Most urgent/Out at once

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE (HQ): DELHI

No. 25317-367 Genl./Jud.Circl./HCS/2020 Dated, Delhi the 09 DEC 2020

Copy of the letter alongwith order dated 27/11/2020 passed by Hon'ble Division Bench of Delhi High Court in Criminal Appeal No. 353/2020, titled "Sunny vs. State of NCT of Delhi" be circulated for information and necessary action/compliance to:-

1. **The Principal District & Sessions Judges, all Court Complexes, Delhi/New Delhi.**
2. **The Principal District & Sessions Judge cum Special Judge (PC Act) (CBI), Rouse Avenue Courts Complex, New Delhi.**
3. **All the Courts dealing with Criminal trials in Central District, Tis Hazari Courts, Delhi.**
4. **The Chairman, Website Committee, Tis Hazari Courts, Delhi with the request to direct the concerned official to upload the same on the website of Delhi District Courts.**
5. **The Director (Academics), Delhi Judicial Academy, Dwarka, New Delhi for information as requested vide letter no. DJA/Dir./Acd/2019/4306 dt. 06.08.2019.**
6. **For uploading the same on Centralized Website through LAYERS.**
7. **PS to Ld. Principal District & Sessions Judge (HQ), Tis Hazari Courts, Delhi.**

(CHARU AGGARWAL)
Officer-In-Charge (Genl. Branch)
Addl. District & Sessions Judge
Central District, Tis Hazari Courts, Delhi

Encls. As above.

No. 1398 Genl./Jud.Circl./HCS/2020 Dated, Delhi the 09 DEC 2020

Copy to:

The Registrar General, Hon'ble High Court of Delhi, New Delhi for information please.

Officer-In-Charge (Genl. Branch)
Addl. District & Sessions Judge
Central District, Tis Hazari Courts, Delhi.

Copy of Order

Most Urgent/Out Today

(1)

D.B.(Appeal)

IN THE HIGH COURT OF DELHI AT NEW DELHI

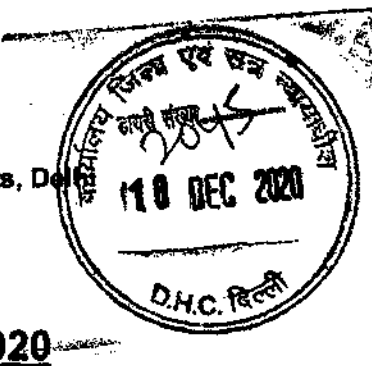
No. 46197 /Crl. Dated 17/12/2020

From:

The Registrar General,
High Court of Delhi,
New Delhi.

To,

1.The District & Sessions Judge (HQ) Tis Hazari Courts, Delhi



Criminal Appeal No. 353/2020

Sunny **....Appellant/s**

VERSUS

State GNCT of Delhi **....Respondent/s**

In an appeal U/s 374(2) of the code of criminal procedure against the judgment/order dated 09.07.2020 passed by Sh. Jagdish Kumar, Additional Sessions Judge, Special FTC (North), Rohini Courts, Delhi in SC No. 75/2017 arising out of FIR No. 465/2017, P.S.: Nand Nagri, Under Sections: 302/34 IPC.

Sir/Madam,

I am directed to forward herewith for information and necessary action a copy of order dated **27.11.2020** passed in the above noted case by the **Hon'ble Division Bench** of this court.

Necessary directions are contained in the enclosed copy of order.

Yours faithfully

Encl.: Copy of order dated **27.11.2020**
along-with Memo of Parties

Admn. Officer (J)/ (Crl.)

for Registrar General



(3)

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 27th November, 2020**

\+ CRL.A. 352/2020

1 KARAN ..... Appellant

Through: Mr. Kanhaiya Singhal and Ms. Pratiksha Tripathi, Advocates.

versus

STATE NCT OF DELHI .....Respondent

Through: Mr. Rahul Mehra, Standing Counsel for GNCTD with Ms. Aashaa Tiwari, APP for the State and Mr. Chaitanya Gosain, Advocate.

Mr. Rajshekhar Rao, Ms. Aanchal Tikmani and Mr. Shreeyash Lalit, Advocates for Delhi High Court.

Mr. Vikas Pahwa, Senior Advocate as amicus curiae with Mr. Sumer Singh Boparai, Mr. Varun Bhati and Ms. Raavi Sharma, Advocates.

Prof. (Dr.) G.S. Bajpai, Professor of Criminology & Criminal Justice, National Law University, Delhi as amicus curiae assisted by Mr.Neeraj Tiwari, Assistant Professor of Law, Mr.Ankit Kaushik, Research Associate, Mr.G. Arudhra Rao and Ms.Shelal Lodhi Rajput

Mr. Kanwal Jeet Arora, Member Secretary, DSLSA.

(5)

JUDGMENT

J.R. MIDHA, J.

1. The appellants have been convicted by the ld. Additional Sessions Judge under Sections 302/34 IPC. The ld. Addl. Sessions Judge reserved the judgment, after conclusion of the arguments, on 06th March, 2020 while being posted at Karkardooma Courts. On 13th March, 2020, ld. Addl. Sessions Judge was transferred from Karkardooma Courts to Rohini Courts and he pronounced the impugned judgments on 09th July, 2020. The appellants have challenged impugned judgments on the two grounds: *first*, that the ld. Addl. Sessions Judge ceased to have jurisdiction in respect of Karkardooma Courts matters upon being transferred with immediate effect vide transfer order No.10/G-I/Gaz.IA/DHC/2020 dated 13th March, 2020 and he was not empowered to deal with this case which was tried in the jurisdiction of Karkardooma Courts and *second*, that Note 2 appended to the transfer order dated 13th March, 2020 which empowered the judicial officers to pronounce the judgment/order in the reserved matters, was invalid. Reliance is placed on the Division Bench judgment of this Court in ***Jitender @ Kalle v. State***, (2013) 196 DLT 103 (DB).

2. An important question of law has arisen for consideration before this Court with respect to the validity of *Note 2* appended to the transfer order dated 13th March, 2020 and the correctness of the findings of ***Jitender's case*** relating to *Note 2* in respect of similar transfer orders of the High Court. *Note 2* empowered the transferred judicial officers to pronounce the judgments/orders in respect of the reserved matters within a period of 2-3 weeks after transfer took effect, notwithstanding such posting/transfer. *Note 2* appended to the Transfer Order is reproduced herein under:

6. On 09th July, 2020, Sh. Jagdish Kumar, Addl. Sessions Judge delivered the judgment while Presiding as Addl. Sessions Judge (Special Fast Track Court), North Rohini.

7. These appeals came up for hearing for first time on 16th July, 2020, when the Division Bench of this Court issued notice to the State. Considering that the grounds raised by the appellants had wide ramifications on the Criminal Justice System, the Division Bench of this Court issued notice to the High Court on administrative side. The Division Bench further appointed Mr. Vikas Pahwa, Senior Advocate to assist this Court as amicus curiae. The Division Bench further directed the ld. Addl. Sessions Judge to defer the hearing on sentence by two weeks.

8. On 10th August, 2020, Mr. Vikas Pahwa, ld. amicus curiae, submitted that this case is squarely covered by the law laid down by the Supreme Court in ***Gokaraju Rangaraju v. State of Andhra Pradesh***, (1981) 3 SCC 132 in which the Supreme Court held that the judgment passed by a Sessions Judge would be legal and valid even if the appointment of the concerned Judge was subsequently declared to be invalid. The Supreme Court held that the *de facto* doctrine was well established. The Supreme Court considered the earlier cases on the *de facto* doctrine. The Supreme Court also noted that the *de facto* doctrine was recognized by British as well as American Courts. The Supreme Court further noted that Article 233A was incorporated by the 20th Amendment to the Constitution in 1966 to protect the judgments delivered by the Judges notwithstanding that their appointment, posting, promotion or transfer was not valid. The 20th Amendment was the consequence of the decision of the 5 Judge Bench judgment of Supreme Court in ***Chandra Mohan v. State of U.P.,*** AIR 1966 SC 1987 in which the appointment of the

ld. Addl. Sessions Judge and the bail applications were dismissed as infructuous. However, the appeals were kept pending to consider the legal issues raised by the High Court.

12. Mr. Kanhaiya Singhal, ld. counsel for the appellant Mr. Rajshekhar Rao, ld. counsel for the High Court; Mr. Rahul Mehra, ld. Standing Counsel and Mr. Vikas Pahwa, ld. amicus curiae, further submitted that there is a need to frame guidelines for award of compensation under Section 357 CrPC. It was submitted that the Courts below are not conducting any inquiry to ascertain the impact of crime on the victims and the paying capacity of the accused before awarding the compensation. It was further submitted that guidelines be framed in this regard. Prof. G.S. Bajpai, Professor of Criminology & Criminal Justice, National Law University, Delhi, who has done extensive research on Victimology has been appointed as amicus curiae to assist in this case in framing guidelines under Section 357 CrPC.

Submissions of Mr. Rajshekhar Rao, Ld. counsel for Delhi High Court

13. The ld. Addl. Sessions Judge was transferred from Karkardooma Courts to Rohini Courts by the High Court vide transfer order dated 13th March, 2020 and *Note 2* appended to the transfer order dated 13th March, 2020 is under challenge. *Note 2* appended to the Transfer Order dated 13th March, 2020, directs:

(i) The judicial officers under transfer shall notify the cases in which they had reserved judgments/orders before relinquishing the charge of the Court in terms of the posting/transfer order;

(ii) The Judicial Officers shall pronounce judgments/orders in all such matters on the date fixed or maximum within a period of 2-3 weeks;

(iii) Notwithstanding the posting/transfer, judgments/orders shall be

16. *Note 2* appended to Transfer Order dated 08th February, 2010 has been used in various other transfer/posting orders of the Judicial Officers by this Court such as transfer orders dated 13th March, 2009; 17th July, 2009; 28th July, 2009; 15th October, 2009; 14th December, 2009; 04th February, 2010; 08th March, 2010; 26th April, 2010, 26th August, 2010; 09th September, 2010; 29th October, 2010; 15th December, 2010; 23rd December, 2010; 02nd February, 2011; 30th September, 2019; 19th November 2019; 04th December, 2019; 19th February, 2020. Various other versions similar to *Note 2* have been used in the transfer/posting orders by this High Court for transfer of judicial officers of the subordinate judiciary.

Powers of the High Court

17. Article 227 of the Constitution empowers the High Court with the superintendence over all Courts and Tribunals throughout its territory. The power of superintendence under Article 227 includes the administrative as well as judicial superintendence i.e. the High Court can transfer a case by exercising its administrative power of superintendence or its judicial power of superintendence. Articles 227 and 235 of the Constitution empower the High Court to transfer the cases on administrative side. Article 235 of the Constitution empowers the High Court with control over subordinate Courts including posting and promotion of Judicial Officers.

18. Code of Criminal Procedure vests plenary powers in the High Court relating to the superintendence over the subordinate Courts including the appointment, posting, promotion and transfer of the judicial officers. Reference is made to Sections 4(1), 7, 9, 11, 12, 13, 16, 17 and 18 CrPC. Section 33 provides that the Judicial Officers shall have the powers conferred upon them by High Court and High Court is empowered to

20. Chapter XXXV CrPC protects the irregularities in procedure unless it has resulted in failure of justice. Section 462 protects judgment given by a Criminal Court in a proceeding which took place in a wrong jurisdiction unless it has resulted in failure of justice. Section 465 protects the irregularities in the complaint, summons, warrants, proclamation, order, judgment or other proceedings before or during trial. Reliance is placed on ***Willie (William) Slaney v. State of M.P.***, (1955) 2 SCR 1140 and ***State of M.P. v. Bhooraji***, (2001) 7 SCC 679.

Concept of 'Illegality' and 'Irregularity' in CrPC

21. In ***Pulukuri Kotayya v. King-Emperor***, (1947) 1 Mad LJ 219, the Privy Council held that the distinction between an illegality and an irregularity is one of degree rather than of kind. In ***Willie (William) Slaney*** (*supra*), the Constitution Bench of the Supreme Court held that the illegality that strikes at the root of the trial and cannot be cured is not merely an irregularity but the illegality that may strike at the root of the trial and can be cured is merely an irregularity.

Concept of "Failure of Justice"

22. The conviction cannot be set aside merely on the ground of procedural irregularity unless it has resulted in failure of justice.

23. In ***Darbara Singh v. State of Punjab***, (2012) 10 SCC 476, the accused challenged the conviction under Section 302 IPC on the ground that a charge under Section 302/34 of IPC was not framed against him. The Supreme Court rejected the objection on the ground that the appellant was unable to show what prejudice, if any, was caused to the appellant, even if such charge has not been framed against him, moreover, the appellant was always fully aware of all the facts. The Supreme Court held that "*Failure of*

latter is not of a peremptory character and is curable under Section 462. Territorial jurisdiction is a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular Court, the convenience of the accused as well as convenience of the witnesses who have to appear before the Court.

28. While considering the ambit of Sections 462 and 465, the Supreme Court in ***State of Karnataka v. Kuppuswamy Gownder,*** (1987) 2 SCC 74 held that the Scheme of CrPC is that where there is no inherent lack of jurisdiction either on the ground of lack of territorial jurisdiction or on the ground of any irregularity of procedure, an order or sentence awarded by a competent Court could not be set aside unless prejudice is pleaded and proved which will mean failure of justice. The Supreme Court specifically observed that *'even if a trial takes place in a wrong place where the Court has no territorial jurisdiction to try the case still unless failure of justice is pleaded and proved, the trial cannot be quashed'*. Even in cases where trial was conducted in the wrong jurisdiction, it has been held by the Supreme Court that the same would not vitiate trial unless there has been a failure of justice. Reference is made to ***Mangaldas Raghavji Ruparel v. State of Maharashtra,*** (1965) 2 SCR 894; ***Ram Chandra Prasad v. State of Bihar,*** (1962) 2 SCR 50; ***State of A.P. v. Cheemalapati Ganeswara Rao*** (1964) 3 SCR 297 and ***Kamil v. State of U.P.,*** (2019) 12 SCC 600.

Procedure in Criminal Cases

29. Section 353 CrPC provides that judgment in every trial in a Criminal Court shall be pronounced by the Presiding Officer in open Court. The term "*Presiding Officer*" has been used in Sections 61, 70, 105, 265D, 265F, 340, 353 CrPC and Sections 366 and 367 CrPC, 1898. In Section 265F, the term

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Court" or by the "*presiding officer of the Court*" where matter was heard. However, Sections 353 and 354 have to be complied with. CrPC does not impose a bar on pronouncement of orders/judgments by the Judge who recorded the entire evidence and heard the matter or who heard the matter finally after evidence was recorded by someone else, merely because the said Judge has been transferred to another Court.

Division Bench judgment in Jitender's case

33. *Note 2* attached to the transfer order dated 08th February, 2010 was not under challenge in ***Jitender's case***. In that case, the Division Bench was dealing with the validity of the judgments by which the appellant were convicted, though dictated and signed by the Judge who heard the arguments but were *'announced'* by a successor Judge after the transfer of the predecessor Judge. Thereafter, the successor Judge heard the arguments on the point of sentence and passed the orders on sentence. The accused challenged the conviction on the ground that the judgment was not duly pronounced and Section 353 was not complied with. The question before the Division Bench was whether such '*announcements*' could amount to valid judgments? The Division Bench held that the successor Judge cannot adopt her predecessor's written judgment as her own and CrPC does not permit pronouncement of an order by a successor Judge authored, signed and dated by a predecessor Judge. Para 47 of the judgment is reproduced hereunder:

> *"47...While it is true that the note sought to enable the judicial officers to pronounce judgments/orders within a period of 2/3 weeks, notwithstanding, the posting/transfer, that was merely an administrative order and cannot over ride the statutory provisions of the 1973 Code. The High Court could not permit something by way of an administrative order which was not permissible under the 1973 Code. The mere fact that there is a*

judgment is a precedent on its own facts. It is not everything written in the judgment constitutes a precedent. The relevant portion is as under:-

> *"12. ... Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. (See State of Orissa v. Sudhansu Sekhar Misra [(1968) 2 SCR 154: AIR 1968 SC 647] and Unioh of India v. Dhanwanti Devi [(1996) 6 SCC 44]) A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In Quinn v. Leathem [1901 AC 495 : 85 LT 289 : (1900-03) All ER Rep 1 (HL)] the Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides."*

36. In ***Mehboob Dawood Shaikh v. State of Maharashtra***, (2004) 2 SCC

natural justice should be maintained and the power of judicial review must not be applied blindly.

38. Pertinently, *Note 2* is issued in exercise of the supervisory jurisdiction of this Court under Article 235 of the Constitution as also in furtherance of the powers of the High Court under Section 483 CrPC to ensure expeditious and proper disposal of cases by the Courts. It must also be kept in mind that there is presumption that all judicial and official acts have been regularly performed by the judicial officers. As such, unless prejudice or failure of justice can be shown, administrative orders issued by High Court ought not to be set aside.

Procedure adopted by Ld. ASJ has not resulted in any irregularity or illegality

39. It is not the case of the appellants herein that the ld. ASJ, Shri Jagdish Kumar has not complied with provisions of Section 353 CrPC while pronouncing the Judgment. It is not the case of the appellants that parties were not duly notified of the pronouncement in the cause list of the Court where matter was heard and evidence was recorded, in the cause list of the Court where order was pronounced or on the District Court website. It is also not the case of the appellants that the order/judgment has not been duly signed by ld. ASJ. It is also not the case of the Appellant that the language or contents of the order/judgment do not comply with Section 354 CrPC. As the entire evidence in the matter had been recorded and arguments had been heard, the trial stood completed on 06th March, 2020. As per Section 353 CrPC, judgment in every trial shall be pronounced '*after termination of trial*'. It is also clear that sentencing is a separate stage of trial. It is not the case of the Appellants herein that in view of procedure followed by ld. ASJ,

(23)

Supreme Court has set aside judgments on account of delay in pronouncements, the cases pertain to a delay of over two years. Reference is made to ***Kanhaiyalal v. Anupkumar***, (2003) 1 SCC 430 and ***Bhagwandas Fatehchand Daswani v. HPA International***, (2000) 2 SCC 13. Further, practice directions of this Court as stipulated in the Delhi High Court Rules do not stipulate that judgments ought to set aside merely on account of delay.

Right of accused to a speedy trial and interest of society

43. It is clear that various provisions have been stipulated in the CPC and CrPC in order to ensure that there is no delay in delivery and pronouncement of judgments/orders. In the event that the said provisions are violated, a Court may consider setting aside the conviction keeping in mind various extraneous factors such as the possibility that the Judge may have forgotten the facts, public confidence in the judiciary etc. However, it is also important to keep in mind the following observations of the Supreme Court in ***Mohd. Hussain v. State,*** (2012) 9 SCC 408:

> *"40. "Speedy trial" and "fair trial" to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused's right of fair trial. Unlike the accused's right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused's right to speedy trial have to be weighed vis-à-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused*

(a)(i) no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State, and

(ii) no posting, promotion or transfer of any such person as a district judge, made at any time before the commencement of the Constitution (Twentieth Amendment) Act, 1966, otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or void or ever to have become illegal or void by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions;

(b) no jurisdiction exercised, no judgment, decree, sentence or order passed or made, and no other act or proceeding done or taken, before the commencement of the Constitution (Twentieth Amendment) Act, 1966 by, or before, any person appointed, posted, promoted or transferred as a district judge in any State otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or invalid or ever to have become illegal or invalid by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions."

Submissions of Mr. Vikas Pahwa, Ld. amicus curiae

46. In the present case, the Judgment was delivered by ld. ASJ, Shri Jagdish Prasad in open Court on 09th July, 2020. The pronouncement is in consonance with Section 353 CrPC and thus, is a valid judgment and no prejudice has been caused to the accused resulting in failure of justice. Ld. ASJ had presided over the trial, appreciated the evidence and heard the final arguments of the case in terms of Section 235 CrPC on 29th February, 2020, 02nd March, 2020, 03rd March, 2020 and on 06th March, 2020, before reserving the judgment. The trial concluded in terms of Chapter XVIII CrPC, upon hearing of the arguments of the case on 06th March, 2020. The

established that '*the acts of the officers de facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid or binding as if they were the acts of officers de jure*'.

50. In ***Pulin Behary Das v. King Emperor,*** 1911 SCC Online Cal 159 Calcutta High Court held that the *de facto* doctrine is aimed at the prevention of public mischief and the protection of public and private interest.

51. In ***Gokaraju Rangaraju v. State of Andhra Pradesh,*** 1981 (3) SCC 132, the Supreme Court upheld the validity of the judgments and orders passed by the Sessions Judges whose appointments were subsequently quashed by the Supreme Court. The Supreme Court applied the *de facto* doctrine to protect the judgments/orders of such Judges whose appointments were quashed. The *de facto* doctrine avoids endless confusion and needless chaos. An illegal appointment may be set aside, and a proper appointment may be made, but the acts of those who hold office *de facto* are not so easily undone and may have lasting repercussions and confusing sequels if attempted to be undone. The *de facto* doctrine thus has two requisites, namely, the possession of the office and the performance of the duties attached thereto and other is the color of title, i.e., apparent right to the office and acquiescence in the possession thereof by the public. According to this doctrine, the acts of officers *de facto* performed within the sphere of their assumed official authority, in the interest of the public or third parties and not for their own interest, are generally held valid and binding as if they were performed by *de jure* officers.

52. In the present case, no prejudice whatsoever has been caused to the accused by the pronouncement of the judgment. The ld. ASJ pronounced

criminal Court on the ground that the enquiry, trial or other proceedings took place in a wrong Sessions division unless such error has occasioned failure of justice.

56. In ***Padam Singh Thakur v. Madan Chauhan***, 2016 SCC OnLine HP 4260, the conviction was challenged on the ground that the case was adjudicated by the Judicial Magistrate, Shimla whereas it should have been tried by the Judicial Magistrate, Theog. The Himachal Pradesh High Court rejected the challenge on the ground that no prejudice whatsoever has been caused to the accused. The Himachal Pradesh High Court held that Section 462 CrPC saves the judgments if the trial had taken place in a wrong Sessions division.

57. In the present case, the ld. ASJ presided over the trial, heard the final arguments and thereafter, reserved the judgment. The ld. ASJ thereafter pronounced the judgment in terms of Section 235 CrPC and no prejudice whatsoever has been caused to the accused and there was no failure of justice.

Section 465 CrPC mandates that an irregularity, which does not have the character of an illegality and does not cause prejudice to the accused, can be cured

58. Section 465 CrPC provides that the finding, sentence or order of a Court cannot be set aside on the ground of any error, omission or irregularity unless there has been failure of justice. Section 465 CrPC protects the findings, sentence or order in respect of an irregularity and not an illegality. In ***Willie (William) Slaney (supra)***, the Supreme Court defined illegality as a defect which strikes at the very substance of justice such as refusal to give accused a hearing, refusal to allow the accused to defend himself, refusal to explain the charge to the accused and such illegalities are not protected by

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provision says that the proceedings adopted in such a case, though based on such erroneous order, "shall not be set aside merely on the ground of his not being so empowered."

13. It is useful to refer to Section 462 of the Code which says that even proceedings conducted in a wrong sessions divisions are not liable to be set at naught merely on that ground. However, an exception is provided in that section that if the court is satisfied that proceedings conducted erroneously in a wrong sessions division "has in fact occasioned a failure of justice" it is open to the higher court to interfere. While it is provided that all the instances enumerated in Section 461 would render the proceedings void, no other proceedings would get vitiated ipso facto merely on the ground that the proceedings were erroneous. The court of appeal or revision has to examine specifically whether such erroneous steps had in fact occasioned failure of justice. Then alone the proceedings can be set aside. Thus the entire purport of the provisions subsumed in Chapter XXXV is to save the proceedings linked with such erroneous steps, unless the error is of such a nature that it had occasioned failure of justice.

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15. A reading of the section makes it clear that the error, omission or irregularity in the proceedings held before or during the trial or in any enquiry were reckoned by the legislature as possible occurrences in criminal courts. Yet the legislature disfavoured axing down the proceedings or to direct repetition of the whole proceedings afresh. Hence, the legislature imposed a prohibition that unless such error, omission or irregularity has occasioned "a failure of justice" the superior court shall not quash the proceedings merely on the ground of such error, omission or irregularity.

16. What is meant by "a failure of justice" occasioned on account of such error, omission or irregularity? This Court has observed in Shamnsaheb M. Multtani vs :State of Karanataka (2001) 2 SCC 577 thus:

> *"23. We often hear about 'failure or justice' and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is*

Successor Judge to pass the order on sentence in terms of Section 235(2) CrPC. The Successor Judge has the jurisdiction to pass the Order on Sentence in terms of Section 35 CrPC.

Judgment passed by Division Bench in Jitender's case is per incuriam and thus, should be overruled

62. Section 326 (1) CrPC relied upon by the Division Bench while deciding the above mentioned case states that whenever a Judge or a Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself. Provided that if the succeeding Judge or Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

63. Section 326 (1) CrPC while enabling the Successor Judge or Magistrate to proceed in the manner indicated above, does not specifically empower the Succeeding Judge or Magistrate to pronounce a Judgment written by the predecessor Judge or Magistrate without application of mind. This section only applies when the criminal trial is pending and not terminated, while the matter is fixed for the pronouncement of judgment. The Division Bench has wrongly relied upon Section 326 CrPC, which had no application on the facts and circumstances of that case.

64. While deciding the legality of *Note 2* in the transfer/posting order, the

in the eyes of law as the Division Bench did not consider the *de facto* doctrine discussed in ***Gokaraju Rangaraju (supra)***.

Submissions relating to the sentencing policy

70. Section 357 CrPC was introduced on the basis of recommendations made by the Law Commission in the 41st Report submitted in 1969, which discussed section 545 (now section 357) of the erstwhile Criminal Code of 1898 extensively. The Report recognized that Criminal Courts had the discretion to order or not to order payment of compensation. On the basis of 41st Report, the Government of India introduced the Code of Criminal Procedure Bill, 1970 which aimed at revising section 545 and introducing it as Section 357. The Statement of Objects and Reasons underlying the Bill was that Section 545 only provided compensation when the Court imposed a fine and the amount of compensation was limited to the fine whereas under the new provision (Section 357), compensation can be awarded irrespective of whether the offence is punishable with fine and if fine is actually imposed.

71. Section 357 empowers the Court to award compensation to the victim having due regard to the nature of injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors. The Code of Criminal Procedure, 1973 incorporated Section 357 which states in its Objects that the provision was inserted as it "*intended to provide relief to the proper sections of the community*".

72. The amendments to the Code of Criminal Procedure, 2008 focused heavily on the rights of victims in a criminal trial, particularly in trials relating to sexual offences. Though the 2008 Amendment left Section 357 CrPC unchanged, it introduced Section 357A CrPC under which the Court is

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9.2 However, in India the criminal law provides compensation to the victims and their dependants only in a limited manner. Section 357 of the Code of Criminal Procedure incorporates this concept to an extent and empowers the Criminal Courts to grant compensation to the victims.

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11. In India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The State should accept the principle of providing assistance to victims out of its own funds.....

xxx xxx xxx

48. The question then is whether the plenitude of the power vested in the Courts Under Section 357 & 357-A, notwithstanding, the Courts can simply ignore the provisions or neglect the exercise of a power that is primarily meant to be exercised for the benefit of the victims of crimes that are so often committed though less frequently punished by the Courts. In other words, whether Courts have a duty to advert to the question of awarding compensation to the victim and record reasons while granting or refusing relief to them?

xxx xxx xxx

66. To sum up: While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order Under Section 357 Code of Criminal Procedure would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to

of human rights, the Supreme Court and High Courts in India have of late evolved the practice of awarding compensatory remedies not only in terms of money but also in terms of other appropriate reliefs and remedies. Medical justice for the Bhagalpur blinded victims, rehabilitative justice to the communal violence victims and compensatory justice to the Union Carbide victims are examples of this liberal package of reliefs and remedies forged by the apex Court. The recent decisions in Nilabati Behera v. State of Orissa (1993 2 SCC 746) and in Chairman, Railway Board v. Chandrima Das are illustrative of this new trend of using Constitutional jurisdiction to do justice to victims of crime. Substantial monetary compensations have been awarded against the instrumentalities of the state for failure to protect the rights of the victim.

6.8.2 These decisions have clearly acknowledged the need for compensating victims of violent crimes irrespective of the fact whether offenders are apprehended or punished. The principle invoked is the obligation of the state to protect basic rights and to deliver justice to victims of crimes fairly and quickly. It is time that the Criminal Justice System takes note of these principles of Indian Constitution and legislate on the subject suitably"

(Emphasis Supplied)

74. On perusal of Section 357 CrPC it is clear that rights under Section 357 are not foreclosed but continued in Section 357A CrPC. The Courts are empowered to travel beyond Section 357 CrPC and award compensation where relief under Section 357 CrPC is inadequate or where the cases end in acquittal or discharge. This amendment has brought forth rehabilitation of victims to the forefront and it is the Court's duty to make such provisions operative and meaningful.

75. Pursuant to the directions of the Division Bench of this Court in judgment dated 07th July, 2008 in Criminal Appeal No. 5/2000 titled ***Khem Chand v. State of Delhi,*** Delhi State Legal Services Authority is granting

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77. In ***Hari Singh v. Sukhbir Singh,*** (1988) 4 SCC 551, seven persons were convicted under Sections 307/149, 325/149, 323/149 and 148 IPC and sentenced to undergo rigorous imprisonment from one year to three years. The High Court acquitted two of the accused of all charges, and five of the accused of the offence under Sections 307/149 IPC while maintaining their conviction and sentence under Sections 325/149, 323/149 IPC and Section 148 IPC. They were however released on probation of good conduct. Each one of accused was ordered to pay compensation of Rs. 2,500/- to Joginder who was seriously injured and whose power of speech was permanently impaired. The Supreme Court deplored the failure of Courts in awarding compensation under 357 CrPC. The Court recommended all the courts to exercise the power available under Section 357 CrPC liberally to meet ends of justice. The court observed:

> *"10. Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In this case, we are not concerned with sub-section (1). We are concerned only with sub-section (3). It is an important provision but courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to*

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reiterated the same while deciding the scope of compensation under Sections 357 and 357A CrPC to victims of motor accidents. This Court laid down the guidelines for awarding compensation by Criminal Court to all victims of motor accident offences even if they are in receipt of compensation from Motor Accident Claims Tribunal. Further the Court directed a summary inquiry to be conducted by Criminal Court for ascertaining quantum of compensation by directing the SHO of Police station to submit '*Victim Impact Report*'.

80. In ***Vikas Yadav v. State of U.P***, 2015 SCC OnLine Del 7129, the Division Bench of this Court held that although theorizing is one thing and practically carrying out what the Section mandates in order to achieve its true objective requires aid of the judiciary to form guidelines on Scheme of Compensation under Section 357. There is huge cost of litigation even in criminal cases also though comparatively criminal cases run for a lesser duration. The contributing factors in the increase is the fact that the accused who is in the state custody is deemed to be innocent and therefore, all expenses of such person as long as he is in custody is borne by the State itself. At the end of the trial, Courts may ask the accused to pay for the expenses, which are surprisingly limited to the fine to be paid under Section 357. The litigants take advantage of such expenses borne by the State and the State ends up paying amount for trips to the hospital and other places of the accused. This fact has been predominantly deprecated by the Division Bench in ***Vikas Yadav*** *(supra)*, where the Court went to miniscule minutes of each penny spent on the accused during the entire trial and ordered for the recovery of the same. The Division Bench imposed a fine of Rupees fifty lakhs on the accused and ordered it to be disbursed. The Supreme Court in

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directed to notify their schemes within one month from receipt of a copy of this order.
18. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful.
19. We determine the interim compensation payable for the two deaths to be rupees ten lakhs, without prejudice to any other rights or remedies of the victim family in any other proceedings.
20. Accordingly, while dismissing the appeal, we direct that ...the victim be paid interim compensation of rupees ten lakhs. It will be payable by the Haryana State Legal Services authority within one month from receipt of a copy of this order. If the funds are not available for the purpose with the said authority, the State of Haryana will make such funds available within one month from the date of receipt of a copy of this judgment and the Legal Services Authority will disburse the compensation within one month thereafter".

83. In ***Ankush Shivaji Gaikwad*** *(supra)* the Supreme Court developed on its position taken in ***Hari Singh*** *(supra)* and held that Section 357 CrPC confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case. The Supreme Court laid down the proposition that: - "*While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation*". The Court made application of Sections 357 and 357A CrPC mandatory while sentencing the accused by directing the Courts to state the reasons for application or non- application of Sections 357 or 357A CrPC before delivering the order on sentence. The Supreme Court, in ***Suresh*** *(supra)*,

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Inquiry Committee should thereafter inquire into the matter and submit the report to the Court within 30 days; the Court should determine the restitution amount after considering the report and hearing the parties. Prof. G.S. Bajpai has also given suggestions for protection and disbursement of the restitution amount to the victims. Prof. G.S. Bajpai has also submitted the formats of report of the Investigating Officer; and formats of the affidavit of the victim and format of the affidavit of the accused.

Submissions of Mr. Rahul Mehra, Ld. Standing Counsel, Govt. of NCT of Delhi

86. On 29th November, 1985, The General Assembly of United Nations adopted the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* which emphasized the need to set norms and minimum standards for protection of victims of crime. The said declaration recognized four major components of rights of victims of crime, *namely,* access to justice and fair treatment; restitution; compensation and assistance. Section 357A CrPC was incorporated to give effect to the UN Declaration.

87. Every victim of crime undergoes immense physical, emotional and mental trauma apart from economic losses. State as a custodian of all Fundamental Constitutional Rights is not only legally but also morally and socially bound to come to the rescue of victims and provide them all help so that they can overcome their trauma, both emotionally as well as financially.

88. The nature and extent of victimisation has to be adequately understood considering the social and stark financial disparity amongst the citizens. The rights and rehabilitation needs of each victim have to be minutely gauged, recognized and redressed. They deserve attention and help.

89. In ***Khem Chand v. State***, Crl.A.No.5/2000, this Court passed

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quantify the quantum.

(iii) The recommendation may be made for grant of compensation according to the Delhi Victim Compensation Scheme, 2018. The Legal Services Authority is not authorized to grant the compensation beyond the limit provided in the Scheme.

(i) In matters resulting into acquittal or discharge, similar recommendation may be made in case the Trial Court feels the need of rehabilitation of the victim provided the victim can be considered as a victim of an offence as defined in the scheme.

(v) In cases of untraced matters or wherein the identity of the offender cannot be established, the victim/dependants may be referred to District Legal Services Authority to move an application for grant of compensation.

(vi) At any stage of the trial, Trial Court may also recommend/refer the matter for grant of Interim Compensation. The interim compensation can only be quantified by the POCSO Court.

(vii) The compensation can only be granted in the categories mentioned in the Schedule to the Scheme in Part-I and Part-II. The other matters cannot be considered. Legal Services Authorities are not authorized/ empowered to go beyond the Scheme.

(viii) Compensation may be recommended in State Cases i.e. matter on which cognizance has been taken on basis of Police Report (for Interim, this may be considered as Institution on basis of FIR) or on complaint cases (only when the accused has been summoned).

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on the victim as well as with respect to the financial capacity of the accused be filed by DSLSA before the Court. It is submitted that the format of the affidavit of the victim with respect to the impact of the crime and the affidavit of the accused with respect to the financial capacity be formulated. The Court, after holding the accused guilty of offence, should direct the aforesaid affidavits to be filed within 10 days and DSLSA be directed to conduct a preliminary inquiry into the matter and submit a report to the Court within 30 days.

Submission of Mr. Kanhaiya Singhal, Advocate

94. The affidavit of the victim relating to the impact of crime and the affidavit of the accused with respect to his financial capacity be formulated and the same be called for by the Trial Court after the conviction of the accused. Mr. Singhal, ld. counsel for the appellants has suggested the formats of the affidavits in his written submissions.

Relevant Provisions of law

95. ***Constitution of India***

Article 227 - Power of superintendence over all courts by the High Court

(1) Every High Court shall have superintendence over all courts and tribunal throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may:

a. call for returns from such courts;

b. make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

c. prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

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Section 326 - Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

(1) Whenever any Judge or Magistrate, after having heard and recorded the whole or any part of the evidence in any inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself: Provided that if the succeeding Judge or Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of Justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code from one judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under section 322 or in which proceedings have been submitted to a superior Magistrate under section 325.

Section 353 - Judgment

(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,—

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

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(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;
(c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted and the punishment to which he is sentenced;
(d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

Section 357 - Order to pay compensation:

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

a) in defraying the expenses properly incurred in the prosecution;

b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a civil court;

c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

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(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to the be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

Section 407 - Power of High Court to transfer cases and appeals

(1) Whenever it is made to appear to the High Court:

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order—

(i) that any offence be inquired into or tried by any Court not qualified under Sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(10) Nothing in this section shall be deemed to affect any order of Government under Section 197

Section 460 - Irregularities which do not vitiate proceedings

If any Magistrate not empowered by law to do any of the following things, namely:—

(a) to issue a search-warrant under Section 94;
(b) to order, under Section 155, the police to investigate an offence;
(c) to hold an inquest under Section 176;
(d) to issue process under Section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;
(e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of Section 190;
(f) to make over a case under sub-section (2) of Section 192;
(g) to tender a pardon under Section 306;
(h) to recall a case and try it himself under Section 410; or
(i) to sell property under Section 458 or Section 459,

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Section 461 - Irregularities which vitiate proceedings

If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:—

(a) attaches and sells property under Section 83;
(b) issues a search-warrant for a document, parcel or other thing in the custody of a postal or telegraph authority;
(c) demands security to keep the peace;
(d) demands security for good behaviour;
(e) discharges a person lawfully bound to be of good behaviour;
(f) cancels a bond to keep the peace;
(g) makes an order for maintenance;
(h) makes an order under Section 133 as to a local nuisance;
(i) prohibits, under Section 143, the repetition or continuance of a public nuisance;
(j) makes an order under Part C or Part D of Chapter X;

(d)

Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates.

Relevant Judgments

Powers of the High Court

97. In ***Hari Vishnu Kamath v. Syed Ahmad Ishaque***, (1955) 1 SCR 1104, the Supreme Court held that Article 227 of the Constitution confers the power of Superintendence to the High Courts, both on judicial and administrative side. Relevant portion of the said judgment is reproduced hereunder:

> *"20. We are also of opinion that the Election Tribunals are subject to the superintendence of the High Courts under Article 227 of the Constitution, and that superintendence is both judicial and administrative. That was held by this Court in Waryam Singh v. Amarnath [1954 SCR 565] where it was observed that in this respect Article 227 went further than Section 224 of the Government of India Act, 1935, under which the superintendence was purely administrative, and that it restored the position under Section 107 of the Government of India Act, 1915. It may also be noted that while in a certiorari under Article 226 the High Court can only annul the decision of the Tribunal, it can, under Article 227, do that, and also issue further directions in the matter. We must accordingly hold that the application of the appellant for a writ of certiorari and for other reliefs was maintainable under Articles 226 and 227 of the Constitution."*
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> *(Emphasis Supplied)*

98. In ***Ranbir Yadav v. State of Bihar***, (1995) 4 SCC 392, the Supreme Court dismissed the challenge to the transfer of a case by the High Court on administrative side holding that the High Court is empowered to transfer a case on administrative side as well as judicial side and both the powers

law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior court, the High Court should not quash the judgment of the subordinate court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the subordinate court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse."

100. In ***Kamlesh Kumar v. State of Jharkhand***, (2013) 15 SCC 460, the Supreme Court rejected the challenge to the transfer of a case by the High Court on administrative side on the ground that the High Court can transfer the case by exercising its administrative power of superintendence under Article 227 read with Article 235 of the Constitution of India. Relevant portion of the said judgment is reproduced hereunder:

"21. The High Court does have the power to transfer the cases and appeals under Section 407 CrPC which is essentially a judicial power. Section 407(1)(c) CrPC lays down that, where it will tend to the general convenience of the parties or witnesses, or where it was expedient for the ends of justice, the High Court could transfer such a case for trial to a Court of Session. That does not mean that the High Court cannot transfer cases by exercising its administrative power of superintendence which is available to it under Article 227 of the Constitution of India. While repelling the objection to the exercise of this power, this Court observed in para 13 of Ranbir Yadav [Ranbir Yadav v. State of Bihar, (1995) 4 SCC 392: 1995 SCC (Cri) 728] .....
22. For the reasons stated above, there is no substance in the objections raised by the petitioners. The High Court has looked into Section 407 CrPC, referred to Articles 227 and 235 of the Constitution of India, and thereafter in its impugned judgment

> *29. The case at hand constrains us to say that a trial Judge should remember that he has immense responsibility as he has a lawful duty to record the evidence in the prescribed manner keeping in mind the command postulated in Section 309 CrPC and pronounce the judgment as provided under the Code. A Judge in charge of the trial has to be extremely diligent so that no dent is created in the trial and in its eventual conclusion. Mistakes made or errors committed are to be rectified by the appellate court in exercise of "error jurisdiction". That is a different matter. But, when a situation like the present one crops up, it causes agony, an unbearable one, to the cause of justice and hits like a lightning in a cloudless sky. It hurts the justice dispensation system and no one, and we mean no one, has any right to do so. The High Court by rectifying the grave error has acted in furtherance of the cause of justice. The accused persons might have felt delighted in acquittal and affected by the order of rehearing, but they should bear in mind that they are not the lone receivers of justice. There are victims of the crime. Law serves both and justice looks at them equally. It does not tolerate that the grievance of the victim should be comatosed in this manner."*

102. In ***S. J. Chaudhri v. State***, 2006 SCC OnLine Del 797, the Division Bench of this Court rejected the challenge to the transfer of a case by the High Court from one Session to another on administrative side. Relevant portion of the said judgment is as under:-

> *"6. ... this is not a case of transfer simplicitor from one Sessions Judge to another, but a case where arguments stand more or less concluded in the Court of a particular Sessions Judge and the Chief Justice on the administrative side has deemed it expedient, for the ends of justice, to order that the Sessions Judge who has heard the arguments in extenso pronounce judgment in the case.*
> *7. We say so on the basis of the records which have been scrutinized by us, and on such scrutiny it was found by us that arguments in the case had been heard by Ms. Mamta Sehgal,*

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at length on over 30 dates by a Sessions Judge with whom the case has been pending for the last over 5 years. Yet the course of justice is sought to be obstructed by the present transfer petition praying for re-transfer of the case to a Sessions Judge who will have to hear arguments from the scratch. Should such a prayer be entertained at the behest of the accused? We are of the considered view that the answer to this must be in the negative, for, in our view, any exercise of powers as contained under Sections 407 and 482 of the Code of Criminal Procedure for the aforesaid purpose would not only further delay the disposal of the case, which has been pending already for over 23 years, but would cause untold hardship to the complainant, apart from the fact that the State through the CBI would have to de novo argue the matter.

10. Before parting with the order, we deem it expedient to refer to the contention of the petitioner that fair and impartial justice will not be done to him if the matter is heard and decided by Ms. Mamta Sehgal. To say the least, we find no reason for such an apprehension on the part of the petitioner. Merely for the petitioner to allege that he will not get impartial justice, to our mind, is wholly insufficient. The question really is whether the petitioner can be said to entertain reasonably an apprehension that he would not get justice. It is not any and every apprehension in the mind of the accused that can be termed as reasonable apprehension. Apprehension must not only be entertained, but must also appear to the Court to be reasonable and justified by facts and circumstances. Facts and circumstances are otherwise. The petitioner did not entertain any apprehension from the year 2001 when the matter was posted with Ms. Mamta Sehgal, Additional Sessions Judge till the year 2006 when her posting was changed. But now all of a sudden he expresses apprehension that the learned Additional Sessions Judge may not render impartial justice. Can his apprehension be termed a reasonable one? In the attendant circumstances and in view of the fact that no case of any real bias has been made out by him, the answer to this question must be in the negative. It cannot be also lost sight of that though assurance of a fair trial is the final imperative of the

> *Subramania Iyer case [(1901) LR 28 IA 257, 263], the trial is bad and no question of curing an irregularity arises; but if the trial is conducted substantially in the manner prescribed by the Code, but some irregularity occurs in the course of such conduct, the irregularity can be cured under Section 537, and nonetheless so because the irregularity involves, as must nearly always be the case, a breach of one or more of the very comprehensive provisions of the Code". Pulukuri Kotayya v. King-Emperor [(1947) LR 74 IA 65, 75].*

9. Now it is obvious that the question of curing an irregularity can only arise when one or more of the express provisions of the Code is violated. The question in such cases is whether the departure is so violent as to strike at the root of the trial and make it no trial at all or is of a less vital character. It is impossible to lay down any hard and fast rule but taken by and large the question usually narrows down to one of prejudice. In any case, the courts must be guided by the plain provisions of the Code without straining at its language wherever there is an express provision.

10. For a time it was thought that all provisions of the Code about the mode of trial were so vital as to make any departure therefrom an illegality that could not be cured. That was due to the language of the Judicial Committee in N.A. Subramania Iyer v. King-Emperor [(1938) 65 AIR 158, 175].

11. Later, this was construed to mean that that only applies when there is an express prohibition and there is prejudice. In Subramania Iyer case [(1901) LR 28 IA 257, 263] the Privy Council said:

> *"The remedying of mere irregularities is familiar in most systems of jurisprudence, but it would be an extraordinary extension of such a branch of administering the criminal law to say that when the Code positively enacts that such a trial as that which has taken place here shall not be permitted*

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is for the Court in all these cases to determine whether there has been prejudice to the accused; and in doing so to bear in mind that some violations are so obviously opposed to natural justice and the true intendment of the Code that on the face of them and without anything else they must be struck down, while in other cases a closer examination of all the circumstances will be called for in order to discover whether the accused has been prejudiced."

Concept of 'Illegality' and 'Irregularity' in CrPC

104. In ***Pulukuri Kotayya v. King-Emperor***, (1948) LR 74 IA 65, the Privy Council held that the distinction drawn in many of the cases in India between an illegality and an irregularity is one of degree rather than of kind. Relevant portion of the judgment is reproduced hereunder:

> *"...but if the trial is conducted substantially in the manner prescribed by the Code, but some irregularity occurs in the course of such conduct, the irregularity can be cured under s. 537, and none the less so because the irregularity involves, as must nearly always be the case, a breach of one or more of the very comprehensive provisions of the Code. The distinction drawn in many of the cases in India between an illegality and an irregularity is one of degree rather than of kind."*
>
> *(Emphasis Supplied)*

105.. In ***Willie (William) Slaney v. State of M.P.*** *(supra)*, the Constitution Bench of the Supreme Court held that the irregularity is curable if it has not resulted in failure of justice but the irregularity is not curable if it has resulted in failure of justice. Relevant portion of the said judgment is reproduced hereunder:

> *"31. The sort of problem that we are now examining can only arise when an express provision of the Code is violated and then the root of the matter is not whether there is violation of an express provision, for the problem postulates that there must be, nor is it whether the provision is expressed in positive or in*

justice. When so struck down, the conviction is "invalid"; when not, it is good whatever the "irregularity". It matters little whether this is called an "illegality", an "irregularity" that cannot be cured or an "invalidity", so long as the terms are used in a clearly defined sense."

Concept of "Failure of Justice"

106. In ***Darbara Singh v. State of Punjab***, (2012) 10 SCC 476, the accused challenged the conviction under Section 302 IPC on the ground of defect of framing of charges. The Supreme Court rejected the challenge on the ground that there was no failure of justice. The Supreme Court held that ***"Failure of Justice"*** means serious prejudice caused to the accused. Relevant portion of the judgment is reproduced hereunder:

"21. "Failure of justice" is an extremely pliable or facile expression, which can be made to fit into any situation in any case. The court must endeavour to find the truth. There would be "failure of justice"; not only by unjust conviction, but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and also safeguarded, but they should not be overemphasised to the extent of forgetting that the victims also have rights. It has to be shown that the accused has suffered some disability or detriment in respect of the protections available to him under the Indian criminal jurisprudence. "Prejudice" is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial, and not with respect to matters falling outside their scope. Once the accused is able to show that there has been serious prejudice caused to him, with respect to either of these aspects, and that the same has defeated the rights available to him under criminal jurisprudence, then the accused can seek benefit under the orders of the court."

107. In ***Willie (William) Slaney (supra)***, the Supreme Court held that the

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itself or to direct such additional evidence to be collected by the trial court. But to replay the whole laborious exercise after erasing the bulky records relating to the earlier proceedings, by bringing down all the persons to the court once again for repeating the whole depositions would be a sheer waste of time, energy and costs unless there is miscarriage of justice otherwise. Hence the said course can be resorted to when it becomes unpreventable for the purpose of averting "a failure of justice". The superior court which orders a de novo trial cannot afford to overlook the realities and the serious impact on the pending cases in trial courts which are crammed with dockets, and how much that order would inflict hardship on many innocent persons who once took all the trouble to reach the court and deposed their versions in the very same case. To them and the public the re-enactment of the whole labour might give the impression that law is more pedantic than pragmatic. Law is not an instrument to be used for inflicting sufferings on the people but for the process of justice dispensation."

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"17. It is an uphill task for the accused in this case to show that failure of justice had in fact occasioned merely because the specified Sessions Court took cognizance of the offences without the case being committed to it. The normal and correct procedure, of course, is that the case should have been committed to the Special Court because that court being essentially a Court of Session can take cognizance of any offence only then. But if a specified Sessions Court, on the basis of the legal position then felt to be correct on account of a decision adopted by the High Court, had chosen to take cognizance without a committal order, what is the disadvantage of the accused in following the said course?"

109. In ***Hanumant Dass v. Vinay Kumar***, (1982) 2 SCC 177, the Supreme Court rejected the challenge to the conviction on the ground that the case was transferred to a Court which did not have territorial jurisdiction as it has not resulted in failure of justice. Relevant portion of the said judgment is

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accused at the trial nor any prejudice was pleaded either at the trial or at the appellate stage and therefore in absence of any prejudice such a technical objection will not affect the order or sentence passed by competent court. Apart from Section 465, Section 462 provides for remedy in cases of trial in wrong places. Section 462 reads as under...

...This provision even saves a decision if the trial has taken place in a wrong Sessions Division or sub-division or a district or other local area and such an error could only be of some consequence if it results in failure of justice, otherwise no finding or sentence could be set aside only on the basis of such an error.

15. It is therefore clear that even if the trial before the III Additional City Civil and Sessions Judge would have in a Division other than the Bangalore Metropolitan Area for which III Additional City Civil and Sessions Judge is also notified to be a Sessions Judge still the trial could not have been quashed in view of Section 462. This goes a long way to show that even if a trial takes place in a wrong place where the court has no territorial jurisdiction to try the case still unless failure of justice is pleaded and proved, the trial cannot be quashed. In this view of the matter therefore reading Section 462 alongwith Section 465 clearly goes to show that the scheme of the Code of Criminal Procedure is that where there is no inherent lack of jurisdiction merely either on the ground of lack of territorial jurisdiction or on the ground of any irregularity of procedure an order or sentence awarded by a competent court could not be set aside unless a prejudice is pleaded and proved which will mean failure of justice. But in absence of such a plea merely on such technical ground the order or sentence passed by a competent court could not be quashed."

(Emphasis Supplied)

111. In ***Purushottamdas Dalmia v. State of W.B.***, (1962) 2 SCR 101, the conviction was challenged by the accused on the ground that the offence was not committed within the territorial limits of the Court which convicted him. The Supreme Court held that there are two types of jurisdiction. First, being

other local area, unless it appears that such error has in fact occasioned a failure of justice."

The reason for such a difference in the result of a case being tried by a court not competent to try the offence and by a court competent to try the offence but having no territorial jurisdiction over the area where the offence was committed is understandable. The power to try offences is conferred on all courts according to the view the legislature holds with respect to the capability and responsibility of those courts. The higher the capability and the sense of responsibility, the larger is the jurisdiction of those courts over the various offences. Territorial jurisdiction is provided just as a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular court, the convenience of the accused who will have to meet the charge levelled against him and the convenience of the witnesses who have to appear before the court. It is therefore that it is provided in Section 177 that an offence would ordinarily be tried by a court within the local limits of whose jurisdiction it is committed."

112. In ***Ram Chandra Prasad v. State of Bihar***, (1962) 2 SCR 50, the Supreme Court rejected the objection that the Court did not have territorial jurisdiction on the ground that it has not resulted in failure of justice. Relevant portion of the said judgment is reproduced hereunder:

"8. In view of Section 531 of the code of Criminal Procedure, the order of the Special Judge, Patna, is not to be set aside on the ground of his having no territorial jurisdiction to try this case, when no failure of justice has actually taken place. It is contended for the appellant that Section 531 of the Code of Criminal Procedure is not applicable to this case in view of sub-section (1) of Section 7 and Section 10 of the Criminal Law Amendment Act. We do not agree. The former provision simply lays down that such offences shall be triable by Special Judges and this provision has not been offended against. Section 10 simply provides that the cases triable by a Special Judge under Section 7 and pending before a Magistrate

judgment in a sealed cover to be pronounced by the successor Judge. The successor Judge later pronounced the judgment. The Punjab and Haryana High Court held that failure to comply with Section 353 is a procedural irregularity which is curable unless it occasions failure of justice. Relevant portion of the judgment is reproduced hereunder:

> *"54. Considering the provisions of Sections 353(7) and 465, Code of Criminal Procedure, collectively, it transpires that the Presiding Officer was within the ambit of propriety to have pronounced the judgment there, and then on any of the dates after 22.5.2008. By 22.5.2008, all the proceedings had concluded, including final arguments and the case had been fixed for passing of orders for 24.5.2008. The petitioner, while giving one excuse after another, did not appear thereby frustrating the process of Court and process of law, on account of which the impugned order has been, passed.*
>
> *55. Considering the provisions of Section 353, Code of Criminal Procedure, I find that there was no bar, prohibition, hindrance or obstacle for the trial Court to have adopted the measure adopted by it. As held above, the judgment could have been pronounced in the presence of the Counsel for the petitioner. Conceivably, misconstruing the provisions of Section 353, Code of Criminal Procedure, the trial Court adopted the procedure of signing the judgment and affixing a date thereon and putting it in a sealed cover, to be pronounced by the successor Presiding Officer. There being no provision debarring the trial Court from adopting the procedure, I find no illegality in the conduct of the trial Court. The proceedings had concluded, the order had been prepared and was only to be pronounced, after affixing the signatures by the Presiding Officer.*
>
> xxx xxx xxx
>
> *73. From the Jaw, as noticed above, it also follows that the judgment of the trial Court represents finalisation of trial of an accused. The Code of Criminal Procedure contemplates that the judgment should be complete in all respects at the time of pronouncement. At that stage, all that is required of the*

prohibits the successor Officer pronouncing the same in Court. Such a course does not cause prejudice to anybody, rather, it accelerates dispensation of justice. Pronouncement of an order by successor Presiding Officer would not in anyway prejudice the accused in the conduct of the case. It is merely an irregularity completely covered by the provisions of Section 465, Code of Criminal Procedure.

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78. A combined reading of sub-Sections (7) and (8) of Section 353, Code of Criminal Procedure, indicates that non-compliance with provisions of Section 353, Code of Criminal Procedure, would not render valid until and unless it occasions failure of justice. To obtain the benefit of noncompliance of Section 353, Code of Criminal Procedure, it would be incumbent on the accused to prove the prejudice caused to him' by such non-compliance. This is what has been held in the law, referred to above. The principle of law which emerges is that mere non-compliance of Section 353. Code of Criminal Procedure, which requires a Judge to pronounce and sign the judgment in open Court, will not render the judgment illegal. Procedural irregularity is curable."

De facto Doctrine

115. In ***Gokaraju Rangaraju v. State of A.P.,*** (1981) 3 SCC 132, while considering the effect of the judgments pronounced by judges whose appointments were quashed by the Court subsequent to the pronouncement of judgments. The Court resorted to the *de facto* doctrine and held:

"17. A judge, de facto, therefore, is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a judge de jure. Such is the de facto doctrine, born of necessity and public policy to prevent

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not validly appointed. A person appointed as a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, would be exercising jurisdiction in the Court of Session and his judgments and orders would be those of the Court of Session. They would continue to be valid as the judgments and orders of the Court of Session, notwithstanding that his appointment to such Court might be declared invalid. On that account alone, it can never be said that the procedure prescribed by law has not been followed. It would be a different matter if the constitution of the court itself is under challenge. We are not concerned with such a situation in the instant cases. We, therefore, find no force in any of the submissions of the learned Counsel."

116. In ***Surendra Singh v. State of Uttar Pradesh***, AIR 1954 SC 194, the case was heard by a Bench of two judges and the judgment was signed by both of them but one of the Judges expired before the pronouncement of the judgment in the Court. The judgment was subsequently pronounced by one of the Judges. The Supreme Court held the judgment to be valid having been pronounced in terms of Section 353 CrPC. Relevant portion of the said judgment is as under:

"11. An important point therefore arises. It is evident that the decision which is so pronounced or intimated must be a declaration of the mind of the Court as it is at the time of pronouncement. We lay no stress on the mode of manner of delivery, as that is not of the essence, except to say that it must be done in a judicial way in open court. But however, it is done it must be an expression of the mind of the court at the time of delivery. We say this because that is the first judicial act touching the judgment which the court performs after the hearing. Everything else up till then is done out of court and is not intended to be the operative act which sets all the consequences which follow on the judgment in motion. Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have been signed. The final operative act is that which is formally declared in

Rule 3, Part B of Chapter 26 of Delhi High Court Rules empowers the High Court to transfer the cases on administrative grounds. To summarize, the High Court has both judicial as well as administrative power to regulate administration of justice.

119. Chapter XXXV of the Code of Criminal Procedure protects the irregularities in procedure unless it has resulted in failure of justice. Section 460 protects irregularities which do not vitiate the proceedings whereas Section 461 lists out irregularities which vitiate proceedings. Section 462 protects judgment given by a Criminal Court in a proceeding which took place in a wrong jurisdiction unless it has resulted in failure of justice. Section 465 protects the irregularities in the complaint, summons, warrants, proclamation, order, judgment or other proceedings before or during trial unless there has been failure of justice. "*Failure of Justice*" means serious prejudice caused to the accused.

120. Section 465 CrPC protects the findings, sentence or order in respect of an irregularity and not an illegality. Illegality is a defect which strikes at the very substance of justice such as refusal to give accused a hearing, refusal to allow the accused to defend himself, refusal to explain the charge to the accused and such illegalities are not protected by Section 465. The distinction between an illegality and an irregularity is one of degree rather than of kind.

121. There are two types of jurisdictions of a Criminal Court, namely, (i) the jurisdiction with respect to the power of the Court to try particular kinds of offences, and (ii) the territorial jurisdiction. While the former goes to the root of the matter and any transgression makes the entire trial void, the latter is not of a peremptory character and is curable under Section 462 CrPC.

proved. There has been no prejudice to the accused in the present case.

126. The impugned judgment is also protected by the *de facto* doctrine based on necessity and public policy.

127. In ***Jitender's case (supra)***, *Note 2* of the transfer order was not under challenge. In that case, the Division Bench was considering the validity of a judgment dictated and signed by the predecessor Judge but '*announced*' by the successor Judge. The Division Bench held the pronouncement of the judgment by the successor Judge to be illegal for being in violation of Section 353 CrPC. While doing so, the Division Bench also commented on the validity of *Note 2* which was not in issue before the Division Bench. The Division Bench observed that an administrative order cannot override the statutory provisions of CrPC. However, the Division Bench did not consider Articles 227 and 235 of the Constitution. The validity of *Note 2* had to be seen under Articles 227 and 235 of the Constitution which was not considered. The Division Bench also did not consider Section 462 CrPC which clearly protects a judgment/order on account of lack of territorial jurisdiction unless it has resulted in failure of justice. The attention of the Division Bench was not drawn to the Supreme Court judgment in ***State of Karnataka v. Kuppuswamy Gownder (supra)*** on the scope of Section 462 where the trial takes at a wrong place. The well established *de facto* doctrine was also not considered by the Division Bench. Before deciding the validity of Note 2, the notice to the High Court was paramount. However, no notice was issued to the High Court on the administrative side before considering the validity of *Note 2*. Given an opportunity, the High Court could have defended *Note 2* being an administrative order passed in exercise of superintendence under Articles 227 and 235 of the Constitution. We

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"6. The victimisation of the family of the convict may well be a reality and is regrettable. It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependants of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law! This is a deficiency in the system which must be rectified by the legislature. We can only draw attention to this matter. Hopefully, the welfare State will bestow better thought and action to traffic justice in the light of the observations we have made."

(Emphasis supplied)

132. In ***Maru Ram v. Union of India***, (1981) 1 SCC 107, Krishna Iyer J., held that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. Victimology must find fulfillment, not through barbarity but by compulsory recoupment by the wrongdoer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn.

133. In ***Dayal Singh v. State of Uttaranchal***, (2012) 8 SCC 263, the Supreme Court held that the criminal trial is meant for doing justice to all - the accused, the society and the victim, then alone can law and order can be maintained. The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that the guilty man does not escape.

134. In ***State of Gujarat v. Hon'ble High Court of Gujarat***, (1998) 7 SCC 392, the Supreme Court suggested that the State should make a law for setting apart a portion of wages earned by prisoners to be paid as compensation to victims of the offence, the commission of which entailed a sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in another feasible mode. The

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return of stolen property (restitution), these being types of reparation which might be described as practical or material. The term can also be used to describe more intangible outcomes, as where an offender makes an apology to a victim and provides some reassurance that the offence will not be repeated, thus repairing the psychological harm suffered by the victim as a result of the crime."

(Emphasis Supplied)

135. Justice remains incomplete without adequate compensation to the victim. Justice can be complete only when the victim is also compensated. In order to give complete mental satisfaction to the victim, it is extremely essential to provide some solace to him in the form of compensation so that it can work as a support for the victim to start his life afresh.

Sections 357 and 357A of CrPC – Compensation to victim(s) of crime

136. Section 357 CrPC empowers the Court to award compensation to the victim(s) of the offence in respect of the loss/injury suffered. The object of the section is to meet the ends of justice in a better way. This section was enacted to reassure the victims that they are not forgotten in the criminal justice system. The amount of compensation to be awarded under Section 357 CrPC depends upon the nature of crime, extent of loss/damage suffered and the capacity of the accused to pay for which the Court has to conduct a summary inquiry. However, if the accused does not have the capacity to pay the compensation or the compensation awarded against the accused is not adequate for rehabilitation of the victim, the Court can invoke Section 357A CrPC to recommend the case to the State/District Legal Services Authority for award of compensation from the State funded Victim Compensation Fund under the Delhi Victim Compensation Scheme, 2018. Section 357 CrPC is mandatory and it is the duty of all Courts to consider it in every criminal case. The Court is required to give reasons to show such

the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of the accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way, may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub- section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge."

(Emphasis Supplied)

139. In ***Manish Jalan v. State of Karnataka***, (2008) 8 SCC 225, the Supreme Court observed that the Courts have not made use of the provisions regarding award of compensation to the victims as often as they ought to be. The relevant portion of the said judgment is reproduced hereunder:

"12. Though a comprehensive provision enabling the court to direct payment of compensation has been in existence all through but the experience has shown that the provision has rarely attracted the attention of the courts. Time and again the courts have been reminded that the provision is aimed at serving the social purpose and should be exercised liberally yet the results are not very heartening."

140. In ***K.A. Abbas H.S.A. v. Sabu Joseph***, (2010) 6 SCC 230, the Supreme Court again noted that Section 357 CrPC is an important provision but the Courts have seldom invoked it, perhaps due to the ignorance of the object of it.

141. In ***Roy Fernandes v. State of Goa***, (2012) 3 SCC 221, the Supreme Court again observed that the Criminal Courts do not appear to have taken significant note of Section 357 CrPC or exercised the power vested in them. The relevant portion of the said judgment is reproduced hereunder:-

the courts. In other words, whether courts have a duty to advert to the question of awarding compensation to the victim and record reasons while granting or refusing relief to them?

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54. Applying the tests which emerge from the above cases to Section 357, it appears to us that the provision confers a power coupled with a duty on the courts to apply its mind to the question of awarding compensation in every criminal case. We say so because in the background and context in which it was introduced, the power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system. The victim would remain forgotten in the criminal justice system if despite the legislature having gone so far as to enact specific provisions relating to victim compensation, courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation. It follows that unless Section 357 is read to confer an obligation on the courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision.

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61. Section 357 CrPC confers a duty on the court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the court must disclose that it has applied its mind to this question in every criminal case.

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66. To sum up: while the award or refusal of compensation in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay, which constitutes an important aspect of any order under Section 357 CrPC would involve a certain enquiry albeit summary unless of course the facts as

member, laid down the principles relating to the procedure to be followed in respect of Section 357 CrPC.

Principles in regard to methodology of assessing compensation

147. Section 357(1)(b) CrPC empowers the Court to award compensation out of the fine to the victim for any loss or injury caused by the offence when the compensation is, in the opinion of the Court, recoverable by such person in Civil Court. Section 357(1)(c) empowers the Court to award compensation out of the fine in death cases where the persons are entitled to recover the same under Fatal Accidents Act, 1855. Section 357(3) empowers the Court to award compensation to any person who has suffered loss or injury by reason of the act of the accused. Section 357(5) provides that at the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section. The effect of these provisions is that the Court has to compute the compensation which the victims are entitled to claim against the accused under civil law.

148. In cases resulting in death, the multiplier method has been accepted as a sound method for determining the compensation to the family of the deceased in law of torts. Reference may be made to ***Gobald Motor Service Ltd. v. R.M.K. Veluswami,*** 1962 (1) SCR 929; ***Ishwar Devi Malik. v. Union of India,*** ILR (1968) 1 Delhi 59; ***Lachman Singh v. Gurmit Kaur,*** I (1984) ACC 489 (SB); ***Lachhman Singh v. Gurmit Kaur,*** AIR 1979 P&H 50; ***Bir Singh v. Hashi Rashi Banerjee,*** AIR 1956 Cal. 555. Reference may also be made to ***Lata Wadhwa v. State of Bihar,*** (2001) 8 SCC 197; ***Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy,*** AIR 2012 SC 100; ***Jaipur Golden Gas Victims Association v. Union of India,***

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road accident leaving behind his widow and two children; first step would be to add 50% of the income as future prospects and total income for computation of compensation would be taken as Rs.11,250/-. Next step is to deduct 1/3rd towards the personal expenses which the deceased would have spent on himself and the loss of dependency of his family would be Rs.7,500/- per month. The annual loss of dependency of Rs.90,000/- is multiplied by the multiplier of 15 to compute the total loss of dependency as Rs.13,50,000/-. Compensation has to be added towards loss of love and affection, loss of consortium, loss to estate, medical expenses, emotional harm/trauma, mental and physical shock etc. and funeral expenses.

Interim compensation

150. In ***Bodhisattwa Gautam v. Subhra Chakraborty,*** (1996) 1 SCC 490, the Supreme Court held that the Court has the right to award interim compensation and the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the Courts trying the offence. The relevant portion of the judgment is reproduced hereunder:

> *"18. This decision recognises the right of the victim to compensation by providing that it shall be awarded by the court on conviction of the offender subject to the finalisation of the Scheme by the Central Government. If the court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the court the right to award interim compensation which should also be provided in the Scheme. On the basis of principles set out in the aforesaid decision in Delhi Domestic Working Women's Forum [(1995) 1 SCC 14 : 1995 SCC (Cri) 7], the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the courts trying the offences of rape which, as pointed out above is an offence against basic human rights as also the Fundamental Right of Personal Liberty and Life.*
>
> *19. Apart from the above, this Court has the inherent jurisdiction to*

and the Code of Criminal Procedure is declared to be legal and valid. The contrary finding of the Division Bench relating to *Note 2* in ***Jitender's case*** *(supra)* is overruled.

154. The ld. Addl. Sessions Judge was duly empowered to pronounce the judgment by virtue of *Note 2* appended to the transfer order dated 13th March, 2020. The pronouncement of the judgment by ld. Addl. Sessions Judge is in terms of Section 353 CrPC. The delay in pronouncing the judgment is a mere irregularity and is hereby condoned.

155. Notwithstanding validity of *Note 2*, the impugned judgment is also protected by Sections 462 and 465 CrPC and the *de facto* doctrine.

Victimology

156. Victims are unfortunately the forgotten people in the criminal justice delivery system. Victims are the worst sufferers. Victims' family is ruined particularly in cases of death and grievous bodily injuries. This is apart from the factors like loss of reputation, humiliation, etc. The Court has to take into consideration the effect of the offence on the victim's family even though human life cannot be restored but then monetary compensation will at least provide some solace.

157. The criminal justice system is meant for doing justice to all - the accused, the society and the victim.

158. Justice remains incomplete without adequate compensation to the victim. Justice can be complete only when the victim is also compensated.

Sections 357 & 357A of CrPC

159. Section 357 CrPC empowers the Court to award compensation to victims who have suffered by the action of the accused.

160. The object of the Section 357(3) CrPC is to provide compensation to

depending upon gravity of offence, severity of mental and physical harm/injury suffered by the victim, damage/losses suffered by the victims and the capacity of the accused to pay. While determining the paying capacity of the accused, the Court has to take into consideration the present occupation and income of the accused. The accused can also be directed to pay monthly compensation out of his income.

Financial capacity of the accused

169. Before awarding compensation, the Trial Court is required to ascertain the financial capacity of the accused. This Court has formulated the format of an affidavit to be filed by the accused after his conviction to disclose his assets and income which is ***Annexure-A*** hereto.

Victim Impact Report

170. This Court has formulated the format of ***Victim Impact Report*** (VIR) to be filed by DSLSA in every criminal case after conviction. ***Victim Impact Report*** (VIR) shall disclose the impact of the crime on the victim. The format of the ***Victim Impact Report*** in respect of criminal cases, other than motor accident cases, is ***Annexure B-1***. The format of ***Victim Impact Report*** in respect of motor accident cases is ***Annexure B-2***.

Summary Inquiry

171. A summary inquiry is necessary to ascertain the impact of crime on the victim, the expenses incurred on prosecution as well as the paying capacity of the accused.

172. This Court is of the view that the summary inquiry be conducted by Delhi State Legal Services Authority (DSLSA) considering that DSLSA is conducting similar inquiry under the Delhi Victim Compensation Scheme, 2018 and is well conversant with the manner of conducting the inquiry.

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178. If the accused does not have the capacity to pay the compensation or the compensation awarded against the accused is not adequate for rehabilitation of the victim, the Court shall invoke Section 357A CrPC to recommend the case to the Delhi State Legal Services Authority for award of compensation from the Victim Compensation Fund under the Delhi Victims Compensation Scheme, 2018.

179. In pending appeals/revisions against the order on sentence in which Section 357 CrPC has not been complied with, the Public Prosecutor shall file an application seeking a direction from the Court for directing the accused to file his affidavit of assets and income in the format of ***Annexure-A*** and directions to DSLSA to conduct a summary inquiry to ascertain the loss/damage suffered by the victim(s) and the paying capacity of the accused in the format of ***Annexures-B/B-1*** in terms of Sections 357(4) CrPC in accordance with procedure mentioned hereinabove.

180. All the Courts below shall send a monthly statement to the Registrar General of this Court containing the list of cases decided each month. The list shall contain the name and particulars of the case; date of conviction; whether affidavit of assets and income has been filed by the accused; whether summary inquiry has been conducted to assess the compensation and determine the paying capacity of the accused; and compensation amount awarded. The monthly statement shall also contain one page summary format of the above information. The first monthly report for the period 01st January, 2021 to 31st January, 2021 be submitted by 15th February, 2021 and thereafter, by 15th of each English calendar month. The Registrar General of this Court shall place these reports before ACR Committee of the Judicial Officers.

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Jeet Arora, Member Secretary, DSLSA; Mr. Akshay Chowdhary and Ms. Anjali Agrawal, Law Researchers attached to this Court.

186. This Court is of the view that the mandatory summary inquiry by DSLSA into the loss/damage suffered by the victim and the paying capacity of the accused after conviction; and the affidavit of accused in format of ***Annexure-A;*** and ***Victim Impact Report*** by DSLSA in the format of ***Annexure-B*** and ***Annexure B-1*** should be incorporated in the Statue/Rules. Let this suggestion be considered by the Central Government. Copy of this judgment along with ***Annexure-A***, ***Annexure-B*** and ***Annexure B-1*** be sent to Mr. Chetan Sharma, ld. ASG for taking up the matter with Ministry of Law & Justice. Mr. Chetan Sharma, ld. ASG is requested to assist this Court on 25th February, 2021.

187. Copy of this judgment along with ***Annexure-A***, ***Annexure-B*** and ***Annexure B-1*** be sent to the Registrar General of this Court who shall send the same to the District Judge (HQs.) for being circulated to all concerned Courts.

188. Copy of this judgment along with affidavit of accused in the format of ***Annexure-A*** and ***Victim Impact Report*** in the format of ***Annexure-B*** and ***Annexure B-1*** be uploaded in the District Court Website (*in .pdf format*) to enable the lawyers/litigants to download the same.

189. Copy of this judgment along with ***Annexure-A***, ***Annexure-B*** and ***Annexure B-1*** be sent to Delhi Judicial Academy to sensitize the Judges about the directions given by this Court.

190. National Judicial Academy is reporting the best practices of the High Courts on their website (www.nja.nic.in) under the head of Practices & Initiatives of various High Courts. Copy of this judgment along with

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ANNEXURE-A

Format of the AFFIDAVIT of the Convict

(To be filed by the Convict within ten days of the conviction)

AFFIDAVIT

I _____, son of/daughter of/wife of _____, aged about ____ years, resident of _____, do hereby solemnly declare and affirm as under:

S. No.	Description	Particulars
1.	FIR No., date and under Section(s)	
2.	Name of Police Station	
3.	Date, time and place of offence	
4.	Date of conviction	
5.	Name of the convict	
6.	Father's /Spouse's name	
7.	Age	
8.	Gender	
9.	Marital status	
10.	Addresses: Permanent	
	Present	
11.	Contact information: Mobile	
	Email ID	
12.	Educational and professional qualifications	
13.	Occupation	

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20.	Incomeearned by the convict during incarceation			
21.	Any other income not covered above			
22.	***Total ncome***	**Monthly**		
		Annual		
23.	***Immovable properties*** Particulars of the immovable propeties including joint properties, built up properties, lease hold propeties, land/ agricultural land and investment in real estate such as bookng of plots, flats etc. in your nam or in joint names			
24.	***Financial Assets*** Particulars of all bank accounts including Current and Savings, Demt accounts in your name or joint names held in the last three years	**Account Number**	**Name of Bank**	**Current Balance**
25.	***Investments*** FDRs, NSC, IVP, KVP, Post Office schemes, PPF etc.; Deposits with Government and Non-Government entities; Stocks, shares, debentures, bonds, units and mutual funds, etc.	**Particulars**	**Current Value**	
26.	***Movable Assets*** Motor Vehicles, live stock, plant and equipment etc.	**Particulars**	**Cost of acquisition**	
27.	List of other assets not itemized above			
28.	***Value of total assets***			

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5. I understand that any false statement made in this affidavit may constitute an offence under Section 199 read with Sections 191 and 193 of the Indian Penal Code, 1860 punishable with imprisonment up to seven years and fine, and Section 209 of Indian Penal Code, 1860 punishable with imprisonment up to two years and fine. I have read and understood Sections 191, 193, 199 and 209 of the Indian Penal Code, 1860.

DEPONENT

Verification:

Verified at _____ on this ____ day of _____ that the contents of the above affidavit relating to my income and assets are true to my knowledge, no part of it is false and nothing material has been concealed therefrom. I further verify that the copies of the documents filed along with the affidavit are true copies of the originals.

DEPONENT

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7.	Father's /Spouse's name	
8.	Age	
9.	Gender	
10.	Marital status	
11.	Addresses: Permanent	
	Present	
12.	Contact information: Mobile	
	Email ID	

I. Death Case

S. No.	Description	Particulars		
13.	Name of the deceased			
14.	Father's/Spouse's name			
15.	Age of the deceased			
16.	Gender of the deceased			
17.	Marital status of the deceased			
18.	Occupation of the deceased			
19.	Income of the deceased			
20.	Name, age and relationship of legal representatives of deceased:			
	Name	**Age**	**Gender**	**Relation**
(i)				
(ii)				
(iii)				
(iv)				

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	victim.	
(xvi)	Any other non pecuniary loss/damage	
	Total loss suffered	

II. Injury Case

S. No.	Description	Particulars
22.	Name of the injured	
23.	Father's /Spouse's name	
24.	Age of the injured	
25.	Gender of the injured	
26.	Marital status of the injured	
27.	Occupation of the injured	
28.	Income of the injured	
29.	Nature and description of injury	
30.	Medical treatment taken by the injured	
31.	Name of hospital and period of hospitalization	
32.	Details of surgeries, if undergone	
33.	Whether any permanent disability? If yes, give details	
34.	Whether the injured got reimbursement of medical expenses	
35.	Details of family/dependents of the injured:	

	Name	Age	Gender	Relation
(i)				

(12-1)

	stress, dejectment and unhappiness in future life etc.	
(iii)	Post-traumatic stress disorder (anxiety, depression, hostility, insomnia, self-destructive behaviour, nightmares, agitation, social isolation, etc.) panic disorder or phobia(a) which got triggered by the incident.	
(iv)	Emotional harm/trauma, mental and physical shock etc.	
(v)	Disfiguration	
(vi)	Loss of marriage prospects	
(vii)	Loss of Reputation	
(viii)	Any other non-pecuniary loss/damage	
	Total loss suffered	

III. Damage/Loss to the property

S. No.	Description	Particulars
37.	Description of the property damaged/lost	
38.	The value of loss suffered	

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Documents considered and attached to the report

In death cases:

1. Death certificate
2. Proof of age of the deceased which may be in form of a) Birth Certificate; b) School Certificate; c) Certificate from Gram Panchayat (in case of illiterate); d) Aadhar Card
3. Proof of Occupation and Income of the deceased which may be in form of a) Pay slip/salary certificate (salaried employee); b) Bank statements of the last six months; c) Income tax Return; Balance Sheet
4. Proof of the legal representatives of the deceased (Names, Age, Address, Phone Number & Relationship)
5. Treatment record, medical bills and other expenditure
6. Bank Account no. of the legal representatives of the deceased with name and address of the bank
7. Any other document found relevant

In injury cases:

8. Multi angle photographs of the injured
9. Proof of age of the deceased which may be in form of a) Birth Certificate; b) School Certificate; c) Certificate from Gram Panchayat (in case of illiterate); d) Aadhar Card
10. Proof of Occupation and Income of the deceased which may be in form of a) Pay slip/salary certificate (salaried employee); b) Bank statements of the last six months; c) Income tax Return; Balance Sheet
11. Treatment record, medical bills and other expenditure.
12. Disability certificate (if available)
13. Proof of absence from work where loss of income on account of injury is being claimed, which may be in the form of a) Certificate from the employer; b) Extracts from the attendance register.
14. Proof of reimbursement of medical expenses by employer or under a Mediclaim policy, if taken
15. Any other document found relevant

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7.	Father's /Spouse's name	
8.	Age	
9.	Gender	
10.	Marital status	
11.	Addresses: Permanent	
	Present	
12.	Contact information: Mobile	
	Email ID	

I. Death Case

S. No.	Description	Particulars		
13.	Name of the deceased			
14.	Father's/Spouse's name			
15.	Age of the deceased			
16.	Gender of the deceased			
17.	Marital status of the deceased			
18.	Occupation of the deceased			
19.	Income of the deceased			
20.	Name, age and relationship of legal representatives of deceased:			
	Name	**Age**	**Gender**	**Relation**
(i)				
(ii)				
(iii)				
(iv)				
(v)				

(xvi)	Any other non-pecuniary loss/damage	
	Total loss suffered	

II. Injury Case

S. No.	Description	Particulars
22.	Name of the injured	
23.	Father's /Spouse's name	
24.	Age of the injured	
25.	Gender of the injured	
26.	Marital status of the injured	
27.	Occupation of the injured	
28.	Income of the injured	
29.	Nature and description of injury	
30.	Medical treatment taken by the injured	
31.	Name of hospital and period of hospitalization	
32.	Details of surgeries, if undergone	
33.	Whether any permanent disability? If yes, give details	
34.	Whether the injured got reimbursement of medical expenses	
35.	Details of family/dependents of the injured:	

	Name	Age	Gender	Relation
(i)				
(ii)				

	in future life etc.	
(iii)	Post-traumatic stress disorder (anxiety, depression, hostility, insomnia, self-destructive behaviour, nightmares, agitation, social isolation, etc.) panic disorder or phobia(a) which got triggered by the incident.	
(iv)	Emotional harm/trauma, mental and physical shock etc.	
(v)	Disfiguration	
(vi)	Loss of marriage prospects	
(vii)	Loss of Reputation	
(viii)	Any other non-pecuniary loss/damage	
	Total loss suffered	

III. Damage/Loss to the property

S. No.	Description	Particulars
37.	Description of the property damaged/lost	
38.	The value of loss suffered	

IV. Conduct of the accused

S. No.	Description	Particulars
39.	Whether the accused fled from the Spot If so, when he/ she appeared before Police/ Court or arrested?	
40.	Whether the Accused reported the accident to the Police/ family of the victim	

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55.	*Apparent contributing circumstances*	
(i)	Driving without valid driving license	
(ii)	Driving while disqualified	
(iii)	Learner driving without supervision	
(iv)	Vehicle not insured	
(v)	Driving a stolen vehicle	
(vi)	Vehicle taken out without the consent of the owner	
(vii)	Driving dangerously or at excessive speed	
(viii)	Dangerously loaded vehicle/ Overloaded	
(ix)	Parking on the wrong side of the road	
(x)	Improper parking/ Parking on wrong side of road	
(xi)	Non-observance of traffic rules	
(xii)	Poorly maintained vehicle	
(xiii)	Fake/forged driving license	
(xiv)	History of convulsions/ seizures	
(xv)	Fatigued/ Sleepy	
(xvi)	Guilty of violation of traffic rules in the past	
(xvii)	Previous convictions	
(xviii)	Suffering from medical condition that impairs driving	
(xix)	Using mobile phone while driving (Handheld)	
(xx)	Using mobile phone while driving (Handsfree)	
(xxi)	More than one injured/ dead	
(xxii)	Under the influence of alcohol or drugs	

57.	***Irresponsible Behaviour***	
(i)	Failing to stop after accident	
(ii)	Ran away from the spot after leaving the vehicle	
(iii)	Destruction or attempt to destroy the evidence	
(iv)	Falsely claiming that one of the victims was responsible for the accident	
(v)	Trying to throw the victim off the bonnet of the vehicle by swerving in order to escape	
(vi)	Causing death/injury in the course of dangerous driving post commission of crime or chased by police in an attempt to avoid detection or apprehension	
(vii)	Offence committed while the offender was on bail	
(viii)	Took any false defence	
(ix)	Misled the investigation	
(x)	Post-accident road rage behavior	

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Documents considered and attached to the report

In death cases:

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3. Proof of Occupation and Income of the deceased which may be in form of a) Pay slip/salary certificate (salaried employee); b) Bank statements of the last six months; c) Income tax Return; Balance Sheet
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5. Treatment record, medical bills and other expenditure
6. Bank account no. of the legal representatives of the deceased with name and address of the bank
7. Any other document found relevant

In injury cases:

8. Multi angle photographs of the injured
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14. Proof of reimbursement of medical expenses by employer or under a Mediclaim policy, if taken
15. Any other document found relevant