

(1968) 01 AHC CK 0045
In the Allahabad High Court
Case No : C.M. Writ No. 26 of 1967

Ved Prakash and another

APPELLANT

Vs

The Hon''ble the Chief Justice and others

RESPONDENT

Date of Decision : 10-01-1968

Acts Referred:

Citation : (1968) 38 AWR 87

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : Hari Swarup, for the Appellant; G.P. Dixit for opp. parties, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—The Petitioners want that the order passed by the Hon''ble the Chief Justice on 26-9-1966, permitting the Respondents to prepare a type written paper-book of the first appeal (No. 271 of 1965) filed by the Petitioners in this Court, be quashed.

2. The impugned order was passed by the Hon''ble the Chief Justice on an application made by the Respondents u/Ch. XIII, Rule 49 of the Rules of Court. Ch. XIII deals with paper-books in first appeals. First appeals cannot be heard until paper-books have been prepared in accordance with the rules contained in Ch. XIII. The rules relating to the preparation of paper-books are thus steps in aid for progress of the case towards its hearing and decision. All orders that are passed from time to time on that matter by the Court would be judicial in nature. Such orders cannot, in my opinion, be characterised as either ministerial or administrative. Under Rule 4 read with Rule 9 of Ch. XIII the Appellant has to make an application for translation and printing. If no such application is made within the time prescribed by Rule 8, the case is to be listed before the Court and is liable to be dismissed, unless on an application in writing the Court for sufficient cause shown, grants further time for the making of such application, (vide Rule 10). Such an order, which entails the dismissal of the appeal, would be

surely judicial. Similarly, Rule 27 of Ch. XIII prescribes the time within which the charges for translation and printing are to be deposited in the Court. In default the application for translation and printing abates and thereupon the case is listed before the Court and may be dismissed unless the Court on an application grants further time for making the deposit. Such an order either for dismissal or for grant of further time would also be judicial in nature, because it will lead to the end of the case or would tend to the further progress of the case towards its hearing. An order Under Rule 49 would be similar in character. It is passed by the Hon"ble the Chief Justice in his judicial capacity, in an individual case, which is pending in the court. The order tends to aid the progress of the case by enabling a party to prepare the paper-book outside the Court.

3. It is settled that a Court cannot issue a writ, to itself. Certiorari does not go to a superior Court of record, like a High Court. Even the Supreme Court cannot issue certiorari to quash a judicial order of the High Court--See Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, . A judicial order passed by the Hon"ble the Chief Justice is a judicial order passed by this Court. Such an order cannot be impugned Under Article 226 of the Constitution in this Court. The present petition is, in my opinion, not competent in so far as it seeks to quash the order of the Hon"ble the Chief Justice.

4. It was then urged for the Petitioners that inspite of an order Under Rule 49 of Ch. XIII, the office of the Court was obliged to prepare a paper-book in accordance with the rules contained in that Chapter. The Learned Counsel was not able to elaborate the point by any satisfactory argument. If Rule 49 is read in the manner suggested by the Learned Counsel for the Petitioners, it will be a superfluous provision. The position would be that the Hon"ble the Chief Justice can direct a party to get the paper-book prepared outside the Court. The case is undoubtedly to be heard and decided on the basis of such a paper-book. The cost of preparation of the paper-book has to be costs in the cause. But yet another set of paper-book will have to be nonetheless prepared on applications made by parties in accordance with the rules. Rule 49, in my opinion, provides for the normal method of preparation of a paper-book being superseded, if the Hon"ble the Chief Justice thinks it fit to pass an order, there under. Rule 49 was intended to authorise the short-circuiting of the normal procedure for preparation of the paper-book, and not for an additional paper-book being prepared by a party.

5. The office of the Court cannot on this ground be directed to prepare a fresh set of paper-book in the first appeal. The petition has no merits and is accordingly dismissed with costs.