

How to Write Judgments and Orders

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Writing 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 how judgments and orders should be written by the judges. But the long drawn practices evolved by judges over the decades have, to certain extent, settled the manner of writing of judgments and orders of the courts. Arriving at conclusions and making of decisions in cases out of the material available on records of cases is the most cumbersome part of the judicial function of the judges. Writing qualitative judgments and orders requires a lot of experience and skill which a judge acquires in his career over the period. The Supreme Court of India has over the years given several land mark judgments highlighting the various methodologies to be adopted in writing of judgments and orders of various natures. Let us discuss here the various methods and manners of writing of judgments and orders of different natures with the help of the leading judicial pronouncements of the Supreme Court and High Courts.

1. **Definition of “judgment” u/s 2(9) CPC:** Section 2(9) CPC defines the word “judgment” thus: “judgment” means the statement given by the Judge of the grounds of a decree or order.
2. **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*

3. **A judgment is manifestation of reasons and judgment writing is a critical instrument in fostering the rule of law and in curbing rule by the law:** A judgment culminates in a conclusion. But its content represents the basis for the conclusion. A judgment is hence a manifestation of reason. The reasons **provide** the basis of the view which the decision-maker has espoused, of the balances which have been drawn. That is why reasons are crucial to the legitimacy of a judge's work. They provide an insight into judicial analysis, explaining to the reader why what is written has been written. The reasons, as much as the final conclusion, are open to scrutiny. A judgment is written primarily for the parties in a forensic contest. The scrutiny is first and foremost by the person for whom the decision is meant, the conflicting parties before the court. At a secondary level, reasons furnish the basis for challenging a judicial outcome in a higher forum. The validity of the decision is tested by the underlying content and reasons. But there is more. Equally significant is the fact that a judgment speaks to the present and to the future, judicial outcomes taken singularly or in combination have an impact upon human lives. Hence, a judgment is amenable to wider critique and scrutiny, going beyond the immediate contest in a courtroom. Citizens, researchers and journalists continuously evaluate the work of courts as public institution committed to governance under law. Judgment writing is hence a critical instrument in fostering the rule of law and in curbing rule by the law. See: *State Bank of India vs. Ajay Kumar Sood*, (2023) 7 SCC 282 (Para 17)

4. **Judgment writing is a layered exercise:** Judgment writing is a layered exercise. In one layer, a judgment addresses the concerns and arguments of parties to a forensic contest. In another layer, a judgment addresses stakeholders beyond the conflict. It speaks to those in society who are

impacted by the discourse. In the layered formulation of analysis, a judgment speaks to the present and to the future. Whether or not the writer of a judgment envisions it, the written product remains for the future, representing another incremental step in societal dialogue. If a judgment does not measure up, it can be critiqued and criticised. Behind the layers of reason is the vision of the adjudicator over the values which a just society must embody and defend. In a constitutional framework, these values have to be founded in the Constitution. The reasons which a Judge furnishes provide a window, an insight, into the work of the court in espousing these values as an integral element of the judicial function. See: *State Bank of India vs. Ajay Kumar Sood*, (2023) 7 SCC 282 (Para 18)

5. Essentials of a judgment: According to Order 20, rule 4(2) CPC, The essential components of a judgment are :

- a. concise statement of the case
- b. points for determination (issues)
- c. decision thereon
- d. reasons for such decision. See:

(a). *Cellular Operators Association of India Vs. Union of India*, AIR 2003 SC 899.

(b). *Union of India Vs. Manager, Jain Associates*, AIR 2001SC 3381

(c). *Balraj Taneja Vs. Sunil Madan*, AIR 1999 SC3381.

3A. What a judgment must reflect?: Fact that judgment is accurate is not sufficient. It must also be reasonable, logical and easily comprehensible. Judicial opinion is to be written in such a way that it elucidates in convincing manner and proves the fact that the verdict is righteous and

judicious. Therefore, it is desirable that judgment should have clarity, both on facts and law, and on submissions, findings, reasonings and ultimate relief granted. See:Shakuntala Shukla Vs State of UP, AIR 2021 SC 4384

6. **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 :
 - (i) Shakuntala Shukla Vs State of UP, AIR 2021 SC 4384
 - (ii) Commissioner of Income Tax Vs. Surendra Singh Pahwa, AIR 1995 All 259.
7. **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. See:Shakuntala Shukla Vs State of UP, AIR 2021 SC 4384
8. **Evidence and its appreciation:** 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. See:Shakuntala Shukla Vs State of UP, AIR 2021 SC 4384

9. **Law and 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.
10. **Mode of quoting rulings in judgments and orders:** (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 here :See: **State of Bombay vs. United Motors, (1955) SCR 1069**
11. **Effect of non-mentioning or wrong mentioning of correct provision of law in judgment or order :** 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

12. 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. See:Shakuntala Shukla Vs State of UP, AIR 2021 SC 4384

13. Judges may have their own style of judgment writing: Individual Judges can indeed have different ways of writing judgments and continue to have variations in their styles of expression. The expression of a judge is an unfolding of the recesses of the mind. However, while recesses of the mind may be inscrutable, the reasoning in judgment cannot be. While Judges may have their own style of judgment writing, they must ensure lucidity in writing across these styles. See: State Bank of India vs. Ajay Kumar Sood, (2023) 7 SCC 282 (Para 28)

11A. Operative part of judgment 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. See:Shakuntala Shukla Vs State of UP, AIR 2021 SC 4384

11B. Grant of relief claimed in plaint implied if the decree merely says that the suit is decreed: If the plaintiff has sued for an injunction and the decree merely says that the suit is decreed, the grant of an injunction, as prayed for in the plaint, is implied. It makes no difference that the decree is based on a compromise. The decree must be co-related to the relief claimed in the plaint. Of course, one must search for the real intent of the parties and decide if the prohibitions in the comprise were intended to be enforced as an injunction. See: Harihar Pandey vs. Mangala Prasad, AIR 1986 All 9.

11C Ambiguity, confusions and words with uncertain meanings should be avoided : 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. See:Shakuntala Shukla Vs State of UP, AIR 2021 SC 4384

12. **Simple language should be preferred in judgments and orders:** Using simple words and language easily understandable by the litigants, lawyers and the ordinary people should be preferred in the judgments and orders.
13. **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.
14. **Harsh and offending words and language should be avoided in judgments and orders :** 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).

15. **Unbalanced language not be used in judgments and orders:** Unbalanced language is generally out of place in judicial adjudication. See:

(i).N. S. Gujral Vs. Custodian, Evacuee Property, AIR 1968 SC453.

(ii).Macropollo & Co. Vs. Macropollo Co. Employees Union, AIR 1958 SC 1012.

Note: For detailed discussions and the Supreme Court pronouncements on the subject, kindly see my Article “Law on Strictures and Defences Against Judicial Assaults” on my website on Google lawhelpline.in

16. **Lengthy sentences should avoided:** 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.
17. **Standard legal words and phrases generally used in courts should be preferred :** 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.
18. **Abbreviations, code words and difficult words in judgments and orders should be avoided:** A common man cannot and shall not be able to understand the abbreviations and the code words used in the judgment. It is well settled that the use of abbreviations and the code words should be strictly avoided. It is equally well settled that the judgment should be so precise and so clear that a common man or a litigant must understand the judgment. The language should be sober, temperate and clear. See:Smt. Hina Singh Vs. Satya Kumar Singh, AIR 2007 Jharkhand 34 (DB).
19. **Proverbs, idioms, exaggerations, embellishments, ornamentations etc should be avoided in judgments and orders:** 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.

20. **Numbering of paragraphs:** Each paragraph in a judgment or lengthy order should be numbered.
21. **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.
22. **Task of numbering of paragraphs in a judgment requires great skill:** The task of paragraph numbering and internal referencing requires skill and judgment in great measure. The editor who inserts para numbering must know how legal argumentation and legal discourse is conducted and how a judgment of a court of law must read. Often legal arguments or conclusions are either clubbed into one paragraph in the original judgment or parts of the same argument are given in separate paragraphs. It requires judgment and the capacity for discernment for determining whether to carve out a separate paragraph from an existing paragraph in the original judgment or to club together separate paragraphs in the original judgment of the Court. Setting of paragraphs by the appellants of their own in the judgment entailed the exercise of the brain work, reading and understanding of subject of disputes, different issues involved, statutory provisions applicable and interpretation of the same and then dividing them in different paragraphs so that chain of thoughts and process of statement of facts and the application of law relevant to the topic discussed is not disturbed, would require full understanding of the entire subject of the judgment. Making paragraphs in a judgment could not be called a mechanical process. It requires careful consideration, discernment and choice and thus it can be called as a work of an author. Creation of paragraphs would obviously require extensive reading, careful study of subject and the exercise of

judgment to make paragraph which has dealt with particular aspect of the case, and separating intermixing of a different subject. Creation of paragraphs by separating them from the passage would require knowledge, sound judgment and legal skill. In our opinion, this exercise and creation thereof has a flavour of minimum amount of creativity. See: *Eastern Book Company And Others v. D.B Modak And Another*, (2008) 1 SCC 1 (Para 61)

23. **Distinct paragraphs for different parts of controversies requiring 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.
24. **No personal view should be injected in the judgment by the judge**: See: A judge should not inject his personal view in the judgment. See: *Director, Studies Vs. Vaibhav Singh Chauhan*, AIR 2008 SC(Suppl) 696.
25. **No subjectivity in judgment**: 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.
26. **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)

27. **No Repetitions :** There should be no repetitions of the views already expressed by the judge in his judgment/order.
28. **Judgment must not contain self-contradictory passages into it:** A judgment should not be inconsistent in itself and should not incorporate passages repugnant to each other. See: State of West Bengal Vs. Kesoram Industries Ltd,AIR 2005 SC 1646.
29. **I, My, Me, Mine should be avoided in judgments and orders :** Use of words like I, My, Me, Mine in judgments or orders by the Judges for themselves should be avoided and instead following words and phrases should be preferred:
 - (i). court is satisfied that
 - (ii). court is of the view that
 - (iii). in the opinion of the court
 - (iv). court finds that
 - (v). court concludes that
 - (vi). court directs that
 - (vii). court holds that
 - (viii). application is hereby rejected by the court
 - (ix). accused persons were granted bail by the court
 - (x). court fails to understand as to why he preferred to waive his rights.

30. **Checking of the draft judgment :** After preparing 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 mistakes may be checked and rectified.
31. **Cuttings and erasures etc in judgments and orders should be avoided:** In case any over-writings, cuttings or erasures occur in judgments or orders, the same should be initialed by the judge pronouncing the judgment or order.
32. **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)
33. **Passing lengthy orders should be avoided:** The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail paced progress of proceedings in trial courts would further be slowed down. It can be appreciated if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. See: Kanti Bhadra Shah Vs. State of West Bengal, 2000 CrLJ 746 (SC)

34. **Number of pages covered in a judgment not material:** : 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
35. **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
36. **Brief judgment when valid?:** Where a finding is arrived at cursorily, the judgment based on such a finding is not vitiated if the finding is supported by evidence. See: Satya Pal Vs. Ved Prakash, AIR 1980 All 268.
37. **Brief judgment when invalid?:** A judgment may be brief, but not so brief as not to disclose the points for determination or to discuss the evidence led thereon . See: Kuldip Oil Industries Vs. Pratap Singh, AIR 1959 All 505.
38. **No oral judgments and orders:** CPC does not provide for oral judgments and orders. Section 142 CPC provides that all orders and notices served on or given to any person under the CPC shall be in writing. See: K. V. Rami Reddy Vs. Prema, AIR 2008 SC 1534.
39. **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.

40. **Non-speaking or cryptic judgment and 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 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 my Article on “**Necessity of Passing Speaking & Reasoned Orders**” available on Google on my website (lawhelpline.in).

41. **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.
42. **Time limit for pronouncing judgment from the date of conclusion of arguments:** (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 i. e. 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.

42. Courts and Tribunals must ensure uploading of their judgments and orders and their accessibility by using digital signatures, but not mere their scanned versions of printed copies: The importance of making judgments accessible to persons from all section of society, especially persons with disability, needs emphasis. All judicial institutions must ensure that the judgment and orders being published by them do not carry improperly placed watermarks as they end up making the documents inaccessible for persons with visual disability who use screen readers to access them. On the same note, courts and tribunals must also ensure that the version of the judgment and orders uploaded is accessible and signed using digital signatures. They should not be scanned versions of printed copies. The practice of printing and scanning documents is a futile and time-consuming process which does not serve any purpose. The practice should be eradicated from the litigation process as it tends to make documents as well as process inaccessible for an entire gamut of citizens. . See: *State Bank of India vs. Ajay Kumar Sood*, (2023) 7 SCC 282 (Para 22)

43. **Full particulars of accused persons such as their names, parentage, complete address etc. must be mentioned in the judgments of sub-ordinate courts :** Full particulars of accused persons such as their names, parentage, complete address etc. must be mentioned in the judgments of sub- ordinate courts. See : State of UP Vs. Mahipal, 2014 (84) ACC 488 (All)(DB).
44. **Duty of Magistrate while passing summoning order in complaint case:** 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.
45. **Arguments : How much part of arguments should be quoted in judgments or orders?:** 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

46. **Only lawyer, not Judge, is expected to know the law:** There is a presumption in law that a lawyer knows the law but there is no absolute presumption that a Judge should know the law. A Judge is only called upon to balance the two sides of an argument presented before him. See: Judgment dated 01.05.2014 passed by Hon'ble Justice Rajiv Narain Raina of the Punjab and Haryana High Court in CR. No. 3791 / 2013 (O&M), Nirmal Singh & Others Vs. Tarsem Singh & Others
47. **Sentimental arguments should not be entertained by courts:** 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
48. **Total 20 days for arguments in Bihar Fodder Scam case granted by the Supreme Court :** 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 relative 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 that : *"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 the 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, this 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 five days for the prosecution and fifteen 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 the 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, 22*).

49. **For verbally pronounced judgment in open court**, See: Order 41, rule 31 CPC as amended in UP.

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