

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.181 of 2016

Judgment Reserved on : 17.8.2016

Judgment Delivered on : 24.8.2016

Smt. Kiran Singh, W/o Shri Anil Kumar Singh, aged about 48 years,
Occupation Housewife, R/o Mohall Kedarpur, Bhatthi Road,
Ambikapur, District Surguja, Chhattisgarh

---- Appellant

versus

1. State of Chhattisgarh, through Secretary, Law and Legislative Affairs, Mahanadi Bhawan, Raipur, Chhattisgarh
2. High Court of Chhattisgarh at Bilaspur, through the Registrar General, Bilaspur, District Bilaspur, Chhattisgarh

--- Respondents

Writ Appeal No.134 of 2016

1. Ajay Singh, S/o Sureshwar Prasad Singh, aged about 42 years,
2. Sureshwar Prasad Singh, S/o Jagdish Singh, aged about 80 years,
Both are resident of Village Katinda, P.S. Lakhanpur, District Surguja, Chhattisgarh

---- Appellants

versus

1. The State of Chhattisgarh, through Secretary, Law and Legislative Affairs, Mahanadi Bhawan, New Raipur, Chhattisgarh
2. High Court of Chhattisgarh at Bilaspur, through Registrar General, Bilaspur, Chhattisgarh

--- Respondents

and

Writ Appeal No.224 of 2016

Triveni Prasad Ratre, S/o Dashru Ram Ratre, aged about 71 years,
R/o Village Jhulan, Police Station & Tahsil Pamgarh, Civil and
Revenue District Janjgir-Champa, Chhattisgarh

---- Appellant

versus

1. State of Chhattisgarh, through Secretary, Law and Legislative Affairs Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, Civil and Revenue District, Raipur, Chhattisgarh
2. High Court of Chhattisgarh at Bilaspur, through its Registrar General, High Court of Chhattisgarh, Bilaspur, Police Station Bodri, Civil and Revenue District Bilaspur, Chhattisgarh

3. Registrar General, High Court of Chhattisgarh, Bilaspur, Police Station Bodri, Civil and Revenue District Bilaspur, Chhattisgarh

--- Respondents

For Respective Appellants	:	Dr. Rajesh Pandey and Shri V.A. Goverdhan, Advocates
For Respondent/State	:	Shri Prafull N. Bharat, Additional Advocate General
For Respondent/High Court	:	Shri Ashish Shrivastava and Shri Praveen Das, Advocates

Hon'ble Shri Deepak Gupta, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

C.A.V. Judgment

Per Deepak Gupta, Chief Justice

1. The above-mentioned three writ appeals are being disposed of by the following common judgment as common questions of law and facts are involved in all the appeals and they arise out of one and same judgment delivered by Learned Single Judge of this Court on 18.2.2016.
2. Very important and interesting questions of law are involved in these three cases with regard to the amplitude and width of the powers of the High Court on the administrative side to exercise its jurisdiction under Articles 227 and 235 of the Constitution of India (henceforth 'the Constitution').
3. The factual matrix is that one Shri L.R. Thakur was posted as Second Additional District and Sessions Judge at Ambikapur. A complaint was received by the High Court from one Shri Sushil Kumar Chaturvedi, Advocate and Member of the State Bar Council that Shri L.R. Thakur had passed orders acquitting the accused, but there were no judgments on the facts. The Registrar (Vigilance) of this Court issued a memorandum to the District and Sessions Judge, Surguja at Ambikapur on 18.2.2008 to inquire into the

matter and submit his report. The District and Sessions Judge submitted his report to the High Court on the same day itself in which he clearly stated that no judgments were found on the records of such cases. The District and Sessions Judge in his report has stated that in two sessions trials, being Sessions Trial No.148 of 1999 and Sessions Trial No.71 of 1995, though Shri L.R. Thakur, Additional Sessions Judge has purportedly delivered the judgments, they were not available on the record as they had not actually been dictated, dated or signed. Thereafter, the matter was placed in a meeting of the Full Court of this Court on 4.3.2008. In the said meeting, the Full Court passed a resolution placing Shri L.R. Thakur under suspension in contemplation of departmental inquiry to be conducted against Shri L.R. Thakur in relation to the irregularities committed by him in discharge of his judicial work. At the same time, the Full Court took a decision to transfer the cases in question from the Court of Shri L.R. Thakur, Second Additional Sessions Judge, Ambikapur to the Court of District and Sessions Judge, Surguja at Ambikapur for their rehearing and disposal. At this stage, it may be pointed out that as far as disciplinary proceedings against Shri L.R. Thakur are concerned, they were duly completed and after receipt of the inquiry report in which Shri L.R. Thakur was found guilty, the Full Court recommended imposition of punishment of compulsory retirement upon Shri L.R. Thakur and vide order dated 22.3.2011 Shri L.R. Thakur was compulsorily retired from Chhattisgarh Higher Judicial Service.

4. The instant three writ appeals arise out of Sessions Trial No.148 of 1999 and Sessions Trial No.71 of 1995. The accused in Sessions Trial No.148 of 1999 filed two writ petitions, being Writ Petitions (Criminal) No.2796 of 2008 and 2238 of 2008. The accused in

Sessions Trial No.71 of 1995 filed a writ petition, being Writ Petition (Criminal) No.276 of 2010.

5. The main contention on behalf of the writ Petitioners was that an order was passed by the Second Additional Sessions Judge, Ambikapur acquitting the Petitioners from the charge framed against them and this itself would amount to a judgment and since the proceedings had come to an end, the High Court had no jurisdiction or competence to direct the transfer of the cases in question to the Court of District and Sessions Judge, Surguja at Ambikapur. It was also urged that the order passed on the administrative side has the effect of setting aside the judicial order and as such the same should be set aside.
6. On behalf of the High Court, it was urged that there was no judgment on record and the order passed by the Trial Court in which the Trial Court had stated that vide separate judgment of date the accused has been acquitted, was only a record of the proceedings and it did not amount to a judgment and, therefore, the High Court was fully competent to transfer the cases even on the administrative side. The Learned Single Judge, after discussing the entire law on the subject, came to the conclusion that there was no judgment on the record and since no judgment had been dictated in open Court nor was any judgment available on the record, the proceedings could not be said to be terminated and it cannot be said that the trial has come to an end. The Learned Single Judge held that since the trial had not come to an end, the High court was fully justified in passing the orders transferring the sessions trials. It was also held that the High Court, while exercising its power under Article 227 of the Constitution could transfer the cases from one Court to another Court. The writ

petitions were accordingly dismissed.

7. Aggrieved by the judgment of dismissal of the writ petitions, the Petitioners have filed the instant writ appeals.
8. Dr. Rajesh Pandey and Shri V.A. Goverdhan, Learned Counsel appearing for the respective Appellants/Petitioners submit that the order acquitting the Appellants/Petitioners amounts to a judgment in itself. In the alternative, they submit that even if the said order is not treated as a judgment, it brings the proceedings to an end and since the proceedings have ended, the High Court had no jurisdiction to order transfer of the cases. It is lastly submitted that assuming such powers exist, these powers can be exercised only on the judicial side and not on the administrative side.
9. On behalf of the High Court, it is submitted by Shri Ashish Shrivastava and Shri Praveen Das, Learned Counsel that since there is no judgment on record, the proceedings have not come to an end and as such the Full Court, on the administrative side, was fully justified and empowered to transfer the cases. It is also submitted that the proceedings have not come to an end and the order relied upon by the writ Petitioners is no judgment in the eyes of law and does not terminate the sessions trials.
10. To appreciate the rival contentions of the parties, it would be appropriate to quote the order passed on the daily order-sheet in Sessions Trial No.71 of 1995. The order reads as follows:

"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.”

The order passed in other case is dated 31.10.2007 and is virtually identical.

11. The Learned Single Judge has referred to various provisions of the Code of Criminal Procedure (henceforth 'the Code'). Section 235 of the Code envisages that the Judge, after hearing the arguments and points of law, should deliver a judgment in the case. In case, the accused is convicted, he has to be heard on the question of sentence, unless the Judge follows the procedure of Section 360 of the Code. Sub-section (1) of Section 353 of the Code provides that in every criminal trial the Presiding Officer shall pronounce the 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 part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader. Sub-section (2) of Section 353 of the Code requires that the Judge should ensure that the judgment is taken down in shorthand and thereafter he should sign every page of the judgment as soon as it is made ready, and he should write on it the date of the delivery of the judgment in open Court. Sub-section (3) of Section 353 of the Code requires that 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. Sub-section (4) of Section 353 of the Code requires that if only operative part of the judgment is announced then the whole judgment or a copy thereof should immediately be made available to the parties or their pleaders free of cost. Section 354 of the Code deals with contents of the judgment and clause (b) of sub-section (1) of Section 354 of the Code mandates that the judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision. It is also the requirement of this sub-section that the judgment must specify the offence for which the accused is convicted or of which he is acquitted. Section 378 of the Code deals with appeals against acquittals.

12. The Learned Single Judge held and rightly so, that immediately on the termination of the trial or soon thereafter the Criminal Court of original jurisdiction is required to pronounce judgment in open Court. He can do so either by delivering the whole 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.

13. As far as the present cases are concerned, judgments were admittedly not dictated in open Court. As per the order-sheets, the judgments were purportedly dictated by the Judge and signed and dated separately by him and, therefore, it is apparent that the Trial Judge could proceed either under clause (b) or clause (c) of sub-section (1) of Section 353 of the Code. The judgment had also to be made available to the parties free of cost. Admittedly, no

judgment has been found on the record. We are in full agreement with the Learned Single Judge that no judgment, as envisaged in the eyes of law, is available on the record of the Trial Court. At the same time, we cannot ignore the fact that in the daily order-sheets, it is noted that the accused have been acquitted of a particular charge framed against them. In the said orders recorded in the order-sheets, it is specifically mentioned that the proceedings have been terminated and the files have been sent to the Record Room.

14. Reasons are the heart and soul of any judicial order. One expects that any order passed by any judicial or quasi-judicial authority, which effects the rights of the parties must contain reasons. An order which is without reasons is an anathema in any civilized judicial system. We have no hesitation in agreeing with the Learned Single Judge that the order passed on the order-sheet does not amount to a judgment. It does not give facts. It does not deal with the evidence. It does not deal with the contentions of the parties. It does not give any reasons. However, it does say that the accused have been acquitted of the charge framed against them and the proceedings have come to an end.

15. The issue that arises is whether this order brings the proceedings to an end or not. The Learned Single Judge relied upon a large number of judgments to hold that a judgment must be complete, it must have point(s) for determination, decision thereon and reasons for such a decision. We have no quarrel with this well established principle of law. It goes without saying that a judgment must contain reasons so that the higher Court is able to appreciate what weighed with the Trial Court while delivering its judgment. We agree with the findings of the Learned Single Judge and with the law laid down in this regard in various judgments cited before the

Learned Single Judge and also before us such as **Baldeo v. Deo Narain**, AIR 1954 Allahabad 104, **Ratia Mohan v. The State of Gujarat**, AIR (56) 1969 Gujarat 320, **Nathusing Vridhsingh v. Vasantlal R. Shah**, AIR 1968 Gujarat 210, **Jahri Lal v. Emperor**, AIR 1930 Patna 148, **State of Punjab v. Jagdev Singh Talwandi**, (1984) 1 SCC 596 and **Ramautar Thakur v. State of Bihar**, AIR (44) 1957 Patna 33.

16. Having held so, we are clearly of the view that even if there is no judgment, the order passed by the Trial Court has brought the proceedings to an end. The order very clearly states that the accused have been acquitted. The order very clearly states that the proceedings have come to an end. The order also clearly states that the files have been consigned to the Record Room. This order is on the face of it totally illegal. We are clearly of the view that the manner in which the Trial Court passed this order without there being any written judgment on record clearly reflects gross judicial indiscipline. We would even go to the extent that it reflects judicial dishonesty and corruption. The Trial Judge recorded something in the order which was totally false and incorrect. He had not dictated the judgment. Therefore, the question of dating and signing the same did not arise.

17. Having held so, we cannot ignore the fact that there is an order on record which purports to acquit the accused, it purports to terminate the proceedings and it sends the record of the proceedings to the Record Room. The question that arises is whether the High Court on the administrative side could have transferred the cases in question to another Court.

18. To appreciate the arguments advanced, it would be relevant to refer

to Articles 227 and 235 of the Constitution. The High Courts are vested with wide powers of superintendence under Article 227 of the Constitution. Article 227 of the Constitution envisages superintendence not only on the administrative side but also superintendence on the judicial side. Every High Court in the exercise of its jurisdiction under Article 227 of the Constitution is entitled to correct any error including errors in the judicial orders in respect of Courts and Tribunals functioning throughout the territory in relation to which it exercises jurisdiction. Clause (1) of Article 227 of the Constitution is very widely worded and the powers are extremely wide. Clause (2) of Article 227 of the Constitution deals with the administrative powers of the High Courts to call for returns, make and issue general rules, prescribe forms for regulating the practice and proceedings of such Courts and prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts. As far back as in 1953, the Apex Court in **Banerjee, D.N. v. P.R. Mukherjee, AIR 1953 SC 58** held that the High Court could exercise power of judicial revision also. This judicial pronouncement still holds the field and there is no dispute with regard to the same. The High Court is empowered under Article 227 of the Constitution to ensure that the inferior Courts and Tribunals function within the bounds of their authority and they perform their duties in the manner prescribed by law. We have, therefore, no hesitation in holding that the High Court does have the power to correct any illegal orders passed by an inferior Court or Tribunal falling in its jurisdiction.

19. Dr. Rajesh Pandey, Learned Counsel appearing for the respective Appellants submitted that as far as the proceedings in question are concerned, they have come to an end and, therefore, the question

of their transfer does not arise.

20. Shri Ashish Shrivastava and Shri Praveen Das, Learned Counsel appearing for the High Court submit that the order which we have quoted above is only an order regarding the proceedings and it is not a judgment and, therefore, the proceedings have not come to an end.

21. We have given our careful consideration to the submissions of the parties. At the outset, we may make it clear that we do not agree with the submission of Learned Counsel Dr. Rajesh Pandey that the High Court cannot pass orders on the administrative side to transfer the cases. On many occasions, when new Courts are established or when Presiding Officer of a particular Court is not available for long length of time, cases are transferred from one Court to the other Court on the administrative side. There may also be some exceptional cases where the High Court would be justified in transferring the cases on the administrative side due to some facts being brought to the notice of the High Court. To give an example, suppose it comes to the knowledge of the High Court that a Presiding Judge in the subordinate Court is hearing a matter in which he has a personal interest or some of his close family members have a personal interest in the said matter, the High Court may immediately transfer such a matter even on the administrative side. To give another example, suppose a complaint is made to the Chief Justice of the High Court or to a Portfolio Judge that bribe has been given to a particular Judge who is going to deliver the judgment the next day then the High Court may decide to stay the order and transfer the proceedings even on the administrative side. This can be done in the interest of justice. However, we are not in agreement with the submission of Learned

Counsel for the High Court that the proceedings have not come to an end. Obviously, a matter can only be transferred if it is pending. If the case stands disposed of then there is nothing left to be transferred. If an order, which is brought to the notice of the High Court, is grossly illegal and perverse as in the present case, the High Court can take *suo motu* action and set aside such an order, but such an order can be set aside by the High Court only on the judicial side and not on the administrative side. The power to transfer a case may be exercised on the administrative side, but when the order of the Court has to be set aside, that can only be set aside by the Court after registering a *suo motu* petition, issuing notice to the affected parties, hearing them and thereafter on the judicial side such an illegal order can be set aside. This, in our opinion, cannot be done on the administrative side.

22. In the present case, we are faced with a situation where the High Court has transferred the cases without setting aside the order acquitting the accused and terminating the proceedings. This order may be illegal and bad in law. But, as long as the order is on the record, how can there be another parallel set of proceedings. We also fail to appreciate how the transferee Judge can now rehear the cases and pass fresh judgments therein, when the order-sheets show that the accused have been acquitted and the cases have been terminated and the records have been sent to the Record Room. These would be totally inconsistent and contradictory orders in the same cases.

23. We may make it clear that we are in agreement with the Full Court as well as the Learned Single Judge with regard to the action which had to be taken. However, the action has not been taken in a lawful manner. Therefore, though the action may be justified, the

manner in which it has been taken is not in accordance with law and, therefore, the same will have to be set aside. In our view, proper course for the Full Court would have been to take disciplinary action against the Presiding Officer under Article 235 of the Constitution. As far as the judicial order was concerned, the proper remedy was to treat the report of the Registrar (Vigilance) as a *suo motu* petition, call for the records of the cases, set aside the orders and thereafter transfer the cases for rehearing.

24. We are not at all impressed with the arguments of Shri Ashish Shrivastava, Learned Counsel for the High Court that this order of transfer has been passed in exercise of jurisdiction vested in this Court under Article 235 of the Constitution. Article 235 of the Constitution deals with control over the District Courts and Courts subordinate thereto. The High Court can exercise control over the subordinate Courts, but the article itself is clear that this control relates to posting, promotion, grant of leave etc. and there can be no manner of doubt that control under Article 235 of the Constitution is in the nature of disciplinary control over the Judicial Officers and ministerial staff of the subordinate Courts. In this behalf, we make reference to a judgment of the Apex Court in **The State of West Bengal v. Nripendra Nath Bagchi, AIR 1966 SC 447** in which the Apex Court held as follows:

“16. Mr. Sen argues somewhat syllogistically as follows: Under clause (1) of the Article no person in the service of the Union or the State can be dismissed or removed by an authority subordinate to that by which he is appointed. Under cl. (2) no such person can be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause. Reading the above with Arts. 233 and 234 he contends, and rightly, that a District Judge

or a Judge subordinate to the District Judge cannot be dismissed or removed by any authority other than the Governor. Mr. Sen argues that this power of the Governor determines that the enquiry must be made by or under the directions of the Governor or the Government. To lend support to this contention Mr. Sen draws pointed attention to provisos (b) and (c) to cl. (2). He says that by reason of proviso (b), cl. (2) does not apply if the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that it is not reasonably practicable to give to that person an opportunity of showing cause and under cl. (3) the decision of that authority is made final. Again, by the proviso (c), says he, the Governor may dispense with the enquiry altogether if he is satisfied that in the interest of the security of the State it is not expedient to give to any person an opportunity of showing cause. Mr. Sen contends that as the Governor alone can appoint or dismiss or remove District Judges and as he alone can decide whether, for any of the two reasons mentioned in provisos (b) and (c) an opportunity to a District Judge of showing cause against the charges levelled against him shall be denied, the Governor alone can initiate enquiries and cause them to be held and the High Court cannot claim to hold them. In this way, he contends, the extent of control exercisable by the High Courts under Art. 235 must be so cut down as to keep disciplinary jurisdiction out."

- 25.** The above-quoted judgment leaves no manner of doubt that Article 235 of the Constitution basically deals with the services in the subordinate Courts and not the judicial administration of the Courts. The power of judicial administration is vested in the High court under Article 227 of the Constitution and the power of service administration over the subordinate Courts is vested in the High Court under Article 235 of the Constitution. Furthermore, under

Article 227 of the Constitution, the High Court can exercise its power of superintendence not only over Courts but also over Tribunals within its jurisdiction. Under Article 235 of the Constitution, the High Court exercises control only over the Courts subordinate to it. We have no doubt in our mind that Article 235 of the Constitution has no application in the instant case.

26. In view of the above discussion, we are constrained to set aside the impugned judgment of the Learned Single Judge and we also hold that the action of the High Court insofar as it relates to transfer of Sessions Trial No.148 of 1999 and Sessions Trial No.71 of 1995 is illegal and is accordingly set aside. We make it clear that the remaining action taken by the High Court on the administrative side against the concerned Judicial Officer Shri L.R. Thakur is absolutely justified and that is not even a matter of dispute before us.

27. Having held so, we cannot let the matter rest here. This matter has been argued on a number of occasions and in fact it was heard in part for the first time on 20.7.2016 and on that date only we had in no uncertain terms told Learned Counsel for the Appellants/Petitioners that if need be this Court on the judicial side may exercise its powers under Article 227 of the Constitution to set aside the orders passed by the Trial Court.

28. In view of the above discussion, we are clearly of the view that the order dated 28.1.2008 passed in Sessions Trial No.71 of 1995 and the order dated 31.10.2007 passed in Sessions Trial No.148 of 1999 are wholly illegal. They have been passed without there being any judgments on record. The Presiding Officer acted dishonestly and made a false statement in the order-sheets that the judgments have been pronounced, signed and dated. In fact, there

is no judgment on record. Though we have held that these orders could not be set aside on the administrative side, we are clearly of the view that such an illegal, perverse and dishonest order cannot be permitted to remain on the record. We had heard Learned Counsel for the Appellants/Petitioners also and no serious argument in this regard has been raised before us. Since there is no judgment on record, we set aside the order dated 28.1.2008 passed in Sessions Trial No.71 of 1995 and the order dated 31.10.2007 passed in Sessions Trial No.148 of 1999 in exercise of powers vested in this Court under Article 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure. The records of the sessions trials be sent to the concerned Court which shall, after receipt of the records of the sessions trials, issue fresh warrants against the accused and after ensuring their presence, the Trial Court shall hear arguments in the matters and thereafter decide the same afresh. We make it clear that there shall be no fresh or *de novo* trials and the Learned Sessions Judge shall only proceed from the stage of hearing arguments in the sessions trials.

29. Consequently, all the three writ appeals are disposed of in the aforesaid terms.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE