

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 2796 of 2008**

1. Smt. Kiran Singh W/o Shri Anil Kumar Singh, aged about 40 years, Occupation House Wife, R/o Mohall Kedarpur Bhatthi Road, Ambikapur, Dist. Surguja (CG).

---- **Petitioner****Versus**

1. The State Of Chhattisgarh, Through Secretary, Law and Legislative Affairs, DKS Bhawan, Raipur (CG)
2. High Court of Chhattisgarh at Bilaspur, Through The Registrar General, Bilaspur (CG)

---- **Respondent****WPCR No. 276 Of 2010**

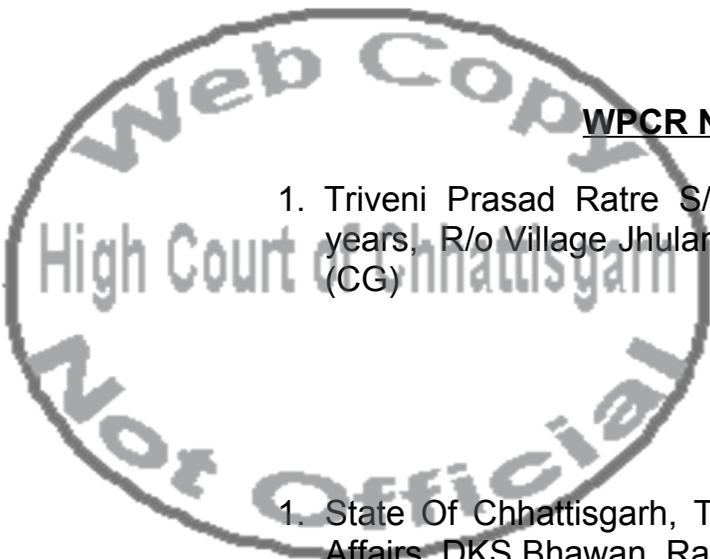
1. Triveni Prasad Ratre S/o Dashru Ram Ratre, aged about 65 years, R/o Village Jhulan, Tahsil Pamgarh, Dist. Janjgir-Champa (CG)

---- **Petitioner****Vs**

1. State Of Chhattisgarh, Through Secretary, Law and Legislative Affairs, DKS Bhawan, Raipur, Dist. Raipur (CG)
2. High Court Of Chhattisgarh At Bilaspur, Through Registrar General, High Court Of Chhattisgarh, Bilaspur, Distt.-Bilaspur (CG)
3. Registrar General High Court Of Chhattisgarh, Bilaspur, Dist. Bilaspur (CG)

---- **Respondent****And****WPCR No. 2238 Of 2008**

1. Ajay Singh, S/o Sureshwar Prasad Singh, aged about 25 years
2. Sureshwar Prasad Singh S/o Jagdish Singh, aged about 61 years



Both are resident of Village Katinda P.S. Lakhanpur, District Surguja (CG).

---- **Petitioner**

Vs

1. The State Of Chhattisgarh, Through Secretary, Law and Legislative Affairs, DKS Bhawan, Raipur (CG)
2. High Court Of Chhattisgarh At Bilaspur, Through Registrar General, Bilaspur (CG)

---- **Respondent**

For Petitioners in WPCR Nos.2796 & 2238 of 2008 Shri Rakesh Pandey, Adv.

For Petitioner in WPCR No.276 of 2010 Shri Vaibhav A. Goverdhar, Adv.

For Respondent/State Shri Shashank Thakur, Govt. Adv.

For Respondent/
High Court of Chhattisgarh Shri Praveen Das & Shri Ashish Shrivastava, Advocates

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

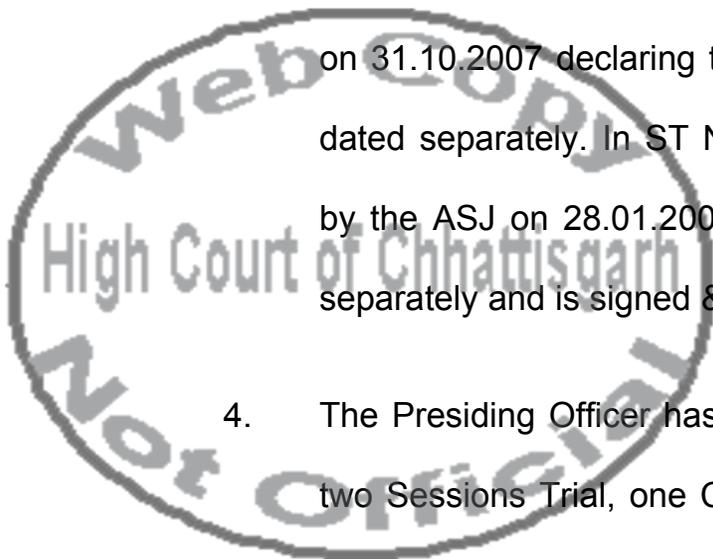
18/02/2016

Factual matrix :

1. Petitioners would assail the common order dated 07.03.2008 passed by the High Court of Chhattisgarh through its Registrar General transferring ST No.148/99 (*State v. Smt. Kiran Singh and Others*) and ST No.71/95 (*sic 71/99*) (*State v. T.P. Ratre*) along with one civil suit and two civil appeals from the Court of Shri L.R. Thakur, Second Additional District & Sessions Judge, Ambikapur (for short "the ASJ") to the Court of District & Sessions

Judge, Surguja at Ambikapur (for short "the SJ") for re-hearing the cases in accordance with law.

2. WP CR Nos.2796 and 2238 have been preferred by the accused of ST No.148/99, wherein they were facing trial for committing offences punishable under Sections 498-A and 304-B of the Indian Penal Code (for short 'the IPC'), whereas, in WPCR No.276/2010, the petitioner was facing trial in ST No.71/95 for commission of offence under Section 306 of the IPC.
3. In ST No.148/99, the trial Judge passed an order in order sheet on 31.10.2007 declaring that the judgment is written, signed and dated separately. In ST No.71/95 also similar order was passed by the ASJ on 28.01.2008 observing that the judgment is typed separately and is signed & dated.
4. The Presiding Officer has passed such orders in order sheets in two Sessions Trial, one Civil Suit & two Civil Appeals, therefore, one Shri Sushil Kumar Chaturvedi, Advocate, Member, State Bar Council made a complaint to the High Court on 12.02.2008, upon which the Registrar (Vigilance), High Court of Chhattisgarh issued a memorandum to the District & Sessions Judge, Ambikapur on 18.02.2008 to enquire into the matter and submit the report. The District & Sessions Judge submitted a report to the High Court on the same day i.e. 18.02.2008 substantiating the allegations against the Presiding Officer.



5. It was informed by the District Judge that in ST Nos.148/99 & 71/95, Civil Suit No.1-A/2006, Civil Appeal No.24-A/2006 (old No.11-A/2005) and Civil Appeal No.17-A/2006, Shri L.R. Thakur, the Second ASJ has purportedly delivered the judgments, but the judgments are not available in the file, because they have not been written. Thereafter, the mater was placed before the Full Court on 04.03.2008 wherein the decision was taken to transfer the cases from the Court of Shri L.R. Thakur Second Additional District and Sessions Judge, Ambikapur to the Court of District and Session Judge, Surguja at Ambikapur for re-hearing the cases in accordance with law. Another resolution was passed by the Full Court on the same day placing the Presiding Officer under suspension with immediate effect in contemplation of departmental enquiry in connection with the irregularities committed by him in discharge of judicial work. The Departmental Enquiry was duly completed and based on the enquiry report, the Full Court eventually resolved to impose punishment of compulsory retirement. By order dated 22.03.2011 the State Government compulsorily retired the Presiding Officer from the service on the recommendation of the High Court of Chhattisgarh.

Submissions :

6. It is argued by Shri Rakesh Pandey & Shri Vaibhav A. Goverdhan, learned counsel appearing for the petitioners, that the order passed by the Second Additional Sessions Judge,

Ambikapur acquitting the petitioners from the charges would amount to judgment, therefore, the High Court acting through the Registrar General was not legally competent nor it has jurisdiction to direct transfer of the Sessions Trial to the Court of District and Sessions Judge, Sarguja at Ambikapur for re-hearing. Learned counsel would strenuously urge that the trial having come to an end upon passing the order which amounts to judgment, nothing remained for transfer or rehearing. In any event, the order passed by the High Court on administrative side has the affect of setting aside the judicial order passed by the ASJ, therefore, the order impugned is without jurisdiction or authority of law.

7. Per contra, Shri Praveen Das & Shri Ashish Shrivastava, learned counsel appearing for the High Court of Chhattisgarh and Shri Shashank Thakur, learned Govt. Advocate appearing for the State, would submit that the order passed by the ASJ was to be based on a detailed judgment purportedly passed, dated and signed separately, however, there being no such separate judgment, the trial did not come to an end, therefore, in an extraordinary situation like the present, the High Court has rightly transferred the cases to the Court of SJ.

8. Learned counsel appearing for the parties have placed reliance upon the following judgments **State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (Dead) and Others¹, Janardhan Reddy & Others v. The State of**

1 (1996) 1 SCC 435 : AIR 1996 SC 906

Hyderabad & Others², Yakub Abdul Razak Memon v. State of Maharashtra, through CBI, Bombay³, Shambhu and others v. The State⁴, Udai Narain v. State of U.P. and Others⁵, Surendra Singh and Others v. State of Uttar Pradesh⁶ and Radhey Shyam and Another v. Chhabi Nath and Others⁷.

Issues arising :

9. The issue for consideration is what constitutes a judgment in a criminal trial and when it can be said that the judgment satisfies the legal requirement so as to be a legally binding document, which terminates the proceedings in the manner provided in the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.). The other issue is about the jurisdiction and authority of the High Court in exercising administrative powers to treat the trial as pending and thereafter, transferring the same from the Court of ASJ to the Court of SJ.
10. Since the writ petitions arise out of Sessions Trial needless to say that the procedure prescribed for trial before a Court of Sessions provided in Chapter XVIII of the Cr.P.C. was followed by the ASJ.
11. The word 'judgment' is not defined in the Cr.P.C. After closure of the evidence of prosecution, as provided under Section 231, the

2 AIR (38) 51 Supreme Court 217

3 (2013) 13 SCC 1

4 AIR (43) 1956 Allahabad 633

5 2000 Cri.L.J. 544

6 AIR (41) 1954 Supreme Court 194

7 2015 AIR SCW 1849

trial Judge is empowered under Section 232 to pass an order of acquittal, if he thinks that the accused need not produce any evidence in his defence, however, if the acquittal is not ordered under Section 232, the Court shall call upon the accused to enter on his defence and adduce any evidence he may have in support thereof. After hearing arguments of either side (under Sections 234), the Sessions Court delivers the judgment of acquittal or conviction under Section 235.

12. Section 235 of the Cr.P.C. is reproduced hereunder for ready reference :

235. Judgment of acquittal or conviction.--

(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.

13. Chapter XXVII of the Cr.P.C. from Section 353 to 365 contains provisions in respect of 'the judgment'. Sections 353, 354, 362, 363, 364 and 365 need consideration for dwelling on the issue, therefore, they are reproduced as under :

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.

(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.

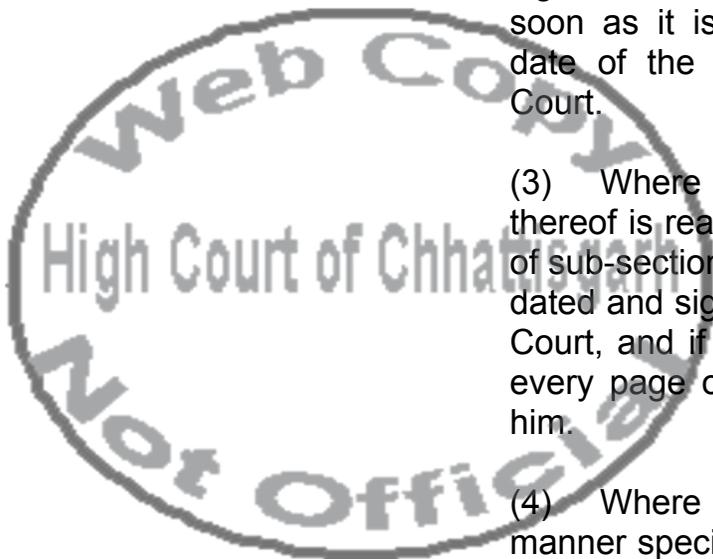
(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(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.

(Emphasis supplied)

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;

(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.

(2) When the conviction is under the Indian Penal Code (45 of 1860), and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with death or, in the alternative, with



imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Code.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(6) Every order under section 117 or sub-section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision.

(Emphasis supplied)

362. Court not to alter judgment.--Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

363. Copy of judgment to be given to the accused and other persons.--

(1) When the accused is sentenced to imprisonment, a copy of the judgment shall, immediately after the pronouncement of the judgment, be given to him free of cost.

(2) On the application of the accused, a certified copy of the judgment, or when he so desires, a translation in his own language if practicable or in the language of the Court, shall be given to him without delay, and such copy shall, in every case where the judgment is appealable by the accused, be given free of cost:

Provided that where a sentence of death is passed or confirmed by the High Court, a certified copy of the judgment shall be immediately given to the accused free of cost whether or not he applies for the same.

(3) The provisions of sub-section (2) shall apply in relation to an order under section 117 as they apply in relation to a judgment which is appealable by the accused.

(4) When the accused is sentenced to death by any Court and an appeal lies from such judgment as of right, the Court shall inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

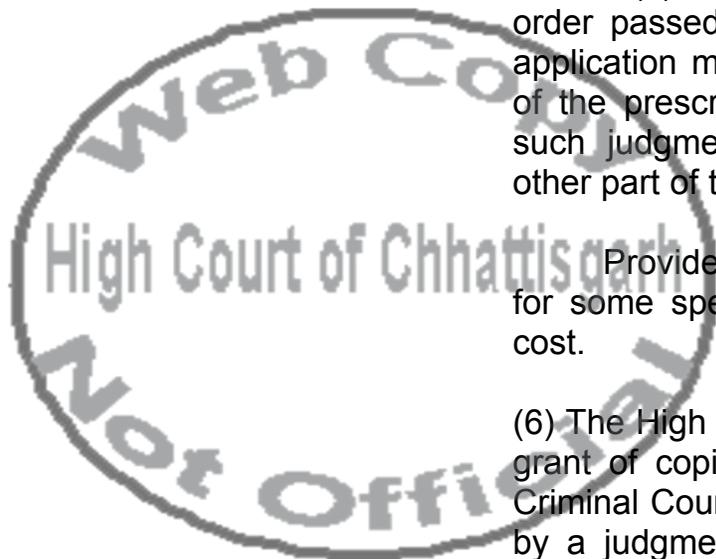
(5) Save as otherwise provided in sub-section (2), any person affected by a judgment or order passed by a Criminal Court shall, on an application made in this behalf and on payment of the prescribed charges, be given a copy of such judgment or order of any deposition or other part of the record:

Provided that the Court may, if it thinks fit for some special reason, give it to him free of cost.

(6) The High Court may, by rules, provide for the grant of copies of any judgment or order of a Criminal Court to any person who is not affected by a judgment or order, on payment, by such person, of such fees, and subject to such conditions, as the High Court may, by such rules, provide.

364. Judgment when to be translated.-- The original judgment shall be filed with the record of the proceedings and where the original is recorded in a language different from that of the Court and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

365. Court of Session to send copy of finding and sentence to District Magistrate.-- In cases tried by the Court of Session or a Chief Judicial Magistrate, the Court or such Magistrate as the case may be, shall forward a copy of its or his finding and sentence (if any) to the District



Magistrate within whose local jurisdiction the trial was held.

14. Chapter XXIX of the Cr.P.C. from Sections 372 to 394 contains provisions in respect of 'appeals'. Section 378 provides for appeal in case for acquittal and Section 382 provides for petition of appeal. Sections 378 and 382 are reproduced as under :

378. Appeal in case of acquittal.--

(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5),

(a) the District Magistrate may, in any case, direct the public prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence.

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal,

(a) to the Court of Session, from an order of acquittal passed by a Magistrate



in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(3) No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

382. Petition of appeal.--Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against.

15. On a dissection of the provisions reproduced above, it would be discerned that immediately after the termination of trial or at some subsequent time, the criminal Court of original jurisdiction shall pronounce judgment in open Court (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 of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

16. In the cases at hand, the judgment was not dictated in open Court, as it was purportedly written, signed & dated separately, therefore, clause (a) has no application. The trial Judge appears to have proceeded under clause (b) or clause (c) by reading out operative part of the judgment, signing and dating the same, as provided under sub-section (3) of Section 353. In such a case, copy of the judgment shall be immediately made available for perusal of the parties or their pleaders free of cost.

17. The legal requirement of judgment, about its language and contents are provided under Section 354. According to this provision, the judgment shall be written in the language of the Court and shall contain the point or points for determination, the decision thereon and the reason for the decision. Section 362 of the Cr.P.C. bars alteration or review of the judgment rendered by criminal Court except to correct a clerical or arithmetical error.

18. Section 363 of the Cr.P.C. requires the Court to give copy of the judgment free of cost to the accused where he is sentenced to imprisonment. Whereas, Section 365 requires that in cases tried by the Court of Session or a Chief Judicial Magistrate, the Court

or such Magistrate as the case may be, shall forward a copy of its or his finding and sentence (if any) to the District Magistrate within whose local jurisdiction the trial was held.

19. In the present cases, an order of acquittal was passed in the order sheet, however, there is no judgment recording the reasons or findings based on appreciation of evidence, which persuaded the ASJ to acquit the accused persons, therefore, the question arises whether such order in the order sheets would constitute a judgment ?

20. To appreciate as to what a judgment of a criminal Court would mean, requires this Court to refer to the earlier judgments rendered by the Supreme Court and the High Courts on the issue.

21. In **Shambhu** (supra), the Allahabad High Court held thus in regard to the words 'judgment' and 'order' :

4. The argument sounds plausible; nevertheless I have no hesitation in holding it to be untenable. A study of the provisions of the Code of Criminal Procedure discloses that the expression of the opinion of the criminal court on any matter at issue arrived at after due consideration of the evidence and of the arguments (if any) falls into two categories: judgments and orders. Nonetheless neither of these terms has been defined either in the Code of Criminal Procedure or the Penal Code.

There is, however, no controversy as to what a 'judgment' is. As held by the Federal Court in *Hori Ram Singh v. Crown and S. Kuppaswami Rao v. R.*, it is used 'to indicate the termination of the case by an

order of conviction or acquittal of the accused', and to this, by virtue of Section 367(6) CrPC must be added orders under Section 118 or Section 123(3), orders which bear the character of a conviction. Chapter XXVI of the Code deals exclusively with judgments and on the basis of its exhaustive provisions there can be no difficulty in recognising a criminal court's 'judgment'.

22. In **Baldeo v. Deo Narain and Others**⁸, the Allahabad High Court once again discussed as to how a judgment in criminal cases should be and held thus in para 14 :

14. ... Under Section 367 CrPC every judgment must contain:

- (1) the points for determination;
- (2) the decision thereon; and
- (3) the reasons for such decision.

Where the reasons given by the trial court are such as cannot be supported by the evidence on record, they are not reasons for the decision, but reasons against the decision. To constitute a legal appreciation of evidence, the judgment should be such as to indicate that the Court has applied its mind to it. Every portion of the judgment of the trial court seems to indicate non-application of mind by the Court to the evidence on record. The third requirement laid down in Section 367 CrPC viz. the reasons for the decision, is an important ingredient of a judgment. Compliance with law in this regard should not be merely formal but substantial and real, for it is this part of the judgment alone which enables the higher court to appreciate the correctness of the decision, the parties to feel that the Court has fully and impartially considered their respective cases and the public to realise that a genuine and sincere

⁸ AIR 1954 Allahabad 104

attempt has been made to mete out even-handed justice. It is in the way the Court discharges its duty in this regard that it is able to instil confidence in its justice and to inspire that respect and reverence in the public mind which is its due. Reasons form the substratum of the decision and their factual accuracy is a guarantee that the Court has applied its mind to the evidence in the case. Where the statement of reasons turn out to be a mere hollow pretension of a baseless claim of application of mind by the Court, the judgment is robbed of one of its most essential ingredients and forfeits its claim to be termed a judgment in the eye of the law.”

(Emphasis supplied)

23. The High Court of Gujarat in **Ratio Mohan v. The State of Gujarat**⁹ referred to its earlier decision rendered in the matter of **Nathusing Vridhsingh v. Vasantlal R. Shah**¹⁰ and held thus in para 9 :

9. In this connection, I was referred to a decision in Athipalayan, In re, wherein it was held that the irregularity even in pronouncing the judgment in open court and signing and dating the same would amount to an illegality vitiating the conviction and sentence passed in the case. While saying so, it has been observed thus: (AIR p. 508, para 4)

‘... it is one of the glorious principles of our criminal jurisprudence that we do not try or sentence people in absentia and we do not also convict and sentence people without judgments being pronounced in open court and signed and dated then and there. It may be different in the

9 AIR (56) 1969 Gujarat 320

10 AIR 1968 Gujarat 210

continental system of criminal jurisprudence.'

It was a case in which a sentence was announced before the judgment, which was the final decision of the court intimated to the parties and the world at large by formal pronouncement of delivery in open court by the trial Judge and signing and dating it simultaneously and thereby terminating the criminal proceedings finally. In Nathusing Vridhsingh v. Vasantlal R. Shah, the question arose whether the order of dismissal of a complaint under Section 203 of the Criminal Procedure Code without recording any reasons amounts to an irregularity or illegality curable under Section 537 of the Criminal Procedure Code and it was held that the order was one in contravention of that provision and such a breach of the provision renders the order void and ineffective. It was not curable under Section 537 of the Criminal Procedure Code. Some observations made by the Supreme Court in Willie (William) Slaney v. State of M.P., were quoted to say that 'the complainant is entitled to know why his complaint has been dismissed with a view to consider an approach to a revisional Court. Being kept in ignorance of the reasons clearly prejudices his right to move the Revisional Court and where he takes a matter to the Revisional Court renders his task before that Court difficult, particularly in view of the limited scope of the provisions of Sections 438 and 439 of the Code of Criminal Procedure'. Those observations may well apply in the present case particularly when the accused has a right of appeal against the order of conviction and sentence passed in the case and he would obviously be at a disadvantage to assail the reasons which were in the mind of the learned Magistrate and which came out so late as on 6-2-1968. The appellant-accused had a right to know the reasons which led the learned Magistrate to come to that conclusion. It may well happen that after coming to know about the accused going in appeal, the learned Magistrate may try to record a



proper judgment which otherwise he may later on do in some other manner. In any event, the learned Magistrate has clearly contravened the imperative provisions contained in Section 264 of the Criminal Procedure Code by passing the sentence without recording the judgment in the case and has that way acted illegally. Such an illegality cannot be treated as an irregularity contemplated under Section 537 or an omission as urged by Mr Nanavati so as to become curable one. Even if it were to be treated as such as coming within the ambit of Section 537, it can easily be said that it had occasioned failure of justice in the circumstances of the case. In any view of the matter, the order is, therefore, liable to be set aside.”

(Emphasis supplied)

24. Way back in 1930 the Patna High Court in **Jahri Lal v. Emperor**¹¹ held that pronouncing sentence before completing the judgment, that is to say, before preparing the essential part of it, such as the statement of points for determination and the reasons for the decisions makes these sentences illegal and vitiates conviction.

25. In **State of Punjab and others v. Jagdev Singh Talwandi**¹², the Supreme Court considered how the final order/judgment is to be pronounced. It was held thus in para 30 :

30. We would like to take this opportunity to point out that serious difficulties arise on account of the practice increasingly adopted by the High Courts, of pronouncing the final order without a reasoned judgment. It is desirable that the final order which the High Court intends to pass

11 AIR 1930 Patna 148

12 (1984) 1 SCC 596

should not be announced until a reasoned judgment is ready for pronouncement. Suppose, for example, that a final order without a reasoned judgment is announced by the High Court that a house shall be demolished, or that the custody of a child shall be handed over to one parent as against the other, or that a person accused of a serious charge is acquitted, or that a statute is unconstitutional or, as in the instant case, that a detenu be released from detention. If the object of passing such orders is to ensure speedy compliance with them, that object is more often defeated by the aggrieved party filing a special leave petition in this Court against the order passed by the High Court. That places this Court in a predicament because, without the benefit of the reasoning of the High Court, it is difficult for this Court to allow the bare order to be implemented. The result inevitably is that the operation of the order passed by the High Court has to be stayed pending delivery of the reasoned judgment.

(Emphasis supplied)

26. Considering the above referred judgments, the Supreme Court in the celebrated case of **Yakub Abdul Razak Memon** (supra) concluded that 'it is evident that generally a judgment must be complete and it must have points for determination, decision thereon and reasons for such a decision. The basic requirement for such ingredients appears to be that the superior court (appellate/revisional) may be able to examine as to whether the judgment under challenge has been rendered in accordance with law and particularly, based on evidence on record. So, the purpose of recording reasons is to facilitate the superior court to examine the correctness of the judgment of the courts below.'

27. The Division Bench of the Patna High Court in **Ramautar Thakur and others v. State of Bihar**¹³ held thus :

18. The Criminal Procedure Code, unlike the Civil Procedure Code, does not define 'Judgment' A 'judgment' means the expression of the opinion of the Court arrived at after, a due consideration of the evidence and all the arguments. The above meaning of the word 'Judgment', as is to be found in Full Bench decisions of the Madras High Court in Re Chinna Kaliappa Goundan ILR 29 Mad 126 (Q), of the Bombay High Court in Emperor v. Nan-dial Chunilal : 48 Bom LR 41: AIR 1946 Bom 276) (FB) (R), and of the Calcutta High Court in Damu Senapati v. Shridhar Rajwar ILR 21 Cal 121 (S), was approved by their Lordships Bhagwati and Imam JJ., in the Supreme Court case just mentioned.

Their Lordships mentioned that the observations of the Madras High Court in its Full Bench decision, just referred to, were quoted with approval by Sulaiman J., in Dr. Hori Ram Singh v. Emperor : AIR 1939 FC 43 (T), in which his Lordships Sulaiman J., observed that the Criminal Procedure Code did not define a 'judgment', but various sections of the Code suggested what it meant His Lordship then discussed those sections and concluded that 'judgment' in the Code meant a judgment of conviction or acquittal.

19. The question, therefore, for our consideration is, is the order of dismissal for default a 'judgment' ?

20. In the case of AIR 1928 Rang 238 (G), it has been held that an order of dismissal for default is not a 'judgment' within the meaning of Section 369, Criminal P. C.

21. In this connection the observation of Sulaiman J., in 'Dr. Hori Ram Singh (T)', above mentioned, which was held by the

¹³ AIR (44) 1957 Patna 33

Supreme Court to be sound, may be reproduced below:

"It will be seen that an order under Section 435 can with difficulty be called a 'judgment'. All that a Judge does at this preliminary stage is either to send for the records of the lower Court with a view to examining them under Section 439 (1), or to refuse to do so. It is difficult to see how the latter can possibly be called a judgment of conviction. When such an order consists of the one word 'Dismissed' can it necessarily be taken as a judicial pronouncement that in the opinion of the Judge the respondent was rightly convicted upon the evidence? It seems to me that all that it means is that the Judge sees no adequate ground disclosed in the petition or on the face of the judgment for proceeding further."

22. His Lordship Bhagwati J. in the Supreme court case in delivering his own judgment and that of his Lordship Imam J. observed thus:

"The order dismissing the appeal or criminal revision summarily or in limine would no doubt be a final order of the High Court not subject to review or revision even by the High Court itself but would not tantamount to a judgment replacing that of the lower Court."

(Emphasis supplied)

28. Thus, by now it is fairly settled that to constitute a judgment rendered by a Criminal Court, it is not the operative part written in the order sheet which would constitute the judgment but it is the discussion on the merits of the prosecution evidence, the arguments of both the sides and the findings based on reasons to

conclude the trial in conviction or acquittal, which would constitute a judgment.

29. If the orders in the order sheet passed in the present cases would constitute a judgment, then there is nothing to be appealed against because there is no discussion at all of the prosecution case and the reasons for recording of such finding which entitles the accused to be acquitted.

30. In view of the authoritative pronouncements by the Supreme Court in **Jagdev Singh Talwandi** (supra) and **Yakub Abdul Razak Memon** (supra), the order passed in order sheet in favour of each of the petitioner acquitting them of the charges by a two line order would not constitute judgment, therefore, the trial has not come to an end on the basis of such order. Moreover, the trial Judge has mentioned in the order sheet that the judgment is signed and dated in the open Court, however, there is no judgment available in the record of the Court, therefore, the Judge himself had construed that there is a separate document which he has referred as judgment, which is distinct and separate than the order in the order sheet wherein the acquittal is recorded.

31. The next point for consideration is - if the order passed by the trial Judge in favour of the petitioners do not constitute a judgment and the trial is said to be pending, whether the High Court, on its administrative side can direct transfer of the case from the Court of ASJ to the Court of SJ ?

32. Learned counsel appearing for the petitioners would argue that the Registrar General or for that matter the High Court has no jurisdiction to pass the impugned order on administrative side because the impugned order has the affect of reopening of trial which can only be done by the High Court in appellate jurisdiction and not on the administrative side.

33. At the first glance, the argument appears to be attractive, however, in view of the discussion made in the preceding paragraphs wherein this Court has held that the order passed by the trial Judge in favour of the petitioners would not constitute a judgment, hence, there was no occasion for the District Magistrate to appeal against the said order on the judicial side. If the trial did not come to an end because there was no judgment by a criminal Court as required under the Cr.P.C., it was open for the High Court to exercise its administrative power to transfer the case so that the Presiding Officer who has committed such serious error in more than one cases is not provided with an opportunity again to deal with the cases. It was more so because the Judge has formed an opinion about the matter without even discussing the evidence adduced by the prosecution.

34. In regard to the High Court's power of superintendence under Article 227 of the Constitution of India over all Courts and Tribunals functioning within its territorial jurisdiction, the **Full Bench** of the Bombay High Court in **Balkrishna Hari**

Phansalkar v. Emperor¹⁴, while considering *pari materia* provision under Section 107 of the Government of India Act, 1915, speaking through Beaumont, C.J., has held thus :

Now, what are those powers ? Under S. 107 the High Court has superintendence over all Courts for the time being subject to its appellate jurisdiction. It is not disputed that rights of superintendence include not only superintendence on administrative points, but superintendence on the judicial side too, and that under its power of superintendence the High Court can correct any error in a judgment of a Court subject to its appellate jurisdiction.....

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.....Experience shows that irregularities and illegalities do creep into the administration of the law, and I think myself that it would be unfortunate if the High Court had no power to correct any irregularity or illegality in the proceedings of any of these special Courts. We must therefore deal with this revision application which has been admitted on its merits.

While delivering the minority judgment, Nanavati, J. one of the Judges of the Full Bench in **Balkrishna Hari Phansalkar** (supra) has succinctly observed about the public confidence in the fairness and moderation of the Courts. The judgment was concluded by Nanavati, J. by observing thus :

.....It is perhaps not sufficiently recognised that public confidence in the impartiality and moderation of the Courts is of great value in itself in preserving the public peace, and indeed on occasion it may be of more use than battalions of troops or police. It is necessary in the interests of

14 AIR 1933 Bombay 1

public peace itself that that confidence should be maintained, and it is therefore not merely from the point of view of the accused in the present case, but also from the wider point of view of preserving the confidence of the public in the fairness and moderation of the Courts that it seems to me that the present case and other cases of which it is a sample are eminently suitable for revision. Unfortunately however as I am in a minority, the question of the exact amount of punishment does not arise.

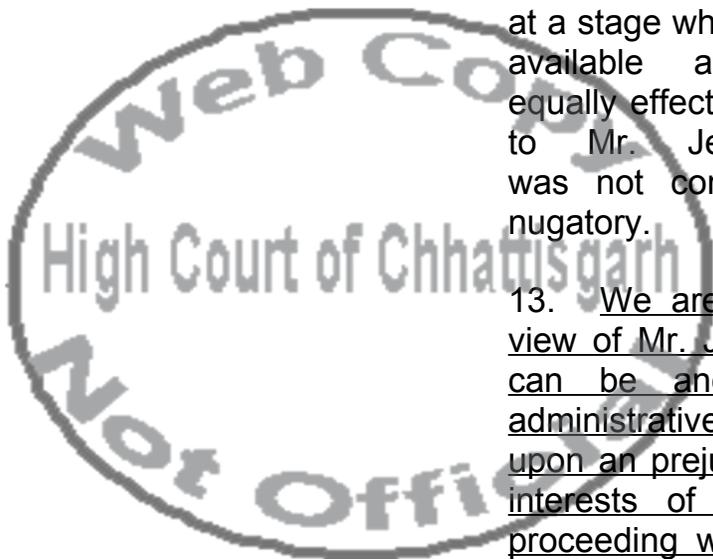
35. While considering the powers of the High Court on the administrative side, under Article 227 of the Constitution, to transfer a case the Supreme Court in **Ranbir Yadav v. State of Bihar**¹⁵, held thus in paras 12 & 13 :

12. Before considering the above contentions of Mr. Jethmalani, we may mention that in spite of sufficient opportunities given, the order of transfer passed by the High Court was not produced before us. Needless to say, had it been produced we would have exactly known the facts and circumstances which promoted the High Court to pass that order and clearly appended the source of power. However, from the material on record which we have already detailed, it appears that the order was passed by the High Court in the administrative jurisdiction. Under Article 227 of the Constitution of India every High Court has superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction and its trite that this power of superintendence entitles the High Court to pass orders for administrative exigency and expediency. In the instant case it appear that the High Court had exercised the power of transfer in the context of the petition filed by some of the accused from jail complaining that they could not be accommodates in the Court

15 (1995) 4 SCC 392

room as a result of which some of them had to remain outside. It further appears that the other grievance raised was that the Court was so crowded that even clerks of the lawyers were not being allowed to enter the Court room to carry the briefs. Such a situation was obviously created by the trial of a large number of persons. If in the context of the above facts, the High Court exercised its plenary administrative power to transfer the case to the 5th Court, which we assume had a bigger and better arrangement to accommodate the accused, lawyers and other connected with the trial no exception can be taken to the same, particularly by those at whose instance and for whose benefit the power was exercised. Mr. Jethmalani, however, contended that administrative power could not be exercised at a stage when judicial power was not only available and operational but was equally effective and efficacious. According to Mr. Jethmalani, if the former was not contained the latter would be nugatory.

13. We are unable to share the above view of Mr. Jethmalani. So long as power can be and is exercised purely for administrative exigency without impinging upon an prejudicially affecting the rights or interests of the parties to any judicial proceeding we do not find any reason to hold that administrative powers must yield place to judicial powers simply because in a given circumstance they co-exist. On the contrary, the present case illustrates how exercise of administrative powers were more expedient, effective and efficacious. If the High Court had intended to exercise its judicial power of transfer invoking Section 407 of the Code it would have necessitated compliance with all the procedural formalities thereof, besides providing adequate opportunity 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 other connected with the trial but did it with utmost dispatch.

(Emphasis supplied)

36. Yet again, the Supreme Court in **Shalini Shyam Shetty and Another v. Rajendra Shankar Patil**¹⁶, delineated the principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution of India; formulating the principles it was held thus in para 49 (e) (i) (l) (m) (n) :

(e) According to the ratio in Waryam Singh, followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, "within the bounds of their authority".

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(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in L. Chandra Kumar vs. Union of India and therefore abridgement by a Constitutional amendment is also very doubtful.

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(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning

16 (2010) 8 SCC 329

of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

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(Emphasis supplied)

37. The Supreme Court has, thus, sealed the issue to observe that in appropriate cases depending upon the circumstances, the High Court can exercise administrative powers under Article 227 of the Constitution of India to transfer the case from one Court to another Court.

38. Applying the above settled legal position on the issue, I have no hesitation in observing that such extraordinary circumstances had arisen in the present cases where the situation warranted that the Sessions Trials of the respective criminal cases be transferred to the Court of Sessions Judge because the trial Judge was not discharging his judicial functions in accordance with the procedure prescribed under the Cr.P.C. and was acquitting the

accused persons one after another without writing judgments. If the High Court would not have intervened, there would have been judicial chaos leading to travesty of justice. The District Magistrate would not be able to seek opinion from the Public Prosecutor for filing appeals because there are no reasons or finding in the judgment against which appeal can be preferred. The trial Judge has thrown aside the procedure prescribed under the Cr.P.C in respect of writing and delivering the judgment, therefore, it was an appropriate and fit case for exercise of administrative powers by the High Court to direct transfer of cases from the Court of ASJ to the Court of SJ.

39. *Ex.consequenti*, all the writ petitions, *sans substratum*, deserve to be and are hereby dismissed. No order as to costs.

40. Copy of this order be circulated amongst all the District & Sessions Judges of the State for its further circulation amongst all the Judges of the District Judiciary so that the Judicial Officers do not commit similar mistake as was committed by the Presiding ASJ in the present cases. The Judges of subordinate Courts are advised to deliver the reasoned judgment in all cases by signing and dating on the date of delivery of judgment. Sd/-

Judge

Prashant Kumar Mishra

Gowri