

3291/EK/20  
23/12/2020

Most urgent/Out at once

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


No. 25317-367 Genl./Jud.Circl./HCS/2020

Dated, Delhi the

9 DEC 2020

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

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

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

Ecnls. As above.

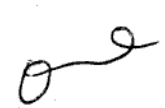
No. 1398 Genl./Jud.Circl./HCS/2020

Dated, Delhi the

9 DEC 2020

Copy to:

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

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

- Pde circulate  
- o/c/computer Pr.  
- o/c/jud. branch.  
Pr. D95J/East

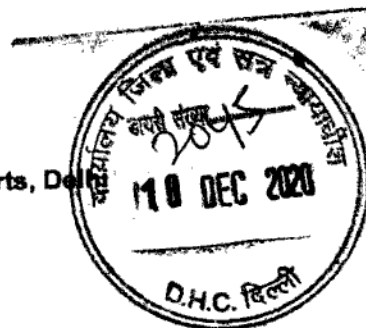
D.B.(Appeal)

IN THE HIGH COURT OF DELHI AT NEW DELHI  
 No. 46197 /Cr. Dated 17/12/2020

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

To,

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



**Criminal Appeal No. 353/2020**

Sunny

.... Appellant/s

VERSUS

State GNCT of Delhi

.... Respondent/s

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

Sir/Madam,

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

Necessary directions are contained in the enclosed copy of order.

Yours faithfully

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

*[Signature]*  
 Admn. Officer (J)/ (Cr.)

for Registrar General



**IN THE HIGH COURT OF DELHI AT NEW DELHI  
CRIMINAL APPELLATE JURISDICTION  
CRL. APPEAL NO. \_\_\_\_\_ OF 2020**

(Appeal U/s 374 (2) of Cr. P.C. against judgment and order dated 09.07.2020 passed by the Hon'ble Court of Shri Jagdish Kumar, I.d. Additional Sessions Judge, Special FTC (North), Rohini Courts, Delhi in Sessions Case No. 75/2017 arising out of the F.I.R. No. 465/2017 dated 15.06.2017 U/s. 302, 34, I.P.C., P.S. Nand Nagari, Delhi)

**IN THE MATTER OF:**

Sunny ... Appellant

Versus

State NCT of Delhi ... Respondent

**MEMO OF PARTIES**

Sunny,  
S/o Sh. Hari Chand,  
R/o C-1/312, Nand Nagari,  
New Delhi.

..... Appellant

Versus


State NCT of Delhi  
Through Standing Counsel (Crl.),  
High Court of Delhi  
New Delhi

.... Respondent

S.C. No. 75/2017  
FIR No. 465/2017  
P.S. Nand Nagari  
U/S.: 302/34, I.P.C.

Through

Appellant

  
K. Singhal & Pratiksha Tripathi,  
Advocates.  
LGF, D-143,  
Lajpat Nagar-I, New Delhi  
Mob: 92124 24765

New Delhi  
Dated: 13.07.2020

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

3

% Date of Decision: 27<sup>th</sup> November, 2020

+ CRL.A. 352/2020

1 KARAN

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

versus

STATE NCT OF DELHI

..... Respondent  
Through: Mr. Rahul Mehra, Standing Counsel  
for GNCTD with Ms. Aashaa Tiwari,  
APP for the State and Mr. Chaitanya  
Gosain, Advocate.  
Mr. Rajshekhar Rao, Ms. Aanchal  
Tikmani and Mr. Shreeyash Lalit,  
Advocates for Delhi High Court.  
Mr. Vikas Pahwa, Senior Advocate as  
amicus curiae with Mr. Sumer Singh  
Boparai, Mr. Varun Bhati and Ms.  
Raavi Sharma, Advocates.  
Prof. (Dr.) G.S. Bajpai, Professor of  
Criminology & Criminal Justice,  
National Law University, Delhi as  
amicus curiae assisted by Mr. Neeraj  
Tiwari, Assistant Professor of Law,  
Mr. Ankit Kaushik, Research  
Associate, Mr. G. Arudhra Rao and  
Ms. Shelal Lodhi Rajput  
Mr. Kanwal Jeet Arora, Member  
Secretary, DSLSA.

+ CRL.A. 353/2020

④

2 SUNNY

..... Appellant

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

versus

STATE NCT OF DELHI

.....Respondent

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

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

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

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

Mr. Kanwal Jeet Arora, Member Secretary, DSLSA.

**CORAM:**

**HON'BLE MR. JUSTICE J.R. MIDHA**

**HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

**HON'BLE MR. JUSTICE BRIJESH SETHI**

(5)

**JUDGMENT**

**J.R. MIDHA, J.**

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

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

(6)

*"Note 2. The judicial officers under transfer shall notify the cases in which they had reserved judgments/orders before relinquishing the charge of the court in terms of the posting/transfer order. The judicial officers shall pronounce judgments/orders in all such matters on the date fixed or maximum within a period of 2-3 weeks thereof, notwithstanding the posting/transfer. Date of pronouncement shall be notified in the cause list of the court to which the matter pertains as also of the court to which the judicial officer has been transferred and on the website."*

*(Emphasis Supplied)*

**Brief facts**

3. On 15<sup>th</sup> June, 2017 at about 09:00 PM, the appellants namely Karan, Sunny and 'MB' a juvenile in conflict with law dragged Gulfam out of his house to a nearby park where Karan and Sunny caught hold of Gulfam and MB stabbed Gulfam in his back with a knife/*chura*. Gulfam suffered fatal injuries. FIR No. 465/2017 was registered at P.S. Nand Nagari and both the appellants were charged for offences under Sections 302/34 IPC. The chargesheet was committed to the Id. Addl. Sessions Judge Shahdara, vide order dated 23<sup>rd</sup> October, 2017 of the Chief Metropolitan Magistrate and both the accused persons faced the trial.
4. Sh. Jagdish Kumar, Addl. Sessions Judge, Karkardooma Courts heard the final arguments which concluded on 06<sup>th</sup> March, 2020 whereupon he reserved the judgment and the matter was listed for orders on 17<sup>th</sup> March, 2020.
5. Vide transfer notification/order bearing No. 10/G-I/Gaz.IA/DH/2020 dated 13<sup>th</sup> March, 2020, Sh. Jagdish Kumar was transferred from the post of Addl. Sessions Judge, Judge-04, Karkardooma Courts to Addl. Sessions Judge (Special Fast Track Court), North Rohini with immediate effect.

6. On 09<sup>th</sup> July, 2020, Sh. Jagdish Kumar, Addl. Sessions Judge delivered the judgment while Presiding as Addl. Sessions Judge (Special Fast Track Court), North Rohini.
7. These appeals came up for hearing for first time on 16<sup>th</sup> July, 2020, when the Division Bench of this Court issued notice to the State. Considering that the grounds raised by the appellants had wide ramifications on the Criminal Justice System, the Division Bench of this Court issued notice to the High Court on administrative side. The Division Bench further appointed Mr. Vikas Pahwa, Senior Advocate to assist this Court as amicus curiae. The Division Bench further directed the Id. Addl. Sessions Judge to defer the hearing on sentence by two weeks.
8. On 10<sup>th</sup> August, 2020, Mr. Vikas Pahwa, Id. amicus curiae, submitted that this case is squarely covered by the law laid down by the Supreme Court in *Gokaraju Rangaraju v. State of Andhra Pradesh*, (1981) 3 SCC 132 in which the Supreme Court held that the judgment passed by a Sessions Judge would be legal and valid even if the appointment of the concerned Judge was subsequently declared to be invalid. The Supreme Court held that the *de facto* doctrine was well established. The Supreme Court considered the earlier cases on the *de facto* doctrine. The Supreme Court also noted that the *de facto* doctrine was recognized by British as well as American Courts. The Supreme Court further noted that Article 233A was incorporated by the 20<sup>th</sup> Amendment to the Constitution in 1966 to protect the judgments delivered by the Judges notwithstanding that their appointment, posting, promotion or transfer was not valid. The 20<sup>th</sup> Amendment was the consequence of the decision of the 5 Judge Bench judgment of Supreme Court in *Chandra Mohan v. State of U.P.*, AIR 1966 SC 1987 in which the appointment of the



District Judges was held to be invalid. The Supreme Court also noted that *de facto* doctrine is not a stranger to the Constitution or to the Parliament/Legislatures of the States. Article 71(2) of the Constitution protects the actions of the President and the Vice-President, even if their election was declared as void. Section 107(2) of the Representation of the People Act, 1951 protects the actions of the Members of Parliament, even if their election was declared as void.

9. Vide order dated 10<sup>th</sup> August, 2020, the Division Bench referred these matters to a larger Bench considering the important questions of law relating to the criminal justice system involved in these cases.

10. On 25<sup>th</sup> August, 2020, this matter was placed before the present Bench of three Judges. The brief notes of submissions were filed by Mr. Rajshekhar Rao, Id. counsel for Delhi High Court as well as Id. amicus curiae along with the relevant judgments. Learned counsel for the appellants submitted that he had gone through the submissions filed by the High Court as well as the Id. amicus curiae and he received instructions from the appellants to withdraw the objections to the jurisdiction of the Id. Addl. Sessions Judge and not to press these appeals but with liberty to challenge the conviction on merits after the passing of the order on sentence.

11. Mr. Rajshekhar Rao, Id. counsel for the Delhi High Court, Mr. Vikas Pahwa, Id. amicus curiae; and Mr. Rahul Mehra, Id. Standing counsel for the State submitted that the findings of the Division Bench relating to the *Note 2* in *Jitender's case (supra)* affected the entire Criminal Justice System and, therefore, this Court should examine the validity of *Note 2* issued by the High Court in these appeals. This Court, vide order dated 25<sup>th</sup> August, 2020, permitted the appellants to withdraw the objections to the jurisdiction of the

(9)

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

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

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

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

- (i) The judicial officers under transfer shall notify the cases in which they had reserved judgments/orders before relinquishing the charge of the Court in terms of the posting/transfer order;
- (ii) The Judicial Officers shall pronounce judgments/orders in all such matters on the date fixed or maximum within a period of 2-3 weeks;
- (iii) Notwithstanding the posting/transfer, judgments/orders shall be

pronounced within a maximum period of 2-3 weeks; and

- (iv) Date of pronouncement shall be notified in the (a) cause list of the Court to which the matter pertains as also (b) the cause list of the Court to which the judicial officer has been transferred and (c) on the website.

14. In *Jitender's case (supra)*, a similar Note 2 was appended to the transfer order of the Id. Addl. Sessions Judge which is reproduced hereunder:-

*"Note 2. Judicial Officers under transfer shall notify the cases in which they had reserved Judgments/Orders before relinquishing the charge of the Court in terms of the postings/transfers order. The Judicial Officers shall pronounce the judgments/orders in all such matters within a period of 2-3 weeks, notwithstanding the posting/transfer."*

15. The aforesaid Note 2 was used for the first time in the transfer/posting order dated 13<sup>th</sup> May, 2009 on the recommendation dated 12<sup>th</sup> May, 2009 of the *Administrative and General Supervision Committee* of the High Court. As per minutes of the meeting of the *Administrative and General Supervision Committee* dated 12<sup>th</sup> May, 2009, the following recommendations were made:

*"(a) It was decided that whenever postings/transfers of judicial officers are made, the order to be issued, shall be made effective 2-3 days after the date of issuance.  
(b) In the postings/transfers order it shall be directed that the judicial officers under transfer shall notify the cases in which they had reserved judgments/orders before relinquishing the charge of the court in terms of the postings/transfers order. The judicial officers shall be directed to pronounce judgments/orders in all such matters within a period of 2-3 weeks, notwithstanding the posting/transfer."*

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

**Powers of the High Court**

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

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

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 stipulates the duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates. 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 powers to regulate administration of justice. Reliance is placed on *Hari Vishnu Kamath v. Syed Ahmad Ishaque*, (1955) 1 SCR 1104; *Ranbir Yadav v. State of Bihar*, (1995) 4 SCC 392; *Kamlesh Kumar v. State of Jharkhand*, (2013) 15 SCC 460; *Ajay Singh v. State of Chhattisgarh*, (2017) 3 SCC 330 and *S. J. Chaudhri [Lt. Col. (Retd.)] v. State*, (2006) 131 DLT 376 (DB).

**Scheme of the CrPC vis-à-vis Irregularity in Procedure**

19. Chapter XXXV CrPC deals with irregular proceedings. The object of Chapter XXXV is to protect the irregular proceedings unless the error 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 deals with proceedings in a wrong place and Section 465 deals with the effect of an error, omission or irregularity.

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

**Concept of 'Illegality' and 'Irregularity' in CrPC**

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

**Concept of "Failure of Justice"**

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

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

Justice” means serious prejudice caused to the accused. It has to be shown that the accused has suffered some disability or detriment in respect of the protections available to him under Indian Criminal Jurisprudence. 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.

24. In *Willie (William) Slaney v. State of M.P. (supra)*, the Supreme Court held that the 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 were explained to him clearly and fairly; and if he was given a full and fair chance to defend himself.

25. 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.

26. In *Kalp Nath Rai v. State*, (1997) 8 SCC 732, the Supreme Court rejected the contention that the sanction letter did not mention the section of the offence under which the accused were prosecuted as it has not resulted in failure of justice.

**Sections 462 and 465 CrPC protects the irregularities pertaining to lack of jurisdiction**

27. 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 of it makes the entire trial void, the

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

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

**Procedure in Criminal Cases**

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



'*Presiding Officer of the Court*' is used in contrast to the Section 353 which uses the term '*Presiding Officer*'. In Section 265F, delivery of judgment is associated with a particular Court whereas Sections 353 CrPC and 366 CrPC, 1898 do not associate the delivery of a judgment with a particular Court. Section 367 CrPC, 1898 provides that the judgment shall be written by the Presiding Officer of the Court whereas there is no such stipulation in Section 353 CrPC.

30. CrPC deals with the situation where the jurisdiction of a Judge, who recorded the whole or any part of the evidence, has ceased to exist. CrPC draws the distinction between the matters where hearing had been concluded prior to cessation of jurisdiction and part-heard matters. Section 326 has to be complied with even in cases of transfer of a judicial officer within the same Sessions division. Reference is made to *Ranbir Yadav (supra)*; *Bhaskar v. State*, (1999) 9 SCC 551 and *Anil Kumar Agarwal v. State of U.P.*, 2015 Cri LJ 2826.

31. Section 462 provides that no finding, sentence or order shall be set aside merely on the ground that the inquiry, trial or other proceedings took place in the wrong jurisdiction unless there has been a failure of justice. Similarly, where a judge who had prepared and signed a judgment after having recorded the entire evidence and hearing arguments, ceased to exercise jurisdiction prior to pronouncing the same, the successor Judge was permitted to pronounce the said judgment written and signed by his predecessor where all formalities stipulated under Section 353 have been complied with by the predecessor Judge. Reference is made to *Bharti Arora v. State of Haryana*, (2011) 1 RCR (Cri) 513 (2).

32. Section 353 does not limit pronouncement of a judgment "*in the open*

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

**Division Bench judgment in Jitender's case**

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

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

(18)

*note such as Note 2 in the order dated 08.02.2010 would not enable us to detract from the statutory provisions which do not permit the pronouncement of a judgment by a successor judge which have been written and signed by the predecessor and that, too, after the predecessor ceased to have jurisdiction over the said case...*"

34. On a bare reading of para 47 of the judgment in *Jitender's case*, it appears that the meaning/intention behind *Note 2* was not gone into by the Division Bench. The Division Bench held that an administrative order cannot override the statutory provisions of the CrPC. As such, it cannot be said that *Note 2* in itself has been set aside by the Division Bench in *Jitender's case* especially since in the facts of the said case, there was a clear departure from what was prescribed in *Note 2* i.e., rather than the Presiding Officer who heard the matter pronouncing judgment after transfer albeit at Court to which he was posted, the judgment was 'announced' by the successor although the same was dictated and signed by the predecessor Judge and dispatched to the successor Judge in sealed cover. Attention of the Division Bench does not appear to have been drawn to Section 462 CrPC where setting aside of an order/judgment merely on account of lack of jurisdiction has been specifically barred unless "*such error has in fact occasioned a failure of justice*". It also appears that the attention of the Division Bench was not drawn to the judgment of the Supreme Court in *Kuppuswamy Gownder, (supra)*, where the scope of Section 462 CrPC has been extended to cases where trial takes place in a wrong place.

35. While considering the impact of *Jitender's case*, it is important to note that every observation in a judgment is not a binding precedent. In *State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275*, the Supreme Court held that a

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

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

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

20

362, the Supreme Court held that a decision is available as a precedent only if it decides a question of law. In *Jitender's case*, the question before the Division Bench was as to (i) whether decisions can be delivered by a successor Judge in criminal matters (ii) whether decisions announced in open Court without complying with provisions of Section 353 CrPC can be considered as validly pronounced and (iii) whether decisions can be authored by successor Judge in criminal matters after relinquishing charge on their transfer. However, the Division Bench did not consider the question as to (i) whether it was mandatory for the successor Judge to pronounce a judgment authored by the predecessor Judge in view of *Note 2* appended to the transfer order and no other course of action was available to the successor judge and (ii) whether the defect in pronouncement of judgment therein is curable under Section 462 CrPC.

**Courts have to exercise caution while setting aside administrative orders**

37. *Note 2* appended to the Transfer Order dated 08<sup>th</sup> February, 2010 and Transfer Order dated 13<sup>th</sup> March, 2020 has been issued in compliance with the principle that he who hears must decide as held in *Gullapalli Nageswara Rao v. A.P.S.R.T.C.*, AIR 1959 SC 308. *Note 2* further ensure that pendency of cases is curbed to a certain extent by permitting Judge to pronounce judgments/orders within a particular time frame subsequent to their transfer. It is also clear that *Note 2* is not in violation of any of the legal principles stipulated in CrPC. While examining the validity of an administrative order issued by the Patna High Court under Section 9(6) CrPC that the trial will be conducted inside the Jail premises for the expeditious trial of the case, it was held by the Supreme Court in *Mohd. Shahabuddin v. State of Bihar*, (2010) 4 SCC 653 that while reviewing administrative decisions, standards of

(21)

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

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

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

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

procedure prescribed under Section 235 CrPC for a hearing on sentence could not be complied with. As such, it is clear that procedure prescribed under CrPC has not been violated, at any stage, in the present appeals.

**Lapse of over four months in delivering the Impugned Judgment is an irregularity and can be cured**

40. Admittedly, there is a time gap of over four months between completion of trial and pronouncement of the judgment. Ld. ASJ relinquished charge as ASJ-04, Shahdara on 16<sup>th</sup> March, 2020 before the lunch session and took charge as ASJ (Special Fast Track Courts), North District, Rohini on 16<sup>th</sup> March, 2020 in the fore-noon.

41. **Chapter 11 Part A, Rule 4 of the Delhi High Court Rules** provides for the manner in which a delay in pronouncement of a judgment by a subordinate Judge is to be dealt with. At the same time, it is important to mention that various orders have been passed by this Court wherein it is stipulated that there should be no delay in delivery of judgments in view of the pandemic prevalent in the country. Reference is made to **Dalbir Singh v. Satish Chand** CRP No. 53/2020 decided by this Court on 22<sup>nd</sup> July, 2020; **Shushree Securities Pvt. Ltd. v. Times A & M (India) Limited**, CM(M) No. 98/2020 decided by this Court on 02<sup>nd</sup> March, 2020 and **Deepti Khera v. Siddharth Khera**, CM(M) No. 1637/2019 decided by this Court on 18<sup>th</sup> November, 2019.

42. Even though recommendations have been made by the Supreme Court directing that judgments be delivered in a time bound manner in **Anil Rai v. State of Bihar**, (2001) 7 SCC 318, none of the recommendations made therein stipulate that judgments ought to be set aside merely on account of delay of four months. Even though there have been instances where the

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

**Right of accused to a speedy trial and interest of society**

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

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



(24)

but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of the accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end. These principles must apply as well when the appeal court is confronted with the question whether or not retrial of an accused should be ordered."

**Applicability of de facto doctrine and Article 233A of the Constitution**

44. In the present case, Note 2 in the transfer order dated 13<sup>th</sup> March, 2020 permits the Judge to pronounce the judgment within 2-3 weeks after relinquishing the charge and, as such, there is no irregularity in the pronouncement of the judgment. Without prejudice, it is submitted that even assuming Note 2 was invalid, the *de facto* doctrine laid down by the Supreme Court in *Gokaraju Rangaraju (supra)*, would protect the impugned judgments in the present appeals. In *Gokaraju Rangaraju (supra)*, the Supreme Court considered the validity of the judgments and orders passed by the Sessions Judges whose appointments were subsequently quashed by the Supreme Court. The Supreme Court applied the *de facto* doctrine to protect the judgments/orders of such Judges.

45. Article 233A was introduced in the Constitution as a result of the 27<sup>th</sup> Amendment to the Constitution pursuant to the Judgment in *Chandra Mohan (supra)*. Article 233A is reproduced herein under:

**"Article 233A - Validation of appointments of, and judgments, etc., delivered by, certain district judges**  
*Notwithstanding any judgment, decree or order of any court,*

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

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

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

**Submissions of Mr. Vikas Pahwa, Ld. amicus curiae**

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

only proceeding left was the pronouncement of the judgment in terms of Section 353 CrPC.

47. The mandate of Section 353 CrPC is that the Presiding Officer pronounces the judgment in open Court, immediately after the termination of the trial or at any subsequent time. The Id. Presiding Officer has to read the judgment in whole or in part and sign the same along with the date in open Court. In the present case, the Presiding officer has done the same and hence, the pronouncement is in consonance with the said provision.

48. The term '*Presiding officer*' referred to Section 353 CrPC has not been defined in CrPC. It has to be construed liberally taking into consideration that the Judge before whom the evidence has been recorded, arguments have been heard and the trial terminated for pronouncement of the judgment. The only mandatory requirement is that the Judge has to apply his mind by appreciating the evidence, which he has to declare while pronouncing the judgment.

49. Ld. ASJ had the jurisdiction to pass the judgment being a *de facto* Judge in service and holding a court of competent jurisdiction in Delhi. The Id. ASJ pronounced the judgment on 09<sup>th</sup> July, 2020, assuming to have jurisdiction in view of the Transfer Order passed by the High Court on 13<sup>th</sup> March, 2020. To test the validity of the judgment pronounced on 09<sup>th</sup> July, 2020 by the Id. ASJ, *de facto* doctrine has to be applied. This doctrine is engrafted as a matter of public policy and necessity to protect the interest of public and individuals involved in the official acts of persons exercising the duty under lawful authority. Since the judgments pronounced by the Judges post-transfer in different jurisdictions, involves the personal liberty of convicts at large, the public policy gets involved. This doctrine is well

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

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

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

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

the judgment by assuming power under the administrative transfer order dated 13<sup>th</sup> February, 2020 which empowered him to pronounce the judgment in reserved matters.

**High Court has superintendence over the District Courts for conferring jurisdiction to try cases and the transfer of the Judges**

53. Under Articles 227 and 235 of the Constitution, the High Court has superintendence over all the Courts in Delhi and confers jurisdiction on the District Courts to try cases in accordance with law, including the power to transfer the cases from one District to another. The cases can also be transferred by the High Court under Sections 194, 407 and 483 CrPC. Reliance is placed on *Hari Vishnu Kamath v. Syed Ahmad Ishaque*, (1955) 1 SCR 1104; *Ranbir Yadav v. State of Bihar*, (1995) 4 SCC 392; *Kamlesh Kumar v. State of Jharkhand*, (2013) 15 SCC 460; *Ajay Singh v. State of Chhattisgarh*, (2017) 3 SCC 330 and *Achutananda Baidya v. Prafullya Kumar Gayen*, (1997) 5 SCC 76.

54. In the present case, the transfer order dated 13<sup>th</sup> March, 2020 has been issued by the High Court in exercise of its administrative power of superintendence under Article 227 of the Constitution by empowering the Judges to pronounce the judgments in reserved matters. The administrative order of the High Court is not in conflict with the statutory provisions as the power is exercised for administrative exigency, without impinging upon or prejudicially affecting the rights and interests of the parties to any judicial proceeding.

**Section 462 CrPC protects the finding, sentence or order challenged on the ground of jurisdiction of a Sessions division**

55. Section 462 CrPC protects the finding, sentence or order of any

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

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

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

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

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