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GA dated 1.11.1999.

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(3) (i) s. 482 r/w ss. 319 and 397(2) - Order of Court of Session rejecting prayer of complainant u/s. 319 to summon applicants, set aside by High Court - Held: Order passed by trial court refusing to issue summons on the application filed by complainant u/s. 319 decides rights and liabilities of appellants in respect of their involvement in the case and, as such, cannot be said to be an interlocutory order so as to bar a revision to High Court u/s. 397(2).

(ii) s. 482 - Exercise of power by High Court - Held: Inherent power of court can be exercised when there is no remedy or express provision in

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the Code for redressal of the grievance - In the instant case, complainant ought to have challenged the order before High Court in revision u/s. 397 and not by invoking inherent jurisdiction of High Court u/s. 482.

(iii) s. 482 r/w s. 401(2) - Opportunity of hearing - Held: A valuable right accrued to appellants by reason of the order passed by Court of Session refusing to issue summons - In the circumstances, principle of giving notice and opportunity of hearing as contemplated u/s 401(2) should be applied where such orders are challenged in High Court u/ s. 482 - Order of High Court set aside and matter remanded to it for decision afresh after giving opportunity of hearing to appellants - Notice.

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(ii) ss. 3(ee), 4, and 6 - "Appropriate Government" - Held: If the purpose of acquisition is exclusively for the Union, then Union/Central Government will have exclusive jurisdiction to acquire the land - If the purpose of acquisition is exclusively for a State, or for "a general public purpose", then the State Government concerned will have exclusive jurisdiction to acquire land - In the instant case, though the land was acquired for Railway complex, but additionally the purpose of acquisition had a nexus with the State and, as such, the purpose for acquisition can certainly be described as "a general public purpose" - Therefore, State Government had jurisdiction to acquire the land because it duly satisfied the requirement of the term 'appropriate

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Government' referred to in ss. 4 and 6 - While acquiring the land of appellants, State Government has proceeded in due course of law - As such, appellants cannot be stated to have been deprived of their lands/property, without the authority of law and there has been no violation of appellants' right under Art. 300A of the Constitution - Constitution of India, 1950 - Art. 300A.

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- Judgment of High Court set aside - Insurer is liable to pay compensation awarded.

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(ii) s.166 - Fatal accident - Compensation - Propriety of Tribunal and High Court apportioning contributory negligence at 75:25 and 50:50 respectively and awarding compensation accordingly - Held: Evidence of eye-witness, FIR and charge-sheet against driver of offending vehicle, established that he caused the death due to negligent driving - Therefore, Tribunal and High Court erred in concluding that accident occurred due to negligence on the part of deceased as well.

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(1) ss. 138 and 141 - Dishonour of cheque - Liability of joint account holders - Complaint u/s. 138 - Held:

Under s. 138, it is only the "drawer" of cheque who can be made liable for penal action - Strict interpretation is required to be given to penal statutes - In a case of issuance of cheque from joint account, a joint account holder cannot be prosecuted unless cheque has been signed by each and every joint account holder - Appellant has not signed the cheque - s. 141 is not attached - The term "association of persons" has to be interpreted ejusdem generis having regard to the purpose of the principle of vicarious liability incorporated in s. 141 - Proceedings as regards appellant, quashed - Interpretation of statutes - Ejusdem generis.

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(2) ss.138 and 141 - Dishonour of cheque - Territorial jurisdiction - In view of the law laid down in Bhaskaran's case, the Magistrate in whose jurisdiction the drawee resides and, as such, has filed the complaint, has territorial jurisdiction to try the complaint - s.178 of the Code has widened the scope of jurisdiction of a criminal court and s.179 has stretched it to still a wider horizon - Code of Criminal Procedure, 1973 - ss. 177, 178 and 179 - Jurisdiction.

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(1)(i) ss. 120-B, 420/409, 411, 477-A IPC and ss.13(1)(d) r/w s.13(2) of Prevention of Corruption

Act - Brokerage claimed illegally and dishonestly - Units of CANCIGO floated by CMF, purchased in the names of Andhra Bank, and ABFSL and payment made by broker - Further, false claim of brokerage on the investment made by Sahara India and IDBI - Held: So far as Trustee and General Manager of CMF is concerned, there is no material of his involvement in the crime - He is acquitted of all the charges - As regards broker, he disguised his investment and dishonestly claimed brokerage from CMF - He was not engaged as a broker in the transactions - Prosecution has proved that the broker is guilty of making a false representation to CMF to deceive it to part with the stated amount - Acquittal of co-accused on the ground of non-corroboration has no application to accused himself - Judgment of Special Court affirmed with modification.

(ii) ss. 420/409, 411 and 477-A - Accused originally charged with offences punishable u/ss 120-B, 420/409, 411 and 477-A - His conviction u/s 409 converted to that u/s 420 IPC - His conviction u/s 411 upheld - However, in view of acquittal of two other accused, his conviction u/s 477-A set aside - Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 - Scam.

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(2) s.302 r/w s.34 - Murder - Common intention - Conviction by courts below - Held: Appellants were not on-lookers - Their intention is clearly reflected from their presence with weapons at the place of occurrence till the commission of crime and

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thereafter dragging the dead body to courtyard of one of the accused-appellant - Thus, it cannot be said that s.34 is not attracted - In the circumstances, establishing of any motive is inconsequential - Criminal law - Motive.

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PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995:

(i) s. 38 - Age relaxation vis-à-vis physically handicapped - Appointment of physically handicapped challenged as he had crossed the age prescribed - Held: Expressions "appropriate Government and local authority shall formulate schemes for ensuring employment of persons with disability" and "may provide for relaxation of upper age limit" - Connotation of - Where Legislature uses the words 'shall' and 'may' in close proximity of each other, as in s. 38, word 'may' cannot be construed as mandatory - Act postulates age relaxation only as directory or expectant - Failure to mandate age relaxation is a lacuna in the legislation - Since Government Order not providing age relaxation to physically handicapped continues to hold the field, succour cannot be extended to appellant who is indubitably suffering from a disability - Government of West Bengal Memo No. 1736(21) GA dated 1.11.1999 - Service law - Age relaxation to physically handicapped - Costs - Proclamation adopted by the Economic and Social Commission for Asian and Pacific Region (ESCAP) - Legislation.

(ii) s.2(t) - 'Person with disability' - Held: Means a

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person suffering from not less than forty per cent of any disability as certified by a medical authority - On the coming into force of Disabilities Act on 7.2.1996, definition in s.2(t) shall apply notwithstanding any State legislation or Rules irreconcilable or repugnant thereto.

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PREVENTION OF CORRUPTION ACT, 1988:

(i) s.3(1) r/w s.4(3) and s.22 - 2G Spectrum case - Nomination of Special Judge - Jurisdiction of Special Court to take cognizance of offences punishable u/ss 420/12B IPC as per second supplementary charge-sheet filed by CBI in the FIR for offences punishable under PC Act - Held: Apart from an offence punishable under the Act, any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified thereunder can also be tried by a Special Judge - From second charge-sheet it is clear that petitioners are co-accused in 2G Scam case - Thus, s. 220, Cr.P.C. will apply and the petitioners though accused of different offences i.e. u/s 420/120-B IPC alleged to have been committed in the course of 2G Spectrum transactions, u/s 223, Cr. P.C. they may be charged and can be tried together with the other co-accused of 2G Scam cases.

(ii) s. 3(1) - 2G Spectrum case - Nomination of Special Judge - Held: State Government may appoint as many Special Judges as may be necessary and specified in the notification to try any offence punishable under the Act - In the instant case, as co-accused have been charged under

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the provisions of the PC Act, NCT of Delhi is well within its jurisdiction to issue Notification(s) appointing Special Judge(s) to try 2G Scam case(s) - In view of Arts. 233 and 234, it is well within the jurisdiction of High Court to nominate officer(s) of the rank of District Judge for appointment and posting as Special Judge(s) under sub-s. (1) of s. 3 - Constitution of India, 1950 - Arts. 233 and 234.

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