

Jharia S/o Maniya

Vs

State of Rajasthan and Another

Writ Petition (Criminal) No. 1632 of 1981

(A. P. Sen, E. S. Venkataramiah, R. B. Misra JJ)

21.07.1983

JUDGMENT

A. P. SEN, J. -

1. This petition under Article 32 of the Constitution is clearly not maintainable and must be dismissed but in view of the growing trend of filing such frivolous applications, we deem it necessary to state the reasons therefor.

2. It appears that the petitioner along with two others was arraigned before the Sessions Judge of Alwar in Sessions Trial No. 130 of 1976 for having committed an alleged offence punishable under Section 302 of the Indian Penal Code, alternatively, under Section 302 read with Section 34 of the Code. By his finding and sentence dated April 21, 1977 the learned Sessions Judge convicted the petitioner and his two associates for having committed the murder of the deceased Jharia in furtherance of their common intention under Section 302 read with Section 34 and sentenced each of them to undergo imprisonment for life, while recording their acquittal under Section 302. On appeal, a Division Bench of the Rajasthan High Court (Jaipur Bench) in Criminal Appeal No. 219 of 1977 by judgment dated July 3, 1980 maintained the conviction of the petitioner under Section 302 read with Section 34 but acquitted his two associates giving them the benefit of doubt. Dissatisfied with the judgment of the High Court, the petitioner applied to this court for grant of special leave under Article 136 of the Constitution. The special leave petition was dismissed by this court on February 23, 1981. An application for review was also dismissed on November 19, 1981. Thereafter, the petitioner filed this petition under Article 32 assailing his conviction and sentence. The petitioner seeks the issuance of a writ of a mandamus directing the State of Rajasthan to forbear from giving effect to the judgment and sentence passed by learned Sessions Judge as also the judgment of the High Court as well as the order passed by this court dismissing the special leave petition. He further seeks a declaration that his conviction under section 302 read with Section 34 by the High Court was illegal and therefore his detention in jail was without the authority of law and in violation of Article 21 read with Articles 14 and 19 of the Constitution.

3. The petitioner contends that in view of the decisions of this court reported in Krishna Govind Patil v. State of Maharashtra [(1964) 1 SCR 678 : AIR 1963 SC 1413 : (1963) 2 SCJ 718 : 1963 (2) Cri LJ 351], Maina Singh v. State of Rajasthan [(1976) 3 SCR 651 : (1976) 2 SCC 827 : 1976 SCC (Cri) 332 : AIR 1976 SC 1084 : 1976 Cri LJ 835] and Piara Singh v. State of Punjab [(1980) 2 SCC 401 : 1980 SCC (Cri) 499], his conviction under Section 302 read with Section 34 was illegal as he had been charged with two other named persons who have been acquitted by the High Court and therefore he cannot be convicted of an offence punishable under Section 302 read with Section 34. Upon this basis, the contention is that the petitioner has been deprived of his life and liberty without

the authority of law in violation of Article 21 read with Articles 14 and 19 of the Constitution. It is represented to us that the contention based upon the decisions of this court had been advanced during the course of the hearing of the special leave petition, but both the special leave petition and the application for review have been dismissed and therefore the petitioner has no other remedy except to approach this court for appropriate writ, direction or order under Article 32 of the Constitution.

4. We fail to appreciate the propriety of asking for a declaration in these proceedings under Article 32 that conviction of the petitioner by the High Court for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code is illegal, particularly when this court has declined to grant special leave under Article 136. Nor can the petitioner be heard to say that his detention in jail amounts to deprivation of the fundamental right to life and liberty without following the procedure established by law in violation of Article 21 read with Articles 14 and 19. When a special leave petition is assigned to the learned Judges sitting in a Bench, they constitute the Supreme Court and there is a finality to their judgment which cannot be upset in these proceedings under Article 32. Obviously, the Supreme Court cannot issue a writ, direction or order to itself in respect of any judicial proceedings and the learned Judges constituting the Bench are not amenable to the writ jurisdiction of this court.

5. In *Shankar Ramchandra Abhyankar v. Krishnaji Dattatraya Bapat* [(1970) 1 SCR 322 : (1969) 2 SCC 74 : AIR 1970 SC 1], this court laid down that if there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted, it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the subordinate court. In that case, the respondent had already chosen the remedy under Section 115 of the Code of Civil Procedure, 1908, but a learned Single Judge dismissed the revision. Thereupon, the respondent moved the High Court by a petition under Articles 226 and 227 of the Constitution challenging the same order of the appellate court. A Division Bench of the High Court held that in spite of the dismissal of the revision petition, it could interfere under Articles 226 and 227 on a proper case being made out, and after going into the merits on the case, it granted relief to the respondent. On appeal to this court, the contention was that the High Court could not have interfered under Articles 226 and 227. That contention of the appellant prevailed and the judgment of the Division Bench of the High Court was set aside. It was observed :

The refusal to grant relief in such circumstances would be in consonance with the anxiety of the court to prevent abuse of process as also to respect and accord finality to its own decisions.

6. There is no reason why the same principle should to equally apply to proceedings under Article 32 of the Constitution which are initiated after the court has declined to interfere under Article 136.

7. For these reasons, the writ petition fails and is dismissed.

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