Ratilal Bhanji Mithani

Vs

Asstt. Collector of Customs, Bombay & Anr

Criminal Appeal No. 64 of 1967

(R. S. Bachawat, J. M. Shelat, V. Bhargava JJ)

04.05.1967

JUDGMENT

BACHAWAT, J.

The appellant along with other persons is being tried for an offence under Sec. 120B of the Indian Penal Code read with Sec. 167(81) of the Sea Customs Act, 1878, and Sec. 5 of the Imports and Exports Control Act, 1947. The offence is bailable. The appellant was released on bail under orders of Magistrates dated May 11, 1960 and April 1, 1961. A large number of witnesses have been examined but the trial has not yet been concluded. By a order dated March 3/6, 1967, the High Court of Maharashtra, Bombay, in the exercise of its inherent jurisdiction cancelled the bail orders and directed him to surrender to his bail. From this order, the present appeal has been filed by special leave.

In Talab Haji Hussain v. Madhukar Purshttam Mondkar and another, this Court held that a High Court has the inherent power to cancel a bail granted to a person accused of a bail able offence where such an order is necessary to secure the ends of justice or to prevent the abuse of process of the Code of Criminal Procedure.

On behalf of the appellant it was strenuously argued that this case was wrongly decided. Having heard full arguments, we find no reason for departing from our earlier decision.

In the matter of admission to bail, the Code of Criminal Procedure makes a distinction between bailabel and non-bailable offence. The grant of bail to a person accused of a non-bailable offence is discretionary under Sec. 497 of the Code and the person released on bail may again be arrested and committed to custody by an order of the High Court, the Court of Session and the Court granting the bail. Under Sec. 498 of the Code the High Court and the Court of Session may release any person so admitted to bail to be arrested and committed to custody. A person accused of a bailable offence is treated differently; at any time while under detention without a warrant and at any stage of the proceeding before the Court before which he is brought, he has the right under Sec. 496 of the Code to be release on bail granted under Sec. 496. Nevertheless, if at any subsequent stage of the proceedings, it is found that any person accused of a bailabel offence is intimidating, bribing or tampering with the prosecution witness or is attempting to abscond, the High Court has the power to cause him to be arrested and to commit him to custody for such period as it thinks fit. This jurisdiction springs from the over-riding inherent powers of the High Court and can be invoked in exceptional cases only when the High Court is satisfied that the ends of justice will be defeated unless the accused is committed to custody. For the reasons given in Talab Haji Hussain's case, we hold that this inherent power of the High Court exists and is preserved by Sec. 561-A of the Code.

The person committed to custody under the orders of the High Court cannot ask for his release on bail under sec. 496, but the High Court may by a sub-sequent order admit him to bail again.

Counsel for the appellant argued that the inherent power of the High Court is not conferred by any legislation or statute, and the deprivation of the personal liberty of the appellant by an order of the High Court in the exercise of its inherent powers is violative of the constitutional protection under Art. 21 of the Constitution.

Art. 21 is in these terms :

> "No person shall be deprived of his life or personal liberty except according to procedure established by law".

The term 'law' in Art. 21 was the subject of an elaborate discussion in A. K. Gopalan v. The State of Madras. Kania C.J. at pp. 111-113 said that the term 'law' in that Article must mean the law of the State or enacted law, and not rules of natural justice. Fazl Ali J. who was in the minority, said at page 169 that 'law' must include certain principles of natural justice. Patanjali Sastri J. at p. 199 said that 'law' in Art. 21 means 'positive or State-made law'. Mahajan J. at page 226 expressed no opinion on the point. Mukherjea J. at p. 278 said that "in article 21 the work 'law' has been used in the sense of State-made law and not as an equivalent of law in the abstract or general sense embodying the principles of natural justice". Das J. said at page 309 that "there is no scope for introducing the principles of natural justice in Article 21 and 'procedure established by law' must mean procedure established by law made by the State which, as defined includes Parliament and the Legislatures of the States". As explained by four of the learned Judges in A. K. Gopalan's case, the expression 'law' in Art 21 means enacted or State made law, and not the general principles of natural justice.

In Pandit M. S. M. Sharma v. Shri Sri Krishna Sinha and others, this Court held that a deprivation of personal liberty of any person by a Legislative Assembly of a State in exercise of its power to punish for its contempt is according to a procedure established by law and does not contravene Art 21. Art. 194(3) of the Constitution provides that "the powers, privileges and immunities of a house of the Legislature of a State, and of the members ad the committees, of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of it members and committees, at the commencement of this Constitution". Article 194(3) thus confers on the Legislative Assembly of a State the existing inherent powers enjoyed by the British House of Commons including the power to punish for its contempt. Art. 208(1) empowers the Legislative Assembly to make rules regulating its procedure. As explained in Pandit Sharma's case, these power and the procedure prescribed by the rules has the sanction of enacted law and an or of committal for contempt of the Assembly is according to procedure established by law. Das C.J., speaking for four learned Judges said at page 861 : "Art. 194(3) confers on the Legislative Assembly those powers, privileges and immunities and Art. 208 confers power on it to frame rules. The Bihar Legislative Assembly has framed rules in exercise of its powers under that Article. It follows, therefore, that Art. 194(3) read with the rules, so framed has laid down the procedure for enforcing its powers, privileges and immunities. If, therefore, the Legislative Assembly has the powers, privileges and immunities of the House of Commons and if the petitioner is eventually deprived of his personal liberty as a result of the proceedings before the Committee of Privileges, such deprivation will be in accordance with procedure established by law and the petitioner cannot complain of the breach, actual or threatened, of his fundamental right under Art. 21". Subba Rao J. in his minority judgment in that case and the Court in Special Reference No. 1 of 1964, did not say anything to the contrary

on this point.

Now the question is whether the inherent power of the High Court is conferred by or has the sanction of enacted law. From its very inception the High Court has possessed and enjoyed its inherent powers including the power to prevent the abuse of the process of any Court within its jurisdiction and to secure the ends of justice. These powers inherent in the High Court and spring from its very nature and constitution as a court of superior jurisdiction. All the existing powers of the High Courts were preserved and continued by legislation from time to time. Sec. 561-A of the Criminal Procedure Code declared that "nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order passed under this Code, or to prevent the abuse of process of any Court or otherwise to secure the ends of justice". The section was inserted in the Code by Act XVII of 1923 to obviate any doubt that these inherent powers have been taken away by the Code. In terms, this section did not confer any power, it only declared that nothing in the Code shall be deemed to limit or affect the existing inherent powers of the High Court, see King Emperor v. Khwaja Nazir Ahmad. Then came other enactments which were framed differently. Sec. 223 of the Government of India Act, 1935, provided :

> "Subject to the provisions of this Part of this Act, to the provisions of any Order in Council made under this or any other Act and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by this Act, the jurisdiction of and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of Part III of this Act".

The Section enacted that the jurisdiction of the existing High Courts and the powers of the judges thereof in relation to the administration of justice "shall be" the same as immediately before the commencement of part III of the Act. The statute confirmed and re-vested in the High Court all its existing powers and jurisdiction including its inherent powers. Then came the Constitution. Art. 225 of the Constitution provides :

> "225. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution".

The proviso to the article is not material and need not be read. The article enacts that the jurisdiction of the existing High Court's and the powers of the judges thereof in relation to administration of justice "shall be" the same as immediately before the commencement of the Constitution. The Constitution confirmed and re-vested in the High Court all its existing powers and jurisdiction including its inherent powers, and its power to make rules. When the Constitution or any enacted law has embraced and confirmed the inherent powers and jurisdiction of the High Court which previously existed, that power and jurisdiction has the sanction of an enacted "law" within the

meaning of Art. 21 as explained in A. K. Gopalan's case. The inherent powers of the High Court preserved by Sec. 561-A of the Code of Criminal Procedure are thus vested in it by "law" within the meaning of Art. 21. The procedure for invoking the inherent powers is regulated by rules framed by the High Court. The power to make such rules is conferred on the High Court by the Constitution. The rules previously in force were contained in force by Article 372 of the Constitution. The order of the High Court cancelling the bail and depriving the appellant of his personal liberty is according to procedure established by law and is not violative of Art. 21.

The High Court cancelled the previous bail orders, as it found that the appellant was intimidating and tampering with certain German citizens whom the prosecution intended to examine as witnesses. This finding is challenged by the appellant. Normally, it is not the practice of this Court to re-examine findings of fact full arguments, we are not incline to interfere with the findings of the High Court. The High Court reserved liberty to the appellant to move the High Court on or after June 26, 1967, for a fresh order of bail. It was contemplated that within the time so fixed, the prosecution will examine the German witnesses. On March 13, 1967, the appellant surrendered to his bail and since then he is in jail custody. The prosecution has been given ample opportunity to examine the witnesses before June 26, 1967, without any interference from the appellant. From the correspondence placed before us, it appears that during the pendency of this appeal the prosecution has refrained from taking steps for the examination of the German witness. This Court did not pass any order staying the proceedings or admitting the appellant to bail. The delay in the examination of the witnesses is caused entirely by the laches of the prosecution. Even if the prosecution cannot now examine the witnesses by June 26, 1967, we see no reason why the appellant should remain in custody after that date. We direct that the appellant be released on bail on June 26, 1967, whether or not the prosecution witnesses are examined by that date. The bail will be given to the satisfaction of the Presidency Magistrate, 23rd Court, Esplanade, Bombay, before whom the case is pending. Subject to this modification, the appeal is dismissed.

R. K. P. S. Order modified and Appeal dismissed.

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