

IV (2006) CCR 181 (Jharkhand H.C.)

— If cause of action arises within jurisdiction of Court fully or partially, such Court empowered to entertain, try and determine matter irrespective of seat of Government.

IV (2006) CCR 191 (Allahabad H.C.) (DB)

- Police Officer's power to investigate cognizable case — FIR alleged to have been registered where offence not committed — Registration of crime by police unsustainable — Matter at stage of investigation — Competent police officer and relevant police station at liberty to further proceed with investigation if any appropriate steps taken by concerned in this regard.

Criminal Procedure Code, 1973 — Sections 2(g), 2(h), 36, 156, 181, 181(4).

IV (2006) CCR 97 (Andhra Pradesh H.C.)

THEFT — Dishonestly receiving stolen property — Bail not cancelled — No suppression of fact that bail application pending before High Court and stating no bail application pending either before Sessions Court or High Court — *Bona fide* mistake due to illiteracy.

IV (2006) CCR 95 (Chhattisgarh H.C.)

- Hurt — Ingredients of theft — Prosecution not established by cogent evidence to prove that PW 1 had title over MOs 1 to 11 — Only possession is proved — Robbery is higher manifested form of offence of theft — Evidence of PW 1 may prove MOs 1 to 11 have been taken without her consent but there is dispute with regard to title over MOs 1 to 11 — It cannot be categorically said accused was guilty of dishonestly taking away property — Taking of property by violence and force may be unlawful but such conduct may not amount to robbery — For injuries inflicted on PW 1, accused held guilty under Section 324, IPC and sentenced to fine of Rs. 20,000/- with directions.

Indian Penal Code, 1860 — Sections 324, 378, 379.

IV (2006) CCR 84 (Karnataka H.C.)

TRANSFER PETITION — Transfer of case to another Court — 40 witnesses already examined and about 15 more witnesses left to be examined — Trial at final stage — Impugned order of transferring case from Court of Sessions Judge, Ghaziabad to Court of Sessions Judge, Dehradun set aside.

IV (2006) CCR 37 (SC)

- Transfer of Case — Powers of High Court — High Court has no jurisdiction to make inter-State transfer.

IV (2006) CCR 37 (SC)

- Transfer of complaint — Complaint instituted by respondent company against petitioner and also criminal complaint instituted by petitioner against Director of respondent company pending at Mumbai — Subsequently, respondent-company initiated proceedings against petitioner at Delhi — Petitioner residing at Mumbai and has child of 7 years — Considering hardship likely to be faced by petitioners in travelling to Delhi — In view of fact other criminal proceedings pending at Mumbai — Fit case to transfer petition.

Criminal Procedure Code, 1973 — Section 406 — Negotiable Instruments Act, 1881 — Section 138 r/w Section 142.

IV (2006) CCR 36 (SC)

UNLAWFUL COMPULSORY LABOUR — Victim at time of incident was minor and below 14 years — Provisions of Child Labour Act applicable for forced domestic labour to provisions of Section 374, IPC — Even under general law, contract or agreement with minor is void — Acquittal of respondents on ground of agreement between respondents and victim for domestic work *prima facie* appears illegal — Even his father could not have entered into such kind of agreement or contract for minor — Sufficient and reliable evidence available on record against respondent for unlawfully taking compulsory labour from minor victim — From evidence of DW 1 it is proved money was due and from prosecution evidence it is proved victim unlawfully compelled to work as forced and compulsory labourer in lieu of money taken by his father — This constitutes offence under Section 374, IPC — Impugned judgment of acquittal set aside — Instead of awarding jail sentence, respondents awarded with fine of Rs. 5,000/- each.

Indian Penal Code, 1860 — Section 374 — Criminal Procedure Code, 1973 — Section 378 — Child Labour (Prohibition and Regulation) Act, 1986.

IV (2006) CCR 230 (Madhya Pradesh H.C.)

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IV (2006) CCR 67 (SC)

- **Section 3(1)** — Preventive Detention Order — Legality — Challenge against — Detention order served on detenu on 20.2.2006 — Grounds of detention served on 21.2.2006 — Material and relied upon documents served on 24.2.2006 — Incumbent, in law, upon detaining authority to serve relied upon documents on same date *i.e.* on 21.2.2006 itself *pari pasu* along with grounds of detention — This having not been done — Detention order void *ab initio* — Same struck down — Detenu be set at liberty.

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- **Arts. 20, 20(3)** — Right of accused to be silent — Process of conducting scientific tests on accused does not amount to compelling witness to give evidence against him.

IV (2006) CCR 88 (Madras H.C.)

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IV (2006) CCR 84 (SC)

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- **Sections 2(g), 2(h), 36, 156, 181, 181(4)** — Territorial Jurisdiction — Police Officer's power to investigate cognizable case — FIR alleged to have been registered where offence not committed — Registration of crime by police unsustainable — Matter at stage of investigation — Competent police officer and relevant police station at liberty to further proceed with investigation if any appropriate steps taken by concerned in this regard.

IV (2006) CCR 97 (Andhra Pradesh H.C.)

- Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 8(c) r/w Sections 20(1)(ii)(A), 36A(1)(a) — **Criminal Procedure Code, 1973 — Section 4(2) Schedule I, Classification 2** — Bailable Offence — Offences arising under NDPS Act punishable with imprisonment for less than 3 years are bailable one — Provision under Section 36A(1)(a) of Act is unambiguous — Special Court empowered to try only offences punishable with imprisonment for term of more than 3 years — Section 36A(1)(a) of Act r/w Section 4(2), Cr.P.C. empowers other Magistrates to try offences punishable with imprisonment less than 3 years in accordance with Cr.P.C. — Said provision went unnoticed by Courts below — There is flood of cases before Special Court resulting in delay in disposal of cases including bail applications — Magistrate Courts and District Courts should give effect to provisions under Section 36A(1)(a) of NDPS Act r/w Section 4(2) of Cr.P.C. Schedule I, Classification 2 in letter and spirit — Petitioner to be released on bail with conditions.

IV (2006) CCR 103 (Madras H.C.)

- **Sections 82/83, 205** — Exemption from personal appearance — Non grant of by Magistrate — Non-bailable warrants issued could not be executed because he was untraceable — Issuance of process under Sections 82/83, Criminal Procedure Code — Legality — Petitioner not absconding or evading Court process — In fact appearing through Counsel — Petitioner one of accused persons in case under Sections 138/141, Negotiable Instruments Act — In view of judgments of this Court, laying down clear principle and procedure required to be followed, orders issuing non-bailable warrants and initiation of process under Sections 82/83 could not have been passed against petitioner — Petitioner assured his appearance before Trial Court — Impugned orders quashed.

IV (2006) CCR 178 (Delhi H.C.)

- **Sections 91, 233, 482** — Indian Penal Code, 1860 — Sections 147, 148, 323, 307, 506, 149 — Army Act — Sections 25, 27 — Quashing of Order — Entering upon Defence — Petitioner facing trial for alleged commission of offences under Sections 147, 148, 323, 307, 506, 149, IPC and Sections 25, 27, Arms Act — Trial already commenced and some witnesses already examined — Petitions filed under Section 233, Cr.P.C. to summon five witnesses — Another petition filed under Section 91, Cr.P.C. to call for some documents from Under Secretary to Government — Court below after discussing materials available on record concluded issuing summons to official witnesses like Under Secretary to Government, not necessary and rather would not only delay proceedings of case but vexatious attempt — Court below however allowed petitioners to examine K and M as their witnesses — No illegality or infirmity in impugned order — No interference warranted.

IV (2006) CCR 243 (Orissa H.C.)

- **Section 125** — Maintenance to mother — Challenge against quantum — Petitioner directed to pay sum of Rs. 1,000 p.m. as maintenance to O.P. No. 2, mother of petitioner — Petitioner earning about Rs. 7,000 p.m. — Family Court took into consideration relevant aspects and felt O.P. No. 2 is mother of petitioner and aged 65 years and awarded Rs. 1,000 as maintenance — No reason to interfere with amount awarded by Family Court.

IV (2006) CCR 177 (Jharkhand H.C.)

- Maintenance — Refusal of — Second revision petition — Maintainability — Maintenance rejected to wife as she separated from appellant-husband for no justifiable reason — Father of respondent was demanding sum of Rs. 30,000/- for sending her to house of appellant-husband — Revisional Court confirmed findings of fact recorded by trial Magistrate and dismissed revision — In petition under Section 482, Cr.P.C. in form of second revision, High Court awarded maintenance — Nothing in law empowers High Court to set aside concurrent findings of fact recorded by Courts below even without advertng to evidence or recording reasons — Judgment of High Court perverse — Set aside — **Criminal Procedure Code, 1973 — Sections 125, 482.**

IV (2006) CCR 55 (SC)

- **Sections 154, 156(1), 156(3)** — Indian Penal Code, 1860 — Sections 323, 406, 498A, 504, 506 — Cruelty, Criminal Intimidation, Hurt, Criminal Breach of Trust — Powers of Magistrate — Registration of FIR — Scope of provision of Section 156(3), Cr.P.C. — No scope for police officer

to refuse registration of any information as an FIR which discloses cognizable offence — Police officer can investigate FIR of cognizable offence without order passed by Magistrate concerned — In case police refuses to register FIR, Magistrate may direct police to register FIR and order for investigation into such offences — By not following mandate of law not only Magistrate has committed miscarriage of justice but has given blow to person seeking justice from him, for inaction on part of police, for torture of his daughter at hands of accused — Glaring example of miscarriage of justice and flouting mandate of law — Impugned order quashed — ACMM directed to reconsider application under Section 156(3), Cr.P.C.

IV (2006) CCR 19 (Allahabad H.C.)

- **Section 159** — Power of Magistrate to hold investigation or preliminary inquiry — Scope of Section 159, Cr.P.C. — Section 159, Cr.P.C. confers power on Magistrate only to conduct inquiry and not to proceed to place and conduct local inspection — Words “at once proceed” occurring in Section 159, Cr.P.C. qualifies word ‘inquiry’ — Contention that in view of provision in Section 159, Cr.P.C., Magistrate has got power to proceed to the spot and hold inquiry not correct.

IV (2006) CCR 152 (Kerala H.C.)

- **Sections 167, 397, 401** — Constitution of India, 1950 — Art. 20 — Polygraph, Nuero analysis and brain mapping test — Does not amount to testimonial compulsion — Misappropriation of huge sum of Rs. 594.88 crores by petitioner accused by sale of unlisted shares — Permission to conduct scientific tests on accused, viz. Polygraph, Narco Analysis and Brain Mapping Test and production of accused before FSL — Scientific tests are like MRI or CT Scan — Scientific value of such tests and credibility to be evaluated only during course of trial — Unless such tests conducted, investigating agency may not be in position to come out with clinching testimony against petitioner — Subjecting accused to undergo scientific tests will not amount to breaking his silence by force — Such prayer will not amount to seeking for police custody of accused for further interrogation — Such course does not amount to testimonial compulsion — ACMM granted relief as prayed for by respondent to secure ends of justice — No warrant for upsetting order passed by Court below.

IV (2006) CCR 88 (Madras H.C.)

- **Sections 173(2), 173(8)** — Report of police officer on completion of investigation — Further Investigation — Amount obtained fraudulently by putting forged signatures of informant — Section 173(8), Cr.P.C. provides provisions for further investigation of offence after police report submitted under Section 173(2), Cr.P.C. — Payments were made by petitioners on cheques presented before them bearing forged signatures of witnesses, police by placing additional memo of evidence requested before Court below by way of requisition to issue arrest warrant against petitioners — Impugned order calls for no interference at this stage as trial very much in progress.

IV (2006) CCR 55 (Jharkhand H.C.)

- **Sections 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 482** — Indian Penal Code, 1860 — Sections 120B, 313, 498A — Territorial Jurisdiction — Criminal Conspiracy, Miscarriage, Cruelty — Cause of action — Section 177 provides every offence shall ordinarily be enquired into and tried by Court within whose jurisdiction it was committed — Complainant abused, beaten and tortured at Gangapur — Petitioner refused to hand over stridhan there only — Miscarriage also caused at Gangapur — No cause of action arose at Niwai — Niwai Court have no jurisdiction to deal same.

IV (2006) CCR 110 (Rajasthan H.C.)

- Indian Penal Code, 1860 — Sections 498A, 326, 307 and 506 — Dowry Prohibition Act, 1961 — Sections 3 and 4 — **Criminal Procedure Code, 1973 — Section 178** — Quashing of FIR — Territorial Jurisdiction — Cruelty, Grievous Hurt, Attempt to Murder, Criminal Intimidation — Continuing Offence — After three to four months of solemnization of marriage dowry demand made in M.P. which was informed over telephone by victim to her mother in U.P. — No reference of any cause of action within State of U.P. is available — Telephonic conversation of year 2003 in between victim and mother is stray incident and cannot be regarded as incident immediate before occurrence of crime for treating it as continuance of offence — Offence committed at appropriate place of M.P., considered to be place of jurisdiction over matter — No cause of action arose within

jurisdiction of State of Uttar Pradesh — Order will not affect right of police authority in transmitting FIR to appropriate police authority in M.P. for investigation.

IV (2006) CCR 191 (Allahabad H.C.) (DB)

- **Sections 178(c), 482** — Indian Penal Code 1860 — Section 498A — Dowry Prohibition Act, 1961 — Sections 3 and 4 — Quashing of Order — Territorial Jurisdiction — Dowry Demand, Cruelty — Offence of continuing nature — Informant left her matrimonial home *i.e.* U.P. and presently residing at her parental home *i.e.* Patna, within local area of Magistrate, demand of dowry and also threat in case demand not met Second marriage of her husband shall be performed, made in Patna — Offence committed in more than one local area and it consists of several acts and it can be tried by Court having jurisdiction over any of such local areas.

IV (2006) CCR 194 (Patna H.C.)

- Indian Penal Code, 1860 — Sections 182, 324, 323, 326, 341, 148, 149 — **Criminal Procedure Code, 1973** — **Section 182** — Quashing of Kalendra and consequential proceedings — Petitioner complainant dissatisfied with manner in which investigation carried out by police — He filed petition in this Court to direct investigating agency to expedite and complete investigation and to present challan — Instead of conducting fresh investigation, as directed by Judicial Magistrate, police authorities initiated proceedings under Section 182, IPC against petitioner and presented Kalendra — Till date no verdict by any Court of competent jurisdiction holding allegations levelled by petitioner in FIR or in his criminal complaint are false or fabricated to his knowledge — In private criminal complaint filed by petitioner, *prima facie* view formed by Judicial Magistrate in terms whereof respondent Nos. 2 to 6 summoned and said complaint is now at stage of evidence and issue is *sub judice* — Neither desirable nor expedient for police authorities to conclude petitioner made false allegations inviting penal consequences under Section 182, IPC — Kalendra and consequential proceedings against petitioner quashed.

IV (2006) CCR 54 (Punjab & Haryana H.C.)

- **Section 190** — Expression — “cognizance” — Meaning — When Magistrate or Judge first takes cognizance of offence.

IV (2006) CCR 197 (Gauhati H.C.)

- **Sections 190, 190(1)(a), 190(1)(b), 190(1)(c), 191, 200, 201, 202, 203, 204, 156(3)** — Powers of Magistrate — Cognizance of offence — Practice and Procedure — Different modes of taking cognizance — When Magistrate receives complaint, he is not bound to take cognizance even if offence alleged in complaint discloses commission of offence — Whether Magistrate has or has not taken cognizance of offence will depend on circumstances of particular case including mode in which case sought to be instituted and nature of preliminary action, if any, taken by Magistrate — When complaint is prescribed before Magistrate, he can either direct investigation in terms of Section 156(3), Cr.P.C. or may decide to proceed with complaint — Act of proceeding with examination of complaint under Section 200, Cr.P.C. indicative of fact that Magistrate has taken cognizance of offence and decided to proceed accordingly — Scope of various provisions discussed — It is duty of Magistrate to assign cogent reason for opting to reject final report.

IV (2006) CCR 197 (Gauhati H.C.)

- **Section 198(1)** — Expression — “some person aggrieved” — Meaning — Any person who is member of group of “aggrieved persons” can file complaint for offences falling under Chapter XX of I.P.C. — Words “some person aggrieved” appearing in Section 198 of Code used to include also persons other than spouses — Apart from aggrieved husband or wife their son can be treated as person aggrieved by offence under Section 494, I.P.C. — He can also file complaint alleging offence of bigamy as person who belongs to group of “some person aggrieved” under Section 198(1), Cr.P.C.

IV (2006) CCR 111 (Kerala H.C.)

- Indian Penal Code, 1860 — Sections 494 and 34 — **Criminal Procedure Code, 1973** — **Section 198(1) Proviso (c)** — Bigamy — Complaint to be filed by “person aggrieved” — Written authorisation from mother not necessary for son to file complaint on behalf of his mother — Second respondent-son himself was aggrieved by act of bigamy — He narrated in detail, his

personal grievances because of second marriage of his father — He himself is aggrieved and this is in addition to personal grievances of his mother — Allegations in complaint *prima facie* constitute offence under Section 494, I.P.C. — No authorisation from aggrieved wife required — Not necessary to mention in complaint that complaint is filed on behalf of his mother, even if it is filed at her request — Son is entitled to file complaint even on his own behalf.

IV (2006) CCR 111 (Kerala H.C.)

- **Section 198(1) Proviso (c)** — Expression — “On her behalf” — Meaning.

IV (2006) CCR 111 (Kerala H.C.)

- Negotiable Instruments Act, 1881 — Section 138 — **Criminal Procedure Code, 1973 — Sections 202, 347(2), 482** — Dishonour of Cheque — Issue of Process — Aggrieved person can prefer revision against order of Magistrate issuing process — In view of alternative remedy of revision against order issuing process, petition under Section 482, Cr.P.C. not maintainable.

IV (2006) CCR 121 (Bombay H.C.)

- **Sections 208, 209, 310(1), 310(2), 319** — “Local Inspection” — Powers of Magistrate — Scope of Section 310, Cr.P.C. — Meaning of expression ‘other proceedings’ in Section 310, Cr.P.C. — Committal Magistrate considering final report of case exclusively triable by Court of Sessions under Section 209, Cr.P.C. has no jurisdiction to conduct local inspection in exercise of powers conferred on him under Section 310, Cr.P.C. at that stage.

IV (2006) CCR 152 (Kerala H.C.)

- Framing of Charge — Mere dismissal of application under Section 482, Cr.P.C. does not take away right of accused to place materials at time when question of framing of charge taken up to show materials do not justify framing of charge — **Criminal Procedure Code, 1973 — Section 228.**

IV (2006) CCR 60 (SC)

- Foreigners Order, 1948 — Clause 7(2) r/w Section 14 of Foreigners Act, 1946 — **Criminal Procedure Code, 1973 — Sections 239, 482, 397, 399** — Discharge of Accused — Accused alleged to have overstayed without proper residential permit — Case registered against her under Section 14 of Act and Clause 7(2) of Order, 1948 — Whether subsequently permission granted to her to have effect of regularising earlier period of overstay — Whether there was violation of condition of residential permit requiring application for extension of period to be made fifteen days before — These are all questions of law and fact — At this stage both Courts below have sufficient material to proceed against petitioner for her alleged overstay beyond permit period.

IV (2006) CCR 213 (Karnataka H.C.)

- **Sections 244, 245(1)** — Discharge of Accused — Revision — Maintainability — Rejection of prayer of accused for discharge by Magistrate under Section 245(1), Cr.P.C. — Criminal revision petition not maintainable.

IV (2006) CCR 46 (Kerala H.C.)

- **Sections 303, 304** — Legal Services Authorities Act, 1997 — Sections 13, 29 — M.P. Legal Services Authorities Regulations, 1997 — Regulation 33 — Constitution of India, 1950 — Article 22(1) — Right to be Defended by Legal Practitioner — Accused does not have sufficient means to engage Pleader — Provisions of Section 304, Cr.P.C. never come in way of right of accused to be defended by Advocate of his choice — Under provisions of Article 22(1) of Constitution also accused of offence has got legal right to engage any Lawyer of his own choice — This freedom of accused cannot be taken away by Court only on ground that legal aid already provided to accused in case — Accused can always on later stage of trial engage Counsel of his choice if circumstances permit him.

IV (2006) CCR 85 (Madhya Pradesh H.C.)

- Evidence of Approver — To be viewed with suspicion especially when it is seriously suspected that he is suppressing some material facts — When Court suspected evidence of approver, pardon given to him itself could be withdrawn and he could be tried along with other accused —

But unfortunately provisions contained in Cr.P.C. do not enable Court to take such strong action — If approver is wilfully concealing anything essential or giving false evidence or not complied with conditions on which tender of pardon made, approver can be tried for offence in respect of which he had been given pardon — **Criminal Procedure Code, 1973 — Sections 306, 308, 308 proviso.**

IV (2006) CCR 29 (SC)

- **Section 310** — Expression 'other proceedings' — Meaning of — Principles of *ejusdem generis* would apply and would restrict meaning of words 'other proceedings' to proceeding in which evidence required to be adduced — Expression 'other proceedings' means proceedings initiated by Executive Magistrate under Section 133 or 145, Cr.P.C.

IV (2006) CCR 152 (Kerala H.C.)

- **Section 310** — "Local Inspection" — Though Magistrate has power to conduct local inspection that can only be for purpose of appreciating evidence on record and not be done in manner so as to reduce Magistrate as witness — Reasons given by Magistrate for conducting local inspection, not justified.

IV (2006) CCR 152 (Kerala H.C.)

- Negotiable Instruments Act, 1881 — Sections 138, 139 — **Criminal Procedure Code, 1973 — Section 313** — Dishonour of Cheque — Presumption available under Section 139 of Act in favour of complainant is rebuttable presumption but same cannot be rebutted only by suggestions or statements given by accused under Section 313, Cr.P.C. — Accused chose not to step in witness box to try to rebut said presumption.

IV (2006) CCR 20 (Bombay H.C.)

- **Section 313** — Power to examine accused — Statement of accused under Section 313, Cr.P.C. by way of affidavit — Relevancy — Law regarding — Discussed.

IV (2006) CCR 144 (Madras H.C.) (DB)

- Proceedings against Persons Appearing Guilty of Offence — Murder, Unlawful Assembly — Summons under Section 319, Cr.P.C. issued after entire evidence recorded and statements of accused under Section 313, Cr.P.C. recorded, arguments heard and judgment reserved — Police papers not supplied to them — Incident relates to year 1990 — Four accused convicted and it has attained finality — Appellants could not have been directed to be retried — Impugned judgment of High Court directing re-trial of appellants set aside and upheld to extent it set aside judgment and order of Court of Session convicting appellants — Indian Penal Code, 1860 — Sections 302, 149 — **Criminal Procedure Code, 1973 — Section 319.**

IV (2006) CCR 48 (SC)

- **Section 319** — Proceedings against person appearing guilty of offence — Extra-ordinary power conferred on Courts and to be used very sparingly — Merely because some statements made against petitioners, they cannot be impleaded as accused in mechanical manner — Only if compelling situation is existing and there is any likelihood of order of conviction being passed against newly arrayed accused, they may be summoned to be arrayed as accused — Unless PWs cross-examined, it cannot be said their evidence is fully recorded — In absence of cross-examination of PWs 2 and 3, impugned order based on material collected during course of examination-in-chief cannot be sustained and set aside.

IV (2006) CCR 52 (Karnataka H.C.)

- **Sections 320, 320(1), 320(2), 320(8)** — Compounding of Offence — Degree of wrong done to State through commission of offence appears to be basis, whether offence would be compoundable or not — Principle of generalisation — Where interest of public not rightly affected, complainant may be permitted to come to compromise with party against whom he originally complained of and offence being those mentioned under Section 320, Cr.P.C. — In case of non-compoundable offence, and not mentioned under Section 320, Cr.P.C., Court should consider facts and circumstances of each case and allow parties to compromise to restore amicable and harmonious relationship between parties, which otherwise would likely to result in enduring feud.

IV (2006) CCR 91 (Kerala H.C.)

- Indian Penal Code, 1860 — Sections 143, 147, 148, 324, 447 — **Criminal Procedure Code, 1973 — Section 320(8)** — Amicable settlement of dispute — Compounding of offence — Rioting, Unlawful Assembly, Hurt, Trespass — Offences under Sections 143, 147 and 148, IPC not compoundable under Section 320, Cr.P.C. — Parties have settled matter among themselves — This Court permits them to compound offence as it does not affect any one else except PWs 1 and 2 as well as accused in case — Sections 447 and 324, IPC already compounded by parties — Accused acquitted of all offences alleged against him under Section 320(8), Cr.P.C.

IV (2006) CCR 91 (Kerala H.C.)

- Review of Order — Murder, disappearance of evidence — Common intention — Magistrate in first order accepted police report mentioning “truth undetected” — In subsequent order on same date CJM took cognizance of offence — This amounts to review of earlier order, which is impermissible in law under Section 362, Cr.P.C. — Subsequent order taking cognizance is bad in law — Order of CJM quashed — Aggrieved person may pursue his remedy available in law — **Criminal Procedure Code, 1973 — Section 362** — Indian Penal Code, 1860 — Sections 302, 201, 34.

IV (2006) CCR 59 (SC)

- **Section 374** — Indian Penal Code, 1860 — Sections 294, 323 — Obscenity — Animosity between complainant-appellant and accused-respondents with regard to management and agreement to sell of rice mill — Case of complainant developed from stage to stage — Contradictions in evidence of prosecution witnesses — Facts and circumstances of case show accused-respondents might have committed offence but there is long gap between might have and must have — It would be travesty of justice to convert order of acquittal after 18 years of incident as incident alleged to have taken place on 24.3.1987 — About 19 years elapsed — Order of acquittal passed by Trial Court confirmed.

IV (2006) CCR 119 (Orissa H.C.)

- **Section 378** — Indian Penal Code, 1860 — Sections 307, 326 — Appeal against acquittal — Attempt to Murder, Grievous Hurt — Testimony of injured eye witness as sole witness to occurrence — Assessment of evidence — Trial Court doubted her veracity because of discrepancies and there being no corroborative evidence — Several discrepancies noted relating to actual weapon of offence — Trial Court granted benefit of doubt to accused — Trial Court committed no illegality or perversity in appreciating evidence and circumstances — No evidence on record that PW 2 had no injury on her palms — When two views are possible from evidence on record and Trial Court accepted one out of same, no reason to interfere with same by this Court that too after lapse of two decades from date of occurrence.

IV (2006) CCR 210 (Orissa H.C.)

- Indian Penal Code, 1860 — Section 374 — **Criminal Procedure Code, 1973 — Section 378** — Child Labour (Prohibition and Regulation) Act, 1986 — Appeal against acquittal — Unlawful compulsory labour — Victim at time of incident was minor and below 14 years — Provisions of Child Labour Act applicable for forced domestic labour to provisions of Section 374, IPC — Even under general law, contract or agreement with minor is void — Acquittal of respondents on ground of agreement between respondents and victim for domestic work *prima facie* appears illegal — Even his father could not have entered into such kind of agreement or contract for minor — Sufficient and reliable evidence available on record against respondent for unlawfully taking compulsory labour from minor victim — From evidence of DW 1 it is proved money was due and from prosecution evidence it is proved victim unlawfully compelled to work as forced and compulsory labourer in lieu of money taken by his father — This constitutes offence under Section 374, IPC — Impugned judgment of acquittal set aside — Instead of awarding jail sentence, respondents awarded with fine of Rs. 5,000/- each.

IV (2006) CCR 230 (Madhya Pradesh H.C.)

- Appeal against Acquittal — Refusal to grant leave to file appeal against acquittal — No reasons given by High Court — High Court as first Court of Appeal ought to have re-appreciated entire

evidence on record independently and returned its findings objectively as regard guilt or otherwise of accused — It has failed to do so — Primary ground for acquittal seems to be eye-witnesses did not make any effort to save deceased and their presence is doubtful — High Court completely oblivious to fact that by such refusal, close scrutiny of order of acquittal, by Appellate Forum, has been lost once and for all — Absence of reasons has rendered High Court order unsustainable — **Criminal Procedure Code, 1973 — Section 378(1), 378(3).**

IV (2006) CCR 84 (SC)

- **Section 386** — Powers of Appellate Court — Court must decide appeal after perusing record — Hearing of parties is subject to appearance of Pleaders.

IV (2006) CCR 64 (Bombay H.C.)

- Suspension of sentence pending appeal — Accused sentenced to undergo RI for 10 years and fine of Rs. 1 lac on each count — Appellant in jail since 1.3.1997 and already undergone more than 7 years of imprisonment — On appellant depositing amount of fine, execution of sentence of imprisonment suspended during pendency of appeal — **Criminal Procedure Code, 1973 — Section 389** — Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 8, 15.

IV (2006) CCR 41 (SC)

- Bail — Grant of — Suspension of sentence pending appeal — Murder, Common Intention — Co-accused, to whom stab-injury by knife attributed, already released on bail — Only allegation against appellant is he caused injury with piece of brick — Appellant entitled to be enlarged on bail — Sentence passed against appellant pending criminal appeal suspended — **Criminal Procedure Code, 1973 — Section 389** — Indian Penal Code, 1860 — Section 302 r/w Section 34.

IV (2006) CCR 50 (SC)

- **Sections 397, 397(3), 439, 482, 145, 146, 148** — Revisional Jurisdiction, Inherent Powers, Breach of Peace Concerning Land or Water — Local Inquiry — Bar against second revision — Exercise of inherent powers — Powers of Revisional Court are limited — If view taken by Executive Magistrate is plausible view and based on evidence, no interference by Revisional Court called for — Decision of Executive Magistrate under Sections 145, 148, Cr.P.C. is not based entirely on inspection report but based on evidence on record — No case for interference under Section 482, Cr.P.C. made out.

IV (2006) CCR 167 (Gauhati H.C.)

- **Section 397(1)** — Revision — Maintainability — Suspension of Sentence — Revision against concurrent finding of conviction and sentence — Accused need not surrender and undergo confinement — Filing revision without surrendering and confinement is well within power contemplated under Section 397(1), Cr.P.C. — Section 397(1), Cr.P.C. is very clear and there is no ambiguity as reading of words “direct that execution of any sentence or order be suspended”.

IV (2006) CCR 8 (Madras H.C.)

- **Section 397(1)** — Negotiable Instruments Act, 1881 — Section 138 — Revision — Dishonour of Cheque — Suspension of sentence — Relief without surrender and undergoing confinement, pending disposal of criminal revision — Courts coming across difficulties of accused and more particularly in cases under Section 138, Negotiable Instruments Act and other compoundable offences where there is possibility of compounding of offence within short period — In such event, insisting upon accused concerned to undergo confinement for seeking relief of suspension of sentence, may result in miscarriage of justice.

IV (2006) CCR 8 (Madras H.C.)

- **Sections 397(2), 482** — Revision petition setting aside interlocutory order — Not maintainable — Order of Presiding Officer in revision petition setting aside interlocutory order of Magistrate is without jurisdiction.

IV (2006) CCR 173 (Karnataka H.C.)

- **Sections 397(2), 482** — Revision — Custody of victim girl — Minor girl allegedly kidnapped is traced and produced before Magistrate — She has to be sent to her lawful guardian — Any

dispute as to who is her lawful guardian or minor girl reluctant to go with lawful guardian, appropriate order for interim custody of victim girl to be made by Judicial Magistrate before whom she may be produced — Where minor girl allegedly kidnapped for purpose of marrying her without consent of lawful guardian, paramount consideration in such cases is welfare of victim girl — Magistrate gave tentative custody of girl to grand parents — They were not lawful guardians when parents of girl available — Victim girl is not property or vehicle seized in criminal case — Such order for interim custody can be reviewed as many times as circumstances require — Victim girl expressed her desire to go with her parents *i.e.* revision petitioners — This Court is of opinion that she shall be given to interim custody of revision petitioners by imposing certain conditions.

IV (2006) CCR 173 (Karnataka H.C.)

- **Section 401 r/w Section 482** — Quashing of proceeding — Scope and object of — Guidelines regarding — Discussed.

IV (2006) CCR 77 (Calcutta H.C.)

- **Section 401 r/w Section 482** — Customs Act, 1962 — Sections 135(1)(b)(ii), 135(1)(a)(i) — Quashing of proceedings — Evasion of Customs Duty — Setting aside of departmental proceedings against petitioner and department accepted order of Tribunal as final — Prosecuting that person on basis of same set of facts before Criminal Court manifestly unjust and amounts to prosecution — Such prosecution liable to be quashed.

IV (2006) CCR 77 (Calcutta H.C.)

- Transfer Petition — Transfer of complaint — Complaint instituted by respondent company against petitioner and also criminal complaint instituted by petitioner against Director of respondent company pending at Mumbai — Subsequently, respondent-company initiated proceedings against petitioner at Delhi — Petitioner residing at Mumbai and has child of 7 years — Considering hardship likely to be faced by petitioners in travelling to Delhi — In view of fact other criminal proceedings pending at Mumbai — Fit case to transfer petition — **Criminal Procedure Code, 1973 — Section 406** — Negotiable Instruments Act, 1881 — Section 138 r/w Section 142.

IV (2006) CCR 36 (SC)

- Indian Penal Code, 1860 — Sections 363, 364A read with Section 120B — **Criminal Procedure Code, 1973 — Section 428** — Kidnapping for Ransom, Criminal Conspiracy — No infirmity in order under challenge — Conviction upheld — Criticism with regard to non-examination of certain witnesses unsustainable — Non-production of jail record of A is not circumstance to militate against oral testimony of PW 2 — Corroborated by Constable IM — Where raid conducted to recover child in manner indicated by PW 1 and factum of recovery of child amply proved, non-joining of public witnesses to said raid, not of any consequence — Nothing on record to show case property tampered with or not secured during trial or it was not available — Criticism is based on misreading of evidence — Ransom demands delivered to father of child by accused AP and she also came to collect amount in exchange of child — It cannot be said she was oblivious of purpose of kidnapping — From analysis of evidence on record, it is found child was picked up by RA, neighbour of family and child was familiar with him — Child was last seen with this accused by PW 1 — Demand for ransom made and conveyed through S and repeated by M — Fact that child was recovered from custody of S in exchange of ransom amount, show prosecution able to establish its case beyond shadow of doubt — No infirmity in judgment under challenge — Judgment and order on sentence under challenge upheld.

IV (2006) CCR 29 (Delhi H.C.) (DB)

- **Sections 432, 433** — Prevention of Food Adulteration Act, 1954 — Sentence — Suspension, Remission, Commutation — Court could not postpone execution of sentence till such time as revision petitioner-accused, moves appropriate Government under Sections 432 and 433, Cr.P.C., for remission or commutation of sentence or order Government to commute sentence.

IV (2006) CCR 226 (Kerala H.C.)

- Bail — Suspension of sentence pending appeal — Dowry death — Appellant convicted and

sentenced to undergo RI for 10 years — Post-mortem report states no external injury found — Lungs, liver and spleen found in diseased condition — Cause of death is shock followed by chronic illness — Just and proper to enlarge appellants on bail — **Criminal Procedure Code, 1973 — Section 437.**

IV (2006) CCR 49 (SC)

- Monitoring of, by Supreme Court — Bail — Bail extended from time to time by Supreme Court to monitor trial for 6 months — No further need of monitoring same — Bail directed to continue for duration of case on same terms and conditions — Further, open to CBI to apply for cancellation of bail, if petitioner is deliberately protracting trial or taking unnecessary adjournments — **Criminal Procedure Code, 1973 — Sections 437, 173. (Fodder Scam Cases)**

IV (2006) CCR 80 (SC)

- Anticipatory Bail — Grant of — Co-accused granted bail on similar allegations — Appellant directed to be released on bail subject to condition — **Criminal Procedure Code, 1973 — Section 438.**

IV (2006) CCR 80 (SC)

- **Section 438** — Indian Penal Code, 1860 — Sections 306 and 107 — Anticipatory Bail — Grant of — Abetment of Suicide — In suicidal note left by deceased husband, ingredients required for *prima facie* satisfying test of abetment hardly available in this case — Suicidal note may explain mental state of deceased or hardships/difficulties faced by him during past but not ingredients of Section 107, IPC — Fact that at instance of wife case under Section 498A, IPC was registered and allegations that she was pressing hard for divorce, anticipatory bail granted by this Court — This Court is of opinion that it is fit case in which applicants be given benefit of Section 438, Cr.P.C. with conditions — This shall remain in force for period of 6 weeks.

IV (2006) CCR 107 (Chhattisgarh H.C.)

- **Section 439** — Indian Penal Code, 1860 — Sections 294, 506, 427 — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1988 — Section 3(1)(x) — Arms Act, 1959 — Section 25 — Bail — Obscenity, Criminal Intimidation, Mischief, Accused alleged to have terrorized inhabitants by use of arms and misbehaved with womenfolk — Applicant in jail since 14.4.2005 — Applicant not named in FIR and implicated in this offence on basis of subsequent diary statements of witnesses — Nothing recovered from his possession and all offences are bailable except offence under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes Act — Fit case where applicant should be extended facility of bail with conditions.

IV (2006) CCR 50 (Chhattisgarh H.C.)

- **Section 439** — Indian Penal Code, 1860 — Sections 379, 411 — Bail — Cancellation of — Theft, dishonestly receiving stolen property — Suppression of material fact of pendency of bail application before High Court and stating no bail application pending either before Sessions Court or High Court — *Bona fide* mistake due to illiteracy — Notice issued to applicant to show cause as to why bail granted to him by Second ASJ be not cancelled as same obtained by suppression of facts — Non-bailable warrant issued for production of applicant — Report of ASJ shows after filing of charge-sheet on instructions of wife of applicant, application under Section 439, Cr.P.C. filed and mentioned no other application for bail pending before any competent Court or High Court — Bail application filed with said endorsement and believing it to be true and correct, it was entertained and applicant released on bail by said Court — Due to wrong instructions furnished by wife of applicant, application filed before Sessions Court and applicant released on bail during pendency of application before High Court — Both applicant and his wife are illiterate persons — Even after getting application filed before High Court wife could not understand subsequent application cannot be entertained by Court below — Explanation submitted by applicant accepted and it is deemed proper to drop proceedings at this stage — No case of wilful suppression of facts but *bona fide* mistake due to illiteracy and not knowing technicalities of law by wife of applicant — Matter regarding cancellation of bail and initiation of proceedings under Contempt of Courts Act dropped — Show cause notice discharged.

IV (2006) CCR 95 (Chhattisgarh H.C.)

- **Section 439** — Indian Penal Code, 1860 — Sections 302, 201, 34 — Bail — Murder, Disappearance of Evidence, Common Intention — Except memorandum and statement of witness about recovery of Chappal, no other evidence against applicants to connect them with offence — Fit case to enlarge applicants on bail with condition.

IV (2006) CCR 137 (Chhattisgarh H.C.)

- Electricity Act, 2003 — Section 30 — Indian Penal Code, 1860 — Section 379 — **Criminal Procedure Code, 1973** — **Section 439** — Bail — Theft of Electricity — Loss to department-alleged to be caused by appellant to tune of Rs. 14 lacs — Petitioner already in custody for last more than one month and will face proceedings in accordance with law — His indefinite custody not called for — Petitioner ready to deposit Rs. 2 lacs in Court and furnish security of Rs. 14 lacs in first instance, which will be treated as security for remaining amount after amount of Rs. 2 lacs deposited — Amount will be kept in fixed deposit initially for period of 1 year — If petitioner succeeds in legal proceedings, amount will be refunded to him and security discharged — If petitioner loses, amount will be available to comply with any order — Petitioner granted bail to satisfaction of Chief Justice Magistrate.

IV (2006) CCR 143 (Punjab & Haryana H.C.)

- **Section 439** — Indian Penal Code, 1860 — Sections 302, 307, 323, 294/34 — Bail — Murder, Attempt to Murder, Hurt, Obscenity, Common Intention — Place of occurrence is house of applicants and complainant party had gone to house of applicants at about 10 p.m. — They were armed with deadly weapons like Tabbal and Tangia and on some hot exchanges, quarrel took place and they received injuries in which person died — Fit case to enlarge applicants on bail with conditions.

IV (2006) CCR 170 (Chhattisgarh H.C.)

- **Section 439** — Indian Penal Code, 1860 — Section 376 — Bail — Rape — Applicant is Juvenile — Prosecutrix examined by Medical Officer, who after examination did not find any external or internal injury — Hymen was intact and no bleeding or injury — Applicant entitled to be enlarged on bail with conditions.

IV (2006) CCR 205 (Chhattisgarh H.C.)

- **Sections 439, 437(6)** — Bail — Second bail application — Case triable by Magistrate — Trial not concluded within 60 days from first date fixed for taking evidence — Perusal of Section 437(6), Cr.P.C. shows it is not necessary in each and every case, accused to be released on bail if trial not concluded within period of 60 days by Magistrate — Petitioner habitual offender — Not entitled to be released on bail under Section 437(6), Cr.P.C.

IV (2006) CCR 233 (Rajasthan H.C.)

- Bail — Cancellation — Different considerations to be weighed while considering application for grant of bail and cancellation of bail already granted — Order of bail can be cancelled on existence of cogent and over-whelming circumstances but not on re-appreciation of evidence as done by High Court — No supervening circumstances brought to notice to warrant recalling of order dated 11.1.2002 — Principles to be kept in mind for recalling order of bail set out in *Dolat Ram* case — Impugned order unsustainable, set aside — **Criminal Procedure Code, 1973** — **Section 439(2)**.

IV (2006) CCR 61 (SC)

- **Section 439(2)** — Bail — Cancellation of — Offences under Sections 148, 149, 385, 34, 506, IPC and Section 25, Arms Act — Rejection of bail is on one footing, however, cancellation of same once granted is harsh order because it takes away liberty of individual — It is not to be lightly resorted to — It is not disputed by learned Counsel for State and complainant that concession of bail granted to respondent in FIRs registered against him after grant of concession of bail in present case — FIR dated 24.2.2005 relates to occurrence of 9.2.2005 *i.e.* two days after bail granted by this Court to respondent on 7.2.2005 — In FIR registered on 24.2.2005 anticipatory bail granted to respondent on 6.5.2005 — Nothing to show petitioner misused concession of bail granted to him in present case — No ground made out for cancellation of bail granted to respondent.

IV (2006) CCR 215 (Punjab & Haryana H.C.)

- **Sections 467, 468(2)** — Indian Penal Code, 1860 — Sections 294, 506(1)/34 — Limitation — Quashing of Order — Obscenity, Criminal Intimidation, Common Intention — Scope of provisions of Sections 467, 468, Cr.P.C. — Limitation for taking cognizance of offence — Imprisonment for offence under Sections 294 and 448, IPC — All offences as per complaint allegedly committed in year 2001 — Cognizance taken in year 2004 — Both offences under Sections 294 and 448, IPC punishable with imprisonment for term not exceeding one year — Period of limitation for taking cognizance is also one year and thus barred by limitation by 27.3.2004 when Court below took cognizance — Reading of allegations made in complaint petition throws cloud of suspicion with regard to commission of any offence under Section 506, IPC — Allegations super-imposed and not believable — This Court has no hesitation to quash impugned order.

IV (2006) CCR 171 (Orissa H.C.)

- Joint trial — Transfer of complaint and joint trial of two complaint cases — No prayer in petition filed under Section 482, Cr.P.C. seeking joint trial nor any independent petition filed by respondent seeking joint trial — Having regard to facts and circumstances, no ground to direct transfer of complaint and joint trial of two complaint cases — Allegations about forgery made in December, 2001 and complaint under Section 138, NI Act filed on 23.1.2002 — Respondent filed complaint two years later on 12.3.2003 — Proceedings in complaint filed under Section 138, NI Act are at final stage — High Court did not take into consideration these aspects, while passing impugned order — Impugned order for transfer set aside — Negotiable Instruments Act, 1881 — Section 138 — **Criminal Procedure Code, 1973 — Section 482.**

IV (2006) CCR 25 (SC)

- Quashing of proceedings — Bigamy, cheating — Complaint against husband for offence of Bigamy by father of subsequent wife on her behalf — Complainant's daughter filed affidavit before Magistrate, wherein she stated that at time of marriage she was major and she married appellant on her own free will — She is living happily and peacefully and has no complaint against him or his family members — Specific statement as to fact that written statement not made under any pressure, undue influence, coercion, threat, force — Magistrate not justified in taking cognizance of case as same not filed by wife of appellant in her capacity as wife — Proceedings quashed — Indian Penal Code, 1860 — Sections 494, 420 — **Criminal Procedure Code, 1973 — Section 482.**

IV (2006) CCR 81 (SC)

- Dishonour of Cheque — Quashing of proceedings — Limitation to file complaint — Complaint barred by time — It is matter of evidence and Single Judge not justified in quashing proceedings by holding that complaint was barred by time — Negotiable Instruments Act, 1881 — Sections 138, 138(b) — **Criminal Procedure Code, 1973 — Section 482.**

IV (2006) CCR 42 (SC)

- Quashing of FIR — Cruelty, Criminal Breach of Trust — Investigation not started and no occasion to find out whether there was material to file charge-sheet or not — Too premature a stage for High Court to quash FIR holding FIR *prima facie* does not disclose any cognizable offence against any of respondents and allegations vague in nature — Impugned order of High Court set aside — **Criminal Procedure Code, 1973 — Section 482** — Indian Penal Code, 1860 — Sections 498A, 406.

IV (2006) CCR 53 (SC)

- Inherent Powers — High Court not empowered to set aside concurrent findings of fact recorded by Courts below without adverting to evidence or recording reasons — **Criminal Procedure Code, 1973 — Section 482.**

IV (2006) CCR 55 (SC)

- **Section 482** — Negotiable Instruments Act, 1881 — Section 138 — Quashing of Summons — Dishonour of Cheque — Cheques issued by company to respondent when petitioner was not Director of Company, had resigned more than 9 years before cheques in question issued — Petitioner also placed on record clinching evidence *viz.* certified copy of Form No. 32 to show she was not Director at relevant time — Such document is conclusive of fact that petitioner resigned

w.e.f. 20.8.1994 — She was not incharge or responsible for day-to-day affairs of company and could not be so — Criminal complaints against petitioner quashed.

IV (2006) CCR 61 (Delhi H.C.)

- Indian Penal Code, 1860 — Sections 290, 294A — Bihar Ban on Lotteries Act, 1993 — Sections 3, 4 — **Criminal Procedure Code, 1973 — Section 482** — Quashing of Order — Sale of lottery tickets — Bihar Act of 1993 struck down by Patna High Court in case of *Iqbal Chand Khurana* — Doing business of selling lottery tickets of other States not offence — Prosecution of petitioners for selling of lottery tickets of other States in State of Jharkhand not offence since statute itself prohibiting business of selling lottery tickets of other States struck down by Patna High Court — Order passed by Judicial Magistrate refusing to discharge petitioners set aside.

IV (2006) CCR 72 (Jharkhand H.C.)

- **Section 482** — Quashing of GR case — OP No. 2, aged about 24 years at relevant time, had affair with petitioner No. 1 prior to marriage and married him ignoring objections of her parents — They have been living happily as husband and wife and blessed with 3 children — No useful purpose will be served by allowing GR case to continue any further — Proceeding in GR quashed.

IV (2006) CCR 138 (Orissa H.C.)

- **Section 482** — Indian Forest Act, 1989 — Sections 33, 41, 42 (Bihar Amendment Act) — Quashing of Criminal Proceedings — Railway officials alleged to be involved in commission of offence under Forest Act in allowing illegal transportation of forest wood — Matter should be reported to concerned Divisional Railway Manager (DRM) — Lodging of offence report against petitioner who is none else than DRM, absolutely illegal and *mala fide* — Continuance of criminal proceeding for prosecution of petitioner, abuse of process of Court — Entire criminal prosecution against petitioner quashed.

IV (2006) CCR 150 (Jharkhand H.C.)

- **Section 482** — Indian Penal Code, 1860 — Sections 406, 409, 415, 420, 467, 468, 471, 120B — Registration of Criminal Case — Payment of less salaries to employees, preparing false register and embezzlement of money by Managing Committee of College — Petitioners filed complaint to Senior Superintendent of Police making these allegations — Deputy Superintendent of Police found same proved — There was no hitch in registering case and to continue with investigation — Opinion of District Attorney (Legal) that no ground made out to register case, could not override fact finding inquiry report of Deputy Superintendent of Police — Complaint of petitioners along with inquiry report of Deputy Superintendent of Police sent to Senior Superintendent of Police with directions to register case if cognizable offences disclosed from documents.

IV (2006) CCR 175 (Punjab & Haryana H.C.)

- **Section 482** — Dowry Prohibition Act, 1961 — Sections 3 and 4 — Indian Penal Code, 1860 — Section 498A — Dowry Demand, Cruelty — Quashing of Proceedings — Territorial jurisdiction — Part of alleged offence *i.e.*, threatening and demand of dowry has taken place within territory of Bokaro (State of Jharkhand), while O.P. No. 2 was staying with her parents — Court not inclined to quash proceedings pending before Sub-Divisional Judicial Magistrate, Bokaro.

IV (2006) CCR 181 (Jharkhand H.C.)

- India Penal Code, 1860 — Section 498A — **Criminal Procedure Code, 1973 — Sections 320 and 482** — Cruelty — Quashing of FIR — Compounding of offence — Offence under Section 498A, IPC non-compoundable — In view of settlement between parties and to ensure that parties are not discouraged from settling matter, FIR quashed.

IV (2006) CCR 189 (Bombay H.C.)

- **Section 482** — Indian Penal Code, 1860 — Sections 323, 494 and 498A/34 — Dowry Prohibition Act, 1961 — Sections 3 and 4 — Inherent Powers — Quashing of proceedings — Cruelty, Hurt, Dowry Demand — Petition by wife disclosing offences under said sections of Indian Penal Code and Dowry Prohibition Act — Cognizance taken, order to proceed against accused and co-

accused — Challenge by accused husband against such order — Various defences taken in application under Section 482, Cr.P.C. — At time of taking cognizance, neither Magistrate nor revisional Court can look into defence of accused or documents furnished by him — Magistrate only required to see whether complaint makes out offence and there is legal evidence to support same — On basis of annexures to application under Section 482, Court cannot hold alleged occurrence of offences false and order issuing processes illegal — No merit in application.

IV (2006) CCR 211 (Patna H.C.)

- Family Dispute — Appropriate relief — To approach Civil Court — Dispute as to possession of property — Breach of peace — Claiming possession of property, sons and daughters filed suit against father in Court of Senior Civil Judge — This property is also subject matter of civil suit pending in Civil Court — Parties are already before Civil Court — Civil dispute has been given colour of criminal case — Criminal proceedings initiated under Section 145, Cr.P.C. to be quashed — Parties may approach Civil Court — Civil Court would be at liberty to grant interim relief, whether application for that purpose moved by plaintiffs or defendant — **Criminal Procedure Code, 1973 — Sections 482, 145.**

IV (2006) CCR 46 (SC)

Customs Act, 1962

- **Sections 107, 108** — Summoning of person to give evidence and produce documents — Even without summons any person can appear before Customs Officer and can give statement — When statement is recorded under Section 107 of Act, person who gives statement must be informed of purpose of recording such statement.

IV (2006) CCR 46 (Kerala H.C.)

Dowry Prohibition Act, 1961

- Indian Penal Code, 1860 — Sections 304B, 498A, 34 — **Dowry Prohibition Act, 1961 — Section 3** — Dowry Death, Cruelty, Common Intention, Appreciation of Evidence — Conviction and sentence — Sustainability — No evidence to prove dowry demand by in-laws of deceased except testimony of father of victim, interested witness — Even brother and mother of deceased denied any demand of dowry — All P.W. witnesses except P.W. 8 discloses that there was cordial and good relationship between deceased and also denied factum of dowry demand — They further deposed that deceased died as a result of being hit by train on railway line passing through village — Unsafe and imprudent to sustain conviction of appellants on single testimony of witness who is not only highly interested but also not above being gained over — Conviction and sentence set aside.

IV (2006) CCR 57 (Patna H.C.) (DB)

- Indian Penal Code, 1860 — Sections 498A, 326, 307 and 506 — **Dowry Prohibition Act, 1961 — Sections 3 and 4** — Criminal Procedure Code, 1973 — Section 178 — Quashing of FIR — Territorial Jurisdiction — Cruelty, Grievous Hurt, Attempt to Murder, Criminal Intimidation — Continuing Offence — After three to four months of solemnization of marriage dowry demand made in M.P. which was informed over telephone by victim to her mother in U.P. — No reference of any cause of action within State of U.P. is available — Telephonic conversation of year 2003 in between victim and mother is stray incident and cannot be regarded as incident immediate before occurrence of crime for treating it as continuance of offence — Offence committed at appropriate place of M.P., considered to be place of jurisdiction over matter — No cause of action arose within jurisdiction of State of Uttar Pradesh — Order will not affect right of police authority in transmitting FIR to appropriate police authority in M.P. for investigation.

IV (2006) CCR 191 (Allahabad H.C.) (DB)

- Criminal Procedure Code, 1973 — Sections 178(c), 482 — Indian Penal Code 1860 — Section 498A — **Dowry Prohibition Act, 1961 — Sections 3 and 4** — Quashing of Order — Territorial Jurisdiction — Dowry Demand, Cruelty — Offence of continuing nature — Informant left her matrimonial home *i.e.* U.P. and presently residing at her parental home *i.e.* Patna, within local area of Magistrate, demand of dowry and also threat in case demand not met Second marriage of her husband shall be performed, made in Patna — Offence committed in more than one local area

and it consists of several acts and it can be tried by Court having jurisdiction over any of such local areas.

IV (2006) CCR 194 (Patna H.C.)

Electricity Act, 2003

- **Section 30** — Indian Penal Code, 1860 — Section 379 — Criminal Procedure Code, 1973 — Section 439 — Bail — Theft of Electricity — Loss to department-alleged to be caused by appellant to tune of Rs. 14 lacs — Petitioner already in custody for last more than one month and will face proceedings in accordance with law — His indefinite custody not called for — Petitioner ready to deposit Rs. 2 lacs in Court and furnish security of Rs. 14 lacs in first instance, which will be treated as security for remaining amount after amount of Rs. 2 lacs deposited — Amount will be kept in fixed deposit initially for period of 1 year — If petitioner succeeds in legal proceedings, amount will be refunded to him and security discharged — If petitioner loses, amount will be available to comply with any order — Petitioner granted bail to satisfaction of Chief Justice Magistrate.

IV (2006) CCR 143 (Punjab & Haryana H.C.)

Evidence Act, 1872

- Murder, Cruelty, Common Intention — Two dying Declarations — Death of deceased due to sustenance of 90% burn injuries — Dispute between deceased and family of appellant — She categorically deposed stating about maltreatment at hands of appellants on account of non-fulfilment of their demand of dowry — Deliberations taken in Panchayat proved by PWs 8 and 9 — Nothing pointed out to discard their testimonies — In her first dying declaration deceased exonerated her father-in-law — Her husband forced to bring her to hospital by neighbours — His culpability categorically stated by deceased in both dying declarations — Deceased categorically stated her husband put kerosene oil upon her and upon igniting, locked door of bathroom from outside — She was rescued by neighbours — Her first statement was voluntary and not tutored — Findings of Sessions Judge as also of High Court in regard to guilt of appellant No. 1 must be accepted — Keeping in view inconsistencies between two dying declarations benefit of doubt given to appellant No. 2 — Conviction and sentence of both appellants upheld under Section 498A, IPC — Conviction of appellant No. 2 under Section 302 r/w Section 34, IPC set aside — Indian Penal Code, 1860 — Section 302 r/w Sections 34, 498A — **Evidence Act, 1872 — Section 32.**

IV (2006) CCR 91 (SC)

- Evidence — Dying declaration — Law does not provide dying declaration should be made in any prescribed manner or in form of questions and answers — Only because dying declaration not recorded by Magistrate, same by itself, may not be ground to disbelieve entire prosecution case — When statement of injured is recorded, in event of her death, same may also be treated as FIR — Dying declaration must be voluntary and not tutored — It is admissible in evidence in special circumstances — **Evidence Act, 1872 — Section 32.**

IV (2006) CCR 91 (SC)

- **Section 32** — Dying Declaration — Admissibility — It is not requirement of Section 32, Evidence Act that doctor who records dying declaration of deceased must give his official seal in order to render it admissible.

IV (2006) CCR 66 (Orissa H.C.) (DB)

- Indian Penal Code, 1860 — Sections 306, 498A — **Evidence Act, 1872 — Section 32** — Abetment of suicide — Cruelty — Dying Declaration — Reliability and authenticity — Death of deceased by putting fire on her person by herself — Plea, deceased committed suicide due to physical and mental torture — Conviction based solely on dying declaration made to doctor — Opinion of doctor that deceased was in good condition — Seriousness of her injuries corroborated by evidence of PWs 4 and 5 indicate that she was too weak and feeble to make statement — True that all three witnesses declared hostile, open to accused-Petitioner to rely their testimony for purpose of improbabilising evidence of doctor — All witnesses categorically stated dying declaration not recorded in their presence — Dying declaration lacks credibility and reliability — Petitioner

entitled to benefit of doubt — Conviction and sentence set aside.

IV (2006) CCR 236 (Gauhati H.C.)

- **Section 32** — Dying Declaration — Evidentiary value — While accepting dying declaration Court must insist that it should be of such a nature as to inspire full confidence of Court in its truthfulness and correctness — Further Court to decide fitness of mind of deceased.

IV (2006) CCR 236 (Gauhati H.C.)

- Indian Penal Code, 1860 — Sections 304B and 498A — **Evidence Act, 1872** — **Section 113B** — Dowry Death, Cruelty — Presumption — Injuries on region of face suffered by deceased when she was in house of appellant — Due to demand of dowry and maltreatment she ended her life — No explanation has come forward from learned Counsel for appellant as to injuries on person of deceased — She was suspecting illicit relationship of her husband with wives of his brothers — Apart from statement of D.Ws. 1 and 2, appellant brought no cogent and convincing evidence to rebut case of prosecution — No case made out against appellants viz., JS, TK and HK — Benefit of doubt given to them and they are acquitted of all charges framed against them — Appeal allowed *qua* these appellants.

IV (2006) CCR 184 (Punjab & Haryana H.C.) (DB)

Explosive Substances Act, 1959

- **Section 5** — Indian Penal Code, 1860 — Sections 353, 186 — Arms Act, 1959 — Sections 25A, 26, 35 — Seizure of Explosive Substance — Conviction — Challenge against — Conviction based on written statement of informant — Non-examination of informant — No cogent and reliable evidence adduced by prosecution to prove all appellants live jointly in house — Evidence on record shows it is alleged against appellants that powder kept in small “*puriya*” in small tin was recovered which appeared as explosive substance but there is no report of any Chemical Examiner to show powder recovered from house of appellants was explosive — Prosecution not able to prove its case beyond all reasonable doubts — Judgment and order of Court below set aside.

IV (2006) CCR 116 (Patna H.C.)

Foreigners Order, 1948

- **Clause 7(2)** r/w Section 14 of Foreigners Act, 1946 — Criminal Procedure Code, 1973 — Sections 239, 482, 397, 399 — Discharge of Accused — Accused alleged to have overstayed without proper residential permit — Case registered against her under Section 14 of Act and Clause 7(2) of Order, 1948 — Whether subsequently permission granted to her to have effect of regularising earlier period of overstay — Whether there was violation of condition of residential permit requiring application for extension of period to be made fifteen days before — These are all questions of law and fact — At this stage both Courts below have sufficient material to proceed against petitioner for her alleged overstay beyond permit period.

IV (2006) CCR 213 (Karnataka H.C.)

Indian Penal Code, 1860

- Common Intention — Enactment on principle of joint liability in doing of criminal Act — Section 34, IPC is only rule of evidence and does not create substantive offence — Distinctive feature of section is element of participation in action— Direct proof of common intention seldom available and such intention can only be inferred from circumstances appearing from proved facts of case and proved circumstances — Scope and applicability of Section 34, IPC discussed — **Indian Penal Code, 1860** — **Section 34.**

IV (2006) CCR 26 (SC)

- **Section 34** — Common Intention — Existence of common intention — Question of fact — Criminal trial, conviction and sentence — Appeal — Scope of Section 34, IPC — Interpretation — ‘Common intention’ can be formed previously or in course of occurrence and is to be proved mainly as a matter of influence — No common intention to cause injury.

IV (2006) CCR 239 (Uttaranchal H.C.)

- Juvenile Justice Act, 2000 — Section 18 — **Indian Penal Code, 1860 — Sections 120B, 201, 506, 34** — Bail — Grant of — Juvenile — Criminal conspiracy, disappearance of evidence, criminal intimidation, common intention — Petitioner aged 16 years, denied bail by ASJ — Bail to be granted to juvenile except for three exceptions carved out by Section 18 of Juvenile Justice Act — This was first offence of petitioner — Petitioner's father is Government servant and petitioner residing in well-knit family — Petitioner if released on bail would be living with his family and there is nothing to suggest that he would be exposed to hardened criminals — Case does not fall in any of three exceptions to Section 18 — Petitioner directed to be released on bail with conditions.

IV (2006) CCR 166 (Delhi H.C.)

- Criminal Procedure Code, 1973 — Sections 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 482 — **Indian Penal Code, 1860 — Sections 120B, 313, 498A** — Territorial Jurisdiction — Criminal Conspiracy, Miscarriage, Cruelty — Cause of action — Section 177 provides every offence shall ordinarily be enquired into and tried by Court within whose jurisdiction it was committed — Complainant abused, beaten and tortured at Gangapur — Petitioner refused to hand over stridhan there only — Miscarriage also caused at Gangapur — No cause of action arose at Niwai — Niwai Court have no jurisdiction to deal same.

IV (2006) CCR 110 (Rajasthan H.C.)

- **Sections 143, 147, 148, 324, 447** — Criminal Procedure Code, 1973 — Section 320(8) — Amicable settlement of dispute — Compounding of offence — Rioting, Unlawful Assembly, Hurt, Trespass — Offences under Sections 143, 147 and 148, IPC not compoundable under Section 320, Cr.P.C. — Parties have settled matter among themselves — This Court permits them to compound offence as it does not affect any one else except PWs 1 and 2 as well as accused in case — Sections 447 and 324, IPC already compounded by parties — Accused acquitted of all offences alleged against him under Section 320(8), Cr.P.C.

IV (2006) CCR 91 (Kerala H.C.)

- **Sections 147, 148, 341 r/w Section 149, Section 302 r/w Section 109** — Rioting, Unlawful Assembly, Wrongful Confinement, Murder, Right of Private Defence — Second appellant had reasonable apprehension that death or grievous hurt will be consequence on account of deceased party in dragging him to rice mill and threatening him to kill by throwing him into fire — Second appellant inflicted only one stab injury and he cannot be said to have exceeded his right of private defence — Prosecution case that other appellants instigated him and thereafter he stabbed, will fall down to ground like deck of cards — Entire prosecution case thrown out accordingly.

IV (2006) CCR 217 (Madras H.C.) (DB)

- Criminal Procedure Code, 1973 — Sections 91, 233, 482 — **Indian Penal Code, 1860 — Sections 147, 148, 323, 307, 506, 149** — Army Act — Sections 25, 27 — Quashing of Order — Entering upon Defence — Petitioner facing trial for alleged commission of offences under Sections 147, 148, 323, 307, 506, 149, IPC and Sections 25, 27, Arms Act — Trial already commenced and some witnesses already examined — Petitions filed under Section 233, Cr.P.C. to summon five witnesses — Another petition filed under Section 91, Cr.P.C. to call for some documents from Under Secretary to Government — Court below after discussing materials available on record concluded issuing summons to official witnesses like Under Secretary to Government, not necessary and rather would not only delay proceedings of case but vexatious attempt — Court below however allowed petitioners to examine K and M as their witnesses — No illegality or infirmity in impugned order — No interference warranted.

IV (2006) CCR 243 (Orissa H.C.)

- Appeal against acquittal — Murder, Rioting, Unlawful Assembly — Grant of leave to appeal — Refusal — High Court passed unreasonable order — It was not brought to notice of High Court that complainant's revision petition pending challenging acquittal when application for grant of leave to appeal taken up — In view of settled principles of law, appropriate to direct High Court to hear both applications for grant of leave as filed by State and revision application filed by informant — Same to be considered in accordance with law — **Indian Penal Code, 1860 — Sections 148, 302 r/w Section 149** — Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989 — Section 3(2).

IV (2006) CCR 84 (SC)

- **Sections 182, 324, 323, 326, 341, 148, 149** — Criminal Procedure Code, 1973 — Section 182 — Quashing of Kalendra and consequential proceedings — Petitioner complainant dissatisfied with manner in which investigation carried out by police — He filed petition in this Court to direct investigating agency to expedite and complete investigation and to present challan — Instead of conducting fresh investigation, as directed by Judicial Magistrate, police authorities initiated proceedings under Section 182, IPC against petitioner and presented Kalendra — Till date no verdict by any Court of competent jurisdiction holding allegations levelled by petitioner in FIR or in his criminal complaint are false or fabricated to his knowledge — In private criminal complaint filed by petitioner, *prima facie* view formed by Judicial Magistrate in terms whereof respondent Nos. 2 to 6 summoned and said complaint is now at stage of evidence and issue is *sub judice* — Neither desirable nor expedient for police authorities to conclude petitioner made false allegations inviting penal consequences under Section 182, IPC — Kalendra and consequential proceedings against petitioner quashed.

IV (2006) CCR 54 (Punjab & Haryana H.C.)

- **Section 201** — Disappearance of Evidence — Evidence on record that information with regard to death of deceased sent to her parents' home and her brother was present at her cremation — Conviction under Section 201, IPC, unsustainable.

IV (2006) CCR 57 (Patna H.C.) (DB)

- **Sections 279, 304A** — Criminal Procedure Code, 1973 — Section 401 r/w Section 482 — Death caused by rash and negligent act — Victim travelling on roof of bus and in so doing, he received injury on his head by branch of tree and subsequently expired — No *prima facie* case of rash and negligent driving against driver of vehicle in question — Even if it is accepted conductor gave such proposal to deceased, then also it cannot be said *prima facie* case under Section 304A, IPC made out so far as conductor is concerned — No criminal liability can be attached with this act allegedly done by conductor — At best it can give rise to civil responsibility — Concerned passenger also contributed to negligence — Magistrate not justified in proceeding against petitioner/conductor for alleged offence under Section 304A, IPC — Since driver of bus absolved of offence of rash and negligent driving, conductor cannot be directed to face trial for offence under Section 304A, IPC — Order of Magistrate suffers from material irregularity and set aside.

IV (2006) CCR 234 (Calcutta H.C.)

- **Sections 290, 294A** — Bihar Ban on Lotteries Act, 1993 — Sections 3, 4 — Criminal Procedure Code, 1973 — Section 482 — Quashing of Order — Sale of lottery tickets — Bihar Act of 1993 struck down by Patna High Court in case of *Iqbal Chand Khurana* — Doing business of selling lottery tickets of other States not offence — Prosecution of petitioners for selling of lottery tickets of other States in State of Jharkhand not offence since statute itself prohibiting business of selling lottery tickets of other States struck down by Patna High Court — Order passed by Judicial Magistrate refusing to discharge petitioners set aside.

IV (2006) CCR 72 (Jharkhand H.C.)

- Criminal Procedure Code, 1973 — Section 374 — **Indian Penal Code, 1860** — **Sections 294, 323** — Obscenity — Animosity between complainant-appellant and accused-respondents with regard to management and agreement to sell of rice mill — Case of complainant developed from stage to stage — Contradictions in evidence of prosecution witnesses — Facts and circumstances of case show accused-respondents might have committed offence but there is long gap between might have and must have — It would be travesty of justice to convert order of acquittal after 18 years of incident as incident alleged to have taken place on 24.3.1987 — About 19 years elapsed — Order of acquittal passed by Trial Court confirmed.

IV (2006) CCR 119 (Orissa H.C.)

- Criminal Procedure Code, 1973 — Section 439 — **Indian Penal Code, 1860** — **Sections 294, 506, 427** — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1988 — Section 3(1)(x) — Arms Act, 1959 — Section 25 — Bail — Obscenity, Criminal Intimidation, Mischief,

Accused alleged to have terrorize inhabitants by use of arms and misbehaved with womenfolk — Applicant in jail since 14.4.2005 — Applicant not named in FIR and implicated in this offence on basis of subsequent diary statements of witnesses — Nothing recovered from his possession and all offences are bailable except offence under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes Act — Fit case where applicant should be extended facility of bail with conditions.

IV (2006) CCR 50 (Chhattisgarh H.C.)

- Criminal Procedure Code, 1973 — Sections 467, 468(2) — **Indian Penal Code, 1860 — Sections 294, 506(1)/34** — Limitation — Quashing of Order — Obscenity, Criminal Intimidation, Common Intention — Scope of provisions of Sections 467, 468, Cr.P.C. — Limitation for taking cognizance of offence — Imprisonment for offence under Sections 294 and 448, IPC — All offences as per complaint allegedly committed in year 2001 — Cognizance taken in year 2004 — Both offences under Sections 294 and 448, IPC punishable with imprisonment for term not exceeding one year — Period of limitation for taking cognizance is also one year and thus barred by limitation by 27.3.2004 when Court below took cognizance — Reading of allegations made in complaint petition throws cloud of suspicion with regard to commission of any offence under Section 506, IPC — Allegations super-imposed and not believable — This Court has no hesitation to quash impugned order.

IV (2006) CCR 171 (Orissa H.C.)

- “Murder” and “Culpable Homicide not Amounting to Murder” — Distinction, scope and interpretation of provisions of Sections 299 and 300, IPC — **Indian Penal Code, 1860 — Sections 299, 300.**

IV (2006) CCR 62 (SC)

- Distinction — ‘Murder’, ‘Culpable homicide’ and ‘culpable homicide not amounting to murder’ — Scope and provisions of Section 299 Clause (b) and Section 300 Clauses (2) and (3), IPC — Discussed — **Indian Penal Code, 1860 — Sections 299 Clause (b), 300 Clause (2), 300(3).**

IV (2006) CCR 74 (SC)

- Murder — Rule laid down in *Virsa Singh’s* case — Even if intention of accused limited to infliction of bodily injury sufficient to cause death in ordinary course of nature and did not extend to intention of causing death, offence would be murder — **Indian Penal Code, 1860 — Sections 299, 300 Illustration (c).**

IV (2006) CCR 74 (SC)

- **Sections 300 Exception 5, 302 and 304 (Part I)** — Suicidal Pact — Taking risk of death with one’s own consent — Alteration in conviction — Murder, Culpable homicide not amounting to murder — Strangulation — Appellant held guilty under Section 302 for murder of his wife — Hence present appeal — Suicidal pact between appellant and wife, in furtherance whereof, deceased wife consumed Tik-20 — Wife panicked upon feeling choked and uncomfortable — At this time, accused, in order to prevent her from screaming, applied pressure on her neck — Wife died of asphyxia due to strangulation — Cannot be said appellant had intent to cause death — No premeditation on part of appellant to kill wife — Case of pact of suicide in which deceased partook — Act of strangulation done in heat of passion — Couple were happily married, no strained relations or motive, other than suicide pact — Exception 5 to Section 300, IPC attracted — Nothing to suggest that deceased resisted strangulation — Same shows she had consented to act of her husband — Benefit of Exception to be given — Case would, at highest, fall under Section 304, IPC — Conviction altered accordingly.

IV (2006) CCR 1 (Delhi H.C.) (DB)

- Murder — Rule laid down in *Virsa Singh’s* case — Even if intention of accused was limited to infliction of bodily injury sufficient to cause death in ordinary course of nature and did not extend to intention of causing death, offence would be murder — Illustration (c) to Section 300, IPC clearly brings out this point — **Indian Penal Code, 1860 — Section 300 Illustration (c), 302.**

IV (2006) CCR 62 (SC)

- **Section 302** — Evidence Act, 1872 — Sections 3 and 8 — Murder of wife by strangulation —

Homicidal death — Circumstantial evidence — Motive — Illicit relationship of respondent with another lady and bad habits — Except oral say of close relatives, which is not corroborated by P.Ws. 13 and 14, prosecution failed to establish circumstance relating to motive — In absence of positive evidence placed on record, mere statement of witnesses that they saw deceased and accused about a year back, cannot help prosecution to prove circumstance of 'last seen together' — Tests relating to circumstantial evidence not being satisfied, it is dangerous to hold accused guilty only on hypothetical basis or on assumptions and conjectures.

IV (2006) CCR 34 (Karnataka H.C.) (DB)

- **Section 302** — Murder — Appreciation of Evidence — Main witnesses not examined — Variation in statements of witnesses — Identity of accused in doubt — Circumstantial evidence of last seen theory not satisfactorily established — Absence of name of scribe and informant — Only MLC evidence of witnesses being discrepant and shaky — Not sufficient to prove alleged incriminating circumstances of last seen without any supporting or corroborating evidence — Benefit of doubt should be extended to accused.

IV (2006) CCR 206 (Uttaranchal H.C.) (DB)

- Murder, Common Intention — Conviction on basis of testimony of solitary eye-witness — Justifiability — Prosecution case based solely on evidence of PW 1 mother of deceased — Her testimony not corroborated by any other witness as evidence of PW 2 discarded and other 2 witnesses turned hostile — Entire evidence leads to lurking suspicion about her being eye-witness — She invented false story about existence of motive — Narration of events before murder of son, untrue — Considerable doubt about timing of recording of FIR — Absence of blood stains on her clothes and PW 2 clothes raises serious suspicion having regard to nature of injuries of deceased — No doubt this Court observed conviction can be based on testimony of solitary eye-witness — However, Court must be satisfied testimony of solitary witness is of such sterling quality, Court finds it safe to base conviction on it — In doing so Court must test credibility of witness by reference to quality of evidence — Evidence must be free of any blemish or suspicion, must appear to be natural and so convincing Court has no hesitation in recording conviction on its basis — This Court does not find evidence of PW 1 of that quality — Judgment of acquittal does not deserve to be set aside — **Indian Penal Code, 1860 — Sections 302, 34.**

IV (2006) CCR 16 (SC)

- Murder, Common Intention — Death of deceased by stabbing in furtherance of common intention — Trial Court acquitted accused A3 on ground mere presence of accused not sufficient to hold him guilty — High Court confirmed conviction and sentence of A1 and A2 — Appeal against — As per statement of PWs 1 to 3 evident all 3 accused were going on scooter and motorcycle saw deceased — Exchange of hot words which ultimately converted into serious attack by A1 — Injuries caused death of deceased — Perusal of statement of PWs shows accused appellant in furtherance of common intention of A1 tried to prevent PWs 2 and 3 from intervening in matter — PW 3, who wanted to intervene, prevented by causing knife injury by accused-appellant — No doubt accused-appellant acting in furtherance of common intention and prevented PWs 2 and 3 to save deceased — He facilitated commission of offence — Section 34 attracted and accused-appellant rightly convicted under Section 302 r/w Section 34, IPC — **Indian Penal Code, 1860 — Section 302 r/w Section 34.**

IV (2006) CCR 89 (SC)

- Bail — Grant of — Suspension of sentence pending appeal — Murder, Common Intention — Co-accused, to whom stab-injury by knife attributed, already released on bail — Only allegation against appellant is he caused injury with piece of brick — Appellant entitled to be enlarged on bail — Sentence passed against appellant pending criminal appeal suspended — Criminal Procedure Code, 1973 — Section 389 — **Indian Penal Code, 1860 — Section 302 r/w Section 34.**

IV (2006) CCR 50 (SC)

- Murder, Cruelty, Common Intention — Two dying Declarations — Death of deceased due to sustenance of 90% burn injuries — Dispute between deceased and family of appellant — She categorically deposed stating about maltreatment at hands of appellants on account of non-fulfilment of their demand of dowry — Deliberations taken in Panchayat proved by PWs 8 and 9

— Nothing pointed out to discard their testimonies — In her first dying declaration deceased exonerated her father-in-law — Her husband forced to bring her to hospital by neighbours — His culpability categorically stated by deceased in both dying declarations — Deceased categorically stated her husband put kerosene oil upon her and upon igniting, locked door of bathroom from outside — She was rescued by neighbours — Her first statement was voluntary and not tutored — Findings of Sessions Judge as also of High Court in regard to guilt of appellant No. 1 must be accepted — Keeping in view inconsistencies between two dying declarations benefit of doubt given to appellant No. 2 — Conviction and sentence of both appellants upheld under Section 498A, IPC — Conviction of appellant No. 2 under Section 302 r/w Section 34, IPC set aside — **Indian Penal Code, 1860 — Section 302 r/w Sections 34, 498A** — Evidence Act, 1872 — Section 32.

IV (2006) CCR 91 (SC)

— **Sections 302/34 and 498A/34** — Evidence Act, 1872 — Section 32 — Murder, Cruelty, Common Intention — Two dying declarations written and oral — Deceased was in fit state of body and mind to make conscious statement when she made oral dying declaration — From report of Forensic Laboratory, it is clear that deceased died due to poisoning — It clearly lends corroboration to dying declaration made by deceased — On basis of evidence, coupled with written and oral dying declaration, this Court left with no doubt that deceased was poisoned to death and for this none but appellant No. 1 was responsible — No evidence that appellant Nos. 2 and 3 responsible directly or indirectly for administering poison to deceased — Conviction of appellant Nos. 2 and 3 under Sections 302/34, IPC not at all justified — As appellant No. 1 himself administered poison to deceased, his conviction should have been recorded directly under Section 302, IPC instead of holding him vicariously responsible for death of deceased under Sections 302/34, IPC — Conviction of appellant No. 1 altered to under Section 302, IPC — Sufficient evidence on record to show deceased made dying declaration not only before her relations but before P.W. 9-Doctor that for her failure to fulfil demand for dowry by appellants she used to be tortured frequently — Conviction of all appellants under Sections 498A/34, IPC maintained — Sentence passed accordingly.

IV (2006) CCR 66 (Orissa H.C.) (DB)

— Death sentence — Confirmation of — Murder, Kidnapping, Criminal Conspiracy — Approver's evidence fully corroborated by other items of evidence and death of A caused by appellants, clearly established by prosecution — Appellants along with their mother and with help of approver alleged to have kidnapped 13 children and caused death of 9 out of them — They also attempted to kidnap yet another child but their attempt failed — Mother of appellants died in 1997 — Evidence adduced by prosecution proved beyond reasonable doubt that appellants were responsible for series of kidnapping of children and murders and rightly found guilty of these offences — Approver KS was present when many of murders took place and he had not given full details of crimes — Approver himself admitted he bribed police many times and saved appellants from clutches of law — Murder committed by appellants proved by satisfactory evidence — No reason to interfere with order of conviction passed by Sessions Court and confirmed by High Court — No mitigating circumstances in favour of appellant, except for fact that they are women — Appellants indulged in criminal activities for very long period and continued it till caught by police — Appellants had been menace to society and not committing murders under any compulsion but casually and killed all children least bothering about their lives or agony of their parents — Conviction and death penalty imposed on them confirmed — **Indian Penal Code, 1860 — Section 302 r/w Section 120B, Section 364.**

IV (2006) CCR 29 (SC)

— **Sections 302, 147, 148, 149** — Murder, Rioting, Unlawful Assembly — Death caused by single fatal injury on neck — Motive — Land dispute became genesis of occurrence — Plea of appellant-accused that he was minor and not present at place of occurrence, rejected — Two eye-witnesses categorically named accused as assailant who gave fist blow on person of deceased — It is completely reliable and corroborated by medical evidence on record — Trial Court justified in entirely rejecting plea of accused that he was minor at relevant point of time as transfer certificate from school was forged and obtained fraudulently — Defence evidence not reliable — Considering nature of injury sustained, intention to cause death is apparent — Conviction of

accused-appellant under Section 302, IPC affirmed — No case for unlawful assembly or acting in furtherance of common object made out against other accused persons — Conviction unwarranted as this is case of causing single injury.

IV (2006) CCR 131 (Gauhati H.C.) (DB)

- Proceedings against Persons Appearing Guilty of Offence — Murder, Unlawful Assembly — Summons under Section 319, Cr.P.C. issued after entire evidence recorded and statements of accused under Section 313, Cr.P.C. recorded, arguments heard and judgment reserved — Police papers not supplied to them — Incident relates to year 1990 — Four accused convicted and it has attained finality — Appellants could not have been directed to be retried — Impugned judgment of High Court directing re-trial of appellants set aside and upheld to extent it set aside judgment and order of Court of Session convicting appellants — **Indian Penal Code, 1860 — Sections 302, 149** — Criminal Procedure Code, 1973 — Section 319.

IV (2006) CCR 48 (SC)

- Criminal Procedure Code, 1973 — Section 439 — **Indian Penal Code, 1860 — Sections 302, 201, 34** — Bail — Murder, Disappearance of Evidence, Common Intention — Except memorandum and statement of witness about recovery of Chappal, no other evidence against applicants to connect them with offence — Fit case to enlarge applicants on bail with condition.

IV (2006) CCR 137 (Chhattisgarh H.C.)

- Review of Order — Murder, disappearance of evidence — Common intention — Magistrate in first order accepted police report mentioning “truth undetected” — In subsequent order on same date CJM took cognizance of offence — This amounts to review of earlier order, which is impermissible in law under Section 362, Cr.P.C. — Subsequent order taking cognizance is bad in law — Order of CJM quashed — Aggrieved person may pursue his remedy available in law — Criminal Procedure Code, 1973 — Section 362 — **Indian Penal Code, 1860 — Sections 302, 201, 34.**

IV (2006) CCR 59 (SC)

- Murder — Intention to cause death, hurt — Appreciation of evidence — Appellant assaulted deceased with knife which was concealed by him — Deceased succumbed to injuries during treatment — During incident appellant No. 2 caused injuries to PW 12 and cut deceased on his back as well as on his right knee — Appellant No. 3 beat deceased on right hand causing grievous injury — Occurrence witnessed by PW 12 and PW 1, elder brother of deceased — Fatal injuries attributable to appellant No. 7 — He is convicted under Section 302, IPC — Appellant No. 2 to be convicted under Section 304 Part I, IPC and appellant No. 3 under Section 326, IPC — Conviction of appellant No. 2 in terms of Section 324, IPC is in order — Custodial sentence of 10 years would meet ends of justice so far appellant No. 2 is concerned — For appellant No. 3, custodial sentence of 3 years RI imposed — Appellant No. 2 sentenced to one year RI — Two sentences imposed on appellant No. 2 shall run concurrently — **Indian Penal Code, 1860 — Sections 302, 304 Part I, 326, 324.**

IV (2006) CCR 74 (SC)

- **Sections 302, 304 Part II** — Murder, Knowledge to Cause Death — Alteration in conviction — Statement of accused made under Section 313, Cr.P.C. — Reliability — Exculpatory part of statement that accused is guiltless to be excluded in view of direct testimony of eye-witness-PWs 1 and 2 — Inculpatory part of statement of accused that deceased attempted to outrage modesty of wife of accused when she was alone at house supported with evidence of PW 1 herself — Inculpatory part of statement of accused supported by medical evidence — Investigating Officer deposed he saw grievous injury on private part of deceased — That deceased was found nude at time of occurrence deserves to be accepted — Motive behind occurrence that deceased attempted to outrage modesty of wife of accused found trustworthy — Testimony of PWs 1 and 2, eye-witnesses that accused armed with Aruval indiscriminately cut deceased and caused injuries which corroborates medical evidence cannot be disregarded — Accused and accused alone attacked deceased because of grave and sudden provocation given by deceased in light of evidence of eye-witnesses PWs 1 and 2 — Accused inflicted grievous injuries and caused death of deceased with knowledge that such grievous injuries to deceased would cause his death without

any intention to do so — Conviction and sentence imposed on accused under Section 302, IPC set aside and instead altered to conviction under Section 304 Part II, IPC with R.I. of 5 years.

IV (2006) CCR 144 (Madras H.C.) (DB)

- **Sections 302, 307 r/w Section 34** — Murder, Attempt to Murder, Common Intention — Motive set up by prosecution against accused having committed crime, does not satisfy conscience of Court — Recoveries of weapons used in commission of crime by S accused cannot be taken into consideration against accused A — Prosecution failed to lead any evidence about use of pistol in commission of crime — No Ballistic Expert gave opinion that any bullet was fired from pistol, which according to prosecution used by accused A in present occurrence as well as no bullet recovered from body of deceased during post-mortem examination conducted by PW 1 — Order of conviction and sentence recorded against accused/appellant set aside and he is acquitted.

IV (2006) CCR 253 (Punjab & Haryana H.C.) (DB)

- Criminal Procedure Code, 1973 — Section 439 — **Indian Penal Code, 1860 — Sections 302, 307, 323, 294/34** — Bail — Murder, Attempt to Murder, Hurt, Obscenity, Common Intention — Place of occurrence is house of applicants and complainant party had gone to house of applicants at about 10 p.m. — They were armed with deadly weapons like Tabbal and Tangia and on some hot exchanges, quarrel took place and they received injuries in which person died — Fit case to enlarge applicants on bail with conditions.

IV (2006) CCR 170 (Chhattisgarh H.C.)

- Alteration in conviction — Murder, Hurt, Common intention, Culpable homicide not amounting to murder — Appellants not armed — Evidence is not clear that they restrained movement of deceased when there was quarrel — No definite evidence that common intention was murder — Fact that two co-accused armed with knife and Lathi is of relevance and significance — They came together and left together — Conviction altered from Section 302 to one under Section 304 Part II, IPC r/w Section 34, IPC — Custodial sentence of 7 years would meet ends of justice — **Indian Penal Code, 1860 — Section 302, 323, 304 Part II r/w Section 34.**

IV (2006) CCR 26 (SC)

- **Sections 302 and 498A** — Murder, Cruelty — Death by burn injuries — Accused subjected his wife to torture and assault — Accused developed illicit relationship with some other lady and wanted to remove his wife from way for getting married to another woman — Contention that deceased caught fire in process of cooking food does not appear to be probable as I.O. had not found any stove in P.O. and marks of burn on walls of room found by I.O. — Death of deceased caused by burn injuries not denied by defence — Evidence of only eye-witness being informant quite consistent and reliable and same cannot be doubted on facts and circumstances of case.

IV (2006) CCR 13 (Patna H.C.) (DB)

- Intention to Cause Death — Alteration in conviction — Arrows shot from distance, not with any accuracy — One of such arrows hit deceased — Evidence of eye-witnesses established appellant had shot that arrow — No sudden quarrel as stated by appellant — Evidence shows otherwise — Appellant to be convicted in terms of Section 304 Part I and not Section 302, IPC — Conviction altered accordingly — Custodial sentence of 10 years would meet ends of justice — **Indian Penal Code, 1860 — Section 304 Part I.**

IV (2006) CCR 62 (SC)

- Alteration in conviction — Murder — Culpable homicide not amounting to murder, Hurt, Common Intention — Right of private defence exceeded by appellants in using more force than necessary upon deceased — Large number of litigations pending between parties — Appellants took possession of land from deceased in execution of decree — Deceased and D must be nurturing grudge against appellants — Investigating Officer did not make any investigation from point of view of defence — Investigation not fair — Appellant No. 1 not armed and at later stage of quarrel took out *ubhari* from bullock cart — Possibility of PW 3 and deceased being aggressors cannot be ruled out — Why occurrence took place in front of house of appellants not properly explained by PWs — No pre-meditation on part of appellant No. 1 — Case of sudden fight between parties — This would attract Section 304 Part I, IPC and not Section 302, IPC —

Appellants directed to undergo R.I. for period of 10 years — Conviction of appellants under Section 302 r/w Section 34, IPC, unsustainable — Conviction and sentence imposed on them under Section 324 read with Section 34 upheld — Sentences to run concurrently — **Indian Penal Code, 1860 — Sections 304 Part I, 324 read with Section 34, Section 302 r/w Section 34.**

IV (2006) CCR 1 (SC)

- Sentence — Reduction of — Challenge against — Culpable homicide not amounting to murder, hurt, house trespass — High Court while maintaining conviction reduced sentence for period already undergone — Perusal of record shows that respondent had undergone only 89 days and not 4 years sentence as submitted — No reason for reducing sentence for such serious offences — Impugned judgment of High Court set aside, while giving opportunity to respondent to argue appeal in High Court on merits — **Indian Penal Code, 1860 — Sections 304 Part II, 452, 323 r/w Section 34.**

IV (2006) CCR 82 (SC)

- **Sections 304B and 498A** — Evidence Act, 1872 — Section 113B — Dowry Death, Cruelty — Presumption — Injuries on region of face suffered by deceased when she was in house of appellant — Due to demand of dowry and maltreatment she ended her life — No explanation has come forward from learned Counsel for appellant as to injuries on person of deceased — She was suspecting illicit relationship of her husband with wives of his brothers — Apart from statement of D.Ws. 1 and 2, appellant brought no cogent and convincing evidence to rebut case of prosecution — No case made out against appellants *viz.*, JS, TK and HK — Benefit of doubt given to them and they are acquitted of all charges framed against them — Appeal allowed *qua* these appellants.

IV (2006) CCR 184 (Punjab & Haryana H.C.) (DB)

- **Sections 304B, 498A, 34** — Dowry Prohibition Act, 1961 — Section 3 — Dowry Death, Cruelty, Common Intention, Appreciation of Evidence — Conviction and sentence — Sustainability — No evidence to prove dowry demand by in-laws of deceased except testimony of father of victim, interested witness — Even brother and mother of deceased denied any demand of dowry — All P.W. witnesses except P.W. 8 discloses that there was cordial and good relationship between deceased and also denied factum of dowry demand — They further deposed that deceased died as a result of being hit by train on railway line passing through village — Unsafe and imprudent to sustain conviction of appellants on single testimony of witness who is not only highly interested but also not above being gained over — Conviction and sentence set aside.

IV (2006) CCR 57 (Patna H.C.) (DB)

- Criminal Procedure Code, 1973 — Section 438 — **Indian Penal Code, 1860 — Sections 306 and 107** — Anticipatory Bail — Grant of — Abetment of Suicide — In suicidal note left by deceased husband, ingredients required for *prima facie* satisfying test of abetment hardly available in this case — Suicidal note may explain mental state of deceased or hardships/difficulties faced by him during past but not ingredients of Section 107, IPC — Fact that at instance of wife case under Section 498A, IPC was registered and allegations that she was pressing hard for divorce, anticipatory bail granted by this Court — This Court is of opinion that it is fit case in which applicants be given benefit of Section 438, Cr.P.C. with conditions — This shall remain in force for period of 6 weeks.

IV (2006) CCR 107 (Chhattisgarh H.C.)

- **Sections 306 and 107** — Abetment of Suicide, Abetment of thing — Scope and ambit of two provisions *i.e.* Sections 306, 107, IPC — Discussed.

IV (2006) CCR 107 (Chhattisgarh H.C.)

- **Sections 306, 498A** — Evidence Act, 1872 — Section 32 — Abetment of suicide — Cruelty — Dying Declaration — Reliability and authenticity — Death of deceased by putting fire on her person by herself — Plea, deceased committed suicide due to physical and mental torture — Conviction based solely on dying declaration made to doctor — Opinion of doctor that deceased was in good condition — Seriousness of her injuries corroborated by evidence of PWs 4 and 5 indicate that she was too weak and feeble to make statement — True that all three witnesses

declared hostile, open to accused-Petitioner to rely their testimony for purpose of improbabilising evidence of doctor — All witnesses categorically stated dying declaration not recorded in their presence — Dying declaration lacks credibility and reliability — Petitioner entitled to benefit of doubt — Conviction and sentence set aside.

IV (2006) CCR 236 (Gauhati H.C.)

- Attempt to Murder — Sentence — Modification of — Injury caused to complainant on right calf by appellant by firing — Attempt in order to be criminal need not be penultimate act — It is sufficient to justify conviction under Section 307, IPC if there is present an intent coupled with some overt act in execution thereof — Not essential bodily injury capable of causing death should be inflicted — Section makes distinction between act of accused and its result, if any — Court to see whether act irrespective of result, done with intention or knowledge and under circumstances mentioned in section — Considering nature of injury caused imprisonment cannot be termed to be harsh — However, fine reduced to Rs. 15,000/- to be paid within 6 months — **Indian Penal Code, 1860 — Section 307.**

IV (2006) CCR 22 (SC)

- **Sections 307/34, 326/34** — Conviction — Modification — Attempt to Murder/Common Intention, Grievous Hurt/Common Intention — Offence under Section 326 is minor offence in relation to that under Section 307, IPC — It is trite where Court convicts accused for major offence, it should not again convict him for minor offence — Order of conviction under Section 307, IPC affirmed by which accused sentenced to R.I. for 10 years and order of conviction and sentence set aside under Section 326, IPC.

IV (2006) CCR 124 (Calcutta H.C.) (DB)

- **Sections 307, 326** — Attempt to Murder, Grievous Hurt — Evidence of injured victim-PW 13, reliable — Witnesses cross-examined at length and nothing infirm elicited to cast even slightest doubt on their veracity — No suggestion of any motive for false implication — Totality of evidence of witnesses, especially evidence of injured victim coupled with medical evidence, makes it clear and sufficient to hold accused committed offence in manner and at place as alleged by prosecution.

IV (2006) CCR 124 (Calcutta H.C.) (DB)

- Criminal Procedure Code, 1973 — Section 378 — **Indian Penal Code, 1860 — Sections 307, 326** — Appeal against acquittal — Attempt to Murder, Grievous Hurt — Testimony of injured eye witness as sole witness to occurrence — Assessment of evidence — Trial Court doubted her veracity because of discrepancies and there being no corroborative evidence — Several discrepancies noted relating to actual weapon of offence — Trial Court granted benefit of doubt to accused — Trial Court committed no illegality or perversity in appreciating evidence and circumstances — No evidence on record that PW 2 had no injury on her palms — When two views are possible from evidence on record and Trial Court accepted one out of same, no reason to interfere with same by this Court that too after lapse of two decades from date of occurrence.

IV (2006) CCR 210 (Orissa H.C.)

- **Sections 323, 325** — Hurt, Grievous Hurt — Injuries suffered by PWs 1, 2 and 5 — Identity of assailants doubtful — Evidence of PW 2 to effect that he could not identify assailants and as such prosecution ought to have treated him hostile — Courts below ought not to have held petitioners were assailants — Delay of more than one month in lodging complaint — Between said period witnesses could have put their heads together to implicate petitioners in crime — Unsafe to accept prosecution version — Conviction and sentence imposed upon petitioners set aside.

IV (2006) CCR 223 (Jharkhand H.C.)

- **Sections 323, 341, 379, 506** — Quashing of criminal proceedings — Hire Purchase Agreement — Vehicle purchased under said agreement — Default in payment of instalments — Petitioner seized vehicle as per terms of hire purchase agreement — No offence committed by petitioner under above noted sections — Criminal proceedings initiated against petitioner not maintainable and quashed.

IV (2006) CCR 228 (Andhra Pradesh H.C.)

- Criminal Procedure Code, 1973 — Sections 154, 156(1), 156(3) — **Indian Penal Code, 1860 — Sections 323, 406, 498A, 504, 506** — Cruelty, Criminal Intimidation, Hurt, Criminal Breach of Trust — Powers of Magistrate — Registration of FIR — Scope of provision of Section 156(3), Cr.P.C. — No scope for police officer to refuse registration of any information as an FIR which discloses cognizable offence — Police officer can investigate FIR of cognizable offence without order passed by Magistrate concerned — In case police refuses to register FIR, Magistrate may direct police to register FIR and order for investigation into such offences — By not following mandate of law not only Magistrate has committed miscarriage of justice but has given blow to person seeking justice from him, for inaction on part of police, for torture of his daughter at hands of accused — Glaring example of miscarriage of justice and flouting mandate of law — Impugned order quashed — ACMM directed to reconsider application under Section 156(3), Cr.P.C.

IV (2006) CCR 19 (Allahabad H.C.)

- Criminal Procedure Code, 1973 — Section 482 — **Indian Penal Code, 1860 — Sections 323, 494 and 498A/34** — Dowry Prohibition Act, 1961 — Sections 3 and 4 — Inherent Powers — Quashing of proceedings — Cruelty, Hurt, Dowry Demand — Petition by wife disclosing offences under said sections of Indian Penal Code and Dowry Prohibition Act — Cognizance taken, order to proceed against accused and co-accused — Challenge by accused husband against such order — Various defences taken in application under Section 482, Cr.P.C. — At time of taking cognizance, neither Magistrate nor revisional Court can look into defence of accused or documents furnished by him — Magistrate only required to see whether complaint makes out offence and there is legal evidence to support same — On basis of annexures to application under Section 482, Court cannot hold alleged occurrence of offences false and order issuing processes illegal — No merit in application.

IV (2006) CCR 211 (Patna H.C.)

- **Sections 324, 378, 379** — Hurt, Theft — Ingredients of theft — Prosecution not established by cogent evidence to prove that PW 1 had title over MOs 1 to 11 — Only possession is proved — Robbery is higher manifested form of offence of theft — Evidence of PW 1 may prove MOs 1 to 11 have been taken without her consent but there is dispute with regard to title over MOs 1 to 11 — It cannot be categorically said accused was guilty of dishonestly taking away property — Taking of property by violence and force may be unlawful but such conduct may not amount to robbery — For injuries inflicted on PW 1, accused held guilty under Section 324, IPC and sentenced to fine of Rs. 20,000/- with directions.

IV (2006) CCR 84 (Karnataka H.C.)

- Bail — Grievous Hurt — Appellants in jail for about one year — No likelihood of appeal being heard in near future — Just and proper to release appellants on bail pending appeal with conditions — **Indian Penal Code, 1860 — Section 326.**

IV (2006) CCR 58 (SC)

- Explosive Substances Act, 1959 — Section 5 — **Indian Penal Code, 1860 — Sections 353, 186** — Arms Act, 1959 — Sections 25A, 26, 35 — Seizure of Explosive Substance — Conviction — Challenge against — Conviction based on written statement of informant — Non-examination of informant — No cogent and reliable evidence adduced by prosecution to prove all appellants live jointly in house — Evidence on record shows it is alleged against appellants that powder kept in small “*puriya*” in small tin was recovered which appeared as explosive substance but there is no report of any Chemical Examiner to show powder recovered from house of appellants was explosive — Prosecution not able to prove its case beyond all reasonable doubts — Judgment and order of Court below set aside.

IV (2006) CCR 116 (Patna H.C.)

- **Sections 363, 364A read with Section 120B** — Criminal Procedure Code, 1973 — Section 428 — Kidnapping for Ransom, Criminal Conspiracy — No infirmity in order under challenge — Conviction upheld — Criticism with regard to non-examination of certain witnesses unsustainable — Non-production of jail record of A is not circumstance to militate against oral testimony of PW 2 — Corroborated by Constable IM — Where raid conducted to recover child in

manner indicated by PW 1 and factum of recovery of child amply proved, non-joining of public witnesses to said raid, not of any consequence — Nothing on record to show case property tampered with or not secured during trial or it was not available — Criticism is based on misreading of evidence — Ransom demands delivered to father of child by accused AP and she also came to collect amount in exchange of child — It cannot be said she was oblivious of purpose of kidnapping — From analysis of evidence on record, it is found child was picked up by RA, neighbour of family and child was familiar with him — Child was last seen with this accused by PW 1 — Demand for ransom made and conveyed through S and repeated by M — Fact that child was recovered from custody of S in exchange of ransom amount, show prosecution able to establish its case beyond shadow of doubt — No infirmity in judgment under challenge — Judgment and order on sentence under challenge upheld.

IV (2006) CCR 29 (Delhi H.C.) (DB)

- **Section 374** — Criminal Procedure Code, 1973 — Section 378 — Child Labour (Prohibition and Regulation) Act, 1986 — Appeal against acquittal — Unlawful compulsory labour — Victim at time of incident was minor and below 14 years — Provisions of Child Labour Act applicable for forced domestic labour to provisions of Section 374, IPC — Even under general law, contract or agreement with minor is void — Acquittal of respondents on ground of agreement between respondents and victim for domestic work *prima facie* appears illegal — Even his father could not have entered into such kind of agreement or contract for minor — Sufficient and reliable evidence available on record against respondent for unlawfully taking compulsory labour from minor victim — From evidence of DW 1 it is proved money was due and from prosecution evidence it is proved victim unlawfully compelled to work as forced and compulsory labourer in lieu of money taken by his father — This constitutes offence under Section 374, IPC — Impugned judgment of acquittal set aside — Instead of awarding jail sentence, respondents awarded with fine of Rs. 5,000/- each.

IV (2006) CCR 230 (Madhya Pradesh H.C.)

- **Section 376** — Rape — Conviction — Sustainability — Material contradiction in prosecution version — Place of incident within very short distance of house of prosecutrix — Prosecutrix not raised any alarm when she was being raped — Further, when she returned home, no efforts made by her or her family members to inform villagers about incident — Conduct of prosecutrix and her family members deviant from normal conduct in such cases — In medical examination neither any injury nor any sign of sexual intercourse found — Prosecutrix filed affidavit denying charges against appellant — Prosecution failed to bring home charge against appellant beyond reasonable doubt — Judgment of Trial Court set aside.

IV (2006) CCR 11 (Jharkhand H.C.)

- Criminal Procedure Code, 1973 — Section 439 — **Indian Penal Code, 1860** — **Section 376** — Bail — Rape — Applicant is Juvenile — Prosecutrix examined by Medical Officer, who after examination did not find any external or internal injury — Hymen was intact and no bleeding or injury — Applicant entitled to be enlarged on bail with conditions.

IV (2006) CCR 205 (Chhattisgarh H.C.)

- Rape, Wrongful Confinement — Statement of prosecutrix corroborated in material particulars by other materials brought on record — Trial Court sentenced respondent to undergo 3 months' imprisonment — High Court acquitted accused on ground of alleged relationship between prosecutrix and respondent No. 1 — Alleged relationship is of no consequence, particularly having regard to manner in which entire incident took place — It is one thing to say that what sentence should be imposed, but it is another thing to say that only because lesser sentence imposed by Trial Court, same itself would be ground for acquitting respondent-accused — Matter remitted to High Court for fresh consideration — Further directions issued in regards to proceedings against respondent No. 2 as appeal against respondent 1 abates as he is already dead — **Indian Penal Code, 1860** — **Sections 376, 342.**

IV (2006) CCR 83 (SC)

- Sentence — Reduction of — Legality — Rape — Criminal intimidation — Victim aged 14 years — Additional Sessions Judge punished accused with 10 years' RI and fine of Rs. 5,000/- — High

Court by impugned order reduced sentence for period already undergone, viz. 5 years 4 months and 14 days on ground that appellant accused was illiterate labourer aged 20 years at time of commission of offence — Victim was alone at her house — Accused taking advantage of situation, committed crime — Approach of High Court lacked sensitivity towards minor victim — Order of High Court set aside — Sentence awarded by Trial Court restored — **Indian Penal Code, 1860 — Sections 376, 506.**

IV (2006) CCR 50 (SC)

- Rape, attempt to commit offence — Reduction of sentence — Ground — Offence committed 12 years ago and prosecutrix already married — Prosecutrix 7 years old at time of commission of offence — High Court reduced sentence of imprisonment from 3 years to 6 months and awarded compensation of Rs. 25,000/- — Ground of reduction of sentence taken by High Court unjustified — Impugned order reducing sentence of imprisonment from 3 years to 6 months and compensation of Rs. 25,000/- set aside — Sentence of imprisonment and fine awarded by Trial Court restored — **Indian Penal Code, 1860 — Section 376 r/w Section 511.**

IV (2006) CCR 58 (SC)

- Gang Rape — Sentence — Reduction of sentence below statutory period — Legality of — Accused identified by respondent — Offence under Section 376(2)(g) considered very serious offence and mandates minimum punishment for 10 years for conviction thereunder, unless there are adequate and special reasons mentioned in judgment warranting punishment less than minimum punishment — Reduction of sentence by High Court to period already undergone, on ground that accused in custody for long *i.e.* since 25.4.2001, were semi-literate agricultural labourer coming from rural area — Does not separately or cumulatively, make out case for reduction of sentence — High Court showed unwarranted sympathy towards accused — Judgment of High Court set aside — **Indian Penal Code, 1860 — Section 376(2)(g).**

IV (2006) CCR 14 (SC)

- Electricity Act, 2003 — Section 30 — **Indian Penal Code, 1860 — Section 379** — Criminal Procedure Code, 1973 — Section 439 — Bail — Theft of Electricity — Loss to department-alleged to be caused by appellant to tune of Rs. 14 lacs — Petitioner already in custody for last more than one month and will face proceedings in accordance with law — His indefinite custody not called for — Petitioner ready to deposit Rs. 2 lacs in Court and furnish security of Rs. 14 lacs in first instance, which will be treated as security for remaining amount after amount of Rs. 2 lacs deposited — Amount will be kept in fixed deposit initially for period of 1 year — If petitioner succeeds in legal proceedings, amount will be refunded to him and security discharged — If petitioner loses, amount will be available to comply with any order — Petitioner granted bail to satisfaction of Chief Justice Magistrate.

IV (2006) CCR 143 (Punjab & Haryana H.C.)

- Criminal Procedure Code, 1973 — Section 482 — **Indian Penal Code, 1860 — Sections 406, 409, 415, 420, 467, 468, 471, 120B** — Registration of Criminal Case — Payment of less salaries to employees, preparing false register and embezzlement of money by Managing Committee of College — Petitioners filed complaint to Senior Superintendent of Police making these allegations — Deputy Superintendent of Police found same proved — There was no hitch in registering case and to continue with investigation — Opinion of District Attorney (Legal) that no ground made out to register case, could not override fact finding inquiry report of Deputy Superintendent of Police — Complaint of petitioners along with inquiry report of Deputy Superintendent of Police sent to Senior Superintendent of Police with directions to register case if cognizable offences disclosed from documents.

IV (2006) CCR 175 (Punjab & Haryana H.C.)

- **Sections 420, 467, 468, 471, 504, 506** — Code of Criminal Procedure, 1973 — Section 482 — Inherent powers — Quashing of charge sheet and summoning order — Cheating, Forgery, Criminal intimidation — Instant case not one of rare cases in which proceedings or charge sheet can be quashed — Arrest of applicant stayed during investigation and after submission of charge sheet, non-bailable warrant issued against him — Prayer of applicant for keeping order issuing non-bailable warrant in abeyance granted — Applicant may approach Court concerned and claim

discharge through his Counsel — Non-bailable warrants issued against applicant shall be kept in abeyance and applicant shall not be arrested for period 6 weeks — During this intervening period, applicant permitted to claim discharge through his Counsel — Further, looking to facts and circumstances of case this Court do not find case for quashing of charge-sheet and consequent summoning order right at inception of trial.

IV (2006) CCR 164 (Allahabad H.C.)

- **Section 448** — House-trespass — Post office being public place and Saturday being working day, entering post office does not satisfy basic ingredients of offence under Section 448, IPC.

IV (2006) CCR 171 (Orissa H.C.)

- Forgery, Criminal Conspiracy — Corruption — Sanction for prosecution — Cognizance upon complaint filed for prosecution of appellants shall be considered only after sanction is obtained — Observation of High Court that cognizance can be taken even without obtaining sanction and same can be obtained later on — Reasoning of High Court not only fallacious but wholly unknown to law and not justified in interfering with order passed by Trial Court — Impugned order set aside and that rendered by Trial Court restored — **Indian Penal Code, 1860 — Sections 467, 468, 471A r/w Section 120B** — Prevention of Corruption Act, 1988 — Sections 13(2), 13(1)(d).

IV (2006) CCR 24 (SC)

- **Sections 494 and 34** — Criminal Procedure Code, 1973 — Section 198(1) Proviso (c) — Bigamy — Complaint to be filed by “person aggrieved” — Written authorisation from mother not necessary for son to file complaint on behalf of his mother — Second respondent-son himself was aggrieved by act of bigamy — He narrated in detail, his personal grievances because of second marriage of his father — He himself is aggrieved and this is in addition to personal grievances of his mother — Allegations in complaint *prima facie* constitute offence under Section 494, I.P.C. — No authorisation from aggrieved wife required — Not necessary to mention in complaint that complaint is filed on behalf of his mother, even if it is filed at her request — Son is entitled to file complaint even on his own behalf.

IV (2006) CCR 111 (Kerala H.C.)

- Quashing of proceedings — Bigamy, cheating — Complaint against husband for offence of Bigamy by father of subsequent wife on her behalf — Complainant’s daughter filed affidavit before Magistrate, wherein she stated that at time of marriage she was major and she married appellant on her own free will — She is living happily and peacefully and has no complaint against him or his family members — Specific statement as to fact that written statement not made under any pressure, undue influence, coercion, threat, force — Magistrate not justified in taking cognizance of case as same not filed by wife of appellant in her capacity as wife — Proceedings quashed — **Indian Penal Code, 1860 — Sections 494, 420** — Criminal Procedure Code, 1973 — Section 482.

IV (2006) CCR 81 (SC)

- **Sections 494, 497 and 109** — Bigamy, Adultery, Abetment — Essentials to be proved for offence under Section 494, IPC — On assessment of evidence on record, SDJM found prosecution could not prove that UD is legally married wife of petitioner and offence under Section 494, IPC not made out on complained act of her marriage with somebody else — Further, when petitioner has failed to prove that he is husband of accused, offence under Section 497 not made out — Taking note of contradiction so also other prevaricating evidence of P.Ws., SDJM did not find evidence to be credible — Nothing on record to dislodge that presumption — Reason assigned by SDJM not found to be suffering from perversity to be termed as illegality — No reason to interfere with assessment of evidence and findings recorded by SDJM in disbelieving case of complainant — Order of acquittal pronounced by SDJM upheld.

IV (2006) CCR 106 (Orissa H.C.)

- Criminal Procedure Code, 1973 — Section 482 — Dowry Prohibition Act, 1961 — Sections 3 and 4 — **Indian Penal Code, 1860 — Section 498A** — Dowry Demand, Cruelty — Quashing of Proceedings — Territorial jurisdiction — Part of alleged offence *i.e.*, threatening and demand of dowry has taken place within territory of Bokaro (State of Jharkhand), while O.P. No. 2 was

staying with her parents — Court not inclined to quash proceedings pending before Sub-Divisional Judicial Magistrate, Bokaro.

IV (2006) CCR 181 (Jharkhand H.C.)

- **Section 498A** — Criminal Procedure Code, 1973 — Sections 320 and 482 — Cruelty — Quashing of FIR — Compounding of offence — Offence under Section 498A, IPC non-compoundable — In view of settlement between parties and to ensure that parties are not discouraged from settling matter, FIR quashed.

IV (2006) CCR 189 (Bombay H.C.)

- Criminal Procedure Code, 1973 — Sections 178(c), 482 — **Indian Penal Code 1860** — **Section 498A** — Dowry Prohibition Act, 1961 — Sections 3 and 4 — Quashing of Order — Territorial Jurisdiction — Dowry Demand, Cruelty — Offence of continuing nature — Informant left her matrimonial home *i.e.* U.P. and presently residing at her parental home *i.e.* Patna, within local area of Magistrate, demand of dowry and also threat in case demand not met Second marriage of her husband shall be performed, made in Patna — Offence committed in more than one local area and it consists of several acts and it can be tried by Court having jurisdiction over any of such local areas.

IV (2006) CCR 194 (Patna H.C.)

- Quashing of FIR — Cruelty, Criminal Breach of Trust — Investigation not started and no occasion to find out whether there was material to file charge-sheet or not — Too premature a stage for High Court to quash FIR holding FIR *prima facie* does not disclose any cognizable offence against any of respondents and allegations vague in nature — Impugned order of High Court set aside — Criminal Procedure Code, 1973 — Section 482 — **Indian Penal Code, 1860** — **Sections 498A, 406.**

IV (2006) CCR 53 (SC)

- **Sections 498A and 306** — Cruelty, Abetment of Suicide — Appreciation of evidence — Post-mortem examination — Victim died on account of 61% ante-mortem injuries — Victim set herself on fire on being driven to commit suicide due to ill-treatment meted out to her, though angle of unlawful demands is not there — Appellant ought to have been convicted under Section 306, IPC — Since no appeal filed by State on this count, no need to set aside acquittal of appellant for offence punishable under Section 306, IPC — No fault can be found with conviction for offence punishable under Section 498A, IPC — Sentence imposed on appellant *viz.*, rigorous imprisonment for 3 months and fine of Rs. 1,000, is lenient and requires no reduction.

IV (2006) CCR 64 (Bombay H.C.)

- **Sections 498A, 326, 307 and 506** — Dowry Prohibition Act, 1961 — Sections 3 and 4 — Criminal Procedure Code, 1973 — Section 178 — Quashing of FIR — Territorial Jurisdiction — Cruelty, Grievous Hurt, Attempt to Murder, Criminal Intimidation — Continuing Offence — After three to four months of solemnization of marriage dowry demand made in M.P. which was informed over telephone by victim to her mother in U.P. — No reference of any cause of action within State of U.P. is available — Telephonic conversation of year 2003 in between victim and mother is stray incident and cannot be regarded as incident immediate before occurrence of crime for treating it as continuance of offence — Offence committed at appropriate place of M.P., considered to be place of jurisdiction over matter — No cause of action arose within jurisdiction of State of Uttar Pradesh — Order will not affect right of police authority in transmitting FIR to appropriate police authority in M.P. for investigation.

IV (2006) CCR 191 (Allahabad H.C.) (DB)

Juvenile Justice Act, 2000

- **Section 18** — Indian Penal Code, 1860 — Sections 120B, 201, 506, 34 — Bail — Grant of — Juvenile — Criminal conspiracy, disappearance of evidence, criminal intimidation, common intention — Petitioner aged 16 years, denied bail by ASJ — Bail to be granted to juvenile except for three exceptions carved out by Section 18 of Juvenile Justice Act — This was first offence of petitioner — Petitioner's father is Government servant and petitioner residing in well-knit family — Petitioner if released on bail would be living with his family and there is nothing to suggest that he would be exposed to hardened criminals — Case does not fall in any of three exceptions to

Section 18 — Petitioner directed to be released on bail with conditions.

IV (2006) CCR 166 (Delhi H.C.)

Limitation Act, 1963

- Negotiable Instruments Act, 1881 — Section 138 — **Limitation Act, 1963 — Section 18** — Dishonour of Cheque — Enforceability of time barred debt — Question of limitation, if raised as defence by accused may be considered at stage of trial and not at threshold of criminal prosecution.

IV (2006) CCR 51 (Orissa H.C.)

Narcotic Drugs and Psychotropic Substances Act, 1985

- Suspension of sentence pending appeal — Accused sentenced to undergo RI for 10 years and fine of Rs. 1 lac on each count — Appellant in jail since 1.3.1997 and already undergone more than 7 years of imprisonment — On appellant depositing amount of fine, execution of sentence of imprisonment suspended during pendency of appeal — Criminal Procedure Code, 1973 — Section 389 — **Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 8, 15.**

IV (2006) CCR 41 (SC)

- **Section 8(c) r/w Sections 20(1)(ii)(A), 36A(1)(a)** — Criminal Procedure Code, 1973 — Section 4(2) Schedule I, Classification 2 — Bailable Offence — Offences arising under NDPS Act punishable with imprisonment for less than 3 years are bailable one — Provision under Section 36A(1)(a) of Act is unambiguous — Special Court empowered to try only offences punishable with imprisonment for term of more than 3 years — Section 36A(1)(a) of Act r/w Section 4(2), Cr.P.C. empowers other Magistrates to try offences punishable with imprisonment less than 3 years in accordance with Cr.P.C. — Said provision went unnoticed by Courts below — There is flood of cases before Special Court resulting in delay in disposal of cases including bail applications — Magistrate Courts and District Courts should give effect to provisions under Section 36A(1)(a) of NDPS Act r/w Section 4(2) of Cr.P.C. Schedule I, Classification 2 in letter and spirit — Petitioner to be released on bail with conditions.

IV (2006) CCR 103 (Madras H.C.)

- Difference in weight of sample — Not proved — Weight of sample was 'about 50 gms' — 'About 50 gms' necessarily means not exactly '50 gms' — It is established by evidence that sample which was extracted was sent to Chemical Analyst — Evidence of independent witnesses falsified different in weight — Benefit of doubt cannot be given to respondent — **Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 20(b)(ii).**

IV (2006) CCR 38 (SC)

- **Section 36A(1)(a)** — "Small Quantity" — Categorisation — Notification dated 19.10.2001 — Effect of — 1 kg. comes under small quantity — 1.20 kg. comes in between small and commercial quantity in respect of contraband scheduled as Item 55 — Public Prosecutor fairly stated offences punishable with imprisonment less than 3 years are bailable offences and persons alleged in respect of those offences entitled for bail.

IV (2006) CCR 103 (Madras H.C.)

- Seizure of Illicit Liquor — Chance recovery of 1960 grams of charas — Not necessary to follow procedure contemplated under Sections 42, 50 of Act — **Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 42, 50.**

IV (2006) CCR 56 (SC)

- Seizure of Illicit Liquor and charas — Contraband in question seized from possession of appellant No. 1 — Prosecution established case against said accused — Courts below rightly convicted said appellant — In regard to appellant No. 2, prosecution case is he was travelling in autorickshaw, along with three persons — Prosecution not produced any material whatsoever to establish either this appellant had knowledge that appellant No. 1 was carrying contraband or in any way conniving with said accused in carrying contraband — In absence of any such material to convict second appellant only on ground that he was found in autorickshaw, not justified — Courts

below rightly acquitted other two accused on similar ground — Said benefit ought to have gone to appellant No. 2 also — Prosecution failed to establish its case against appellant No. 2 — **Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 42, 50.**

IV (2006) CCR 56 (SC)

- Search of premises between sunset and sunrise at 3 a.m. — Neither any search warrant nor authorisation obtained — Nor were grounds for possible plea that if opportunity for obtaining search warrant or authorisation accorded evidence will escape, indicated — Non-compliance with provisions of Section 42 Proviso of NDPS Act — Trial stood vitiated — **Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 42 Proviso.**

IV (2006) CCR 60 (SC)

- Search — Charas recovered from bag and not from person of respondent — Section 50, NDPS Act, not applicable — Even if Section 50, NDPS Act applicable, accused informed of his right to be searched in presence of Gazetted Officer or Magistrate — Such information need not be in writing — Requirements of Section 50 of Act duly complied with — **Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 50.**

IV (2006) CCR 38 (SC)

- “Authorised Testing Laboratory” — Certificate furnished by testing laboratory at Kandaghat is valid in law to test samples — High Court erroneously held that person who analysed sample was not Chemical Examiner as defined in Rule 2(c) r/w Rules 17 and 22 of NDPS Rules — Finding of High Court set aside and finding of Sessions Judge upheld — Accused directed to surrender to serve out remaining period of sentence — **Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 55 — Narcotic Drugs and Psychotropic Substances Rules — Rule 2(c) r/w Rules 17, 22.**

IV (2006) CCR 52 (SC)

- **Section 77, 2(vii-a) and 25A r/w Sections 29, 9A** — Controlled Substance — Ephedrine HCL I.P. is controlled substance as notified under notification issued under Section 2(vii-a) of Act — Said notification not covered under Section 77 of Act — No necessity for placing it before House of Parliament for necessary approval when Act was in force as on date of notification.

IV (2006) CCR 256 (Madras H.C.)

Narcotic Drugs and Psychotropic Substances Rules

- “Authorised Testing Laboratory” — Certificate furnished by testing laboratory at Kandaghat is valid in law to test samples — High Court erroneously held that person who analysed sample was not Chemical Examiner as defined in Rule 2(c) r/w Rules 17 and 22 of NDPS Rules — Finding of High Court set aside and finding of Sessions Judge upheld — Accused directed to surrender to serve out remaining period of sentence — **Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 55 — Narcotic Drugs and Psychotropic Substances Rules — Rule 2(c) r/w Rules 17, 22.**

IV (2006) CCR 52 (SC)

Negotiable Instruments Act, 1881

- Joint trial — Transfer of complaint and joint trial of two complaint cases — No prayer in petition filed under Section 482, Cr.P.C. seeking joint trial nor any independent petition filed by respondent seeking joint trial — Having regard to facts and circumstances, no ground to direct transfer of complaint and joint trial of two complaint cases — Allegations about forgery made in December, 2001 and complaint under Section 138, NI Act filed on 23.1.2002 — Respondent filed complaint two years later on 12.3.2003 — Proceedings in complaint filed under Section 138, NI Act are at final stage — High Court did not take into consideration these aspects, while passing impugned order — Impugned order for transfer set aside — **Negotiable Instruments Act, 1881 — Section 138** — Criminal Procedure Code, 1973 — Section 482.

IV (2006) CCR 25 (SC)

- Criminal Procedure Code, 1973 — Section 397(1) — **Negotiable Instruments Act, 1881 — Section**

138 — Revision — Dishonour of Cheque — Suspension of sentence — Relief without surrender and undergoing confinement, pending disposal of criminal revision — Courts coming across difficulties of accused and more particularly in cases under Section 138, Negotiable Instruments Act and other compoundable offences where there is possibility of compounding of offence within short period — In such event, insisting upon accused concerned to undergo confinement for seeking relief of suspension of sentence, may result in miscarriage of justice.

IV (2006) CCR 8 (Madras H.C.)

- **Section 138** — General Clauses Act, 1897 — Section 27 — Dishonour of Cheque — Presumption of service of Notice — “Giving Notice” is not same as receipt of notice — Giving is process of which receipt is accomplishment — To raise presumption of deemed notice, there should be clear averment in complaint that complainant sent statutory notice of demand intimating dishonour of cheque and accused was evading service — In absence of such averment, presumption of deemed notice could not be raised — Notice sent by registered post to correct address of accused and same deemed to have been served on accused in terms of Section 27, General Clauses Act — Presumption available under Section 27 of General Clauses Act cannot be rebutted either by way of mere suggestion or mere denial in statement under Section 313, Cr.P.C. — Courts below rightly concluded notice duly served on accused.

IV (2006) CCR 20 (Bombay H.C.)

- **Section 138** — Limitation Act, 1963 — Section 18 — Dishonour of Cheque — Enforceability of time barred debt — Question of limitation, if raised as defence by accused may be considered at stage of trial and not at threshold of criminal prosecution.

IV (2006) CCR 51 (Orissa H.C.)

- Criminal Procedure Code, 1973 — Section 482 — **Negotiable Instruments Act, 1881** — **Section 138** — Quashing of Summons — Dishonour of Cheque — Cheques issued by company to respondent when petitioner was not Director of Company, had resigned more than 9 years before cheques in question issued — Petitioner also placed on record clinching evidence *viz.* certified copy of Form No. 32 to show she was not Director at relevant time — Such document is conclusive of fact that petitioner resigned *w.e.f.* 20.8.1994 — She was not incharge or responsible for day-to-day affairs of company and could not be so — Criminal complaints against petitioner quashed.

IV (2006) CCR 61 (Delhi H.C.)

- **Section 138** — Sick Industrial Companies (Special Provisions) Act, 1985 — Sections 3(1)(o), 22, 22A — Recall of Process — Dishonour of Cheque — Petitioner alleges complainants were aware at time of transaction with petitioner that petitioner company is declared as sick industrial company under Section 3(1)(o) of SICA — In view of Supreme Court judgment in *Kusum Ingots and Alloys Ltd.*, I (2000) BC 300 (SC)=I (2000) CCR 260=II (2000) SLT 375, option available to petitioner is to go before learned Magistrate and get order — Since issue raised by petitioner on basis of said judgment of Supreme Court goes to root of matter, further proceedings stayed till issue decided by concerned Court.

IV (2006) CCR 80 (Bombay H.C.) (DB)

- **Section 138** — Criminal Procedure Code, 1973 — Sections 202, 347(2), 482 — Dishonour of Cheque — Issue of Process — Aggrieved person can prefer revision against order of Magistrate issuing process — In view of alternative remedy of revision against order issuing process, petition under Section 482, Cr.P.C. not maintainable.

IV (2006) CCR 121 (Bombay H.C.)

- **Section 138** — General Clauses Act, 1897 — Section 27 — Quashing of Proceedings — Dishonour of Cheque — Notice — Service — Notice sent by registered post not served upon applicant/accused — It shall not be presumed that there is sufficient service regarding notice sent by UPC — It cannot be taken into account under Section 27 of General Clauses Act that there was sufficient service upon accused/applicants — Impugned order passed by Court below liable to be quashed.

IV (2006) CCR 128 (Allahabad H.C.)

- **Section 138** — Dishonour of Cheque — Undated cheque given as security — It can be looked at stage of trial whether cheque was given in blank or in security.

IV (2006) CCR 128 (Allahabad H.C.)

- **Section 138** — Dishonour of Cheque — Complaint — Maintainability — Authorisation to file complaint — Complaint filed by Managing Director of Company — As per Articles of Association, Managing Director empowered to represent company in legal proceedings — Revision petitioner-company also placed copy of resolution empowering Managing Director to file complaint or to represent company in legal proceedings by or against company — Sessions Judge erroneously allowed appeal and set aside conviction solely on ground that revision petitioner not produced proper authorisation — No substantive sentence is called for — Accused granted relief by setting aside substantive sentence and modifying compensation into fine with default sentence for non-payment of fine amount.

IV (2006) CCR 139 (Karnataka H.C.)

- Dishonour of Cheque — Quashing of proceedings — Limitation to file complaint — Complaint barred by time — It is matter of evidence and Single Judge not justified in quashing proceedings by holding that complaint was barred by time — **Negotiable Instruments Act, 1881 — Sections 138, 138(b)** — Criminal Procedure Code, 1973 — Section 482.

IV (2006) CCR 42 (SC)

- **Sections 138, 139** — Criminal Procedure Code, 1973 — Section 313 — Dishonour of Cheque — Presumption available under Section 139 of Act in favour of complainant is rebuttable presumption but same cannot be rebutted only by suggestions or statements given by accused under Section 313, Cr.P.C. — Accused chose not to step in witness box to try to rebut said presumption.

IV (2006) CCR 20 (Bombay H.C.)

- **Sections 138, 139** — Dishonour of Cheque — Presumption — Legally recoverable debt — Whenever private complaint filed seeking prosecution of accused for offence under Section 138 of Act, if issuance of cheque and signature on cheque accepted and admitted by accused, initial presumption to be raised by Court in favour of complainant that cheque in question issued towards legally recoverable debt or liability — This presumption is rebuttable presumption — Such rebuttal evidence to be placed before Court by accused.

IV (2006) CCR 245 (Karnataka H.C.)

- **Sections 138, 139** — Dishonour of Cheque — Holder in due course — “Debtor and creditor relationship” — Legally recoverable debt or liability — Determination — Loan given by husband of appellant-complainant to accused — On request of husband of appellant cheque issued in favour of wife-appellant by accused — Appellant becomes creditor and for all practical purposes, she would be entitled to seek prosecution of accused under Section 138 of Negotiable Instruments Act — Approach of Appellate Court is perverse — Judgment of acquittal of first Appellate Court set aside confirming judgment of conviction passed by Trial Court — Respondent/accused found guilty of offence punishable under Section 138, Negotiable Instruments Act.

IV (2006) CCR 245 (Karnataka H.C.)

- **Section 138, 139, 118(b)** — Dishonour of Cheque — Ingredients required to be proved for making out case under Section 138 of Act — *Vide M/s. Kusum Ingots and Alloys Ltd. case, I (2000) CCR 260 (SC)=II (2000) SLT 375=I (2000) BC 300 (SC).*

IV (2006) CCR 20 (Bombay H.C.)

- **Sections 138, 139 and 118(b)** — Dishonour of Cheque — Presumption — Existing debt or liability — Burden of proof on accused-respondent — No inconsistencies in evidence of complainant that cheques issued by accused in discharge of his liability — Complainant denied suggestion that he had taken 3 blank cheques without date and amount from accused as security — As regards date, Section 118(b) of Act provides only when contrary is proved, negotiable instrument is presumed to have been made on date shown on instrument — Accused failed to rebut said presumption — Once it is accepted and held cheque was complete in all respects by accused, no reason not to

infer that accused also completed same as to amount written thereon — Entire plea of accused that cheque given by way of security fails once accused issued cheques in manner stated by complainant — Both Courts below rightly came to conclusion that case of complainant proved beyond reasonable doubt against accused.

IV (2006) CCR 20 (Bombay H.C.)

- Dishonour of cheque — Offence by company — Quashing of issuance of processes — Vicarious liability of directors — No specific averments in complaint against appellants except stating they are directors in company — Primary responsibility is on complainant to make necessary averments in complaint to make accused vicariously liable — Complaint demonstrates statutory requirement of Section 141 of Negotiable Instruments Act not complied with — It raises a legal fiction — By reason of said provision person although not personally liable for commission of offence would be vicariously liable therefor — Such vicarious liability can be inferred so far as company registered or incorporated under Companies Act only if requisite statements, which are required to be averred in complaint petition, made so as to make accused therein vicariously liable for offence committed by company — Not only averments made in complaint petition does not meet said statutory requirements, sworn statement of witness made by son of respondent does not contain any statement that appellant was incharge of business of company — In cases of summons Court requires strict compliance of statutory requirements — Issue of processes against appellants quashed — **Negotiable Instruments Act, 1881 — Sections 138, 139, 141.**

IV (2006) CCR 8 (SC)

- Transfer Petition — Transfer of complaint — Complaint instituted by respondent company against petitioner and also criminal complaint instituted by petitioner against Director of respondent company pending at Mumbai — Subsequently, respondent-company initiated proceedings against petitioner at Delhi — Petitioner residing at Mumbai and has child of 7 years — Considering hardship likely to be faced by petitioners in travelling to Delhi — In view of fact other criminal proceedings pending at Mumbai — Fit case to transfer petition — Criminal Procedure Code, 1973 — Section 406 — **Negotiable Instruments Act, 1881 — Section 138 r/w Section 142.**

IV (2006) CCR 36 (SC)

Prevention of Corruption Act, 1988

- Forgery, Criminal Conspiracy — Corruption — Sanction for prosecution — Cognizance upon complaint filed for prosecution of appellants shall be considered only after sanction is obtained — Observation of High Court that cognizance can be taken even without obtaining sanction and same can be obtained later on — Reasoning of High Court not only fallacious but wholly unknown to law and not justified in interfering with order passed by Trial Court — Impugned order set aside and that rendered by Trial Court restored — Indian Penal Code, 1860 — Sections 467, 468, 471A r/w Section 120B — **Prevention of Corruption Act, 1988 — Sections 13(2), 13(1)(d).**

IV (2006) CCR 24 (SC)

Railway Property (Unlawful Possession) Act, 1966

- **Section 3(a)** — Sentence — Reduction of — Sustainability — Unlawful possession of railway property — Accused unable to explain his possession either by purchase or otherwise — Accused pleaded guilty but prayed for leniency in sentence — Accused was blind, having wife and 3 children — Economic condition poor — He was repenting for offence — No error committed by Magistrate in showing leniency in sentence of accused.

IV (2006) CCR 152 (Bombay H.C.)

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

- Criminal Procedure Code, 1973 — Section 439 — Indian Penal Code, 1860 — Sections 294, 506, 427 — **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1988 — Section 3(1)(x)** — Arms Act, 1959 — Section 25 — Bail — Obscenity, Criminal Intimidation, Mischief, Accused alleged to have terrorize inhabitants by use of arms and misbehaved with womenfolk — Applicant in jail since 14.4.2005 — Applicant not named in FIR and implicated in this offence on

basis of subsequent diary statements of witnesses — Nothing recovered from his possession and all offences are bailable except offence under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes Act — Fit case where applicant should be extended facility of bail with conditions.

IV (2006) CCR 50 (ChhattisgarhH.C.)

- Appeal against acquittal — Murder, Rioting, Unlawful Assembly — Grant of leave to appeal — Refusal — High Court passed unreasonable order — It was not brought to notice of High Court that complainant's revision petition pending challenging acquittal when application for grant of leave to appeal taken up — In view of settled principles of law, appropriate to direct High Court to hear both applications for grant of leave as filed by State and revision application filed by informant — Same to be considered in accordance with law — Indian Penal Code, 1860 — Sections 148, 302 r/w Section 149 — **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(2).**

IV (2006) CCR 84 (SC)
