OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE, ROHINI COURTS: DELHI

Genl./F 3(A)/N-W & N/Rohini/2021/...6.11-663 Delhi, dated the...11/01/21

Copy of the letter bearing No. 25317-367 Genl./Judl. Circl./HCS/2020 dated 19.12.2020 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" as received from office of the Ld. Principal District & Sessions Judge (HQ), Tis Hazari Courts. Delhi is being forwarded for information and necessary action/compliance to :-

(The requisite compliance report be send to Ld. Secretary, DLSA, North-West & North District, Rohini Courts respectively for its onward transmission to the Hon'ble High Court of Delhi through DSLSA)

1. All the Ld. Judicial Officers, **(DHJS & DJS) dealing with Criminal trials**, North-West & North District, Rohini Courts, Delhi (through email-id).
2. The Secretary, DLSA, North-West & North District, Rohini Courts, Delhi (through email-id).
3. Personal Office, Ld. Principal District & Sessions Judge, North-West & North District, Rohini Courts Complex, Delhi (through email-id).
4. The Dealing Official, R & I Branch, Rohini Courts, Delhi for uploading the same on LAYERS (through email-id).
5. The Dealing Official, Computer Branch, Rohini Courts, Delhi for uploading the same on WEBSITE (through email-id).

This issues with the approval of The Competent Authority.

(G.K. MATHUR) 11/1/21
In-charge,
General Branch,
District & Sessions Judge's Office,
Rohini Courts Complex, Delhi.

1469
24/12/20

Most urgent/Out at once

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

4528

No. 25317-367 Genl./Jud.Circl./HCS/2020 Dated, Delhi the 19 DEC 2020

Rohini Courts, Delhi

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. NORTH
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.

Be put up before
Ld. OIC (Genl.) for circulation
Sd
PD&SJ(N)
24/12/2020

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

Encls. As above.

No. 1398 Genl./Jud.Circl./HCS/2020 Dated, Delhi the 19 DEC 2020

Copy to:

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

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

Copy of Order

Most Urgent/Out Today

D.B.(Appeal)

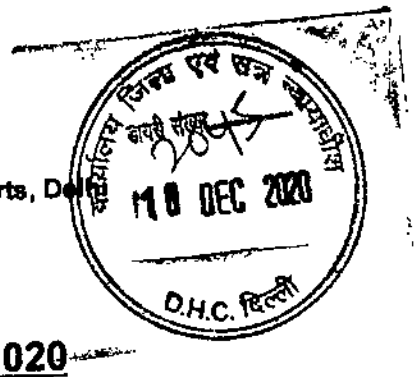
IN THE HIGH COURT OF DELHI AT NEW DELHI

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

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

To,

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



Criminal Appeal No. 353/2020

Sunny .... Appellant/s

VERSUS

State GNCT of Delhi .... Respondent/s

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

Sir/Madam,

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

Necessary directions are contained in the enclosed copy of order.

Yours faithfully

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

16/12/20

Admn. Officer (J)/ (Crl.)

for Registrar General

THE SEAL OF HIGH COURT OF DELHI

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, Ld. 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.

Appellant

Through

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: 27th November, 2020**

\+ CRL.A. 352/2020

1 KARAN

..... Appellant

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

versus

STATE NCT OF DELHI

.....Respondent

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

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

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

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

Mr. Kanwal Jeet Arora, Member Secretary, DSLSA.

+ 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

(15)

JUDGMENT

J.R. MIDHA, J.

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

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

"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 15th 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 ld. Addl. Sessions Judge Shahdara, vide order dated 23rd 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 06th March, 2020 whereupon he reserved the judgment and the matter was listed for orders on 17th March, 2020.

5. Vide transfer notification/order bearing No. 10/G-I/Gaz.IA/DH/2020 dated 13th 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 09th July, 2020, Sh. Jagdish Kumar, Addl. Sessions Judge delivered the judgment while Presiding as Addl. Sessions Judge (Special Fast Track Court), North Rohini.

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

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

(8)

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 10th 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 25th August, 2020, this matter was placed before the present Bench of three Judges. The brief notes of submissions were filed by Mr. Rajshekhar Rao, ld. counsel for Delhi High Court as well as ld. 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 ld. amicus curiae and he received instructions from the appellants to withdraw the objections to the jurisdiction of the ld. 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, ld. counsel for the Delhi High Court, Mr. Vikas Pahwa, ld. amicus curiae; and Mr. Rahul Mehra, ld. 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 25th August, 2020, permitted the appellants to withdraw the objections to the jurisdiction of the

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

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

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

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

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

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

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

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 ld. 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 13th May, 2009 on the recommendation dated 12th 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 12th 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 08th February, 2010 has been used in various other transfer/posting orders of the Judicial Officers by this Court such as transfer orders dated 13th March, 2009; 17th July, 2009; 28th July, 2009; 15th October, 2009; 14th December, 2009; 04th February, 2010; 08th March, 2010; 26th April, 2010, 26th August, 2010; 09th September, 2010; 29th October, 2010; 15th December, 2010; 23rd December, 2010; 02nd February, 2011; 30th September, 2019; 19th November 2019; 04th December, 2019; 19th February, 2020. Various other versions similar to *Note 2* have been used in the transfer/posting orders by this High Court for transfer of judicial officers of the subordinate judiciary.

Powers of the High Court

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

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

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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*

(14)

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

Procedure in Criminal Cases

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

(16)

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

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

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. Leathem [1901 AC 495 : 85 LT 289 : (1900-03) All ER Rep 1 (HL)] the Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides."*

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

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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 1* appended to the Transfer Order dated 08th February, 2010 and Transfer Order dated 13th 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

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

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

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

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

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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 16th March, 2020 before the lunch session and took charge as ASJ (Special Fast Track Courts), North District, Rohini on 16th 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 22nd July, 2020; ***Shushree Securities Pvt. Ltd. v. Times A & M (India) Limited,*** CM(M) No. 98/2020 decided by this Court on 02nd March, 2020 and ***Deepti Khera v. Siddharth Khera,*** CM(M) No. 1637/2019 decided by this Court on 18th 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

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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*

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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 13th 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 39th 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,

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

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

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

Submissions of Mr. Vikas Pahwa, Ld. amicus curiae

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

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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 ld. 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 ld. ASJ pronounced the judgment on 09th July, 2020, assuming to have jurisdiction in view of the Transfer Order passed by the High Court on 13th March, 2020. To test the validity of the judgment pronounced on 09th July, 2020 by the ld. 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

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

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

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

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

the judgment by assuming power under the administrative transfer order dated 13th 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 superintencence 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 13th 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 ld. ASJ presided over the trial, heard the final arguments and thereafter, reserved the judgment. The ld. ASJ thereafter pronounced the judgment in terms of Section 235 CrPC and no prejudice whatsoever has been caused to the accused and there was no failure of justice.

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

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

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

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

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

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

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

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too pliable or facile an expression which could be fitted in any situation of a case. The expression 'failure of justice' would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in Town Investments Ltd. v. Deptt. of the Environment, 1977 (1) All E.R. 813. The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage."

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

(Emphasis Supplied)

61. In the present case there is no '*failure of justice*' as the predecessor Judge presided over the trial, heard the final arguments, authored the judgment and finally pronounced the judgment in consonance with Section 353 CrPC. Even if it is presumed for the sake of arguments, that any irregularity has been caused due to the delay in pronouncement, it is curable under Section 465 CrPC. In ***Jitender's case***, the defect was not an irregularity but rather an illegality which could not be cured. The Judgment was pronounced in violation of Section 353 CrPC, which was held to be no Judgment in the eyes of law. In the present case, the Judgment passed by the Ld. Predecessor Judge is valid and legal, and the case was referred to the

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

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

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

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

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

Division Bench ought to have heard the Delhi High Court. However, the Division Bench did not issue notice to High Court and hence, the High Court was not given an opportunity to defend its order. The principle of *audi alteram partem* is of paramount importance and the same cannot be overlooked. Thus, the order passed by the Division Bench is improper on this count.

65. *Note 2* of the transfer/posting order was issued by the High Court while exercising powers under Article 227 of the Constitution. If given an opportunity, the Delhi High Court could have defended *Note 2*, being an administrative order passed by this High Court in exercise of the power of superintendence under Article 227, which is the basic structure of the Constitution. The Division Bench thus did not take into consideration the power of superintendence of the High Court under Article 227 of the Constitution.

66. The Division Bench overlooked the mandate of Section 462 CrPC, which categorically states that no finding, sentence or order can be challenged on the ground of jurisdiction of any Sessions division.

67. The Division Bench failed to take into consideration the mandate of Section 465 CrPC, which categorically states that unless there has been a failure of justice, convictions cannot be set aside merely on the ground of procedural irregularity.

68. Since the relevant provisions of CrPC, Article 227 of the Constitution and various judgments of the Supreme Court in this regard were overlooked by the Division Bench while passing the Judgment in the case ***Jitender's case***, the same deserves to be overruled.

69. The judgment passed by the Division Bench in ***Jitender's case*** is bad

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

Submissions relating to the sentencing policy

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

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

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

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empowered to direct the State to pay compensation to the victim in cases where Section 357 is not adequate for rehabilitation or where cases end in acquittal or discharge. The insertion of Sections 357A and 357B in CrPC has triggered a new compensatory regime. Reference is made to ***Ankush Shivaji Gaikwad v. State of Maharashtra,*** (2013) 6 SCC 770.

73. Section 357A was introduced in CrPC on recommendation of the 154th Law Commission Report to protect victims. The 154th Law Commission Report on the CrPC devoted an entire chapter to '*Victimology*' in which the growing emphasis on victim's rights in criminal trials was discussed extensively as under:

> *"1. Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harms to people and not merely symbolic harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victims is compensation to victims of crime. The needs of victims and their family are extensive and varied.*
>
> *xxx xxx xxx*
>
> *9.1 The principles of victimology has foundations in Indian constitutional jurisprudence. The provision on Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Article 38). Article 41 mandates inter alia that the State shall make effective provisions for "securing the right to public assistance in cases of disablement and in other cases of undeserved want." So, Article 51A makes it a fundamental duty of every Indian citizen, inter alia 'to have compassion for living creatures and humanism. If interpreted and to 'develop emphatically imaginatively expanded these provisions can form the constitutional underpinnings for victimology.*

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

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

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

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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 Code of Criminal Procedure would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to

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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.

In ***Malimath Committee Report*** *(March 2003), it was observed:*

"6.7.1 Historically speaking, Criminal Justice System seems to exist to protect the power, the privilege and the values of the elite sections in society. The way crimes are defined and the system is administered demonstrate that there is an element of truth in the above perception even in modern times. However, over the years the dominant function of criminal justice is projected to be protecting all citizens from harm to either their person or property, the assumption being that it is the primary duty of a State under rule of law. The State does this by depriving individuals of the power to take law into their own hands and using its power to satisfy the sense of revenge through appropriate sanctions. The State (and society), it was argued, is itself the victim when a citizen commits a crime and thereby questions its norms and authority. In the process of this transformation of torts to crimes, the focus of attention of the system shifted from the real victim who suffered the injury (as a result of the failure of the state) to the offender and how he is dealt with by the State.

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6.8.1 The principle of compensating victims of crime has for long been recognized by the law though it is recognized more as a token relief rather than part of a punishment or substantial remedy. When the sentence of fine is imposed as the sole punishment or an additional punishment, the whole or part of it may be directed to be paid to the person having suffered loss or injury as per the discretion of the Court (Section 357 Cr.PC). Compensation can be awarded only if the offender has been convicted of the offence with which he is charged.

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6.8.7 Sympathizing with the plight of victims under Criminal Justice administration and taking advantage of the obligation to do complete justice under the Indian Constitution in defense

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

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

(Emphasis Supplied)

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

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

interim compensation to the victims under the Delhi Victims Compensation Scheme, 2011 at initial stage for their rehabilitation on the recommendations of SHO of the case concerned and also by the Court concerned while disposing the matter. The nature of extent of victimisation has to be adequately understood considering the social and stark financial disparity amongst our citizens. The rights and rehabilitation needs of each victim have to be minutely gauged, recognized and redressed. Keeping this in consideration, The Delhi Victim Compensation Scheme, 2011 was promulgated which was replaced by the Delhi Victims Compensation Scheme, 2015 which has been in turn replaced by Delhi Victims Compensation Scheme, 2018 notified on 27th June, 2019 by notification no. F.11/35/2010/HP-II/2677-2693.

76. In ***State of Gujarat v. Hon'ble High Court of Gujarat,*** 1998) 7 SCC 392, the issue arose whether the Government should be permitted to deduct the expenses incurred for food and clothes from prisoner's wages. The Court allowed the same and observed that it is a constructive thinking for the State to make appropriate law for diverting some portion of the income earned by the prisoners when they are in jail to be paid to deserving victims. A victim of crime suffers the most and even though retribution is the primary function of law, reparation is the ultimate goal of the Law. The Supreme Court succinctly noted:

> *"99.....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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77. In ***Hari Singh v. Sukhbir Singh,*** (1988) 4 SCC 551, seven persons were convicted under Sections 307/149, 325/149, 323/149 and 148 IPC and sentenced to undergo rigorous imprisonment from one year to three years. The High Court acquitted two of the accused of all charges, and five of the accused of the offence under Sections 307/149 IPC while maintaining their conviction and sentence under Sections 325/149, 323/149 IPC and Section 148 IPC. They were however released on probation of good conduct. Each one of accused was ordered to pay compensation of Rs. 2,500/- to Joginder who was seriously injured and whose power of speech was permanently impaired. The Supreme Court deplored the failure of Courts in awarding compensation under 357 CrPC. The Court recommended all the courts to exercise the power available under Section 357 CrPC liberally to meet ends of justice. The court observed:

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

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

The same position was reiterated by courts in ***Manish Jalan v. State of Karnataka,*** (2008) 8 SCC 225; ***K.A. Abbas H.S.A. v. Sabu Joseph,*** (2010) 6 SCC 230 and ***Roy Fernandes v. State of Goa,*** (2012) 3 SCC 221.

78. In ***Ankush Shivaji Gaikwad (supra)***, the Supreme Court reiterated the law laid down in ***Hari Singh's*** case and held that Section 357 confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case. After noting number of cases, the Court observed that, "***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.***" The ignorant attitude of lower judiciary was intolerable to the Supreme Court when it apparently observed that:

> *"67. 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."*

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

79. In ***Satya Prakash v. State,*** 2013 (3) NVN (Cr.) 373 (Del.), this Court

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

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

appeal ***Vikas Yadav v. State of Uttar Pradesh***, (2016) 9 SCC 541 upheld the compensation Scheme under Section 357 CrPC and modified it by enhancing the fine and determining the compensation as per facts of the case, thereby reaffirming the compensation Scheme.

81. The law in many jurisdictions particularly in continental countries recognizes two types of rights of victims of crime, *firstly*, the victim's right to participate in criminal proceedings and *secondly*, the right to seek and receive compensation from the criminal court for injuries suffered as well as appropriate interim reliefs in the course of proceedings.

82. In ***Suresh v. State of Haryana***, (2015) 2 SCC 227, the Supreme Court interpreted Section 357 CrPC to include interim compensation also. In a case where State failed to protect the life of two, the Court observed:

> *"16. We are of the view that it is the duty of the courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.*
>
> *17. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are*

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

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

categorically observed that Section 357A CrPC was introduced on the recommendation of the 154th Law Commission Report with the sole purpose of ensuring protection to victims.

Submissions of Prof. G.S. Bajpai, Professor of Criminology & Criminal Justice, National Law University, Delhi

84. Prof. G.S. Bajpai has submitted the research paper on Victim Restitution Scheme. Prof. G.S. Bajpai has also made oral submissions to assist this Court. Prof. G.S. Bajpai referred to the resolution passed by General Assembly of United Nations titled *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* on 11th November, 1985. Clause 8 of the U.N. Declaration deals with the restitution to the victims of the crime. It is submitted that the crime has numerous impacts on the victim including physical, financial, social and sociological impact. Prof. G.S. Bajpai has suggested the Victim Restitution Scheme, according to which the Investigating Officer should prepare a report relating to the loss or injury suffered by the victim and the financial capacity of the accused during the course of investigation.

85. After conviction of an accused, the Court should constitute an Inquiry Committee to determine the injury suffered by the victim; cost incurred by the State in prosecution and financial capacity of the accused to pay the restitution amount; the Inquiry Committee should comprise of a panel of two members from DSLSA, Police, Advocates, eminent persons in the field of law and social workers; the Inquiry Committee should call for an affidavit from the accused with respect to his financial capacity and an affidavit from the victim with respect to the impact of crime and data from the Investigating Officer and prosecution with respect to the cost of prosecution;

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

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

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

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

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

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

directions for grant of interim compensation to the victims at the initial stage for rehabilitation whereupon DSLSA granted interim compensation to the victims and DSLSA established a cell to provide counseling to the victims of sexual assault.

90. Victim Compensation Scheme, 2011 was notified which was later replaced by Delhi Victim Compensation Scheme, 2015 and then again replaced by Delhi Victim Compensation Scheme, 2018 which is in force now.

91. In ***Nipun Saxena v. Union of India***, (2019) 2 SCC 703 the Supreme Court passed various directions with respect to the compensation to the victims of crime in pursuance to which Delhi Victim Compensation Scheme, 2015 was replaced by Delhi Victim Compensation Scheme, 2018.

92. Delhi Victim Compensation Scheme, 2018 contains two parts – Part I deals with the victims of offences categorized in the schedule whereas Part II deals with women victims/survivors of sexual assault and other crimes. The salient features of Delhi Victim Compensation Scheme, 2018 are as under:

(i) In every matter wherein the convict is not in position to compensate the victim, the Trial Court may consider the same and with reasons in writing, may recommend the matter to District Legal Services Authority.

(ii) Except Special Courts designated as Children's Court/POCSO Court, Trial Court while making the recommendation cannot quantify the quantum of compensation. POCSO Court is authorized by law laid down under Section 33(8) of the Protection of Children from Sexual Offences Act, 2012 to

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quantify the quantum.

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

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

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

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

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

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

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(ix) In Part-I of the Scheme, it has been categorically provided that cases covered under the Motor Vehicles Act, 1988 wherein compensation is to be awarded by Motor Accidents Claims Tribunal, shall not be covered under the Scheme.

(x) In case the victim/dependents have already been granted compensation under any other governmental scheme, District Legal Services Authority does not have any authority to grant compensation under Part-I and under Part-II, the quantum so granted has to be considered/adjusted accordingly.

(xi) Under the purview of the Scheme as envisaged in Part-I, it is not the offence but the injury suffered by the victim which forms the basis of recommendation for grant of compensation.

(xii) The Scheme also provides for factors to be considered while awarding compensation in both Part-I and Part-II which have to be considered by the District Victim Compensation Committee for grant of compensation. In case, none of the factors are satisfied, the committee is not empowered to grant the compensation.

(xiii) The Scheme does not provide for compensation in case of loss of property rather it focuses on physical or mental injury sustained by victim and similarly by the dependents in case of loss of life. Therefore, the matter wherein the victim has suffered loss of only movable/immovable property may not be recommended/ referred for compensation.

93. The inquiry should be conducted by the DSLSA with the assistance of Delhi Police and the Inquiry Report with respect to the impact of the crime

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

Submission of Mr. Kanhaiya Singhal, Advocate

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

Relevant Provisions of law

95. ***Constitution of India***

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

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

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

a. call for returns from such courts;

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

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

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(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein: Provided that any rules made, forms prescribed, or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

Article 235 - Control over subordinate courts

The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

96. ***Code of Criminal Procedure***

Section 194 - Additional and Assistant Sessions Judges to try cases made over to them

An Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try.

Section 265 F - Judgment of the Court

The Court shall deliver its judgment in terms of section 265E in the open Court and the same shall be signed by the presiding officer of the Court.

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

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

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

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

Section 353 - Judgment

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

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

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

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

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(2) Where the judgment is delivered under clause (a) of sub-section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of Section 465.

Section 354 - Language and contents of judgment.

(1) Except as otherwise expressly provided by this Code, every judgment referred to in Section 353,—

(a) shall be written in the language of the Court;

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

Section 357 - Order to pay compensation:

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

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

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

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

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

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(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) 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.

Section 357A - Victim Compensation Scheme

(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependent who has suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

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

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

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

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

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

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

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

it may order—

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

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

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

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

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(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such an application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

(7) Provided that such stay shall not affect the subordinate Court's power of remand under Section 309.

(8) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(9) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

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

Section 460 - Irregularities which do not vitiate proceedings

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

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

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

Section 461 - Irregularities which vitiate proceedings

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

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

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

his proceedings shall be void.

Section 462 - Proceedings in wrong place

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

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

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

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

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

(6)

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

Relevant Judgments

Powers of the High Court

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

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

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

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

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

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

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

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

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

"21. The High Court does have the power to transfer the cases and appeals under Section 407 CrPC which is essentially a judicial power. Section 407(1)(c) CrPC lays down that, where it will tend to the general convenience of the parties or witnesses, or where it was expedient for the ends of justice, the High Court could transfer such a case for trial to a Court of Session. <u>That does not mean that the High Court cannot transfer cases by exercising its administrative power of superintendence which is available to it under Article 227 of the Constitution of India.</u> While repelling the objection to the exercise of this power, this Court observed in para 13 of Ranbir Yadav [Ranbir Yadav v. State of Bihar, (1995) 4 SCC 392: 1995 SCC (Cri) 728] .....

22. For the reasons stated above, there is no substance in the objections raised by the petitioners. The High Court has looked into Section 407 CrPC, referred to Articles 227 and 235 of the Constitution of India, and thereafter in its impugned judgment

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

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

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

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

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

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

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

"6. ... this is not a case of transfer simplicitor from one Sessions Judge to another, but a case where arguments stand more or less concluded in the Court of a particular Sessions Judge and the Chief Justice on the administrative side has deemed it expedient, for the ends of justice, to order that the Sessions Judge who has heard the arguments in extenso pronounce judgment in the case.

7. We say so on the basis of the records which have been scrutinized by us, and on such scrutiny it was found by us that arguments in the case had been heard by Ms. Mamta Sehgal,

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

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

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