Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 32-33 OF 2017
(@ S.L.P. (Crl.) Nos. 7694-7695 of 2016)

Ajay Singh and Anr and Etc. ...Appellant(s)

Versus

State of Chhattisgarh and Anr. ...Respondent(s)

J U D G M E N T

Dipak Misra, J.

Performance of judicial duty in the manner prescribed by law is fundamental to the concept of rule of law in a democratic State. It has been quite often said and, rightly so, that the judiciary is the protector and preserver of rule of law. Effective functioning of the said sacrosanct duty has been

entrusted to the judiciary and that entrustment expects the courts to conduct the judicial proceeding with dignity, objectivity and rationality and finally determine the same in accordance with law. Errors are bound to occur but there cannot be deliberate peccability which can never be countenanced. The plinth of justice dispensation system is founded on the faith, trust and confidence of the people and nothing can be allowed to contaminate and corrode the same. A litigant who comes to a court of law expects that inherent and essential principles of adjudication like adherence to doctrine of *audi alteram partem*, rules pertaining to fundamental adjective and seminal substantive law shall be followed and ultimately there shall be a reasoned verdict. When the accused faces a charge in a court of law, he expects a fair trial. The victim whose grievance and agony have given rise to the trial also expects that justice should be done in accordance with law. Thus, a fair trial leading to a judgment is necessitous in law and that is the assurance that is thought of on both sides. The exponent on behalf of the accused cannot

be permitted to command the trial as desired by his philosophy of trial on the plea of fair trial and similarly, the proponent on behalf of the victim should not always be allowed to ventilate the grievance that his cause has not been fairly dealt with in the name of fair trial. Therefore, the concept of expediency and fair trial is quite applicable to the accused as well as to the victim. The result of such trial is to end in a judgment as required to be pronounced in accordance with law. And, that is how the stability of the creditability in the institution is maintained.

2. The above prefatory note has relevance, a significant one, to the case at hand. To appreciate the controversy, certain facts are requisite to be noted. The marriage between the appellant No. 1 and Ruby Singh, the deceased, was solemnized according to Hindu rites on 22.06.1997. She committed suicide at her matrimonial home on 01.12.1998. Kameshwar Pratap lodged FIR No. 194/98 at Police Station Lakhanpur, Distt. Sarguja against Ajay Singh (husband), Sureshwar Singh (father-in-law), Dhanwanti Devi

(mother-in-law) and Kiran Singh (sister-in-law) for offences punishable under Section 304B, 34 of the Indian Penal Code (IPC) and other offences. After the criminal law was set in motion, investigating agency after commencement of investigation and after completion thereof laid charge sheet under Sections 304B, 498A/34, 328 IPC read with Section 3/4 of Dowry Prohibition Act, 1961 against the accused persons before the Court of Chief Judicial Magistrate, Ambikapur, who, in turn, committed the matter to the Court of Session and eventually the matter was tried by Second Additional Sessions Judge, Ambikapur. We are, in the present case, not concerned with how many witnesses were examined by the trial court or how the trial continued. What needs to be stated is that the learned trial Judge passed an order in the order sheet that recorded that the accused persons had been acquitted as per the judgment separately typed, signed and dated.

3. A member of the State Bar Council sent a complaint to the Registry of the High Court of Chhattisgarh, Bilaspur alleging that learned trial judge had acquitted the accused

persons but no judgment had been rendered. The Registrar (Vigilance) of the High Court issued a memorandum to the District and Sessions Judge, Surguja at Ambikapur on 18.02.2008 to inquire into the matter and submit a report. The concerned District and Sessions Judge submitted the report to the High Court on the same date stating that no judgments were found in the records of such cases. It has also been brought to the notice of the High Court that in sessions trials being Sessions Trial No. 148 of 1999 and Sessions Trial No. 71 of 1995 though the same trial judge had purportedly delivered the judgments but they were not available on record as the judgments had not actually been dictated, dated or signed. Thereafter the matter was placed before the Full Court of the High Court on 04.03.2008 on which date a resolution was passed placing the concerned trial judge under suspension in contemplation of a departmental inquiry. At the same time, the Full Court took the decision to transfer the cases in question from the concerned trial judge to the file of District and Sessions Judge, Surguja at Ambikapur for

rehearing and disposal. It is worthy to note here that the concerned officer was put under suspension and after completion of inquiry was imposed with the punishment of compulsory retirement on 22.03.2011. We make it clear that we are not concerned with the said punishment in the case.

4. After the decision was taken for transferring the cases by the Full Court for rehearing, three writ petitions forming the subject matter of Writ Petition (Criminal) Nos. 2796 of 2008, 2238 of 2008 and 276 of 2010 were filed. The accused in Sessions Trial No. 148 of 1999 filed Writ Petition (Criminal) Nos. 2796 of 2008 and 2238 of 2008 and accused in Sessions Trial No. 71 of 1995 filed the other writ petition, that is, Writ Petition (Criminal) No. 276 of 2010.

5. The controversy really centers around two issues, namely, whether the learned trial judge had really pronounced the judgment of acquittal on 31.10.2007 and whether the High Court could have in exercise of its administrative power treated the trial as pending and transferred the same from the Court of Second Additional Sessions Judge, Ambikapur to the

Court of District and Sessions Judge, Surguja at Ambikapur for rehearing and disposal.

6. It is urged by learned counsel for the appellants that the nature of order passed by the learned trial judge would amount to a judgment and in the absence of any appeal preferred by the State there could not have been a direction for rehearing of the sessions case as such action runs contrary to the provisions of CrPC. Learned counsel would submit that the High Court in exercise of power of the superintendence could not have transferred the case treating it as pending on its administrative side. To bolster the said submission he has placed reliance on ***Ouseph Mathai & others v. M. Abdul Khadir***[1], ***Essen Deinki v. Rajiv Kumar***[2] and ***Surya Dev Rai v. Ram Chander Rai and others***[3].

7. Mr. C.D. Singh, learned counsel for the State submitted that the approach of the High Court is absolutely infallible and does not warrant any interference by this Court.

[1] (2002) 1 SCC 319
[2] (2002) 8 SCC 400
[3] (2003) 6 SCC 675

8. To appreciate the controversy, it is necessary to refer to the order sheet in Sessions Trial No. 71 of 1995. The trial judge on 28.1.2008 had passed the following order:-

> "28.1.2008:
> State represented by Shri Rajesh Tiwari, A.G.P.
> Accused along with their Counsel Shri Arvind Mehta, Advocate
> The judgment has been typed separately. The same has been dated, signed and announced.
> Resultantly, Accused T.P. Ratre is acquitted of the charge under Section 306 IPC.
> A copy of this judgment be sent to the District Magistrate, Surguja (Ambikapur) through A.G.P.
> Proceedings completed.
> The result be noted in the register and the record be sent to the Record Room."

Be it noted, in the other Sessions Trial, i.e., Sessions Trial No. 148 of 1999 almost similar order has been passed. Be it stated, apart from the aforesaid order, as per the enquiry conducted by the learned District Judge, there was nothing on record. The trial judge had not dictated the order in open court. In such a situation, it is to be determined whether the judgment had been delivered by the trial judge or not.

9. Chapter XVIII of CrPC provides for trial before a court of session. Section 227 empowers the trial judge to discharge the accused after hearing the submissions of the accused and the prosecution and on being satisfied that there is no sufficient ground for proceeding against the accused. The key words of the Section are "not sufficient ground for proceeding against the accused". Interpreting the said provision, the Court in ***P. Vijayan v. State of Kerala and another***[4] has held that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground

[4] (2010) 2 SCC 398

would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which *ex facie* disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

10. Section 228 empowers the trial judge to frame the charge. Section 229 provides if the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon. Section 230 provides for date for prosecution evidence. Section 231 deals with the evidence for prosecution. Section 232 provides that if, after taking the evidence for the prosecution, examining the accused and hearing the prosecution the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal. Section 233 stipulates that where the accused is not acquitted under Section 232 he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof. Section 234 provides for arguments. Section 235 which

provides for judgment of acquittal or conviction reads as follows:-

> "**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."

11. Chapter XXIV provides for general provisions as to inquiries and trials. Chapter XXVII deals with the judgment. Section 353 lays down the procedure for pronouncement of the judgment. The said provision reads as follows:-

> "**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."

12. Section 354 provides for language and contents of the judgment. The said provision reads as follows:-

> **"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."

13. Section 362 has the heading "Court not to alter judgment." The said provision is as follows:-

> "**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."

14. Interpreting the said provision in the context of exercise of inherent power of the High Court under Section 482 CrPC this Court in ***Smt. Sooraj Devi v. Pyare Lal and another***[5] held thus:-

> "5. The appellant points out that he invoked the inherent power of the High Court saved by Section 482 of the Code and that notwithstanding the prohibition imposed by Section 362 the High Court had power to grant relief. Now it is well settled that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the

[5] (1981) 1 SCC 500

> Code (*Sankatha Singh v. State of U.P.*[6]). It is true that the prohibition in Section 362 against the court altering or reviewing its judgment is subject to what is "otherwise provided by this Court or by any other law for the time being in force". Those words, however, refer to those provisions only where the court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the court is not contemplated by the saving provision contained in Section 362 and, therefore, the attempt to invoke that power can be of no avail."

We have referred to the aforesaid decision to illustrate that the CrPC confers absolute sanctity to the judgment once it is pronounced. It does not conceive of any kind of alteration.

15. Section 363 provides copy of judgment to be given to the accused and other persons. Section 364 provides for the situation where the judgment requires to be translated.

16. It is apposite to note that though CrPC does not define the term "judgment", yet it has clearly laid down how the judgment is to be pronounced. The provisions clearly spell out that it is imperative on the part of the learned trial judge to pronounce the judgment in open court by delivering the whole

[6] AIR 1962 SC 1208

of the judgment or by reading out the whole of the judgment or 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.

17. We have already noted that the judgment was not dictated in open court. Code of Criminal Procedure provides reading of the operative part of the judgment. It means that the trial judge may not read the whole of the judgment and may read operative part of the judgment but it does not in any way suggest that the result of the case will be announced and the judgment would not be available on record. Non-availability of judgment, needless to say, can never be a judgment because there is no declaration by way of pronouncement in the open court that the accused has been convicted or acquitted. A judgment, as has been always understood, is the expression of an opinion after due consideration of the facts which deserve to be determined. Without pronouncement of a judgment in the open court, signed and dated, it is difficult to treat it as a judgment of

conviction as has been held in ***Re. Athipalayan and Ors***[7]. As a matter of fact, on inquiry, the High Court in the administrative side had found there was no judgment available on record. Learned counsel for the appellants would submit that in the counter affidavit filed by the High Court it has been mentioned that an incomplete typed judgment of 14 pages till paragraph No. 19 was available. The affidavit also states that it was incomplete and no page had the signature of the presiding officer. If the judgment is not complete and signed, it cannot be a judgment in terms of Section 353 CrPC. It is unimaginable that a judgment is pronounced without there being a judgment. It is gross illegality. In this context, we may refer to a passage from ***State of Punjab and others v. Jagdev Singh Talwandi***[8] wherein expressing the opinion for the Constitution Bench, Chandrachud, C.J. observed thus:-

> "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 should not be

[7] AIR 1960 Mad 507
[8] (1984) 1 SCC 596

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.

31. It may be thought that such orders are passed by this Court and therefore there is no reason why the High Courts should not do the same. We would like to point out respectfully that the orders passed by this Court are final and no appeal lies against them. The Supreme Court is the final court in the hierarchy of our courts. Besides, orders without a reasoned judgment are passed by this Court very rarely, under exceptional circumstances. Orders passed by the High Court are subject to the appellate jurisdiction of this Court under Article 136 of the Constitution and other provisions of the concerned statutes. We thought it necessary to make these observations in order that a practice which is not very desirable and which achieves no useful purpose may not grow out of its present infancy."

18. We have reproduced the aforesaid two passages as the larger Bench has made such observations with regard to unreasoned judgments passed by the High Courts. The learned Chief Justice had noted that the practice is not desirable and does not achieve any useful purpose and it should not grow out of its present infancy. Despite the said observations, sometimes this Court comes across judgments and orders where the High Courts have announced the result of the case by stating "reasons to follow". We can only reiterate the observations of the Constitution Bench.

19. Having stated that, as is evincible in the instant case, the judgment is not available on record and hence, there can be no shadow of doubt that the declaration of the result cannot tantamount to a judgment as prescribed in the CrPC. That leads to the inevitable conclusion that the trial in both the cases has to be treated to be pending.

20. The next issue that emerges for consideration is whether the High Court on its administrative side could have transferred the case from the Second Additional Sessions

Judge, Ambikapur to the Court of District and Sessions Judge, Surguja at Ambikapur. In this regard, it is suffice to understand the jurisdiction and authority conferred under the Constitution on the High Court in the prescription of power of superintendence under Article 227. Article 227 of the Constitution reads as follows:-

> "**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 provisions, 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
> (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 practising 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."

The aforesaid Article confers power of superintendence on the High Court over the courts and tribunals within the territory of the State. The High Court has the jurisdiction and the authority to exercise *suo motu* power.

21. In ***Achutananda Baidya v. Prafullya Kumar Gayen and others***[9] a two-Judge Bench while dealing with the power of superintendence of the High Court under Article 227 has opined that 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 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction,

[9] (1997) 5 SCC 76

refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice.

22. We have already stated that the Division Bench while concurring with the opinion of the learned single Judge has also quashed the order by the learned trial judge on the ground that there was no judgment on record. There is no dispute about the fact that the Full Court of the High Court after coming to a definite conclusion that the learned trial judge had really not passed any judgment, resolved that the matter should be heard by the learned Sessions Judge and accordingly the Registrar General of the High Court communicated the decision to the concerned learned Sessions Judge. The submission of the learned counsel for the appellant is that such a power could not have been exercised by the Full Court on the administrative side, for in exercise of administrative authority, the High Court cannot transfer the

case. The contention is that High Court can only transfer the case in exercise of power under Section 407 and that too on the judicial side. Our attention has also been drawn to Section 194 of CrPC. Section 194 empowers the Additional and Assistant Sessions Judges to try cases made over to them. The said provision reads as follows:-

> "**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."

23. It is argued that Section 194 can be exercised on the administrative side before the commencement of the trial and not thereafter, whereas Section 407 can be taken recourse to on the judicial side and a case can be transferred on the basis of parameters laid down for transfer of a criminal trial. In this regard, we may usefully refer to the authority in ***Ranbir Yadav v. State of Bihar***[10] wherein under certain circumstances the High Court had transferred the sessions trial from the court of one Additional Sessions Judge to

[10] (1995) 4 SCC 392

another by an administrative order at a stage when the trial had commenced. It was contended before this Court that the trial that took place before the transferee court was wholly without jurisdiction and consequently the conviction and sentence recorded by that court were null and void and were not curable under Section 465 CrPC. To sustain the said proposition of law, reliance was placed in ***A.R. Antulay v. R.S. Nayak and another***[11]. The two-Judge Bench perusing the material on record came to the conclusion that the order was passed by the High Court in its administrative jurisdiction. Thereafter, it proceeded to opine thus:-

> "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 it is trite that this power of superintendence entitles the High Court to pass orders for administrative exigency and expediency. In the instant case it appears 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 accommodated in the courtroom 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

[11] (1988) 2 SCC 602

courtroom 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 others 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."

Proceeding further, the 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 proceeding we do not find any reason to hold that administrative powers must yield place to judicial powers simply because in a given circumstance they coexist. On the contrary, the present case illustrates how exercise of administrative powers were more expedient, effective and efficacious. If the High Court had intended to exercise its judicial powers of transfer invoking Section 407 of the Code it would have necessitated compliance with all the procedural formalities thereof, besides providing adequate opportunities to the parties of a proper hearing which, resultantly, would have not only delayed the trial but further incarceration of some of the accused. It is obvious, therefore, that by invoking its power of superintendence, instead of judicial powers, the High Court not only redressed the grievances of the accused and others connected with the trial but did it with utmost dispatch."

24. The Court distinguished the authority in ***A.R. Antulay case*** (supra) on the basis that in the said case the Court was dealing with a situation where this Court had transferred the case to the High Court which was not authorized by law and the Court could not have conferred the jurisdictions on the High Court as it did not possess such jurisdiction under the scheme of the Criminal Law Amendment Act, 1952. The controversy the two-Judge Bench was dealing with pertained to transfer of the case to the learned Additional Sessions Judge who was competent under the CrPC to conduct the sessions trial and, therefore, the Court in ***Ranbir Yadav***'s case (supra) ruled that the order of transfer to another court did not suffer from any legal infirmity.

25. 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.

26. 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 of the 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.

27. Consequently, appeals are dismissed. The trial court to whom the cases have been transferred is directed to proceed in accordance with law.

.....J.
[Dipak Misra]

New Delhi;
January 06, 2017

.....J.
[Amitava Roy]