

How to Write Judgments & Orders

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Writing of judgments and orders is virtually an art which often varies from judge to judge as no form or format has been provided in law as to what should be written in a judgment or order and what should not. But the prevalent practice and different techniques used by judges in writing the judgments and orders have, to certain extent, settled the manner of recording judgments or orders in cases. Arriving at conclusions or making of decisions in cases out of the material available on the record of a particular case is the most cumbersome part of the judicial function of the judges which they acquire over the years out of experience and settled and prevalent practices and methodologies being applied in decision making process and writing of judgments and orders. Some important aspects regarding the writing of judgments or orders are being discussed hereunder :-

1. **FACTS** : Necessary facts relating to the rights and liabilities of the parties or the core controversies involved in between the parties which require adjudication by the court must be mentioned in the judgment. But unnecessary facts narrated by the parties in their pleadings or applications which do not reflect upon the rights and liabilities of the parties or controversies involved in the case need not be stated in judgments or orders. Brevity indicates clarity and therefore every fact mentioned in the pleadings etc. of the parties should not be quoted. After proper marshalling of facts, only relevant facts to decide the controversy or the rights or liabilities of the parties should be discussed.

2. **APPRAISAL OF EVIDENCE** : Only that much part of oral or documentary evidence including electronic records should be quoted and analytically appreciated in the judgments or orders which is really needed for deciding the rights and liabilities of the parties or the controversies involved in a case. Unnecessary or irrelevant part of the evidence should normally be avoided and need not be discussed. The derivative or the conclusion derived from the appreciation of evidence should be recorded in the form of findings with clarity in the judgments or orders.
3. **LAW & RULINGS** : The provisions of law and the relevant Rulings which are attracted and applicable in the light of facts and evidence on record must be quoted & analyzed and only then the conclusions or findings should be recorded in the judgments or orders.
4. **MODE OF CORRECTLY QUOTING RULINGS (C.L. No. 36/IV-h-35 dated 11.4.1956 & C.L. No. 105/Ivh-35 dated 3.10.1956)** :- Judicial officers should give correct citations of reported cases in their judgments. The proper way to do this is to state the names of parties first followed by the citation within brackets as indicated below :
State of Bombay vs. United Motors, (1955) SCR 1069
5. **NON-MENTIONING OR WRONG-MENTIONING OF CORRECT PROVISION OF LAW IN ORDERS** : It is well settled law that if an authority has jurisdiction to take particular action, mere mention of incorrect provision or non-mention of correct provision does not make the action without jurisdiction unless the authority has no jurisdiction in the matter. Wrong mentioning or non-mentioning of a statutory provision under which power was exercised in passing the order, would not vitiate the order for which there was a source under general law or statute law. See :
 1. **Kaushalya Kanya Inter College, Moradabad vs. State of UP, 2005 (2) AWC 1383 (All)**
 2. **High Court of Gujarat vs. Gujarat Kisan Mazdoor Panchayat, (2003) 4 SCC 712**

6. **MANNER OF MAGISTERIAL COURT IN PASSING SUMMONING ORDERS IN COMPLAINT CASES** : Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. See : **Pepsi Foods Ltd. vs. Special Judicial Magistrate, 1998 SCC (Criminal) 1400.**
7. **SIMPLE LANGUAGE** : Judge should normally express his views or conclusions or findings in judgments or orders in simple language with sufficient clarity capable of conveying to the parties or their counsel of what the judge intends to say. Ambiguity, confusions, want of clarity into expressions and language with uncertain meaning should be avoided.
8. **LENTHY SENTENCES** : Writing lengthy sentences in judgments and orders should normally be avoided as mistakes and want of clarity may occur in the findings recorded by the court.

9. **USE OF ONLY STANDARD LEGAL WORDS & PHRASEOLOGIES**

: While writing judgments or orders, only legally prescribed or approved words and phraseology should be employed therein. However, if no such standard words are prescribed in statutes or legal glossaries etc., then the words and phraseologies spoken in ordinary parlance by the parties and their lawyers may also be used by the judge.

10(A). **USE OF PROVERBS, IDIOMS, EXAGGERATIONS, EMBELLISHMENTS, ORNAMENTATIONS etc.**

: Use of proverbs, idioms, exaggerations, embellishments, ornamentation etc. should be avoided by the judges while expressing their views in their judgments and orders and only legally permissible and prevalent words and phrases should be used.

10(B). **Courts not to be swayed away by emotions** --

Where the court was swayed away by emotions and sentiments while recording conviction of the accused for offences u/s 302, 201 IPC despite the fact that there was no evidence to connect the accused Dr. Mahender Singh Dahia with the murder of his wife Namita, a British National of Indian origin, who was murdered in a hotel in Brussels, Belgium, on the very first night of her marriage, and the conviction was set aside by the Delhi High Court and the accused was acquitted, it has been observed (in para 20) by the Hon'ble Supreme Court that given the tendency of human beings to become emotional and subjective when faced with the crimes of depravity, the courts have to be extra cautious not to be swayed away by strong sentiments of repulsion and disgust. It is in such cases that the court has to be on its guard and to ensure that the conclusion reached by it are not influenced by emotion but are based on the evidence produced in the court. See.... **State through CBI Vs. Mahender Singh Dahia, 2011(74) ACC 914(SC)**

11. **Use of dignified & Proper words for lawyers** : Use of only dignified language and words for the lawyers conducting the case has been very long

drawn tradition of the courts. Use of words like “**Learned or Ld.**” for the lawyers for the parties has been the tradition of courts and therefore whenever and wherever there is a need to mention the word counsel or advocate, it should be prefixed by the dignified word learned or Ld.

12. **No Repetitions** : There should be no repetitions of the views already expressed by the judge in his judgment/order.
13. **Distinct Paras For Different Parts of Controversies Required Adjudication** : The judgment or order should be divided into different paragraphs according to its needs. Normally a separate paragraph should be given for a particular part of controversy involved in between the parties regarding their rights of liabilities.
- 14(A).**Arguments** : It is not necessary for a judge to quote and discuss every argument advanced by the parties or their counsel. But all such points raised in the arguments by the counsel for parties which reflect upon the real controversy involved in the case or on the rights and liabilities of the parties must be quoted discussed by the judge in his judgment or order. **Advancing lengthy arguments** has been deprecated by the Courts in the cases noted below :

1. **Gauri Shankar vs. DDC, Allahabad, 2005 (4) AWC 3259 (All)**
2. **LIC of India vs. Escorts Ltd., AIR 1986 SC 1370**

- 14(B).**Total 20 days for arguments in Bihar Fodder Scam case granted by the Supreme Court** : Where in the Bihar Fodder Scam case, an application for transfer of the case from the court of trial judge (at Ranchi) was moved before the Supreme Court by one of the accused persons namely Shri Lalu Prasad Yadav on the ground that the trial judge was close relation of a Minister in the Govt. of Bihar and who was Lalu Prasad's political rival and there was no chance to get justice from the court of the trial judge, the Supreme Court rejected the transfer application with the

directions/observations thus : *"The order-sheet of the Fodder Scam case reveals that the exercise of power by the Special Judge cannot be faulted except its intimation to the parties in the midst of the arguments and compelling them to file written arguments on or before 1.7.2013 and judgment to be pronounced on 15.7.2013. Except the said recourse, which is not in consonance with the scheme of CrPC, in a criminal trial, considering the magnitude of the case pending since 1997, the conduct of the judge cannot be faulted. In view of the same, the Supreme Court is inclined to provide further time for the accused as well as prosecution to complete their arguments, if they so desire. However, keeping in view the submissions made that arguments are still to be advanced, a further time of 5 days for the prosecution and 15 days for all the accused including the appellant herein is granted. The Special Judge should pronounce the decision as early as possible without being influenced by observations made by the superior Courts."* See : **Lalu Prasad alias Lalu Prasad Yadav Vs. State of Jharkhand (2013) 8 SCC 593** (paras 13, 17, 21 and 22).

- 14(C).SENTIMENTAL ARGUMENTS** : It has been clarified by the Supreme Court that sentimental arguments advanced by the Bar should not be entertained. See : **Gopal Singh vs. State Cadre Forest Officers' Association, AIR 2007 SC 1878**
- 15. NO SUBJECTIVITY** : Judges should avoid to incorporate in their judgments or orders their **subjective views, individual philosophy, imaginary or fanciful ideas** not on record or germane to the case in hand. **Objectivity must be given precedence over subjectivity.** While writing judgments or orders, the Judges must keep them confined to the controversy involved in the case, material available on record and to the law and practices permissible.

16. **USE OF WORDS LIKE “I” OR “MY”** : Use of words like “I” or “My” in judgments or orders by the Judges for themselves should be avoided and instead words like “court” or “in the opinion of court” or “court is satisfied or not satisfied” should be preferred in place of words “I” or “My”.
17. **CUTTINGS/ERASURES TO BE INITIALED**: In case any overwritings, cuttings or erasures occur in judgments or orders, the same should be initialled by the judge pronouncing the judgment or order .
18. **SEQUENCING OF PARAGRAPHS** : Every important and material controversy relating to the rights and liabilities of the party in a judgment or order should be written in separate paragraphs according to the need of discussions.
19. **NUMBERING OF PARAGRAPHS** : Each paragraph in a judgment or (lengthy) order should be numbered.
20. **LABOURED JUDGMENT** : Writing unnecessarily lengthy judgments than required should be avoided. It is not the number of pages in a judgment but sufficiency of reasons in support of the conclusions arrived at by the judge that is relevant. Judgments or orders must be reasoned and speaking to justify the conclusion. See : **Union of India vs. Essel Mining & Industries Ltd., 2005 (6) SCC 675**
- 21(A).**LENGTHY JUDGMENTS** : Writing unnecessarily lengthy judgments than required should be avoided. It is not the number of pages in a judgment but sufficiency of reasons in support of the conclusions arrived at by the judge that is relevant. Judgments or orders must be reasoned and speaking to justify the conclusion. See : **Union of India vs. Essel Mining & Industries Ltd., 2005 (6) SCC 675**
- 21(B).**Long judgments not necessarily great** : Brevity in judgment writing has not lost its virtue. All long judgments or orders are not great nor are brief orders always bad. What is required of any judicial decision is due

application of mind, clarity of reasoning and focused consideration. A slipshod consideration or cryptic order or decision without due reflection on the issues raised in a matter may render such decision unsustainable. Hasty adjudication must be avoided. Each and every matter that comes to the court must be examined with the seriousness it deserves. See : **Board of Trustees of Martyrs Memorial Trust and Another Vs. Union of India and Others, (2012) 10 SCC 734** (para 22)

21(C). What a judgment must contain ?: A judgment for its sustenance must contain not only findings on the points, but must also contain what evidence consists of, and how does not prove plaintiff's case. A judgment unsupported by reasons is no judgment in the eye of law. It is well settled that the reasons are the links between the material on record and the conclusion arrived at by the court. See : **Commissioner of Income Tax Vs. Surendra Singh Pahwa, AIR 1995 All 259.**

21(D). Judgment : What is ? : Judgment is a formal expression of opinion by the court. See : **Boards & Boards Private Limited, Jaipur Vs. Himalaya Paper (Machinery) Pvt. Ltd., New Delhi, AIR 1990 Rajasthan 120.**

22. PROFORMA JUDGMENT OR ORDER : Recording of reasons in support of the conclusions arrived at in a judgment or order by the Courts in our judicial system has been recognized since the very inception of the judicial system. Right to know the reasons for the decisions made by the Judges is an indispensable right of a litigant. Even a brief recording of reasoned opinion justifying the decision made would suffice to withstand the test of a reasoned order or judgment. A non-speaking, unreasoned or cryptic order passed or judgment delivered without taking into account the relevant facts, evidence available and the law attracted thereto has always been looked at negatively and judicially de-recognized by the courts. Mere use of

the words or the language of a provision in an order or judgment without any mention of the relevant facts and the evidence available thereon has always been treated by the superior courts as an order incapable of withstanding the test of an order passed judicially. Ours is a judicial system inherited from the British Legacy wherein objectivity in judgments and orders over the subjectivity has always been given precedence. It has been judicially recognized perception in our system that the subjectivity preferred by the Judge in place of objectivity in a judgment or order destroys the quality of the judgment or order and an unreasoned order does not subserve the doctrine of fair play as has been declared by the Apex Court in the matter of **Andhra Bank v. Official Liquidator, 2005(3) SCJ 762**. For a qualitative decision arrived at judicially by the courts, it is immaterial in how many pages a judgment or order has been written by the Judge as has been declared by the Apex Court in the matter of **Union of India v. Essel Mining & Industries Ltd., (2005) 6 SCC 675**.

Note: For more Supreme Court pronouncements on the subject, kindly see the Article on “**Necessity Of Passing Speaking & Reasoned Orders**”.

23. **CRYPTIC & NON-SPEAKING ORDER** : Recording of reasons in support of the conclusions arrived at in a judgment or order by the Courts in our judicial system has been recognized since the very inception of the system. Right to know the reasons for the decisions made by the Judges is an indispensable right of a litigant. Even a brief recording of reasoned opinion justifying the decision made would suffice to withstand the test of a reasoned order or judgment. A non-speaking, unreasoned or cryptic order passed or judgment delivered without taking into account the relevant facts, evidence available and the law attracted thereto has always been looked at negatively and judicially de-recognized by the courts. Mere use of the words

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Note: For more Supreme Court pronouncements on the subject, kindly see the Article on “**Necessity Of Passing Speaking & Reasoned Orders**”.

24. **NO HARSH/OFFENDING REMARKS** : Recording harsh or offending or critical or derogatory remarks against the parties, their counsel, witnesses or against any other person in judgments and orders should be avoided. Judges must act independently and boldly while deciding a case but should not make atrocious remarks against the party or a witness or even against the subordinate court. Judges must not use strong and carping language, rather they must act with sobriety, moderation and restraint as any harsh and disparaging strictures passed by them against any person may be mistaken or unjustified and in such an eventuality they do more harm and mischief than good resulting in injustice. Maintenance of judicial independence is

characterized by maintaining a cool, calm and poised mannerism as regards every action and expression of the members of the judiciary and not by using in appropriate, unwarranted and contumacious language. See : **State of Gujarat Vs. Justice (retired) R.A. Mehta, (2013) 3 SCC 1** (para 104).

Note: For detailed discussions and the Supreme Court pronouncements on the subject, kindly see the Article on “**LAW ON STRICTURES & DEFENCES AGAINST JUDICIAL ASSAULTS**”.

25. **CLARITY IN FINDINGS** : There must be clarity in the views or findings recorded by the judge in his judgment or order and it should be devoid of ambiguity or confusions.
26. **Full particulars of accused persons such as their names, parentage, complete address etc. must be mentioned in the judgments of subordinate courts** : Full particulars of accused persons such as their names, parentage, complete address etc. must be mentioned in the judgments of subordinate courts. See : **State of UP Vs. Mahipal, 2014 (84) ACC 488 (All)(DB)**.
27. **OPERATIVE PART TO BE CLEAR** : The relief granted or refused for the liability etc. imposed and the ultimate result or fate of the case should be clearly recorded in the last part of the judgment or order which is generally called operative part and it should be given a separate paragraph.
28. **JUDGMENT TO BE PRONOUNCED ONLY IN OPEN COURT (G.L. No.14 dated 22.10.1904)** :- In miscellaneous proceedings as well as in suits and appeals, judgment must not only be pronounced in open court, but also dated and signed in open court at the time when it is pronounced and before the decree or order in pursuance of such judgments is drawn up.
29. **DELAY IN DELIVERY OF JUDGMENT (C.L. No. 106/1971, dated 30.8.1973)** : (1) Where argument is heard day after day, or arguments are heard afresh, cases in which judgments are delivered more than one month

after the close of evidence, have to be entered in the quarterly return though no explanation need be furnished in the last column of the said return if the judgment is pronounced within one month of the commencement of argument, that is within one month of the first date on which the arguments were heard.

(2) On receipt of the quarterly return, the District Judge should scrutinize all cases in which judgment is delivered more than one month after the conclusion of arguments and satisfy himself that there was no unnecessary delay in the conclusion of the arguments or that arguments were heard afresh for some valid reason.

(3) While scrutinizing the quarterly statement, the District Judge, should also scrutinize those cases where it appears that there has been unreasonable time gap between the close of evidence and the conclusion of arguments. In such cases he can note his comments and, if necessary, obtain the explanation of the officer also.

- 30. CHECKING OF THE DRAFT :** After preparation of the draft of the judgment or order, it should be carefully read by the judge preparing the draft so that before signing, dating and pronouncing it, the errors or other mistakes may be checked and rectified.

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