

Judging Skills : Art, Craft and Science of drafting judgments

- Justice K Chandru





Car crashing into a tree

**“We thought that we would never see
A suit to compensate a tree
A suit whose claim in tort is pressed
Upon a angled tree’s behest;
A tree whose battered trunk was pressed
Against a Chevy’s
Crumpled chest;**

**A tree that faces each new day
With bark and limb in disarray;
A tree that may forever bear
A lasting need for tender care
Flora lovers though we three
We must uphold the Court’s decree.”**



Fisher v Lowe

-Justice J.H.Gillis

(122 Mich.App. 418, 333 N.W.2d 67)



Courts are public theatres in which many of the human dramas of society are played in an abbreviated and somewhat stylized fashion. In the necessarily artificial circumstances of a courtroom and judicial technique it is impossible entirely to suppress the human drama. Judgments and legal opinions record some of these performances. They therefore provide opportunities for skilful writing.



-Justice Michael Kirby

President, Court of Appeal
Supreme Court of Australia

Justice Michael Kirby on

Justice V.R.Krishna Iyer (Supreme Court of India)

- “A fundamental question is posed to us who are Justice Krishna Iyer’s successors. He has seen with a clear eye many of the challenges to human rights of his time.
- We must be equally vigilant to new infractions and to old conduct which we come, with enlightenment, to see as offences to basic human rights.
- Jurists everywhere must be encouraged by this find man’s life and works to pay attention not only to civil and political rights but also to economic, social and cultural rights.
- This is what Justice Krishna Iyer did, We, who come after, should go and do likewise”

V.R.Krishna Iyer - A Living Legend
Universal Law Publishing Co. Pvt. Ltd, 2000



Justice V.R.Krishna Iyer on
“Who is an employee under Labour Law”

Indian Justice, beyond Atlantic liberalism, has a rule of law which runs to the aid of the rule of life. And life, in conditions of poverty aplenty, is livelihood and livelihood is work with wages. Raw societal realities, not fine-spun legal niceties, not competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succour for livelihood through labour.



The source and strength of the industrial branch of Third World Jurisprudence is social justice proclaimed in the Preamble to the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearance when myriad devices are resorted to when labour legislation casts welfare obligations on the real employer.....



The contention of the petitioner as to the non-existence of the vinculum juris between the respondent and himself is if at all impeccable only in laissez faire economics red in tooth and claw' and under the Contract Act rooted in English common law as the human gap of a century yawns between this strict doctrine and the industrial Jurisprudence of today”

Hussainbhai, Calicut Vs. Alath Factory Thozhilali Union
1978 (4) SCC 257

Can public hanging be ordered?



Death for dowry murder – Rajasthan High Court



We feel that when the society is ever increasingly exhibiting abhorrence to dowry deaths of young brides and even then bride burning cases are suddenly increasing & there is proof of bride burning cases challenging the judicial consciousness & authority of the judiciary as well as the State to provide protection to the innocent young brides from the actual barbaric gruesome crimes of in-laws, who as dowry hungry vultures are taking out the flesh and blood of young brides, the punishment when such crimes are proved should be both exemplary and deterrent.

One, such exemplary punishment if given demonstratively in public, can provide protection to thousands of young brides from being burnt alive by creating fear and terror in the minds of such dowry hungry vultures who are doing torture of young brides for the satisfaction of the dowry lust. It would prevent attempt of creating miserable condition either of suicide or homicide, as every one would know that he would not be allowed to go unpunished and one can do it at his or her own peril.

Rajasthan Vs Lichma Devi, 1986 (1) WLN 106

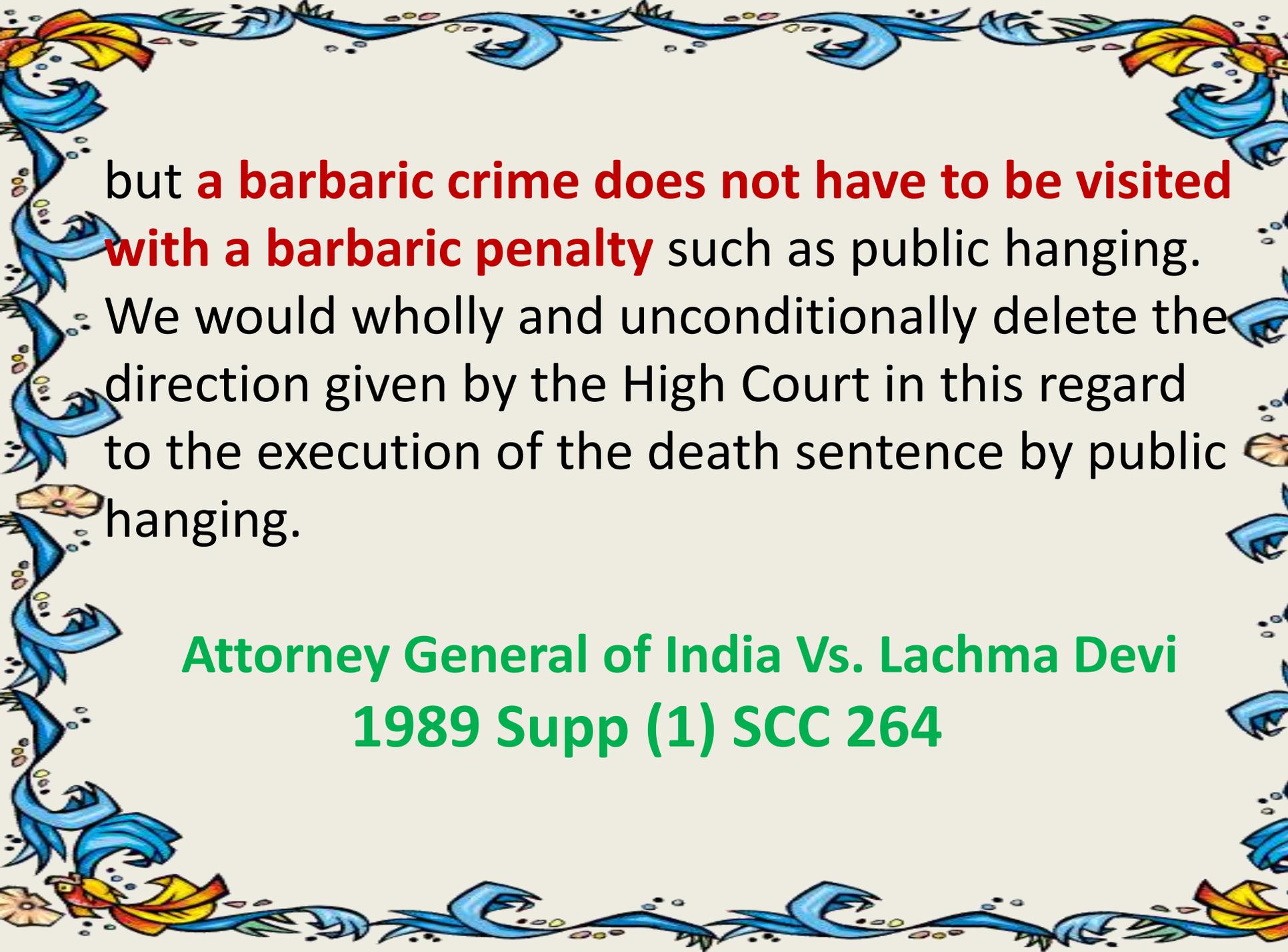
Death sentence to be carried out in public

We have, therefore, directed that the death sentence should be executed at a public place in the guage and eye of the public and this can be done at the stadium grounds or Ramlila ground of Jaipur after giving wide spread publicity through the media, of its date, and time and place.

Supreme Court said



- **We would like to make it clear that the execution of death sentence by public hanging would be a barbaric practice clearly violative of Art.21 of the Constitution and we are glad to note that the Jail Manual of no state in the country makes provision for execution of death sentence by public hanging which, we have no doubt, is a revolting spectacle harking back to earlier centuries..... The direction for execution of the death by public hanging is, to our mind, unconstitutional and we may make it clear that if any Jail Manual were to provide public hanging, we would declare it to be violative of Art.21 of the Constitution..... ..**



but **a barbaric crime does not have to be visited with a barbaric penalty** such as public hanging. We would wholly and unconditionally delete the direction given by the High Court in this regard to the execution of the death sentence by public hanging.

**Attorney General of India Vs. Lachma Devi
1989 Supp (1) SCC 264**



Chopping of hand as punishment

For having committed forgery, this Court is of the view that such a stringent punishment of chopping of fingers should be awarded to the Petitioner. But there is no law to that effect in our country

P.M. Elavarasan

Vs.

Inspector General of Registration

2014(5) CTC 1, Madras High Court

CHEMICAL CASTRATION OF SEX OFFENDERS

When law is ineffective and incapable of addressing the menace, this court cannot keep its hands folded and remain a silent spectator, unmoved and oblivious of the recent happenings of horrible blood-curdling gang rapes of children in various parts of India,” though the suggestion of castration looks barbaric, **barbaric crimes should definitely attract barbaric models of punishment”**

Those activists.... having misplaced sympathy with the perpetrators under the usual banner of ‘human rights violation...

They must remember that ‘human rights’ is not a term restricted to, and reserved only, for offenders.”

xxxx (name withheld U.K.National)

Vs.

State

2016(1) CTC 193

The Supreme Court Women Lawyers Association approached the Supreme Court with a public interest litigation (PIL) seeking a direction to the Centre to consider imposing chemical castration on child sex abusers and child rapists.

The SC was of the firm view that changing the law is a legislative prerogative and courts cannot intrude into the domain of the legislature or even issue directions regarding the same to Parliament.

Death Penalty

Death sentence only for rarest of rarest cases Special reasons must be given for giving death penalty

- “In this case, the accused came from a state about 2000 k.m. from our state and they did not think that the victims were also human like them but they thought only about the well being of their family and their own life and committed the fear of death amongst the common public of our state by committing robbery and murder for about 11 years. Therefore, this court is of the opinion that the death sentence that would be imposed on them would create a fear amongst the criminals who commit such crime and further this case is a rarest of rare case that calls for the imposition of death sentence.”

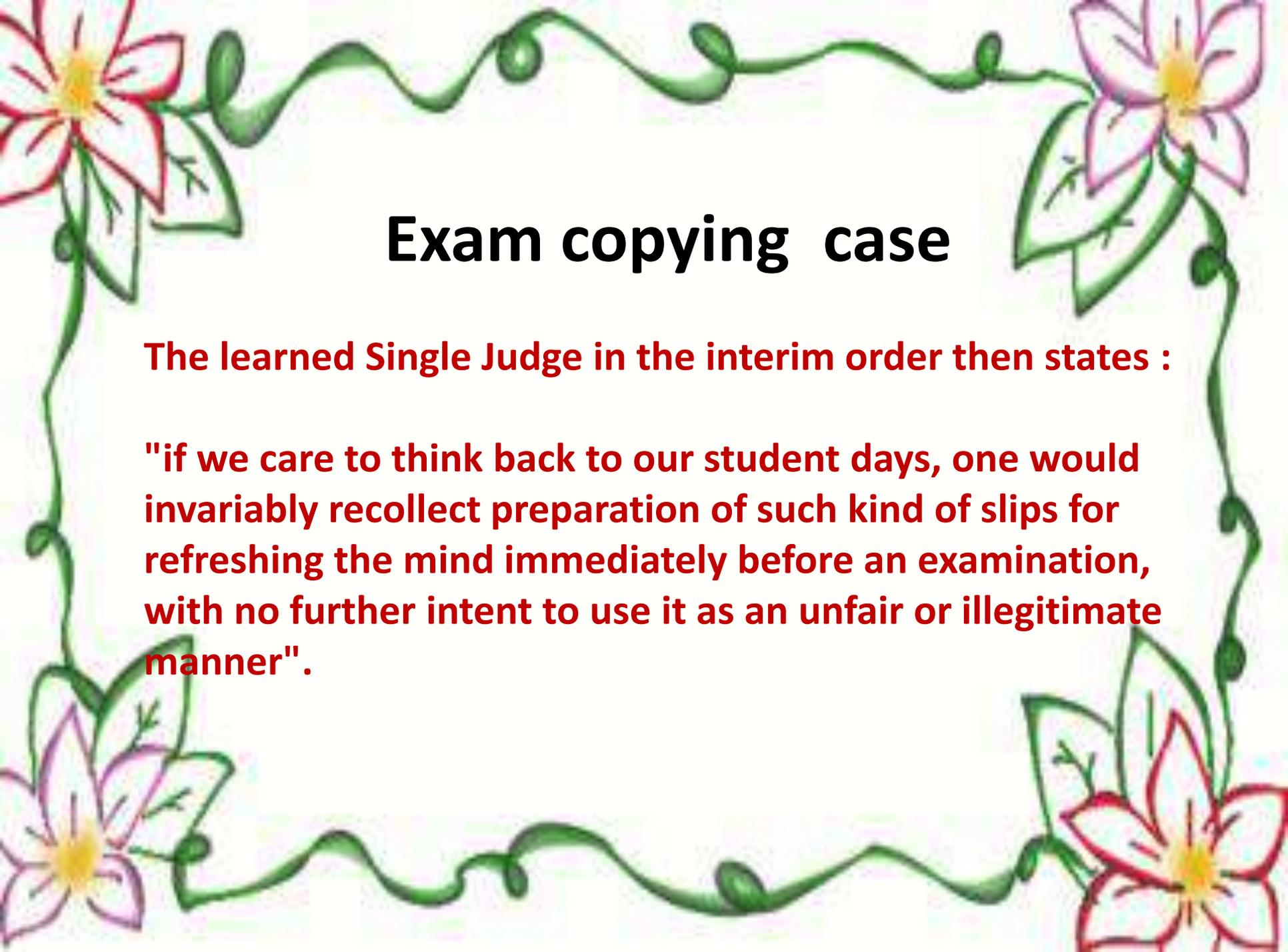
- We have noticed that the trial Court, among other grounds, was also influenced by a speech made by the then Chief Justice of Tamil Nadu as well as a judgment delivered by another learned Judge of Madras High Court on rowdy panchayat system. Following that judgment and the provision under Section 396 IPC, the trial court held that the accused deserves no sympathy and he be sent to the gallows.

- We are also not concerned with the question whether the criminals have come from 20 km away or 2000 km away. Learned judge says that they have come to “our state”, forgetting the fact that there is nothing like ‘our state’ or ‘your state’. Such parochial attitude shall not influence or sway a judicial mind. Learned judge has further stated, since the accused persons had come from a far away state, about 2000 km to “our state” for committing robbery and murder, death sentence would be imposed on them. Learned judge has adopted a very strange reasoning, needs fine tuning and proper training..

- As is obvious from the reasoning of the learned Sessions Judge, he has referred to the prevalence of death sentence in certain countries and observed that in certain countries where law provides “slashing”, “beheading”, “taking the organ for organ” like ‘eye for eye’, ‘tooth for tooth’ to the accused, it shows the growth of criminal jurisprudence. That apart, he had referred to the speech of the then learned Chief Justice of the High Court, and it is clearly demonstrable that the same has influenced his appreciation, analysis and perception. Being influenced by the erroneous notions of law and speech of the learned Chief Justice, may be understanding it totally out of context, his passion and prejudices have dominated over his reasoning faculties and the result, as I perceive, is devastating.

Oma @ Omprakash & Anr vs State Of Tamilnadu

2015(6) SCC 623



Exam copying case

The learned Single Judge in the interim order then states :

"if we care to think back to our student days, one would invariably recollect preparation of such kind of slips for refreshing the mind immediately before an examination, with no further intent to use it as an unfair or illegitimate manner".

we respectfully cannot approve of the above observation of the learned Single Judge.

A judge is supposed to keep his personal view in the background and not inject them in the judgments.

What was done in his student days was surely irrelevant for deciding the case or even passing an interim order.

**Director (Studies) & Ors Vs. Vaibhav Singh Chauhan
2009 (1) SCC 59**



Judgments can be reversed

If...

1. The facts have not been understood properly
2. Legal issues not considered.
3. Binding precedents not followed.
4. The language of the order ununderstandable



For pronouncing an efficacious decision upon the aforesaid facet imperatively when obviously the bar of res judicata besets the plaintiffs against their instituting a fresh suit against the defendants vis-à-vis the aforesaid relief preponderantly when it accrued earlier whereat it stood unventilated by the plaintiffs significantly when they omitted to avail the apposite statutory mechanism whereupon they stand forestalled besides interdicted to in a freshly constituted suit canvass a relief for its removal by the defendants comprised in the latter standing mandatorily injuncted to remove it whereupon the act of the defendants comprised in theirs obstructing the path decreed for user by the plaintiffs would hence stand rendered un-redeemed, ought to not be necessarily borne in mind

- Given the factum aforesaid qua a statutory bar of res judicata forbidding the plaintiffs to institute a fresh suit for redeeming the prohibited act of the defendants comprised in theirs obstructing the path embodied in the apposite tatima also when for reasons aforesaid the defendants acquiesce to the conclusivity of the decree of permanent prohibitory injunction pronounced upon them it is deemed both just and befitting, significantly also for facilitating the plaintiffs to reap the benefit of a conclusively recorded decree of permanent prohibitory injunction de hors any omission on their part to beget an apposite amendment in the plaint seeking embodying therein a relief of mandatory injunction, to record a finding qua the plaintiffs qua their omissions aforesaid not standing in the way of an efficacious affirmative rendition standing pronounced by the learned Executing Court concerned upon an apposite petition constituted therebefore for execution of the aforesaid decree of permanent prohibitory injunction pronounced against the defendants

- In case finality is attached to the findings occurring in paragraph 22 of the judgment of the learned first Appellate Court it would frustrate the working of the binding decree pronounced upon the defendants qua the user by the plaintiffs of a path existing on the suit land. Throughout since the rendition of a conclusively rendered decree of permanent prohibitory injunction pronounced against the defendants upto its efficacious affirmative execution standing ordered by the learned Executing Court comprised in its directing qua appropriate consummatory coercive steps standing taken, its mandate hold full sway besides both the plaintiffs and the defendants are bound to revere its mandate.

- Even if assumingly no efficacious evidence nor any evidence of cogent worth may stand adduced qua the defendants raising any obstruction upon the suit land yet the decree of permanent prohibitory injunction dehors any obstructive act done by the defendants during the pendency of the suit before the learned trial Court or during the pendency of the appeal before the first appellate Court also dehors no scribed relief in consonance therewith standings prayed for by the plaintiffs would not estop this court to permit the executing court to carry the mandate of the conclusively recorded decree of permanent prohibitory injunction pronounced qua the plaintiffs, conspicuously when thereupon the mandate of the conclusively recorded decree pronounced qua the suit land would beget consummation besides would obviate its frustration

- For facilitating its consummation, though the learned executing Court stood enjoined to pronounce an appropriate order, contrarily it by relegating the impact of the aforesaid germane factum probandum comprised in the enforceable executable conclusive decree, has inaptly dismissed the execution petition.

Himachal Pradesh High Court

Civil Revision No. 52 of 2016

dated 9.12.2016

Tek Chand and another

Vs.

Karam Singh & others



Supreme Court rules (11.4.2017)



After hearing learned counsel, it is not possible to comprehend the contents of the impugned order passed by the High Court. The order passed by the High Court is, therefore, set aside and the matter is remanded to the High Court for fresh consideration on merits. The High Court will hear the matter de novo.



Every day is a matter of learning

There is a lot to be learnt

Addl. Dist. & Sessions Judge 'X'

Vs.

High Court of Madhya Pradesh

2015 (4) SCC 91





*Thank
you*

