

**SUPREME COURT OF INDIA**

P. S. R. Sadhanantham

Vs.

Arunachalam

Writ Petn.No.355 of 1979

(V. R. Krishna Iyer, S. Murtaza Fazl Ali, D. A. Desai, R. S. Pathak and A. D. Koshal, JJ.)

01.02.1980

**JUDGEMENT**

**KRISHNA IYER, J.**

(for himself and on behalf of S. M. Fazal Ali and D. A. Desai, JJ.) :-

1. Is it constitutionally valid or desirable on principle to permit a private citizen, who has but loose nexus with the victim of a crime, to invoke the special power under Art. 136 of the Constitution for leave to appeal against an acquittal of the alleged criminal thereby putting in peril his life or liberty in the absence of any legislative provision arming such officious outsider with the right to appeal? This issue, profound on its face but unsound on reflection, falls for decision in this writ petition under Art. 32 of the Constitution. The facts compressed into a single sentence, are that the petitioner was acquitted of a murder charge by the High Court in appeal but the brother of the deceased - not the State nor even the first informant - moved this Court under Art. 136, got leave and had his appeal heard which resulted in the petitioner (accused) being convicted and sentenced to life term under S.302, I.P.C. The present contention urged, to upset that conviction, is that the leave to appeal

and the subsequent proceedings were unconstitutional as violative of Article 21 - the procedural magna carts protective of life and liberty - and, therefore, the sentence must fail. This plea, faintly presented before this Court when the appeal was heard, was briefly considered and rightly rejected. This second battle, doomed to fail like the first, demands of us a condensed ratiocination in negation of the contention hopefully urged by Sri Mridul, counsel for the petitioner.

2. Two interlaced issues arise and they turn on (a) the content and character of Article 136 vis a vis Art. 21, and (b) the locus use that expression to refer to a public-spirited citizen seeking to trigger the legal process to see that justice is done to his neighbour.

3. Article 21, in its sublime brevity, guardians human liberty by insisting on the prescription of procedure established by law, not flat as sine qua non for deprivation of personal freedom. And those procedures so established must be fair, not fanciful, nor formal nor flimsy, as laid down in Maneka Gandhi's case, (1978) 1 SCC 248. So, it is axiomatic that our constitutional jurisprudence mandates the States not to deprive a person of his personal liberty without adherence to fair procedure laid down by law. The question is whether there is any procedure, fair or otherwise, which enables a kindly neighbour who is not a complainant or first informant, to appeal to the Supreme Court against an allegedly erroneous acquittal by the High Court. The corpus juris contains no black-letter law arming any such purely compassionate soul to approach this Court, argues Sri Mridul; and so, his client's liberty has been deprived by a proceeding initiated by someone without any procedure established by law. We see the dexterity in the advocacy but reject its efficacy. Nor are we impressed with the submission that the brother of the deceased in the case of any other high-minded citizen, is an officious meddler who has no business nor grievance when the commission of grievous crime is going unpunished. There is a spiritual sensitivity for our criminal justice system which approves of the view that a wrong done to anyone is a wrong done to oneself, although for pragmatic considerations the law leashes the right to initiate proceedings in some situations. Again, justice is functionally outraged not only when an innocent person is punished but also when a guilty criminal gets away with it stultifying the legal system. The deep concern of the law is to track down, try and punish the culprit, and if found not guilty, to acquit the accused.

4. It is imperative under Art. 21 that there should be some civilised procedure for holding a man guilty and depriving him of his liberty. Undoubtedly, this Court, if it grants leave under Art. 136 and eventually finds him guilty deprives him of his liberty; and so the crucial question that falls for decision is as to whether there is any procedure as predicated by Art. 21 independent of or implicit in Art. 136. It is apparent that there is no statutory provision which creates a right of appeal in favour of a stranger enabling him to challenge an acquittal by the High Court. The Criminal Procedure Code does not create such a right of appeal and, speaking generally, a right of appeal is the creature of statute. So it is submitted that before the Court may grant special leave under Art. 136 there must be an antecedent right of appeal, absent which the question of leave by the Court does not arise. The argument is ingenious but the inference is fallacious.

5. An insightful understanding of the sweep, scope and character of Art. 136 will easily dispel the dichotomy between an antecedent right of appeal and a subsequent grant of leave, which is the corner-stone of the contention of the petitioner.

6. The jural reach and plural range of the judicial process to remove injustice in a given society is a sure index of the versatile genius of law-in-action as a delivery system of social justice. By this standard, our constitutional order vests in the Supreme Court a jurisdiction to do justice, at once omnipresent and omnipotent but controlled and guided by that refined yet flexible censor called judicial discretion. This nidus of power and process, which master-minds the broad observance throughout the Republic of justice according to law, is Art. 136.

7. Specificity being essential to legality, let us see if the broad spectrum spread-out of Art. 136 fills the bill from the point of view of "procedure established by law". In express terms, Article 136 does not confer a right of appeal on a party as such but it confers a wide discretionary power on the Supreme Court to interfere in suitable cases. The discretionary dimension is considerable but that relates to the power of the Court. The question is whether it spells by implication, a fair procedure as contemplated by Art. 21. In our view, it does, Article 136 is a special jurisdiction. It is residuary power; it is extraordinary in its amplitude, its limit, when it chases injustice, is the sky itself. This Court functionally fulfils by reaching out to injustice wherever it is and this power is largely deprived in the common run of cases from Art. 136. Is it merely a power in the Court to be exercised in any manner it fancies? Is there no procedural limitation in the manner of exercise and the occasion for exercise? Is there no duty to act fairly while hearing a case under Art. 136, either in the matter of grant of leave or, after such grant, in the final disposal of the appeal? We have hardly any doubt that there is procedure necessarily implicit in the power vested in the Supreme Court. It must be remembered that Art. 136 confers jurisdiction on the highest Court. The founding fathers unarguably intended in the very terms of Art. 136 that it shall be exercised by the highest judges of the land with scrupulous adherence to judicial principles well established by precedents in our jurisprudence. Judicial discretion is canalised authority, not arbitrary accentricity. Cardozo, with elegant accuracy, has observed:<sup>1</sup>

1 . Benjamin Cardozo, *The Nature of the Judicial Process*, Yale University Press (1921).

"The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. he is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life'. Wide enough in all conscience is the field of discretion that remains".

8. It is manifest that Art. 136 of composite structure, is power-cum-procedure - power in that it vests

jurisdiction in the Supreme Court, and procedure in that it spells a mode of hearing. It obligates the exercise of judicial discretion and the mode of hearing so characteristic of the Court process. In short, there is an in-built prescription of power and procedure in terms of Art. 136 which meets the demand of Art. 21.

9. We may eye the issue slightly differently. If Art. 21 is telescoped into Art. 136, the conclusion follows that fair procedure is imprinted on the special leave that the Court may grant or refuse. When a motion is made for leave to appeal against an acquittal, this Court appreciates the gravity of the peril to personal liberty involved in that proceeding. It is fair to assume that while considering the petition under Art. 136 the Court will pay attention to the question of liberty, the person who seeks such leave from the Court, his motive and his locus standi and the weighty factors which persuade the Court to grant special leave. When this conspectus of processual circumstances and criteria play upon the jurisdiction of the Court under Art. 136, it is reasonable to conclude that the desideratum of fair procedure implied in Art. 21 is adequately answered.

10. Once we hold that Art. 136 is a composite provision which vests a wide jurisdiction and, by the very fact of entrusting this unique jurisdiction in the Supreme Court, postulates, inarticulately though, the methodology of exercising that power, nothing more remains in the objection of the petitioner. It is open to the Court to grant special leave and the subsequent process of hearing are well established. Thus, there is an integral provision of power-cum-procedure which answers with the desideratum of Art. 21 justifying deprivation of life and liberty.

11. The wider the discretionary power the more sparing its exercise. Times out of number this Court has stressed that though parties promiscuously 'provoke' this jurisdiction, the Court parsimoniously invokes the power. Moreover, the Court may not, save in special situations, grant leave to one who is not eo nomine a party on the record. Thus, procedural limitations exist and are governed by well-worn rules of guidance.

12. Sri Mridul urged that every inquisitive benefactor or offensive adventurer cannot 'rush in' and upset a verdict of acquittal by resort to Art. 136. This is really a matter for exercise of judicial discretion and the Court can be trusted to bear in mind time-honoured practices and the value of Art. 21. But no dogmatic prescription of leave under Art. 136 to a non-party applicant can be laid down inflexibly. For access to justice is not a cloistered virtue.

13. It is true that the strictest vigilance over abuse of the process of the Court, especially at the expensively exalted level of the Supreme Court, should be maintained and ordinarily meddlesome bystanders should not be granted 'visa'. It is also true that in the criminal jurisdiction this strictness applies a fortiori since an adverse verdict from this Court may result in irretrieval injury to life or liberty.

14. Having said this, we must emphasise that we are living in times when many societal pollutants create new problems of unredressed grievance when the State becomes the sole repository for initiation of criminal action. Sometimes, pachydermic indifference of bureaucratic officials, at other times politicisation of higher functionaries may result in refusal to take a case to this Court under Art. 136 even though the justice of the lis may well justify it. While "the criminal law should not be used as a weapon in person vendettas between private individuals", as Lord Shawcross<sup>2</sup> once wrote, in the absence of an independent to every citizen, a wider connotation of the expression 'standing' is necessary for Art. 136 to further its mission. There are jurisdictions in which private individuals - not the State alone - may institute criminal proceedings. The Law Reforms Commission (Australia) in its Discussion Paper No.4 on "Access to Courts - I Standing: Public Interest Suits" wrote :

2 . The Times, 26 May 1977, 20.

The general rule, at the present time, is that anyone may commence proceedings and prosecute in the Magistrate's court. The argument for retention of that right arises at either end of the spectrum - the great cases and the frequent petty cases. The great cases are those touching government itself - a Watergate or a Poulson. However independent they may legally be any public official, police or prosecuting authority, must be subject to some government supervision and be dependent on government funds; its officers will inevitably have personal links with government. They will be part of the "establishment". There may be cases where a decision not to prosecute a case having political ramifications will be seen, rightly or wrongly, as politically motivated. Accepting the possibility of occasional abuse the Commission sees merit in retaining some right of a citizen to ventilate such a matter in the Courts.

Even the English System, as pointed by the Discussion Paper, permits a private citizen to file an indictment. In our view, the narrow limits set in Vintage English Law, into the concept of 'person aggrieved' and 'standing' needs liberalisation in our democratic situation. In Dabholkar's case (1975) 2 SCC 702 this Court imparted such a wider meaning. The American Supreme Court relaxed the restrictive attitude towards 'standing' in the famous case of Baker v. Carr. (1962) 369 US 186. Lord Denning, in the notable case of the Attorney-General of the Gambia v. Pierra Sarr N'jie, 1961 AC 617 spoke thus:

.....the words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him;

Prof. S. A. de Smith takes the same view:<sup>3</sup>

3 . Quoted in 'Standing and Justifiability' by V. S. Deshpande, Journal of the Indian Law Institute April-June, 1971, Vol. 13, No. 2, p. 174

All developed legal systems have had to face the problem of adjusting conflicts between two aspects of the public interest - the desirability of encouraging individual citizens to participate actively in the enforcement of the law, and the undesirability of encouraging the professional litigant and the meddlesome interloper to invoke the jurisdiction of the courts in matters that do not concern him.

Prof. H.W.R. Wade strikes a similar note: 4

4 . Ibid. p. 175

In other words, certiorari is not confined by a narrow conception of locus standi. It contains an element of the action popularis. This is because it looks beyond the personal rights of the applicant; it is designed to keep the machinery of justice in proper working order by preventing inferior tribunal and public authorities from abusing their powers.

In Dabholkar's case, one of wrote in his separate opinion: 5

5 . Krishna Iyer, J. in (1975) 2 SCC 702 at 720

The possible apprehension that widening legal standing with a public connotation may unloose a flood of litigation which may overwhelm the Judges is misplaced because public resort to court to suppress public mischief is a tribute to the justice system.

This view is echoed by the Australian Law Reforms Commission.

15. The crucial significance of access jurisprudence has been best expressed by Cappelletti: 6

## 6 . Access to Courts - I Standing Public Interest Suits p.3

The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement - the most basic 'human right' - of a system which purports to guarantee legal rights.

16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Art. 136 is chimerical. Access to Justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bona proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the writ petitioner and dismiss the petition.

17. **PATHAK, J** (for himself and A. D. Koshal, J. :- The High Court of Madras in its appellate jurisdiction acquitted the petitioner, Sadhanantham, of charges under S. 302 and S. 148, I.P.C. Arunachalam, as brother of the deceased, petitioned to this Court under Article 136 of the Constitution for special leave to appeal against the acquittal. The court granted special leave, and ultimately allowed the appeal, Arunachalam v. P.S.R. Sadhanatham, Criminal Appeal No. 170 of 1973 decided by Hon'ble S. Murtaza Fazal Ali and Hon'ble O. Chinnappa Reddy, JJ. on 6th March, 1979 : (reported in AIR 1979 SC 1284) and setting aside the judgment of the High Court restored the conviction and sentence imposed by the trial Court under S. 302, I.P.C. The petitioner has filed this writ petition contending that the judgment and order of this Court is a nullity and should be set aside. The principal contention is that Art. 136 did not empower this Court to grant special leave to Arunachalam (the third respondent) and the grant of special leave by the Court and its entertaining the appeal violates Art. 21 of the Constitution.

18. The maintainability of the appeal on the ground that Arunachalam was not entitled to petition under Art. 136 of the Constitution for special leave was challenged before the Bench hearing the appeal, but the Bench overruled the objection holding that it had ample power under Art. 136 to entertain the special leave petition. The learned Judges laid down that the Court had jurisdiction to entertain appeals against judgments of acquittal by the High Court at the instance of private parties.

19. We have read the judgment of our learned brother V. R. Krishna Iyer, but because of the importance of the question we consider it necessary to set down our view.

20. The expanse of the appellate jurisdiction of the Supreme Court flows from an entire code of provisions contained in the Constitution. It includes an appeal on certificate. It includes an appeal on certificate by the High Court under Art. 132 that the case involves a substantial question of law as to the interpretation of the Constitution in a civil, criminal or other proceeding disposed of by a judgment, decree or final order of a High Court, and an appeal on certificate under Art. 133 that the case involves a substantial question of law of general which calls for decision by the Supreme Court. In a criminal proceeding, disposed of by a judgment or final order or sentence of a High Court, besides cases where the the High Court has convicted the accused and sentenced him to death either on reversing in appeal an order of acquittal by the trial Court or on the case being withdrawn from the subordinate court to itself for trial, an appeal lies to the Supreme Court where the High Court "certifies that the case is fit one for appeal to the Supreme Court". Article 135 confers jurisdiction and power on the Supreme Court with respect to any matter to which Art. 133 or Art. 134 does not apply if such jurisdiction and power were exercisable by the Federal Court immediately before the commencement of the Constitution. Article 136 declares:

"136. (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India."

Then follow other provisions to which we need not refer.

21. Plainly, the jurisdiction conferred by Art. 136 seeks to confer on this Court the widest conceivable range of judicial power, making it perhaps among the most powerful courts in the world. The judicial power reaches out to every judgment, decree, determination, sentence or order affecting the rights and obligations of persons in civil matters, of life and liberty, in criminal matters as well as matters touching the Revenues of the State. It is an attempt to ensure that the foundations of the Indian Republic, which have been laid on the bedrock of justice, are not undermined by injustice anywhere in the land, *Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd.*, 1950 459 at p. 474. As the Court observed in *Durga Shankar Mehta v. Raghuraj Singh* (1955) 1 SCR 267 at p. 272 Art. 136 vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals by grant of special leave.

22. Nonetheless, there is a limitation which in our opinion, is of immediate relevance. It is a limitation in-built into the jurisdiction of the Court and flows from the nature and character of the case intended to be brought before the Court. It is a limitation which requires compliance despite the apparent plenitude of power vested in the Court. When a petition is presented to the Court under Art. 136, the Court will have due regard to the nature and character of the cause sought to be brought before it when entertaining and disposing of the petition.

23. The question is: Does the brother of a deceased person, who has been murdered, possess the

right to petition under Art. 136 of the Constitution for special leave to appeal against an acquittal of the accused? It is a question which touches directly on the nature of a crime and a criminal proceeding.

24. Several different definitions of a crime have been attempted (and there are some jurists who say that it is impossible of definition), but there is broad agreement on one attribute of its nature that it is an illegal act which amounts to a wrong against the public welfare. *Mogul Steamship Co. v. McGregor Gow and Co.* (1889) 23 QBD 598, 606 per Lord Esher M. R. As a concept, crime has been defined as "any conduct which a sufficiently powerful section of any given community feels to be destructive of its own interests, as endangering its safety, stability or comfort," which "it usually regards as especially heinous and seeks to repress with corresponding severity; if possible it secures that the forces which the sovereign power in the State can command shall be utilised to prevent the mischief or to punish any who is guilty of it."<sup>7</sup> Crimes were defined by Blackstone<sup>8</sup> as "the breach and violation of public rights and duties which affect the whole community." A crime, therefore, is an act deemed by law to be harmful to society in general, even though its immediate victim is an individual. Murder injures primarily the particular victim, but its blatant disregard of human life puts it beyond a matter of mere compensation between the murderer and the victim's family. Those who commit such acts are proceeded against by the State in order that, if convicted, they may be punished.<sup>9</sup> The notion of crime as a threat to the whole community is the material counter-part of the formal rule that the State alone is master of a criminal prosecution.<sup>10</sup> In a criminal proceeding, the State stands forward as prosecutor on public grounds. No private person has a direct interest in a criminal proceeding, although exception may be made by the statute in certain cases. It is common knowledge that a criminal prosecution is not intended for the private satisfaction of a personal vendetta or revenge.<sup>11</sup>

7 . Kenny's *Outlines of Criminal Law*, 18th Edn., p. 2 para 3.

8 . *Commentaries*, III. 2.

9 . *Salmond on Jurisprudence*, 12th Edn., p. 92 para 14.

10 . *Current Legal Problems*, 1955 : Glanville Williams, "The Definition of Crime," p. 107 at p.122.

11 . Since the matter is being treated broadly, it is unnecessary to deal here with the distinction between "public" and "private" crimes, and the classification of crimes which the law permits to be compounded.

25. In India also, the criminal law envisages the State as the prosecutor. Under the Code of Criminal Procedure, the machinery of the State is set in motion on information received by the police or on a complaint filed by a private person before a Magistrate. If the case proceeds to trial and the accused is acquitted, the right to appeal against the acquittal is closely circumscribed. Under the Code of Criminal Procedure, 1898<sup>12</sup> the State was entitled to appeal to the High Court, and the complainant could do so only if granted special leave to appeal by the High Court. The right of appeal was not given to other interested persons. Under the Code of Criminal Procedure 1973, <sup>13</sup> the right of appeal, vested in the State has now been made subject to leave being granted to the State by the High Court. The complainant continues to be subject to the prerequisite condition that he must obtain special leave to appeal. The fetters so imposed on the right to appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. The Law Commission of India<sup>14</sup> gave anxious thought to this matter, and while noting that the Code recognised a few exceptions by way of permitting a person aggrieved to initiate proceedings in certain cases and permitting the complainant to appeal against an acquittal with special leave of the High Court, expressed itself against the general desirability to encourage appeals against acquittal. It referred to the common law jurisprudence obtaining in England and other countries where a limited right of appeal against acquittal was vested in the State and where the emphasis rested on the need to decide a point of law of general importance in the interests of the general administration and proper development of the criminal law. But simultaneously the Law Commission also noted that if the right to appeal against acquittal was retained and extended to a complainant the law should logically cover also cases not instituted on complaint. It observed:

12 . S. 417.

13 . S. 378.

14 . Forty-eighth Report, 1972, pp. 17-21 paras. 48-58.

"Extreme cases of manifest injustice, where the Government fails to act, and the party aggrieved has a strong feeling that the matter requires further consideration, should not, in our view be left to the mercy of the Government. To inspire and maintain confidence in the administration of justice, the limited right of appeal with leave given to a private party should be retained, and should embrace cases initiated on private complaint or otherwise at the instance of an aggrieved person."

However, when the Criminal Procedure Code, 1973 was enacted the statute, as we have seen, confined the right to appeal, in the case of private parties to a complainant. This is, as it were, a material indication of the policy of the law.

26. Having regard to the fundamental nature of a criminal proceeding to which reference has been

made, it is now appropriate to examine the considerations which the Court should keep in mind when entertaining a petition for special leave to appeal by a private party against an order of acquittal. From what has been said, it is plain that access to the jurisdiction under Art. 136 cannot be permitted to a private party who seeks to employ the judicial process for the satisfaction of private revenge or personal vendetta. Nor can it be permitted as an instrument of coercion where a civil action would lie. In every case, the Court is bound to consider what is the interest which brings the petitioner to court and whether the interest of the public community will benefit by the grant of special leave. In a jurisprudence which elevates the right to life and liberty to a fundamental priority, it is incumbent upon the court to closely scrutinise the motives and urges of those who seek to employ its process against the life or liberty of another. In this enquiry, the Court would perhaps prefer to be satisfied whether or not the State has good reason for not coming forward itself to petition for special leave. We think that the Court should entertain a special leave petition filed by a private party, other than the complainant, in those cases only where it is convinced that the public interest justifies an appeal against the acquittal and that the State has refrained from petitioning for special leave for reasons which do not bear on the public interest but are prompted by private influence, want of bona fide and other extraneous considerations. We would restrict accordingly the right of a private party, other than the complainant, to petition for special leave against an order of acquittal. It is perhaps desirable to keep in mind that what follows from the grant of special leave is an appeal, and the jurisdiction must, therefore, be invoked by a petitioner possessing a locus standi recognised in law.

27. In regard to the question whether the procedure followed by this Court in disposing of a petition for special leave under Art. 136 is consistent with the procedure contemplated by Art. 21, we have no hesitation in holding that the principle is in-built within the terms of Art. 136 itself that the Court in exercising its jurisdiction will do so as a court of law following the well-known norms of procedure which have been recognised for long as governing and informing the proceedings of all courts. We have no hesitation in holding that Art.21 is not violated.

28. The petitioner has failed to establish that there is a case for interfering with the judgment of this Court allowing the appeal.

29. The writ petition is dismissed, but in the circumstances there is no order as to costs.

Writ petition dismissed.