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**(2010) 10 P&H CK 0217**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Criminal Revision No. 2194 of 2008**

Bharti Arora

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision :** 14-10-2010

**Acts Referred:**

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18

**Citation :** (2010) 10 P&H CK 0217

**Hon'ble Judges :** Ajai Lamba, J

**Bench :** Single Bench

**Advocate :** S.K. Garg Narwana, for the Appellant; Tarun Aggarwal, D.A.G. Haryana, for the Respondent

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## Judgement

Ajai Lamba, J.—The question posed before this Court for determination is whether it is correct, proper and legal for a trial Court to hear arguments, prepare and sign a judgment and put it in a sealed cover, in view of transfer of Presiding Officer, to be pronounced by the successor Presiding Officer, in case an accused, despite summoning, does not appear before it ?

2. Challenge in this petition is to order passed by the Presiding Officer, Special Court, Kurukshetra, dated 30.5.2008, which reads as under:

Smt. Bharti Arora, S.P., is again not present in person in spite of opportunities given to her for personal hearing. Neither she is present nor any application for exemption has been moved on her behalf. DSP Ram Phal is also not present and no application for his exemption has been moved.

Record shows that a number of times opportunities were granted to Smt. Bharti Arora S.P. to appear in person for her personal hearing, but not even once she has appeared, which shows that neither she wants to avail any opportunity of personal hearing nor wants to appear in person before the Court. No person is above law. Since Smt. Bharti Arora SP fails to appear in person and also to avail opportunity of hearing, I proceed to pronounce the order in the case, as the

arguments have already been heard.

Before the order could be pronounced, learned Counsel for Smt. Bharti Arora SP has raised objection that in sensitive matters, order should not be pronounced after receipt of transfer orders by the Officer. It is true that transfer orders have been received by me. It is worthwhile to point it out here that after dismissal of revision petition before the Hon"ble High Court moved by Smt. Bharti Arora, SP, the next date fixed before this Hon"ble Court was 20.05.2008 on which date learned Counsel were told to come prepared with arguments on 22.05.2008. Arguments were duly advanced by all the three Counsel and the case was adjourned to 24.5.2008 for orders. Since Smt. Bharti Arora, SP did not appear in person, she wanted personal hearing which was granted to her for 27.5.2008, 28.05.2008, 29.5.2008 and even for today i.e. 30.05.2008. Every time, application for exemption was moved. No instructions of Hon"ble High Court have been shown by Sh. J.S. Virk, Advocate, vide which any Officer has been directed not to pass any order after receipt of transfer orders. The Officer or the Court does not become functus officio as the day-to-day Court work is going on and I would relinquish the charge on 2.6.2008. It is worthwhile to mention here that arguments have already been advanced and the case was also fixed for orders. It is also important to mention here that order has already been dictated and typed. To avoid any lapse on my part, I put the signed order in sealed cover. Since learned Counsel has objected not to pronounce the order, I refrain myself from doing so. Hence, it is hereby ordered that the order in the case signed by me be put in a sealed cover and placed on the main file.

Now adjourned to 4.6.2008 for appearance of Smt. Bharti Arora SP, Ramphal DSP and Ram Kumar, retired Inspector and for further proceedings.

Sd/-

(Sarita Gupta)

Presiding Officer,

Special Court, Kurukshetra

30.05.2008

3. At the point in time when the incident took place culminating in passing of the impugned order, the Petitioner, an Indian Police Service Officer, was posted as Superintendent of Police, Kurukshetra (Haryana).

4. The brief facts and circumstances of the case, which led to passing of the impugned order, are required to be noticed before the legal issue is dealt with. The brief facts and circumstances of the case emanating from the record, including the record summoned by this Court (received on 30.6.2010), are as under:

5. It seems that on 6.1.2005, Inspector Ram Kumar, along with Police Officials, was present at "T" point in Village Masana on G.T. Road, District Kurukshetra

(Haryana) in a Government vehicle, in connection with patrolling and crime checking. A secret information was received to the effect that Ran Singh, who was living in the fields along with his family, was indulging in sale of opium and on that day also, he was having a large quantity of opium with him and could be apprehended red handed. Finding the secret information to be reliable, intimation was sent to the Senior Officers. A raiding party was formed which reached near the residence of Ran Singh. Ran Singh was found sitting on the cow dung cakes near his residence. Ran Singh was apprehended and formalities, as required under the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short "the Act") were completed. After some time, Shri Virender Kumar Vij, DSP, reached the spot, who was apprised of the facts of the case. After verifying the facts, the DSP directed conduct of search.

6. As per recovery memo, Ran Singh was found sitting near cow dung cakes near his residence, while he had covered himself with a blanket. With the help of Police Officials, he was apprehended and on opening the blanket wrap, he was found holding a plastic bag, white in colour, in his right hand, which was taken into possession. The plastic bag was searched in the presence of the DSP from which opium weighing 8 Kgs. 700 grams was recovered. FIR No. 8 dated 6.1.2005 for commission of offence u/s 18 of the Narcotics Drugs and Psychotropic Substances Act, 1985, was registered at Police Station, Shahbad, District Kurukshetra.

7. As per the report of the Forensic Science Laboratory, Haryana, Madhuban, Karnal, the material recovered was found to be opium.

8. It seems that on 8.1.2005, an application of Ran Singh was received through some relative that he was innocent and opium had been planted upon him by one Surjeet Singh and others. Petitioner-Bharti Arora, IPS, then posted as Superintendent of Police, Kurukshetra, taking cognizance of the application, marked the inquiry to Shri Ram Phal, DSP, Pehowa. The inquiry was completed by DSP Ram Phal on the same day i.e. 8.1.2005 and report was submitted to the effect that Ran Singh was innocent, and the opium had been planted by Surjeet Singh, Angrez Singh and Mehar Deen.

9. On 9.1.2005, the inquiry report was conveyed to the Petitioner. On the same day, discharge report of accused-Ran Singh was prepared and an application for his discharge was filed in the Court on 10.1.2005, which was dismissed by the Presiding Officer, Special Court, Kurukshetra, on 20.1.2005.

10. On completion of investigation, final report u/s 173, Code of Criminal Procedure, 1973, was prepared and filed in Court. In the conclusion drawn by the Investigating Agency, Surjeet Singh, Angrez Singh and Mehar Deen were nominated as accused. The name of accused-Ran Singh was not even mentioned in column No. 2 of the said report. At that juncture, the question arose whether Ran Singh was an accused or not. The issue has been dealt with by the trial Court and decided vide order dated 27.9.2005. It has been concluded that Ran

Singh was the prime accused and could not be discharged.

11. On conclusion of the trial, the Court vide judgment dated 22.2.2007 held Ran Singh to be guilty of having committed the offence u/s 18 of the Act, and acquitted Surjeet Singh, Angrez Singh and Mehar Deen.

12. While dealing with the evidence and material produced during trial, observations have been made in paras 41, 42 and 48 of judgment dated 22.2.2007, in the context of false implication of Surjeet Singh, Angrez Singh and Mehar Deen. On consideration of various facts and circumstances, it has been observed in the judgment that the Petitioner wanted to save accused-Ran Singh. As per her directions, the Police Department came into action and a hurried inquiry was conducted by DSP Ram Phal, who submitted the report as per wishes of the Superintendent of Police. Taking advantage of enmity between Ran Singh and Surjeet Singh, the names of accused Surjeet Singh, Angrez Singh and Mehar Deen, were involved and after arresting them, discharge report of prime accused was submitted by the Investigating Agency within three days of recovery of commercial quantity of opium. The facts and circumstances show connivance of Petitioner-Smt. Bharti Arora, the then Superintendent of Police, Kurukshetra, Ram Phal, the then Deputy Superintendent of Police and Ram Kumar, Investigating Officer, in shifting the recovery of commercial quantity of opium to the plantation by Surjeet Singh with the help of accused Angrez Singh and Mehar Deen.

13. Defence of the Petitioner in the context of allegations of committing offence u/s 58 of the Act, or legality of judgment of trial Court acquitting the persons nominated as accused by the Investigating Agency, is not at issue before this Court, therefore, only the gist of facts has been considered to project the entire sequence of events.

14. The sequence of events indicates that notice u/s 58 of the Act was given to the Petitioner under order dated 26.2.2007. Reply to the notice was furnished by the Petitioner on 12.4.2007.

15. The Petitioner carried Criminal Revision Petition No. 956 of 2007 (Ms. Bharti Arora v. Presiding Officer, Special Court, Kurukshetra and others) to this Court against the issuance of notice u/s 58 of the Act. At the point in time when the revision petition was filed and the matter was heard for the first time, personal appearance of the Petitioner before the trial Court was dispensed with, vide order dated 25.5.2007 by this Court.

16. The revision petition was dismissed vide order dated 19.5.2008. It has been held that, prima facie, the allegations made against the Petitioner cannot be said to be false or not based on material available on record. The facts indicate that the Petitioner cannot be said to have prima facie acted in good faith so as to claim protection u/s 69 of the Act. The order of this Court has attained finality as it was not challenged.

17. In view of the pendency of the revision petition, the trial could not proceed further. The proceedings were undertaken by the trial Court against the Petitioner and the other two Police Officials after 19.5.2008.

18. After dismissal of the revision petition from the High Court, when the matter was taken up on 20.5.2008, the following order was passed by the trial Court:

Further orders not received from the Hon"ble High Court. However, learned Counsel have stated at bar that the Crl. Revision No. 956 of 2007 has been dismissed by the Hon"ble High Court. Order dated 8.6.2007 reveals that the personal appearance of Bharti Arora S.P. and Ramphal D.S.P. was exempted till further orders. A date is requested for for the presence of Bharti Arora S.P. and Ramphal D.S.P. by their learned Counsel. An adjournment also sought for arguments by learned Counsel for the parties. In view of this, now to come upon 22.5.2008 for the presence of Bharti Arora S.P. and D.S.P. Ramphal as well as for arguments on the notice u/s 58 of the Act.

19. Order dated 22.5.2008 indicates that Shri J.S. Virk, Advocate, appeared as Counsel for the Petitioner. The Petitioner did not appear even though order dated 20.5.2008 required the presence of Petitioner in court. For appearance on 22.5.2008, the Petitioner filed an application dated 20.5.2008 to the effect that an urgent and confidential message had been received from the Inspector General of Police, Railways and Technical Services, Haryana, with a direction to visit Jaipur to meet Investigating Officers in connection with some investigation. When the matter was taken up on 22.5.2008, Counsel for the Petitioner gave an undertaking on the application filed in Court, in the following terms:

I undertake to appear on behalf of Mrs. Bharti Arora, I.P.S., Supdt. of Police, Railways Haryana, Ambala Cantt. during her absence of personal appearance and shall be called to appear in person when essential for proceedings.

20. Since the Counsel for the Petitioner and other Police Officials were put to notice to prepare arguments, the arguments were heard by the trial Court on 22.5.2008. The personal appearance of the Petitioner was exempted. The case was adjourned for 24.5.2008, for pronouncement of orders. Counsel for the Petitioner was directed to ensure the presence of the Petitioner, on 24.5.2008.

21. On 24.5.2008, when the order in the context of notice u/s 58 of the Act was to be pronounced, the Petitioner, again, did not appear. Counsel for the Petitioner presented an application, purportedly received by fax, seeking exemption from personal appearance on the ground that the Petitioner was busy in the context of her duties. The order notices the earlier conduct of the Petitioner in having disregarded the earlier directions for appearance and repeated applications having been filed by the Petitioner for exemption from personal appearance. The order also notices that the arguments on the notice u/s 58 of the Act had already been heard on 22.5.2008 and the case had been adjourned for orders. Be that as it may, the case was, again, adjourned for pronouncement of orders, for 27.5.2008.

22. An application was, again, filed by the Petitioner stating that she had received an intimation from her Counsel to appear in person on 27.5.2008. The Petitioner, however, made a reference to her duties as Superintendent of Police, in the context of Gujjar agitation. The Petitioner also explained her absence on earlier occasions in the context of her duties. Vide the application, the Petitioner, again, prayed for exemption from personal appearance, for 27.5.2008, and sought adjournment for one week. In the concluding portion of the application, the Petitioner asked for an opportunity of personal hearing.

23. The trial Court considered the application of the Petitioner and directed her Counsel to produce the Petitioner on 28.5.2008, in case she wanted to explain her version before the Court. The Petitioner was directed to appear in person on 28.5.2008 and the case was yet again fixed for pronouncement of orders.

24. In the context of directions for appearance on 28.5.2008, the Petitioner made yet another application dated 27.5.2008, saying that she had received an intimation from her Counsel to appear in person on 8.5.2008. The Petitioner, however, narrated her duties in connection with the Gujjar agitation. The Petitioner, again, requested for exemption from personal appearance for 28.5.2008 and sought an adjournment for another week with a further prayer that any order may be passed only after giving the Petitioner an opportunity of personal hearing.

25. Considering the request of the Petitioner, the trial Court adjourned the matter to the next date i.e. 29.5.2008, for personal appearance of the Petitioner before pronouncing the order. The trial Court has recorded in order dated 28.5.2008 that perusal of record showed that the Petitioner did not want to appear before the Court on one pretext or the other. The order further records that after dismissal of the revision petition on 19.5.2008 by the High Court, the Petitioner had not put in appearance even once. The order also records that the arguments had already been addressed by the Counsel for the Petitioner. Be that as it may, the trial Court, again, adjourned the matter to 29.5.2008.

26. Order dated 29.5.2008 indicates that neither the Petitioner put in appearance nor she filed an application for exemption from personal appearance. Be that as it may, the trial Court, again, gave one more opportunity to the Petitioner to appear in person for personal hearing, if she wanted and, in case, the Petitioner did not want to appear, the trial Court made it clear to the Counsel for the Petitioner that it would be presumed that she had nothing to say, in person, and that the Petitioner did not want to avail of any opportunity of hearing. The matter was adjourned to 30.5.2008.

27. On 30.5.2008, the impugned order was passed, which has been extracted in earlier part of the judgment. Considering the sequence of events and facts and circumstances of the case, the trial Court put the signed order in a sealed cover and the case was adjourned to 4.6.2008. Order dated 4.6.2008 shows that the Petitioner, again, did not appear. On the adjourned date i.e. 6.6.2008, the

Petitioner appeared when the new Presiding Officer had taken charge.

28. Learned Counsel for the Petitioner, in challenge to the impugned order, has argued that absence of the Petitioner was unintentional and was for reasons given in the applications for exemption from personal appearance. The Petitioner wanted to explain her version, in person, for which opportunity was sought, however, has been denied.

29. Learned Counsel for the Petitioner further contends that vide applications dated 26.5.2008 and 27.5.2008, the Petitioner sought one weeks time, which was not given, rather, the trial Court granted adjournment only for a short period. It is denial of right of the Petitioner to be heard and, therefore, the order is bad in law.

30. Learned Counsel for the Petitioner has argued that the presence of the Petitioner could have been procured by coercive method. Sealed cover procedure is not known to the Code of Criminal Procedure. The impugned order is not in terms of provisions of Section 353 of the Code of Criminal Procedure and, therefore, the impugned order is illegal. Learned Counsel for the Petitioner has relied on Surendra Singh and Others Vs. The State of Uttar Pradesh, .

31. Learned Counsel for the Respondent-State has argued that the Petitioner, who is a senior Officer, has behaved in a most irresponsible manner. Notice u/s 58 of the Act was served on the Petitioner to which a detailed reply was given by the Petitioner under her own signatures. Other than projecting the case herself by way of filing a detailed reply, Counsel for the Petitioner had addressed arguments on 22.5.2008 and, therefore, in such circumstances, there was no occasion for the Petitioner to seek personal hearing. The Petitioner wanted to delay the proceedings on one pretext or another and conduct of the Petitioner has been mala fide.

32. Learned Counsel for the Respondent-State further contends that on what issue the Petitioner wanted to address the trial Court, has not been given in the applications. Learned Counsel for the Respondent-State contends that the judgment on which reliance has been placed by the learned Counsel for the Petitioner, is distinguishable and there is no bar under the provisions of Section 353 of the Code of Criminal Procedure, to adopt the procedure, as adopted by the Trial Court. Learned Counsel for the Respondent-State has further argued that the Petitioner did not have any intention of appearing before the trial Court. Adjournments and exemption from personal appearance were sought only so as to delay the proceedings.

33. Before dealing with the contentions of the learned Counsel for the parties, the provisions of Section 353, Cr.P.C., are required to be noticed, which read 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.

34. Before proceeding further, provisions of Section 465, Code of Criminal Procedure, are also required to be referred. Section 465, Code of Criminal Procedure, reads as under:

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

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

35. Learned Counsel for the Petitioner has relied on the case of Surendra Singh (supra) to contend that the procedure adopted by the trial Judge is illegal and it is only the Presiding Officer of the Court who would have pronounced the judgment in terms of Section 353, Code of Criminal Procedure.

36. A perusal of the judgment of the Hon'ble Supreme Court of India in Surendra Singh's case (supra), indicates that the facts that came up for consideration were entirely different. A Division Bench consisting of Kidwai and Bhargava JJ. of the High Court at Allahabad (Lucknow Bench), heard the appeal on 11.12.1952 and the judgment was reserved. Before the judgment could be pronounced, Bhargava J. was transferred to Allahabad. While at Allahabad, a joint judgment, purporting to be on behalf of himself and his brother Judge (Kidwai J.) was dictated, signed and sent to Lucknow for pronouncement by Kidwai J. Bhargava J. died on 24.12.1952 before the judgment was delivered. After his death on 5.1.1953, Kidwai J. delivered the judgment of the Court, after signing and putting date on it. The date that was placed on the judgment was 5.1.1953 when Bhargava J. was not even alive. Any one reading the judgment and not knowing the facts would conclude that Bhargava J. was party to the delivery of judgment on 5.1.1953. The impact of the judgment was that the sentence of death was confirmed on the Appellants. It is in the backdrop of these facts that the Hon'ble Supreme Court of India considered "whether this "judgment" could be validly delivered after the death of one of the two Judge who heard the appeal" (refer to para-2 of the judgment).

37. In the conclusion, it has been held in the following words (in para-16):

16. Our conclusion is that the judgment which Kidwai J. purported to deliver on 5th January, 1953, was not a valid judgment because the other member of the Bench died before it could be delivered.

38. The entire context in which the Hon'ble Supreme Court of India considered the issue in Surendra Singh's case (supra) is, if one of the Judges of the Bench

is not alive, or has retired, would the judgment delivered by the surviving Judge on a subsequent date be a valid judgment ? The facts of the present case are entirely different and have to be considered accordingly.

39. When the facts are collectively considered, after dismissal of the revision petition of the Petitioner on 19.5.2008, the Petitioner did not appear till 6.6.2008. The arguments were finally heard on 22.5.2008 and the case was fixed for pronouncement of orders, for 24.5.2008, for the first time. The Petitioner filed applications for exemption from personal appearance for 22.5.2008, 24.5.2008, 27.5.2008 and 28.5.2008. The Petitioner neither appeared nor filed any application for exemption from personal appearance for 29.5.2008 or 30.5.2008. The case was fixed for pronouncement of orders for 24.5.2008, 27.5.2008, 28.5.2008, 29.5.2008 and 30.5.2008.

40. Counsel for the Petitioner, on behalf of the Petitioner, had given an undertaking on 22.5.2008, in writing, as noticed in earlier part of the order, that the Petitioner would be called to appear in person when essential for proceedings. It is in the context of the above given facts and circumstances that the issue is required to be considered.

41. Having perused the entire record, I find that the same Presiding Officer conducted the entire proceedings from passing of order dated 27.9.2005, when it was found that Ran Singh was the prime accused and could not be discharged, till finalisation of trial under the Act of Ran Singh, Surjeet Singh, Angrez Singh and Mehar Deen, culminating in judgment of conviction of Ran Singh dated 22/24.2.2007. The same Presiding Officer issued notice u/s 58 of the Act to the Petitioner and her accomplices and concluded the proceedings, culminating in passing of order dated 30.5.2008, which has been impugned in this criminal revision petition. The final order u/s 58 of the Act has been passed and put in a sealed cover. The proceedings at this point in time, therefore, are pending only for pronouncement of the order. It, thus, transpires that the Presiding Officer, who passed the impugned order, had the occasion to see the demeanor of the witnesses during the entire conduct of trial.

42. The Presiding Officer was transferred. Before that time, however, the arguments had already been heard and the case had already been fixed for pronouncement of the order. The final order was not pronounced on account of conduct of the Petitioner in not appearing before the Court despite directions, which admittedly, were conveyed to the Petitioner. Five opportunities were given to the Petitioner to appear to face pronouncement, however, the Petitioner failed to do so, so as to defeat the process of Court. It is under such circumstances that the judgment, which was already ready on 24.5.2008, was signed and put in a sealed cover for pronouncement by the successor Judge and for further proceedings, on 30.5.2008.

43. I am of the considered opinion that the conduct of the Petitioner, as brought out from various orders passed by the trial Court and by the applications filed by

the Petitioner from time to time to seek exemption from personal appearance, indicate that the Petitioner lacks bona fide. The Petitioner has tried to avoid the issue and to claim its deferment. Counsel for the Petitioner gave in writing on 22.5.2008 that the Petitioner would be produced when essential for the proceedings. Despite such undertaking, however, the Petitioner was not produced.

44. Reasons assigned by the Petitioner for nonappearance are in relation to her duties in office, on account of some agitation or other exigencies of service. The Petitioner has not anywhere shown that she had approached her senior officers with a plea that she be given leave to appear before the Court, as per the directions of the Court. This clearly establishes that the conduct of the Petitioner lacks bona fide.

45. I am constrained by the facts and circumstances of the case to say and hold that the duty of the Petitioner was first to have regard for the process of law, particularly when the Petitioner herself is an Indian Police Service Officer. The very purpose of granting exemption from personal appearance is to give latitude to an accused to enable the Advocate to appear on his/her behalf while the presence of the accused is not absolutely necessary. Such a latitude/discretion was shown by the Court towards the Petitioner. When the presence of the Petitioner was found essential for the proceedings, the Petitioner was summoned, however, the Petitioner did not care for the same and filed one application after the other seeking exemption from personal appearance, on one pretext or the other. So much so, for appearance on 29.5.2008 and 30.5.2008, even the application for exemption from personal appearance was not filed. This Court is required to consider as to under the above circumstances created by the Petitioner, whether the Court is required to wait till the convenience of the accused permits ?

46. I am also of the considered opinion that the request of the Petitioner for personal hearing was only a ruse so as to defeat the process of law. In applications dated 26.5.2008 and 27.5.2008, to justify past and future absence in Court, at the end two lines have been added to the following effect:

Any order may kindly be passed only after giving the undersigned opportunity of personal hearing in the interest of natural justice.

47. It is an admitted fact that detailed reply to the notice u/s 58 of the Act was given by the Petitioner herself, under her signatures. It is further an admitted fact that the Petitioner engaged a Counsel, who appeared for the Petitioner and addressed arguments on behalf of the Petitioner, where after pronouncement of the order was the only formality that remained for conclusion of the case. On what issue the Petitioner wanted to address the Court is not known. The Petitioner only sought opportunity of personal hearing vide applications dated 26.5.2008 and 27.5.2008. No such request was made in applications filed for exemption from personal appearance on 22.5.2008 and 24.5.2008. The request for personal hearing, despite the fact that the Petitioner had engaged a Counsel

who had already addressed arguments on 22.5.2008, was made, in my opinion only to create grounds for delay in proceedings, which has defeated the process of the Court and the process of law. The conduct of the Petitioner establishes that she has made an attempt to it Bench hunt so that the case is not decided by the Presiding Officer before whom the entire proceedings had taken place.

48. The contention of the learned Counsel for the Petitioner that an adjournment for a week was sought, which time, however, was not given, hence denial of opportunity of personal hearing, cannot be digested by this Court. The Petitioner was an accused before the Court and was required to behave as such, particularly considering her senior status in public service holding a post of responsibility. Holding a post of responsibility, however, does not arm the Petitioner with the discretion of filing applications for deferment of proceedings repeatedly and indefinitely. The procedure provided u/s 353, Code of Criminal Procedure, is sought to be abused by the Petitioner so as to defeat the purpose of trial itself. In the circumstances created by the Petitioner, the trial Court, adopted the procedure of signing, dating and putting the order in a sealed cover, to be pronounced by successor Presiding Officer. It has not been shown to this Court as to what prejudice has been caused to the rights of the Petitioner by following the procedure. Merely transfer of a Presiding Officer does not render the Court defunct.

49. Consideration of Section 353, Code of Criminal Procedure, shows that the Presiding Officer immediately after termination of trial or at some subsequent time of which notice shall be given to the parties or their pleaders, pronounce the judgment in open Court, as per procedure provided in Section 353 Sub-clauses (a), (b) and (c).

50. Sub-section (5) of Section 353, Code of Criminal Procedure, provides that if the accused is in custody, he shall be brought up to hear the judgment pronounced. Sub-section (6) of Section 353, Code of Criminal Procedure, provides that 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.

51. Proviso to Sub-section (6) provides 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 has the discretion, in order to avoid undue delay in the disposal of the case, to pronounce the judgment notwithstanding their absence.

52. Sub-section (7) of Section 353, Code of Criminal Procedure, clarifies that a judgment delivered by the criminal Court shall not be deemed to be invalid on account of absence of any party or his pleader on the day or from the place notified for the delivery of the judgment, or on the ground of any omission to serve or defect in service on the parties or their pleaders, or any of them.

53. Section 465, Code of Criminal Procedure, provides that no finding, sentence, order or judgment by a Court having competent jurisdiction shall be reversed or altered by a Court of appeal on account of any irregularity in judgment or other proceedings before or during trial unless failure of justice has in fact been occasioned on account of the irregularity.

54. Considering the provisions of Sections 353(7) and 465, Code of Criminal Procedure, collectively, it transpires that the Presiding Officer was within the ambit of propriety to have pronounced the judgment there and then on any of the dates after 22.5.2008. By 22.5.2008, all the proceedings had concluded, including final arguments and the case had been fixed for passing of orders for 24.5.2008. The Petitioner, while giving one excuse after another, did not appear thereby frustrating the process of Court and process of law, on account of which the impugned order has been passed.

55. Considering the provisions of Section 353, Code of Criminal Procedure, I find that there was no bar, prohibition, hindrance or obstacle for the trial Court to have adopted the measure adopted by it. As held above, the judgment could have been pronounced in the presence of the Counsel for the Petitioner. Conceivably, misconstruing the provisions of Section 353, Code of Criminal Procedure, the trial Court adopted the procedure of signing the judgment and affixing a date thereon and putting it in a sealed cover, to be pronounced by the successor Presiding Officer. There being no provision debarring the trial Court from adopting the procedure, I find no illegality in the conduct of the trial Court. The proceedings had concluded, the order had been prepared and was only to be pronounced, after affixing the signatures by the Presiding Officer.

56. The law has to be considered in the context of the above noticed facts so as to see whether failure of justice has been occasioned by the Court following the procedure, as followed.

57. The Hon"ble Supreme Court of India in Iqbal Ismail Sodawala Vs. The State of Maharashtra and Others, , considered the following issue:

Can a convicted person be said to be lawfully imprisoned if at the time of his conviction the trial judge dictates the judgment but does not sign the same because of its having not been transcribed is one of the questions which arises for determination in two petitions Nos. 1522 and 1523 of 1973 .....

While considering the above issue, the following has been held (relevant portion):

7. ... It is plain from the above provisions that the Presiding Officer of the trial Court at the time of the pronouncement of the judgment should date and sign it. The judgment of the trial Court represents the final episode in the trial of an accused. The provisions of the Code of Criminal Procedure contemplate that the judgment should be complete in all other respects by the time it is pronounced and all that need be done is that the Ppresiding Officer should insert the date and append his signature to it at time of the pronouncement..... Where a judgment

is merely dictated and not transcribed and as such not signed at the time of its pronouncement, it would not normally be possible to supply its copy without delay after pronouncement. As it is we find that in the present case the copy of the judgment was not supplied to the accused till February 19, 1973. The above delay of more than nine months in the supply of copy of the judgment of the trial Court discloses, in our opinion, a rather depressing state of affairs. If the judgment had been dictated by the time it was pronounced on May 12, 1972, it should not have taken more than a few days to transcribe the same and supply a copy of it to the accused. A delay of more than nine months in the supply of the copy of the judgment is wholly unjustified. We are given to understand that paucity of staff is mainly instrumental for the delay in the transcribing of the judgment and the supply of its copy.

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8. Question then arises as to whether the Appellant can be said to be not properly imprisoned if the trial Judge had merely dictated the judgment but not signed it because of its not having been transcribed at the time he pronounced it. So far as this aspect is concerned, we find that Section 537 of the Code of Criminal Procedure provides, inter alia, that subject to the other provisions of the Code, no finding, sentence - or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, unless such error, omission, irregularity has in fact occasioned a failure of justice. This Section is designed to ensure that no order of a competent Court should in the absence of failure of justice be reversed or altered in appeal or revision on account of a procedural irregularity. The Code of Criminal Procedure is essentially a Code of procedure and like all procedural law, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. At the same time it has to be borne in mind that it is procedure that spells much of the difference between rule of law and rule be whim and caprice. The object of the Code is to ensure for the accused a full and fair trial in accordance with the principles of natural justice. If there be substantial compliance with the requirements of law, a mere procedural irregularity would not vitiate the trial unless the same results in miscarriage of justice. In all procedural laws certain things are vital. Disregard of the provisions in respect of them would prove fatal to the trial and would invalidate the conviction. There are, however, other requirements which are not so vital. Non-compliance with them would amount to an irregularity which would be curable unless it has resulted in a failure of justice.

9. Question then arises as to whether the failure of a trial judge to sign the judgment at the time of its pronouncement because of its having not been transcribed is a procedural irregularity curable u/s 537 of the Code.....

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11. It would appear from the above that this Court considered noncompliance with the procedural requirement in the matter of signing of the judgment to be an irregularity which could be cured.

12. In view of what been stated above we are of the opinion that the failure of the learned Sessions Judge in not appending his signature to the judgment at the time it was pronounced because of the judgment having not till then been transcribed was a procedural irregularity which would not vitiate the conviction of the accused.

58. In Reference by District and Sessions Judge, Tellicherry, In Re: Reference by District and Sessions Judge, , Kerala High Court considered a reference made by the District and Sessions Judge at Tellicherry. In that case, the issue arose in the following terms:

2. Crl. Revision Petitions Nos. 42 of 1984, 64 of 1984 and 26 of 1985 were heard by Mr. P. Ramachandran Nair at a time when he was attending Courts. Orders were not pronounced in those cases till he was laid up. On 14- 10-1985 the Bench Clerk of the Second Additional District and Sessions Court handed over to the District and Sessions Judge a cover containing the orders in the above three cases signed by Mr. P. Ramachandran Nair on 30-9-1985. In the proceedings papers Sri. Ramachandran Nair has also written "orders passed - vide separate order" under his initials. On 30-9-1985 itself he has written "order handed over for pronouncing to the District Judge, Tellicherry, in view of my personal inconvenience/disability.

The issue has been considered and decided in the following terms (relevant portion):

4. .... In this case due to reasons beyond control the Second Additional Sessions Judge was not in a position to pronounce the orders. He has prepared the orders, signed them and made notes in the order sheets that orders are passed - vide separate orders, probably anticipating that he may be in a position to sit in Court and pronounce the orders himself. We are not now at the question of the propriety or otherwise of such an entry even before the matter was pronounced in open Court. The fact remains that in spite of what was written by the Second Additional District and Sessions Judge in the order sheets in the respective cases, the orders are not so far pronounced in Court.

5. When a Judicial Officer signs the order or judgment it becomes final so far as he is concerned. What then remains is only the formality of pronouncement in open Court by which alone the concerned persons will get notice of the disposal of the case. When a matter is heard by a Court interest of justice demands that decision on the matter will have to be pronounced. Otherwise the concerned parties will be put to serious prejudice and inconvenience. Courts are existing for

dispensation of justice and therefore in cases like this the Courts cannot be said to be powerless.

6. When something requires to be done in the ends of justice in the absence of specific Statutory Provisions the approach of the subordinate Courts should not be to plead helplessness on the ground that specific provision authorising the requisite action is lacking. The approach should be whether there is any Statutory prohibition which prevents the Court from doing what it considers necessary in the interest of justice and avoid harassment or prejudice. The provisions of the Code of Criminal Procedure or the Rules of Practice need not be taken as exhaustive in the matter of authorising things to be done under whatever contingency in the ends of justice. Courts are existing for dispensation of justice and avoid prejudice or harassment. Courts may have to deal with contingencies not contemplated by the framers of the Code and act in the interest of justice. Absence of specific provision should not fetter the hands of the Court in meeting out justice which is absolutely essential in given circumstances. What is necessary to be done in the interest of justice and not prohibited must be taken as permitted. Even though the existing inherent powers saved u/s 482 of the Code are available only for the High Courts, the subordinate Courts are also not powerless. They are also having what could be called auxiliary powers to do what is necessary for dispensation of justice even in the absence of specific provision if there is no prohibition.

7. There is no legal provision which says that a judgment or order in a criminal case prepared and signed by a Judicial Officer could be pronounced in Court only by him. When he is unable to sit in Court and pronounce the judgment or order there should not occur a stalemate. When pronouncement of the judgment or order is necessary there is no provision which prohibits his successor or some other Competent Officer pronouncing the same in Court. Such a power must be there for the proper dispensation of justice and the provisions of the Code must be taken to have authorised the same. Such a course is not going to cause prejudice to anybody. On the other hand it only accelerates dispensation of justice. Pronouncement of the order or judgment need not await the contingency of the selfsame Officer returning. In this case when this reference was made the District and Sessions Judge was not put in charge of the Second Additional Sessions Court and that was one of the reasons for the doubt entertained by him. Now he is put in charge of the Second Additional District and Sessions Court also. On that ground he could now pronounce the order.

The District and Sessions Judge is competent to pronounce the orders and he is directed to pronounce them after notice to parties. The reference is answered accordingly.

59. In *Kuldip Singh Vs. Prabhjot alias Silky*, , this Court considered a case wherein the Presiding Officer of a Court heard arguments and dictated the judgment, which was typed and announced on the date fixed, but did not bear the signatures of the Magistrate. The Magistrate passed away after a few days.

While dealing with the issue, the following has been held by this Court:

2. This is a case where arguments were heard, judgment was dictated and it was typed and thereafter announced as well on the date fixed but it did not bear the signatures of the Judicial Magistrate and he passed away after a few days.

3. The plea raised on behalf of the husband that it is no judgment and that the execution proceeding now pending were ipso facto illegal, is not acceptable. In *Iqbal Ismail Sodawala Vs. The State of Maharashtra and Others*, it was observed that the failures of the Sessions Judge in not appending his signatures to the judgment at the time it was pronounced because of the judgment having not till then been transcribed was a procedural irregularity which would not vitiate the conviction of the accused. Here in the case in hand, the judgment was typed and announced but it was with the Presiding Officer for the usual purpose of corrections and formal signatures and he having passed away before this could be done, would not render it ineffective.

60. In *State of Himachal Pradesh Vs. Surat Singh and etc. etc.*, , the Court considered the following issue:

2. In all these cases a common question of law is involved as to what is the effect of a judgment recorded and pronounced by a Magistrate and such Magistrate failed to sign the same before his death? Therefore, all the above-noted cases are being disposed of by this single Judgment.

While making reference to the judgments in (i) *Saru Smelting and Refining Corpn. Ltd. Vs. State*, , *Surendra Singh and Others Vs. The State of Uttar Pradesh*, , Privy Council in AIR 1938 292 (Privy Council) , *Vinod Kumar Singh Vs. Banaras Hindu University and Others*, , *Iqbal Ismail Sodawala Vs. The State of Maharashtra and Others*, and *Kuldip Singh Vs. Prabhjot alias Silky*, , the following has been held (in para- 34):

34. In all the cases before this Court, it is not denied that the judgments were pronounced by the learned Magistrate on the relevant dates recording the acquittal of the accused-Respondents of the offences charged against them. Unfortunately such judgments could not be signed by the learned Magistrate before his death which took place on 20-11-2001. The non-signing of the judgment, in view of the above-stated settled law, is only a procedural irregularity curable u/s 465 of the Code and would not vitiate the acquittal of the accused-Respondents.

61. In AIR 1938 292 (Privy Council) , the Court was dealing with a case wherein two Judges heard the matter. One of the Judges delivered the judgment, the other agreed with the same on 22.2.1933. One of the Judges, however, went on leave before signing the judgment. While considering the issue, however, in the context of provisions of Code of Civil Procedure, it has been held that the Court must have inherent jurisdiction to supply such a defect. The defect is merely an irregularity, not affecting the merits of the case or the jurisdiction of the Court,

and is no ground for setting aside the decree.

62. In *Re: Sankara Pillai alias Sankaranarayana Pillay*, the judgment was written and before delivery of the judgment, the Magistrate left, probably transferred, and another Magistrate was appointed in his place, who read out his predecessor's judgment and sentence and signed and dated it in open Court. An objection was raised that the Magistrate who had heard the case and written the judgment, could only pronounce it. The High Court of Madras, in the decision rendered on 26.2.1908, held that the course adopted by the successor Magistrate was not illegal or improper and under the provisions of Section 367, Code of Criminal Procedure, 1898 (Section 354(1), (2), (4) and (6), Code of Criminal Procedure, 1973), it is not necessary that the Presiding Officer of the Court who wrote the judgment should be the same person as the Presiding Officer, who is required to date, sign and pronounce it in open Court. It is an irregularity and did not cause prejudice to the accused.

63. In *Nur Muhammad Khan Vs. Empror*, the Court was considering a case wherein the Magistrate who tried the case had done everything in the case except delivering the judgment. The Magistrate could not come to the Court as he was injured in a motor accident and had to proceed to England on long leave. The following has been held (relevant portion):

.... The main ground raised in revision is that the trial was rendered absolutely void owing to the circumstance that the Magistrate did not pronounce judgment in open Court. It appears that Mr. Wijahat Husain who tried the case was so severely hurt in a motor accident after he had done everything in the case except delivering the judgment, that he was unable to come to Court and was obliged as soon as he was able to do so, to proceed to England on long leave. He wrote his judgment, signed it and sent it to be delivered by another Magistrate who did deliver it. It is argued that having regard to the mandatory words of Section 367 of the Code of Criminal Procedure this was an illegality which vitiated the whole trial. Attention is drawn to the words that the judgment shall be dated and signed by the Presiding Officer in open Court at the time of pronouncement. It is admitted that this was not done in the present case. The judgment was delivered by another Magistrate but it was written and signed and dated by Mr. Wijahat Husain who tried the case. It is not suggested that the fact that Mr. Wijahat Husain was not able to come to Court to pronounce the decision has in any way caused a miscarriage of justice or operated unfairly against the accused .... It seems to me that Section 537, which provides that no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed on account of any error, omission or irregularity in the judgment or other proceedings during trial, applies. As I have said before, it is not suggested that the failure of the Magistrate to pronounce judgment in any way prejudiced the accused in the conduct of the case. The only omission namely that the Magistrate did not himself pronounce the judgment in this case was due to the fact that he was physically incapacitated. It seems to me that at the most his procedure in getting

another Magistrate to pronounce this judgment was a mere irregularity completely covered by Section 537. I myself should have thought that the maxim *qui facit per alium facit per se* would apply here. Suppose the Magistrate was so hoarse as not to be able to audibly pronounce his judgment personally, and asked some one to read it out in his presence, surely that would be a compliance with the Section. I suppose if the Magistrate had read his judgment into a Gramophone and then sent it for reproduction in the Court that would have complied with the letter of the law, but to hold that nothing short of that is a sufficient compliance with the law when the Magistrate was physically unable to go to Court, renders the argument absurd....

64. In AIR 1940 289 (Lahore) , the Court was considering a case wherein a Magistrate of Third Class, Garhshankar, wrote his judgment on 28.5.1939 when he was under orders of transfer but which was pronounced by his successor on the date fixed for announcement. Legality of the judgment came to be challenged. The Magistrate appended a note to the judgment in the following words:

As I am under orders of transfer from this place and it is expected that I will be relieved before the date fixed for announcement of judgment in this case, I leave it to my worthy successor.. to announce the above judgment on the date fixed for announcement.

The Court, while dealing with the issue, has held in the following terms (relevant portion):

... In Nur Muhammad Khan Vs. Empror , AIR (1928) All 276 : 71 I.C. 525: 24 Cri.L.J. 173: 21 A.L.J. 137, a Magistrate fell ill before the date of the announcement of judgment and the judgment was, therefore, delivered and signed by his successor, and it was held that Section 537, Criminal P. C., covered the irregularity. In this Allahabad case reference was made to another unreported case of the same Court where a Magistrate after signing the judgment had gone off into camp and another Magistrate had delivered the judgment on his behalf; it was held in that case too that the irregularity was covered by Section 537, Criminal P.C. In a case reported in 7 Cri. L.J. 459 In Re: Sankara Pillai alias Sankaranarayana Pillay, a Division Bench of the Madras High Court held that where a case was adjourned for judgment but before that date the Magistrate was transferred and was succeeded by another who signed and delivered the judgment prepared by his predecessor, in the absence of prejudice the irregularity was held to be cured. In AIR 1925 62 (Oudh) a Magistrate was transferred to another District and his judgment was pronounced by another; it was held that the accused in that case could not even ask for a de novo trial.

65. Collective consideration of the law, as noticed above, would show that the Hon"ble Supreme Court of India in Igbal Ismail Sodawala"s case (supra), noticed that failure of the Sessions Judge in not appending his signatures to the judgment at the time it was pronounced because of the judgment having not till

then been transcribed was a procedural irregularity which would not vitiate the conviction of the accused. Non-compliance of a procedural requirement in the matter of signing of judgment has been held to be an irregularity which could be cured.

66. In Reference by District and Sessions Judge, Tellicherry (*supra*), it has been noticed that a Presiding Officer on the criminal side heard a case and dictated the orders. The orders could not be pronounced as the Presiding Officer was taken ill and had to be hospitalized. The case files, including the orders, were sent to the District and Sessions Judge, for further proceedings. The District and Sessions Judge made a reference seeking clarification as to whether he could pronounce the orders himself. It has been held in clear terms that when a Judicial Officer signs the order or judgment, it becomes final so far as he is concerned. What then remains is only the formality of pronouncement in open Court by which procedure the concerned person will get notice of the disposal and decision of the case. The Courts should not plead helplessness on the ground that specific provision authorizing requisite action is lacking. The approach of the Court should be whether there is any Statutory prohibition which prevents the Court from doing what it considers necessary in the interest of justice and to avoid harassment or prejudice. It has been held that there is no legal provision which shows that a judgment or order in a criminal case prepared and signed by a Judicial Officer should be pronounced in Court only by him.

67. When the Presiding Officer is unable to sit in Court, in the present case, on account of transfer, and pronounce the judgment, there should not occur a stalemate. When pronouncement of a judgment or order is necessary, there is no provision which prohibits his successor or some other competent Officer to pronounce the same in Court. Such course will accelerate dispensation of justice as rehearing of the matter already heard and decided would serve no purpose in law.

68. In Kuldip Singh's case (*supra*), the Magistrate, who had heard arguments, dictated the judgment, which was typed and announced, however, could not affix his signatures. The Magistrate passed away after a few days. This Court, while upholding the order passed by the Magistrate, has held that it was merely a procedural irregularity, which would not vitiate the result of the judgment.

69. In Surat Singh's case (*supra*), the Himachal Pradesh High Court upheld the judgments pronounced by the Magistrate which had not been signed by the Magistrate before his death. It has been held that non- signing of the judgment is only a procedural irregularity, curable u/s 465, Code of Criminal Procedure.

70. In Sankara Pillai alias Sankaranarayana Pillay's case (*supra*), the judgment was written, however, before delivery of the judgment, the Magistrate probably was transferred. The Magistrate, who had been appointed in his place, read out his predecessor's judgment and sentence and signed it and dated it in open Court. The High Court of Madras upheld the judgment while saying that it is not

necessary that the Presiding Officer, who wrote the judgment, should be the same person as the Presiding Officer, who is required to date, sign and pronounce it in open Court. It is an irregularity and does not cause prejudice to the accused.

71. In Nur Muhammad Khan's case (supra), the Magistrate, who had tried the case had concluded the case except delivering the judgment. The Magistrate met with a motor accident. While considering the issue, it has been held by the Allahabad High Court, in the case reported in 1923, that who pronounces the decision is not relevant. What is to be seen is that it should not have caused miscarriage of justice.

72. In Harnam Singh's case (supra), the Magistrate who wrote the judgment, in view of his transfer, gave a note leaving it to his successor to announce the judgment on the date fixed. The Lahore High Court held that it was merely an irregularity. In the absence of prejudice, the irregularity is cured.

73. From the law, as noticed above, it also follows that the judgment of the trial Court represents finalisation of trial of an accused. The Code of Criminal Procedure contemplates that the judgment should be complete in all respects at the time of pronouncement. At that stage, all that is required of the Presiding Officer is that he should insert a date and append his signatures at the time of pronouncement. On pronouncement of the judgment, a copy is required to be supplied to the accused, without delay. The Code of Criminal Procedure is essentially a Code like all other procedural laws designed to further the ends of justice and not to frustrate them by introduction of endless technicalities. The object of the Code is to ensure for the accused a full and fair trial in accordance with principles of natural justice. If there be substantial compliance with the requirements of law, a mere procedural irregularity would not vitiate the trial unless the same results in miscarriage of justice. In all procedural laws certain things are vital. Disregard of a provision in respect of those procedural laws would prove fatal to the trial and would invalidate the conviction. However, other requirements might not be so vital. Noncompliance with those procedures would be only an irregularity, which would be curable unless it has resulted in failure of justice.

74. When a Judicial Officer signs the order or judgment, it becomes final so far as he is concerned. Pronouncement in open Court, thereafter, remains only a formality by which the concerned persons would get notice of the disposal of the case and result of the trial.

75. When something requires to be done in the end of justice in the absence of specific statutory provision, the approach of the subordinate Courts should not be to plead helplessness on the ground that specific provision authorising the requisite action is lacking. Since there is no statutory prohibition that prevents the Court from adopting a procedure in the interest of justice, the trial Court should adopt the procedure. The Courts have to deal with contingencies not

contemplated by the framers of the Code of Criminal Procedure. To achieve the ends of justice, the needful is required to be done, however, it should be ensured that serious prejudice is not caused to the parties. There is no legal prohibition that says that a judgment or order in a criminal case prepared and signed by a Judicial Officer could be pronounced only by him. When pronouncement of judgment or order is necessary, there is no provision which prohibits the successor Officer pronouncing the same in Court. Such a course does not cause prejudice to anybody, rather, it accelerates dispensation of justice. Pronouncement of an order by successor Presiding Officer would not in any way prejudice the accused in the conduct of the case. It is merely an irregularity completely covered by the provisions of Section 465, Code of Criminal Procedure.

76. Section 353, Code of Criminal Procedure, envisages that pronouncement by any Criminal Court vested with original jurisdiction has to be made by the Presiding Officer in open Court, in the presence of the accused. To this principle, however, certain exceptions have been provided for in the Code itself, which would stand invoked, especially when the accused with an ulterior motive to delay the proceedings, does not attend the proceedings. The exception is embedded in proviso to Sub-section (6) of Section 353, Code of Criminal Procedure.

77. The Code itself does not exhaustively deal with various situations which may emerge during a criminal trial, wherein adherence to the mandate of Section 353, Code of Criminal Procedure, may not be possible. The issue which, then, arises is as to what would be the effect of non-compliance with the provisions of Section 353, Code of Criminal Procedure. Noncompliance, in such circumstances, would be merely an irregularity, which is curable, or an illegality, which would vitiate the proceedings.

78. A combined reading of Sub-sections (7) and (8) of Section 353, Code of Criminal Procedure, indicates that non-compliance with provisions of Section 353, Code of Criminal Procedure, would not render valid until and unless it occasions failure of justice. To obtain the benefit of non-compliance of Section 353, Code of Criminal Procedure, it would be incumbent on the accused to prove the prejudice caused to him by such non-compliance. This is what has been held in the law, referred to above. The principle of law which emerges is that mere non-compliance of Section 353, Code of Criminal Procedure, which requires a Judge to pronounce and sign the judgment in open Court, will not render the judgment illegal. Procedural irregularity is curable.

79. In the case in hand, the Judge was not able to pronounce the judgment herself due to the conduct of the accused and, therefore, it cannot be termed as an illity so as to vitiate the proceedings. The judgment, as per the impugned order, is complete with signatures of the Presiding Officer, who heard the arguments and has conducted all the proceedings, and has only to be pronounced by the successor Presiding Officer. The procedure, thus, adopted would cause no prejudice to the accused viz. the Petitioner. I have already held in

the earlier part of the judgment that the Petitioner with mala fide intentions tried to get adjournment after adjournment so as to get deferment of proceedings. justice would not be occasioned. The stand of the Petitioner has already come on record by way of reply to the notice u/s 58 of the Act and the Counsel for the Petitioner had already addressed arguments on 22.5.2008. Adjournments thereafter sought at the instance of the Petitioner were only for reasons that are not justified.

80. In view of the above, the question posed before this Court is answered in terms that no illegality or prejudice to the rights of the Petitioner has been caused by the trial Court by signing the judgment, putting a date on it and putting it in a sealed cover, for it to be pronounced by the successor Presiding Officer, after concluding of all proceedings and hearing arguments, in the facts and circumstances of the case.

81. The petition is, accordingly, dismissed. Order dated 30.5.2008 is hereby upheld.

82. Special Court, Kurukshetra, is directed to open the sealed cover, sealed under the seal of the High Court, on 27.10.2010, and pronounce the order there and then, and carry further proceedings, as required by law.

83. Petitioner-Bharti Arora, DSP Ramphal and Inspector Ram Kumar are directed to remain present before Special Court, Kurukshetra, on the date fixed i.e. 27.10.2010.

84. Director General of Police, Haryana and Home Secretary, Haryana, are directed to ensure the presence of the aforesaid persons in Court on the said date, to face pronouncement of the order.

85. Copy of the order be given dasti to the learned Counsel for the parties under the signatures of the Court Reader.

86. Learned Counsel for the Respondent-State is requested to convey the decision to Director General of Police, Haryana and Home Secretary, Haryana, for its compliance.

87. The entire trial Court file be sealed in Court and be sent through a special messenger, to the District and Sessions Judge, Kurukshetra, for being placed before the Special Court, Kurukshetra.

88. The comments of Ms. Sarita Gupta, Additional District & Sessions Judge, be kept in a sealed covered.