(k) takes cognizance of an offence under clause (c) of sub-section (1) of Section 190;
(l) tries an offender;
(m) tries an offender summarily;
(n) passes a sentence, under Section 325, on proceedings recorded by another Magistrate;
(o) decides an appeal;
(p) calls, under Section 397, for proceedings; or
(q) revises an order passed under Section 446,

his proceedings shall be void.

Section 462 - Proceedings in wrong place

No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

Section 465 - Finding or sentence when reversible by reason of error, omission or irregularity

(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

Section 483 - Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates

(6)

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."*
>
> *(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

(62)

coexist. Relevant portion of the said judgment is reproduced hereunder:

> *"13. ...So long as power can be and is exercised purely for administrative exigency without impinging upon and prejudicially affecting the rights or interests of the parties to any judicial proceeding we do not find any reason to hold that administrative powers must yield place to judicial powers simply because in a given circumstance they coexist. On the contrary, the present case illustrates how exercise of administrative powers were more expedient, effective and efficacious. If the High Court had intended to exercise its judicial powers of transfer invoking Section 407 of the Code it would have necessitated compliance with all the procedural formalities thereof, besides providing adequate opportunities to the parties of a proper hearing which, resultantly, would have not only delayed the trial but further incarceration of some of the accused. It is obvious, therefore, that by invoking its power of superintendence, instead of judicial powers, the High Court not only redressed the grievances of the accused and others connected with the trial but did it with utmost dispatch."*
>
> *(Emphasis Supplied)*

99. In ***Achutananda Baidya v. Prafullya Kumar Gayen,*** (1997) 5 SCC 76, the Supreme Court held that the High Court has both administrative as well as judicial power of superintendence under Article 227 of the Constitution. Relevant portion of the judgment is as under:

> *"10. The power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the courts and tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the High Court can interfere under Article 22 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of*

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. <u>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.</u> 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

(64)

[Kamlesh Kumar v. State of Jharkhand, WP (Cri) No. 95 of 2003, decided on 19-7-2012 (Jhar)] has observed as follows:

> *"Having perused Section 407 CrPC and Articles 227 and 235, I have no hesitation to hold that this Court either on the administrative side or in the judicial side has absolute jurisdiction to transfer any criminal cases pending before one competent court to be heard and decided by another court within the jurisdiction of this Court. This Court in its administrative power can issue direction that cases of particular nature shall be heard by particular court having jurisdiction."*

In view of what is stated earlier, we have no reason to take a view different from the one taken by the High Court. Both the special leave petitions (criminal) are, therefore, dismissed."

101. In ***Ajay Singh v. State of Chhattisgarh***, (2017) 3 SCC 330, the Supreme Court rejected the challenge to the transfer of a case by the High Court on administrative side. Relevant portion of the said judgment is reproduced hereunder:

> *"28. In the case at hand, the High Court on the administrative side had transferred the case to the learned Sessions Judge by which it has conferred jurisdiction on the trial court which has the jurisdiction to try the sessions case under CrPC. Thus, it has done so as it has, as a matter of fact, found that there was no judgment on record. There is no illegality. Be it noted, the Division Bench in the appeal preferred at the instance of the present appellants thought it appropriate to quash the order as there is no judgment on record but a mere order-sheet. In a piquant situation like the present one, we are disposed to think that the High Court was under legal obligation to set aside the order as it had no effect in law. The High Court has correctly done so as it has the duty to see that sanctity of justice is not undermined. The High Court has done so as it has felt that an order which is a mere declaration of result without the judgment should be nullified and become extinct.*

65

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,

66

Additional Sessions Judge on more than thirty different dates, i.e. on 27.10.2004, 1.11.2004, 14.12.2004, 15.12.2004, 16.12.2004, 31.1.2005, 1.2.2005, 18.2.2005, 24.2.2005, 28.2.2005, 1.3.2005, 10.3.2005, 17.3.2005, 22.3.2005, 23.3.2005, 19.4.2005, 21.4.2005, 25.4.2005, 8.7.2005, 22.7.2005, 26.7.2005, 27.7.2005, 9.8.2005, 24.8.2005, 25.8.2005, 20.9.2005, 21.9.2005, 28.9.2005, 31.10.2005, 9.11.2005 and 18.11.2005. To say that arguments had been more or less completed cannot, in such circumstances, be stated to be incorrect. This being the position and the complainant (father of the deceased) being over 90 years of age, in our considered opinion, it cannot be said that the orders passed by the Hon'ble Chief Justice on the administrative side were uncalled for or in any manner prejudicial to the petitioner/accused.

8. In Ranbir Yadav v. State of Bihar, (1995) 4 SCC 392, the High Court had exercised the power of transfer on the petition filed by the accused from jail, inter alia, complaining that they could not be accommodated in the Court room as a result of which some of them had to remain outside. This order was challenged before the Supreme Court on the ground that administrative power could not be exercised when judicial power was not only available and operational, but was equally effective and efficacious. The Supreme Court held that so long as power can be and is exercised purely for administrative exigency without impinging upon and prejudicially affecting the rights or interests of the parties to any judicial proceedings, it could not be said that administrative powers must yield to judicial powers simply because they happened to co-exist in a given case.

9. Applying the ratio of the decision in Ranbir Yadav's case (supra), it cannot be said that the exercise of administrative power in the instant case by the head of the High Court was not supported by any good or cogent reason or that the same was vexatious to the accused in any manner. Here is a case where the father of the deceased has been in pursuit of justice for the last 23 years. He is over 94 years of age and has yet to come to terms with his son's brutal murder. Arguments have been heard

67

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

dispensation of justice, hyper-sensitivity cannot be allowed to impede the course of justice to such an extent that the resultant delay results in failure of justice. Also, normally the complainant has a right to choose any Court having jurisdiction and the accused cannot dictate where the case against him should be tried."

103. In ***Willie (William) Slaney v. State of M.P.***, (1955) 2 SCR 1140, the Supreme Court held that every error or omission in the trial would not vitiate the trial unless the accused can show substantial prejudice. Relevant portion of the judgment is reproduced hereunder:-

"5. ... the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well established and well-understood lines that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is substantial compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.

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8. Next comes a class of case for which there is no express provision in the Code, or where there is ambiguity. In that event, the question is whether the trial has been conducted in substantial compliance with the Code or in a manner substantially different from that prescribed.

"When a trial is conducted in a manner different from that prescribed by the Code (as in N

(69)

> *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*

that this contravention of the Code comes within the description of error, omission or irregularity."

This was examined and explained in Abdul Rahman v. King-Emperor (1926) LR 54 IA 96, 109 as follows:

> *"The procedure adopted was one which the Code positively prohibited, and it was possible that it might have worked actual injustice to the accused."*

12. .....Except where there is something so vital as to cut at the root of jurisdiction or so abhorrent to what one might term natural justice, the matter resolves itself to a question of prejudice. Some violations of the Code will be so obvious that they will speak for themselves as, for example, a refusal to give the accused a hearing, a refusal to allow him to defend himself, a refusal to explain the nature of the charge to him and so forth. These go to the foundations of natural justice and would be struck down as illegal forthwith. It hardly matters whether this is because prejudice is then patent or because it is so abhorrent to well-established notions of natural justice that a trial of that kind is only a mockery of a trial and not of the kind envisaged by the laws of our land, because either way they would be struck down at once. Other violations will not be so obvious and it may be possible to show that having regard to all that occurred no prejudice was occasioned or that there was no reasonable probability of prejudice. In still another class of case, the matter may be so near the border line that very slight evidence of a reasonable possibility of prejudice would swing the balance in favour of the accused.

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15...The real question is not whether a matter is expressed positively or is stated in negative terms but whether disregard of a particular provision amounts to substantial denial of a trial as contemplated by the Code and understood by the comprehensive expression "natural justice".

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17. This, we feel, is the true intent and purpose of Section 537(a) which covers every proceeding taken with jurisdiction in the general phrase "or other proceedings under this Code". It

(71)

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*

(72)

negative terms, but what are the consequences of such disregard. Does it result in an illegality that strikes at the root of the trial and cannot be cured or is it an irregularity that is curable?

32. We have used the terms "illegality" and "irregularity" because they have acquired a technical significance and are convenient to demarcate a distinction between two classes of case. They were first used by the Privy Council in N.A. Subramania Iyer v. King-Emperor [(1901) LR 28 IA 257] and repeated in Babulal Choukhani v. King-Emperor [(1938) LR 65 IA 158, 174] and in Pulukuri Kotayya v. King-Emperor [(1947) LR 74 IA 65, 75] but it is to be observed that the Code does not use the term "illegality". It refers to both classes as "irregularities"; some vitiate the proceedings (Section 530) and others do not (Section 529). Proceedings that come under the former head are "void". Section 535 uses the words "shall be deemed invalid" which indicate that a total omission to frame a charge would render the conviction invalid but for Section 535 which serves to validate it when that sort of "irregularity" has not occasioned a "failure of justice". Section 537 does not use any of these expressions but merely says that no conviction or sentence "shall be reversed or altered" unless there has in fact been a failure of justice.

33. We do not attach any special significance to these terms. They are convenient expressions to convey a thought and that is all. The essence of the matter does not lie there. It is embedded in broader considerations of justice that cannot be reduced to a set formula of words or rules. It is a feeling, a way of thinking and of living that has been crystallized into judicial thought and is summed up in the admittedly vague and indefinite expression "natural justice": something that is incapable of being reduced to a set formula of words and yet which is easily recognizable by those steeped in judicial thought and tradition. In the end, it all narrows down to this: some things are "illegal", that is to say, not curable, because the Code expressly makes them so; others are struck down by the good sense of Judges who, whatever expressions they may use, do so because those things occasion prejudice and offend their sense of fair play and

(73)

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

(74)

irregularities relating to the charge would not vitiate the conviction if the accused knew what he was being tried for; main facts sought to be established against him were explained to him clearly and fairly; and if he was given a full and fair chance to defend himself. Relevant portion of the said judgment is reproduced hereunder:

> *"43... But when all is said and done, what we are concerned to see is whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. If all these elements are there and no prejudice is shown, the conviction must stand whatever the irregularities whether traceable to the charge or to a want of one."*
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> *(Emphasis Supplied)*

108. In ***State of M.P. v. Bhooraji***, (2001) 7 SCC 679, the Supreme Court held that the irregularity of the Sessions Court taking cognizance of the offence without the case being committed has not caused any prejudice to the accused. The Supreme Court further held that any *de novo* trial should be the last resort and that too only when such a course becomes so desperately indispensable. It should be limited to the extreme exigency to avert "*a failure of justice*". Any omission or even the illegality in the procedure which does not affect the core of the case is not a ground for ordering a *de novo* trial. Relevant portion of the said judgment is reproduced hereunder:

> *"8.... A de novo trial should be the last resort and that too only when such a course becomes so desperately indispensable. It should be limited to the extreme exigency to avert "a failure of justice". Any omission or even the illegality in the procedure which does not affect the core of the case is not a ground for ordering a de novo trial. This is because the appellate court has plenary powers for revaluating and reappraising the evidence and even to take additional evidence by the appellate court*

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

reproduced hereunder:-

> *"16. Assuming for the sake of argument, that there were certain irregularities in the procedure the judgment of the High Court could not be set aside unless it was shown by the appellant that there has been failure of justice...*
> *17. We have perused the judgment of the High Court which was placed before us in full. It shows that each and every aspect of the matter has been thoroughly discussed and the High Court has also referred to the error committed by the Sessions Judge in the approach of the case and also in making unwarranted assumptions."*

(Emphasis Supplied)

Section 462 CrPC protects the irregularity pertaining to lack of jurisdiction

110. In ***State of Karnataka v. Kuppuswamy Gownder***, (1987) 2 SCC 74, the matter was transferred after framing of charge by the Principal Sessions Judge from one Sessions Judge to another by a distribution memo without an order under Sections 407 or 194 CrPC. The High Court set aside the conviction on the ground of irregularity which was challenged before the Supreme Court. The Supreme Court held that the irregularity in the procedure has not resulted in failure of justice and therefore, the conviction cannot be set aside. Relevant portion of the said judgment is reproduced hereunder:

> *"14. The High Court, however, observed that provisions of Section 465 CrPC cannot be made use of to regularise this trial. No reasons have been stated for this conclusion. Section 465 CrPC reads as under...*
>
> *xxx xxx xxx*
>
> *It is provided that a finding or sentence passed by a court of competent jurisdiction could not be set aside merely on the ground of irregularity if no prejudice is caused to the accused. It is not disputed that this question was neither raised by the*

(77)

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

the power of the Court to try particular kind of offences and the second being territorial jurisdiction attached to various courts for the sake of convenience. The Supreme Court emphatically held that if a Court has no jurisdiction to try a particular offence, then it would amount to be a flagrant violation, which would render the entire trial void. However, similar importance is not attached to an irregularity which arises due to territorial jurisdiction of a Court. The Supreme Court further held that 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 leveled against him and the convenience of the witnesses who have to appear before the court. It is therefore provided in Section 177 CrPC that an offence would ordinarily be tried by a court within the local limits of whose jurisdiction it is committed. Relevant portion of the said judgment is reproduced hereunder:

> *"13. It is true that the legislature treats with importance the jurisdiction of courts for the trial of offences. Jurisdiction of courts is of two kinds. One type of jurisdiction deals with respect to the power of the courts to try particular kinds of offences. That is a jurisdiction which goes to the root of the matter and if a court not empowered to try a particular offence does try it, the entire trial is void. The other jurisdiction is what may be called territorial jurisdiction. Similar importance is not attached to it. This is clear from the provisions of Sections 178, 188, 197(2) and 531 CrPC. Section 531 provides that:*
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> > *"No finding, sentence or order of any criminal court shall be set aside merely on the ground that the enquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or*

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