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*immediately before the commencement of the Act shall be forwarded for trial to the Special Judge having jurisdiction over such cases. There is nothing in this section which leads to the non-application of Section 531 of the Criminal Procedure Code."*

113. 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 took place in a wrong Sessions Division. Relevant portion of the judgment is as under:

*"The expression "failure of justice" would appear, sometimes, as an etymological chameleon. The Court has to examine whether it is really a failure of justice or whether it is only a camouflage. Justice is a virtue which transcends all barriers. Neither the rules of procedure, nor (sic) technicalities of law can stand in its way. Even the law bends before justice. The order of the court should not be prejudicial to anyone.....Law is not an escape route for law breakers. If this is allowed, this may lead to greater injustice than upholding the rule of the law. The guilty man, therefore, should be punished, and in case substantial justice has been done, it should be defeated when pitted against technicalities."*

**Procedure in Criminal Cases**

114. In *Bharti Arora v. State of Haryana*, (2011) 1 RCR (Cri) 513 (2), the Trial Judge prepared and signed a judgment but could not pronounce as the accused did not appear before the court, despite various adjournment being taken on multiple dates. The Trial Judge signed the judgement and kept the

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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 debaring 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.*

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*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*

*Presiding Officer is that he should insert a date and append his signatures at the time of pronouncement. On pronouncement of the judgment, a copy is required to be supplied to the accused, without delay. The Code of Criminal Procedure is essentially a Code like all other procedural laws designed to further the ends of justice and not to frustrate them by introduction of endless technicalities. The object of the Code is to ensure for the accused a full and fair trial in accordance with principles of natural justice. If there be substantial compliance with the requirements of law, a mere procedural irregularity would not vitiate the trial unless the same results (sic) in miscarriage of justice. In all procedural laws certain things are vital. Disregard of a provision in respect of those procedural laws would prove fatal to the trial and would invalidate the conviction. However, other requirements might not be so vital. Noncompliance with those procedures would be only an irregularity, which would be curable unless it has resulted in failure of justice.*

*74. When a Judicial Officer signs the order or judgment, it becomes final so far as he is concerned. Pronouncement in open Court, thereafter, remains only a formality by which the concerns persons would get notice of the disposal of the case and result of the trial.*

*75. When something requires to be done in the end of justice in the absence of specific statutory provision, the approach of the subordinate Courts should not be to plead helplessness on the ground that specific provision authorising the requisite action is lacking. Since there is no statutory prohibition that prevents the Court from adopting a procedure in the interest of justice, the trial Court should adopt the procedure. The Courts have to deal with contingencies not contemplated by the framers of the Code of Criminal Procedure. To, achieve the ends of justice, the needful is required to be done, however, it should be ensured that serious prejudice is not caused to the parties. There is no legal prohibition that says that a judgment or order in a criminal case prepared and signed by a Judicial Officer could be pronounced only by him. When pronouncement of judgment or order is necessary, there is no provision which*

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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*

needless confusion and endless mischief. There is yet another rule also based on public policy. The defective appointment of a de facto judge may be questioned directly in a proceeding to which he be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the judge except as a judge. Two litigants litigating their private titles cannot be permitted to bring in issue and litigate upon the title of a judge to his office. Otherwise so soon as a judge pronounces a judgment a litigation may be commenced for a declaration that the judgment is void because the judge is no judge. A judged title to his office cannot be brought into jeopardy in that fashion. Hence the Rule against collateral attack on validity of judicial appointments. To question a judged appointment in an appeal against his judgment is, of course, such a collateral attack.

18. ... The twentieth amendment of the Constitution is an instance where the de facto doctrine was applied by the constituent body to remove any suspicion or taint of illegality or invalidity that may be argued to have attached itself to judgments, decrees, sentences or orders passed or made by certain District Judges appointed before 1966, otherwise than in accordance with the provision of Article 233 and Article 235 of the Constitution. The twentieth amendment was the consequence of the decision of the Supreme Court in *Chandra Mohan v. State of U.P.* [AIR 1966 SC 1987: (1967) 1 SCR 77: (1967) 1 LLJ 412] that appointments of District Judges made otherwise than in accordance with the provisions of Articles 233 and 235 were invalid....

19. In our view, the de facto doctrine furnishes an answer to the submissions of Shri Phadke based on Section 9 of the Criminal Procedure Code and Article 21 of the Constitution. The judges who rejected the appeal in one case and convicted the accused in the other case were not mere usurpers or intruders but were persons who discharged the functions and duties of judges under colour of lawful authority. We are concerned with the office that the Judges purported to hold. We are not concerned with the particular incumbents of the office. So long as the office was validly created, it matters not that the incumbent was

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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*

*open court with the intention of making it the operative decision of the court. That is what constitutes the "judgment".*

**Findings**

117. Article 227 of the Constitution empowers the High Court with the superintendence over all the 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 empowers the High Court to have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction and control over subordinate Courts including matters with respect to the posting and promotion of Judicial Officers.

118. 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. Section 33 provides that the Judicial Officers shall have the powers conferred upon them by High Court and High Court is empowered to withdraw the powers conferred on any officer. Section 194 empowers the High Court to direct a Sessions Judge to try a particular case. Section 407 empowers the High Court to transfer the cases on judicial side and Section 483 empowers the High Court to transfer the cases on the administrative side. Section 482 vests inherent power in the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. Section 483 empowers the High Court to exercise superintendence over the subordinate judiciary.

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.



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 who will have to meet the charge leveled against him and the convenience of the witnesses who have to appear before the Court.

122. The Scheme of the Code of Criminal Procedure is that where there is no inherent lack of jurisdiction, an order or sentence awarded by a competent Court cannot be set aside either on the ground of lack of territorial jurisdiction or on the ground of any irregularity of procedure unless prejudice is pleaded and proved which means failure of justice.

123. The Code of Criminal Procedure 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.

124. *Note 2* appended to the transfer order dated 13<sup>th</sup> March, 2020 whereby the High Court directed the judicial officers to pronounce judgment /order in reserved matters notwithstanding their transfer, has been issued by the High Court in exercise of the general power of superintendence over all subordinate Courts under Articles 227 and 235 of the Constitution. *Note 2* appended to the transfer order dated 13<sup>th</sup> March, 2020 is declared to be legal and valid.

125. Notwithstanding the validity of *Note 2*, the impugned judgment of conviction is protected by Section 462 of the Code of Criminal procedure. Section 462 protects the judgment given by a Criminal Court in a proceeding which took place in a wrong jurisdiction unless any prejudice is pleaded and

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

therefore, respectfully disagree with the findings of the Division Bench relating to *Note 2*.

128. In the present case, Id. Addl. Sessions Judge concluded the hearing of the oral arguments on 06<sup>th</sup> March, 2020 when he reserved the judgment. The Ld. Addl. Sessions Judge pronounced the judgment in open Court on 09<sup>th</sup> July, 2020. The pronouncement of the judgment by the Id. Addl. Sessions Judge is in terms of Section 353 CrPC. The delay of over four months in delivering the judgment by the Id. Addl. Sessions Judge is a mere irregularity since it has not caused any prejudice to the accused and is, therefore, curable.

*Victimology*

129. Victims are unfortunately the forgotten people in the criminal justice delivery system. The criminal justice system tends to think more of the rights of the offender than that of relief to the victims. The anxiety shown to highlight the rights of the offender is not shown in enforcing law relating to compensation for the victim, which too has a social purpose to serve.

130. The Court has to take into consideration the effect of the offence on the victim's family even though human life cannot be restored, nor can its loss be measured by the length of a prison sentence. No term of months or years imposed on the offender can reconcile the family of a deceased victim to their loss, nor will it cure their anguish but then monetary compensation will at least provide some solace.

131. In *Rattan Singh v. State of Punjab*, (1979) 4 SCC 719, Krishna Iyer J., held that it is a weakness of our jurisprudence that the victims of the crime do not attract the attention of law. The relevant portion of the judgment is reproduced hereunder:-

"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

entitlement of reparation, restitution and safeguarding of the rights of the victim was noted. It was pointed out that if justice was not done to the victim of the crime, criminal justice would look hollow. Reiterating that a life which is lost or snuffed out could not be recompensed, that monetary compensation would at least provide some solace, the Supreme Court observed as follows:

"46. One area which is totally overlooked in the above practice is the plight of the victims. It is a recent trend in the sentencing policy to listen to the wailings of the victims. Rehabilitation of the prisoner need not be by closing the eyes towards the suffering victims of the offence. A glimpse at the field of victimology reveals two types of victim. The first type consists of direct victims, i.e., those who are alive and suffering on account of the harm inflicted by the prisoner while committing the crime. The second type comprises of indirect victims who are dependants of the direct victims of crimes who undergo sufferings due to deprivation of their breadwinner.

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"99. In our efforts to look after and protect the human rights of the convict, we cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of the criminal act of the convict. The victim is certainly entitled to reparation, restitution and safeguard of his rights. Criminal justice would look hollow if justice is not done to the victim of the crime. The subject of victimology is gaining ground while we are also concerned with the rights of the prisoners and prison reforms. A victim of crime cannot be a —forgotten man in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliation, etc. An honour which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.

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101. Reparation is taken to mean the making of amends by an offender to his victim, or to victims of crime generally, and may take the form of compensation, the performance of some service or the

*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

consideration.

137. The law contained in Section 357(3) CrPC, has, by and large, been mostly neglected or ignored. Hence the Supreme Court in *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551, had to issue a mild reprimand while exhorting the Courts for liberal use of this provision to meet the ends of justice as a measure of responding appropriately to the crime, and reconciling the victim with the offender. The relevant portion of the said judgment is reproduced hereunder:

*"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. ... 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 exercise this power liberally so as to meet the ends of justice in a better way."*

*(Emphasis Supplied)*

138. In *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528, the Supreme Court explained the scope and purpose of grant of compensation as under:

*"38. The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or*

*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:-



"41. The provision for payment of compensation has been in existence for a considerable period of time on the statute book in this country. Even so, the criminal courts have not, it appears, taken significant note of the said provision or exercised the power vested in them thereunder. ..."

142. In *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770, the Supreme Court again noted with despair that Section 357 CrPC has been consistently neglected/ignored by the Courts despite series of pronouncements to that effect. The Supreme Court cited with approval *Sarwan Singh v. State of Punjab*, (1978) 4 SCC 111; *Maru Ram (supra)*, *Hari Singh, (supra)*, *Balraj v. State of U.P.*, (1994) 4 SCC 29, *Baldev Singh v. State of Punjab*, (1995) 6 SCC 593 and *Dilip S. Dahanukar (supra)*. The Supreme Court held that Section 357 CrPC is mandatory and has to be applied in every criminal case and the Courts are required to record reasons for such application. The relevant portions of the judgment are reproduced hereunder:-

"28. The only other aspect that needs to be examined is whether any compensation be awarded against the appellant and in favour of the bereaved family under Section 357 of the Code of Criminal Procedure, 1973. This aspect arises very often and has been a subject-matter of several pronouncements of this Court. The same may require some elaboration to place in bold relief certain aspects that need to be addressed by the courts but have despite the decisions of this Court remained obscure and neglected by the courts at different levels in this country.

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48. The question then is whether the plenitude of the power vested in the courts under Sections 357 and 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?

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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

emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

67. Coming then to the case at hand, we regret to say that the trial court and the High Court appear to have remained oblivious to the provisions of Section 357 CrPC. The judgments under appeal betray ignorance of the courts below about the statutory provisions and the duty cast upon the courts. Remand at this distant point of time does not appear to be a good option either. This may not be a happy situation but having regard to the facts and the circumstances of the case and the time lag since the offence was committed, we conclude this chapter in the hope that the courts remain careful in future.

(Emphasis Supplied)

143. In para 68 of the said judgment, the Supreme Court directed the copy of this judgment be forwarded to the Registrars of all the High Courts for circulation among Judges handling criminal trials and hearing appeals.

144. In *Ashwani Gupta v. Government of India*, 2005 (117) DLT 112, this Court held that mere punishment of the offender cannot give much solace to the family of the victim. Since the civil action for damages is a long drawn/cumbersome judicial process, the compensation of Section 357 CrPC would be useful and effective remedy.

145. There is, therefore not only statutory empowerment under Section 357(3) CrPC of the appellate court to make an appropriate order regarding compensation but the mandatory duty of every court, at the trial stage as well as the appellate court to consider and pass an order of fair and reasonable compensation on relevant factors.

146. In *Vikas Yadav v State of U.P.*, 2015 SCC OnLine Del 7129 the Division Bench of this Court in which one of us (J.R. Midha, J.) was a

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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(2009) 164 DLT 346; *Nagrik Sangarsh Samiti v. Union of India*, 2012 ACJ 1548 ; *Ram Kishore v. M.C.D.*, (2007) 97 DRJ 445; and *Ashok Sharma v. Union of India*, 2009 ACJ 1063. The multiplier method is statutorily recognized for computation of compensation in death cases under Section 163A of the Motor Vehicles Act, 1988.

149. The multiplier method is based on the pecuniary loss caused to the dependants by the death of the victim of the road accident. The dependency of the dependants is determined by taking the annual earning of the deceased at the time of the accident. Thereafter, effect is given to the future prospects of the deceased. After the income of the deceased is established, the deduction is made towards the personal expenses of the deceased which he would have spent on himself. If the deceased was unmarried, normally 50% of the income is deducted towards his personal expenses. If the deceased was married and leaves behind two to three dependents, 1/3<sup>rd</sup> deduction is made; if the deceased has left behind four to six family members, deduction of 1/4<sup>th</sup> of his income is made and where the number of dependent family members exceeds six, the deduction of 1/5<sup>th</sup> of the income is made. The remaining amount of income after deduction of personal expenses is taken to be the loss of dependency to the family members which is multiplied by 12 to determine the annual loss of dependency. The annual loss of dependency is multiplied by the multiplier according to the age of the deceased or victim(s) whichever is higher. A table of multipliers is given in Schedule-II of the Motor Vehicle Act, 1988 but there was some error in the said table which has been corrected by the Supreme Court in *Sarla Verma v. DTC*, 2009 ACJ 1298. For example, in a case where the deceased was aged 36 years working as a telephone operator earning Rs.7,500/- per month dies in a

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 1/3<sup>rd</sup> 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*

pass any order it considers fit and proper in the interest of justice or to do complete justice between the parties."

*(Emphasis Supplied)*

**Conclusion**

151. 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. Article 235 of the Constitution empowers the High Court with respect to the posting and promotion of Judicial Officers.

152. Code of Criminal Procedure vests in the High Court plenary powers relating to the superintendence over the subordinate Courts including the appointment, posting, promotion and transfer of the judicial officers. Section 194 empowers the High Court to direct a Sessions Judge to try particular cases. Section 407 empowers the High Court to transfer the cases on judicial side and Section 483 empowers the High Court to transfer the cases on the administrative side. Section 482 vests inherent power in the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. Section 483 empowers the High Court to exercise superintendence over the subordinate judiciary. Rule 3 of 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.

153. Note 2 appended to the transfer order dated 13<sup>th</sup> March, 2020 issued by the High Court in exercising the aforesaid powers under the Constitution

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 Id. Addl. Sessions Judge was duly empowered to pronounce the judgment by virtue of *Note 2* appended to the transfer order dated 13<sup>th</sup> March, 2020. The pronouncement of the judgment by Id. 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



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the victims who have suffered loss or injury by reason of the act of the accused. Mere punishment of the offender cannot give much solace to the family of the victim – civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread earner of the family.

161. Section 357 CrPC is intended to reassure the victim that he/she is not forgotten in the criminal justice system.

162. Section 357 CrPC is a constructive approach to crimes. It is indeed a step forward in our criminal justice system.

163. The power under Section 357 CrPC is not ancillary to other sentences but in addition thereto.

164. The power under Section 357 CrPC is to be exercised liberally to meet the ends of justice in a better way.

165. Section 357 CrPC confers a duty on the Court to apply its mind on the question of compensation in every criminal case.

166. The word '*may*' in Section 357(3) CrPC means '*shall*' and therefore, Section 357 CrPC is mandatory.

167. The Supreme Court in *Ankush Shivaji Gaikwad (supra)* has given directions that the Courts shall consider Section 357 CrPC in every criminal case and if the Court fails to make an order of compensation, it must furnish reasons.

**Quantum of compensation**

168. The amount of compensation is to be determined by the Court

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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.

173. After the conviction of the accused, the Trial Court shall direct the accused to file the affidavit of his assets and income in the format of *Annexure-A* within 10 days.

174. After the conviction of the accused, the Court shall also direct the State to disclose the expenses incurred on prosecution on affidavit along with the supporting documents within 30 days.

175. Upon receipt of the affidavit of the accused, the Trial Court shall immediately send the copy of the judgment and the affidavit of the accused in the format of *Annexure-A* and the documents filed with the affidavit to DSLSA.

176. Upon receipt of the judgment and the affidavit of the accused, DSLSA shall conduct a summary inquiry to compute the loss suffered by the victims and the paying capacity of the accused and shall submit the *Victim Impact Report* containing their recommendations to the Court within 30 days. Delhi State Legal Services Authority shall seek the necessary assistance in conducting the inquiry from SDM concerned, SHO concerned and/or prosecution who shall provide the necessary assistance upon being requested.

177. The Trial Court shall thereafter consider the *Victim Impact Report* of the DSLSA with respect to the impact of crime on the victims, paying capacity of the accused and expenditure incurred on the prosecution; and after hearing the parties including the victims of crime, the Court shall award the compensation to the victim(s) and cost of prosecution to the State, if the accused has the capacity to pay the same. The Court shall direct the accused to deposit the compensation with DSLSA whereupon DSLSA shall disburse the amount to the victims according to the Scheme.

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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 01<sup>st</sup> January, 2021 to 31<sup>st</sup> January, 2021 be submitted by 15<sup>th</sup> February, 2021 and thereafter, by 15<sup>th</sup> 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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181. Sh. Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority submits that additional manpower would be required to conduct the summary inquiry in every criminal case before sentencing.

182. Delhi State Legal Services Authority is directed to prepare a proposal for additional manpower after examining number of summary inquiries that are likely to be conducted by DSLSA every month and the proposal be sent to Government of NCT of Delhi within one week whereupon Government of NCT of Delhi shall complete all necessary formalities within three weeks to ensure that the directions of this Court relating to the summary inquiry by DSLSA in every criminal case are implemented w.e.f. 01<sup>st</sup> January, 2021.

183. Mr. Rahul Mehra, Id. Standing Counsel shall take up the matter with Government of NCT of Delhi to ensure the compliance of this direction within the stipulated time.

184. List for reporting compliance and further directions on 25<sup>th</sup> February, 2021.

185. This Court appreciates the valuable and effective assistance rendered by Mr. Kanhaiya Singhal, Advocate assisted by Ms. Pratiksha Tripathi, Advocate; Mr. Rahul Mehra, Id. Standing Counsel assisted by Ms. Aashaa Tiwari, Id. APP and Mr. Chaitanya Gosain, Advocate; Mr. Rajshekhar Rao, Advocate assisted by Ms. Aanchal Tikmani and Mr. Shreeyash Lalit, Advocates for Delhi High Court; Mr. Vikas Pahwa, Id. Amicus Curiae assisted by Mr. Sumer Singh Boparai, Mr. Varun Bhati and Ms. Raavi Sharma, Advocates; Prof. 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; 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 Statute/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, Id. ASG for taking up the matter with Ministry of Law & Justice. Mr. Chetan Sharma, Id. ASG is requested to assist this Court on 25<sup>th</sup> 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](http://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, Annexure-B and Annexure B-1** be sent to National Judicial Academy.

191. Copy of this judgment be also sent to Delhi State Legal Services Authority. Copy of this judgment be also sent to the Director of Prosecution for circulation to all Prosecutors.

  
J.R. MIDHA, J.

  
RAJNISH BHATNAGAR, J.

  
BRIJESH SETHI, J.

NOVEMBER 27 2020  
ak/ds/dk