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(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT
EXECUTIVE PROGRAMME
(New Syllabus 2022)

for

December, 2023 Examination

JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

GROUP 1

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Lesson 2: Constitution of India

Satender Kumar Antil vs. Central Bureau of Investigation and Ors. (11.07.2022 - SC)

In this case, taking note of the continuous supply of cases seeking bail after filing of the final report on a wrong interpretation of Section 170 of the Code of Criminal Procedure ("the Code"), an endeavour was made by Supreme Court to categorize the types of offenses to be used as guidelines for the future.

The Supreme Court *inter alia* said that "The principle that bail is the Rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India."

Further, in this case, the Supreme Court issued certain directions, however they may be subject to State Amendments. These directions are meant for the investigating agencies and also for the courts. The directions are as under:

a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in *Arnesh Kumar (supra).* Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the Accused for grant of bail.

d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed Under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

e) There need not be any insistence of a bail application while considering the application Under Section 88, 170, 204 and 209 of the Code.

f) There needs to be a strict compliance of the mandate laid down in the judgment of this Court in Siddharth (supra).

g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the

special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

h) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.

k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

l) All State Governments, Union Territories and High Courts are directed to file affidavits/status reports within a period of four months.

Lesson 3: Interpretation of Statutes

The Authority for clarification and Advance Ruling & Anr. v. M/s. Aakavi Spinning Mills (P) Ltd. (Order dated 12.01.2022)

The Supreme Court in its order dated 22.01.2022 has *inter alia* said that when the Entry in question specifically provides for exemption to the goods described as "Hank Yarn" without any ambiguity or qualification, its import cannot be restricted by describing it as being available only for the hank form of one raw material like cotton nor could it be restricted with reference to its user industry.

The court in para 11 of the Order has mentioned that as noticed, the Entry in question, as inserted into the Fourth Schedule to the Act, is clear and specific that is, "Hank Yarn"; it carries neither any ambiguity nor any confusion. Undoubtably, the yarn in the hank form (which is a unit of measure), has come for exemption under the said Entry 44; and obviously, that exemption enures to the benefit of the handloom industry too. However, for that matter, if the benefit of this broad and unambiguous entry also goes to any other industry, there is absolutely no reason to deny such benefit. In other words, we find no reason to restrict the Entry in its operation to the handloom industry alone or to any particular class of hank yarn like "Cotton Hank Yarn" only. The exemption Entry being clear and unambiguous, no external aid for interpretation is called for, whether in the form of Budget speech or any other notification under any other enactment.

Lesson 10: Law relating to Limitation

Ajay Dabra vs. Pyare Ram and Ors. (31.01.2023 - SC)

In this case the impugned order of High Court of Himachal Pradesh dismissed the delay condonation applications filed Under Section 5 of the Limitation Act, 1963, declining to condone a delay of 254 days, because the reasons assigned for the condonation were not sufficient reasons for condonation of the delay. This was not found to be a sufficient reason for the condonation of delay as the Appellant was an affluent businessman and a hotelier.

The Supreme Court has said that we do not have a case at hand where the Appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the appeal cannot be a valid reason for condonation of the delay, since the Appellant could have filed the appeal deficient in court fee under the provisions of law, referred above. Therefore, we find that the High Court was right in dismissing Section 5 application of the Appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the Appellant filed an appeal in terms of Section 149 Code of Civil Procedure and thereafter removed the defects by paying deficit court fees. This has evidently not been done.

Lesson 11 - Law relating to Arbitration, Mediation and Conciliation

1. Cholamandalam Investment and Finance Company Ltd. vs. Amrapali Enterprises and Ors. (14.03.2023 - CALHC)

This case has given a clarification on unilateral appointment of Arbitrator.

Calcutta High Court decided that in light of the aforementioned judicial precedents(mentioned in the Judgement), it can be said with unambiguous certainty that the unilateral appointment of Arbitrator by the award holder is illegal and void. However, what still remains to be determined is the impact of the aforesaid illegality on the arbitral award and the present execution petition.

The Court further stated that ……. It is a settled principle of law that compliance with Section 12(5) read with Schedule VII is *sine qua non* for any arbitral reference to gain recognition and validity before the Courts. In the present facts in hand, an arbitral reference which itself began with an illegal act has vitiated the entire arbitral proceedings from its inception and the same cannot be validated at any later stage. Thus, it would be a logical inference to consider the aforesaid arbitral proceedings as void ab initio.

2. **Can court exercising power under Section 37 of the Act modify the orders of the arbitral tribunal to protect the subject matter of the arbitration?**

Asian Hotels (North) Ltd. vs. Sital Dass Sons and Ors. (22.12.2022 - DELHC)

The High Court of Delhi has said in the Judgment of this case that this Court is aware of the limited scope of interference in appeal against orders passed by Arbitrators on applications under Section 17 of the Act. However, in appropriate cases, Court can exercise its jurisdiction under Section 37 of the Act to protect the legitimate interest of the appellant, which includes modifying the order of the learned Arbitral Tribunal. It may be noted that jurisdiction of this Court under Section 37 of the Act is substantially different from the scope of jurisdiction under Section 34 of the Act, which does not include the authority to modify the award passed by the Arbitral Tribunal.

3. **Application of Fundamental Rights while passing of Awards by Arbitrators**

The Chairman Board of Trustees for Shyama Prasad Mookherjee Port Kolkata vs. Universal Sea Port Private Ltd. (03.11.2022 - CALHC)

In this case, the Calcutta High Court has said in my understanding, the respondent seems to have had found favour with the arbitrator's sympathies, but unfortunately, they do not find favour with my sympathies and most unfortunately, they do not find favour with the law. It is evident that considerations of discrimination and want of state functionaries to act in due conformance to

Article 14 of the Constitution swayed the arbitrator's contractual interpretation. The aforesaid inference can be gauged from paragraph 5(e) of this judgement. Firstly, arbitrators cannot apply the rights envisaged under the fundamental rights of the Constitution of India or equity while granting arbitral awards, and if they do, such awards must be set aside as being patently illegal under Section 34(2A) of the Act. The arbitrator is a creature of contract and must act within the powers granted by it…..

Lesson 15 - Law relating to Information Technology

Google India Private Limited vs. Visakha Industries and Ors. (10.12.2019 - SC)

In this case the Supreme Court decided that Section 79 of Information Technology Act, 2000 as originally enacted, did not deal with the effect of other laws.

The Supreme Court *inter alia* decided that the finding by the High Court that in the case on hand, in spite of the complainant issuing notice, bringing it to the notice of the Appellant about the dissemination of defamatory matter on the part of the first Accused through the medium of Appellant, Appellant did not move its little finger to block the said material to stop dissemination and, therefore, cannot claim exemption Under Section 79 of the Act, as it originally stood, is afflicted with two flaws. In the first place, the High Court itself has found that Section 79, as it originally was enacted, had nothing to do with offences with laws other than the Act. We have also found that Section 79, as originally enacted, did not deal with the effect of other laws. In short, since defamation is an offence Under Section 499 of the Indian Penal Code, Section 79, as it stood before substitution, had nothing to do with freeing of the Appellant from liability under the said provision…..

Note: Students appearing in December, 2023 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI & Central Government upto 31st May, 2023.