Sheonandan Paswan

Vs

State of Bihar and Others

Review Petition No. 162 of 1983

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

22.08.1983

JUDGMENT

A. N. SEN, J. -

1. After obtaining requisite sanction from the Governor, a charge-sheet in Vigilance P.S. Case No. 9(2)78 was filed by the State of Bihar against the respondents and three others for offenses under Sections 420/466/471/109/120-B, IPC and under Sections 5(1)(a), 5(1)(b) and 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. On the application of the Special Public Prosecutor made under Section 321 of the Code of Criminal Procedure the Special Judge, Patna in whose court the case was pending, permitted the withdrawal of the case by the Prosecution. The validity of the withdrawal of the said case by the Prosecutor was challenged by the petitioner in a criminal revision filed in the High Court at patna. The revision petition was dismissed by the Patna High Court. Against the judgment and order of the Patna High Court dismissing the revision petition, the petitioner filed an appeal in this Court with special leave granted by his Court. The appeal filed with special leave of this court, came up for hearing before a Bench of this Court consisting of V. D. Tulzapurkar, J., Baharul Islam, J. and R. B. Misra J. The appeal was heard at length for a number of days. Three separate judgments were delivered in the appeal by the three learned Judges. Tulzapurkar, J. for reasons recorded in his judgment allowed the appeal, set aside the order of withdrawal and directed the criminal case P.S. No. 2(2)78 to be proceeded with and disposed of in accordance with law. Baharul Islam, J. for reasons stated in his judgment dismissed the appeal. R. B. Misra J. for reasons stated in his judgment dismissed the appeal. In view of the majority decision, the appeal stands dismissed.

2. Against the judgment and order passed by this Court dismissing the appeal by virtue of the majority decision, the appellant has filed this review petition. A review petition in conformity with the Rules of the Court has to be heard by the same Bench which heard the appeal. As Baharul Islam, J. has ceased to be a Judge of this court at the time when the review petition came up for hearing, the Hon'ble the Chief Justice of India constituted the present Bench to deal with the review petition. The Bench directed notice of the review petition to be served on the parties. After service of notice on the parties and after affidavits had been completed, the review petition came up for hearing before this Bench.

3. Mr. Venugopal, learned counsel appearing on behalf of the petitioner in the review petition, raised two main broad contentions, namely (1) the judgment of Baharul Islam, J. is vitiated by a reasonable possibility of bias and as such the said judgment in the eye of law is no judgment at all; and (2) the majority decision suffers from serious legal infirmities and errors which are apparent on the face of the record.

4. The learned Attorney-General, appearing on behalf of the State, has contended that the review petition is incompetent, as according to the learned Attorney-General, a review petition in a criminal proceeding will not lie except on the ground of error of law apparent on the face of the record and in view of the considered judgment of the learned Judges expressing majority view giving detailed reasons for their decision, it cannot be said that there is any error apparent on the face the record. The learned Solicitor General, Mr. A. K. Sen, Mr. S. S. Sen, Mr. S. S. Ray and Mr. Rajinder Singh, learned counsel appearing on behalf of the respondents have adopted the submissions of Attorney-General and have further contended that no grounds for review of the majority decision have been made out.

5. The principles governing a review petition are well settled. Order XL, Rule (1) of the Supreme Court Rules Provides :

> The court may review its judgment or order but no application for review will be entertained in a civil proceedings except on the ground mentioned in Order XLVII, Rule 1 of the Code and in a criminal proceeding except on the ground of an error on the face of the record.

6. In the case of Thungabhadra Industries Ltd. v. Government of A.P. [(1964) 5 SCR 174 : AIR 1964 SC 1372], this Court has observed at SCR p. 186 as follows :

> What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the court held on an identical state of facts that a substantial question of law arose would not per not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear of error apparent on the face of the record would be made out.

7. In the case of Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi [(1980) 2 SCR 650 : (1980) 2 SCC 167 : AIR 1980 SC 674] this Court has held at SCR pp. 656-57 [SCC para 8, pp. 171-72] :

> It is well settled that a party is not entitles to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so : Sajjan Singh v. State of Rajasthan [(1965) 1 SCR 933, 948 : AIR 1965 SC 845]. For instance, if the attention of the Court is not drawn to a material statutory provision during the original

> hearing, the Court will review its judgment : Girdhari Lal Gupta v. D. N. Mehta [(1971) 3 SCR 748, 760 : (1971) 3 SCC 189 : 1971 SCC (Cri) 279 : AR 1971 SC 2162]. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice : O. N. Mahindroo v. District Judge, Delhi [(1971) 2 SCR 11, 27 : (1971) 3 SCC 5 : AIR 1971 SC 107]. Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47, Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record (Order XL, Rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility". Sow Chandra Kanta v. Sheikh Habib [(1975) 3 SCR 933 : (1975) 1 SCC 674 : AIR 1975 SC 1500].

8. In the case of P. N. Eswara Iyer v. Registrar, Supreme Court of India [(1980) 2 SCR 889 : (1980) 4 SCC 680 : AIR 1980 SC 808], this Court while considering the rule, observed at SCR P. 909 (SCC p. 695, para 34) :

The rule [Ed. : Order XL, Rule 1] on its face, affords a wider set of grounds for review for orders in civil proceedings, but limits the ground vis-a-vis criminal proceedings to 'errors apparent on the face of the record'. If at all, the concern of the law to avoid judicial error should be heightened when life or liberty is in peril since civil penalties are often less traumatic. So, it is reasonable to assume that the framers of the rules could not have intended a restrictive review over criminal orders or judgments. It is likely to be the other way about. Supposing an accused is sentenced to death by the Supreme Court and the 'deceased' shows up in court and the court discovers the tragic treachery of the recorded testimony. Is the court helpless to review and set aside the sentence off hanging ? We think not. The power to review is in Article 137 and it is equally wide in all proceedings. The rule merely canalises the flow from the reservoir of power. The stream cannot stifle the source. Moreover, the dynamics of interpretation depend on the demand of the context and the lexical limits of the test. Here 'record' means any material which is already on record or may, with the permission of the court, be brought on record. If justice summons the judges to allow a vital material in, it becomes part off the record; and if apparent error is there, correction becomes necessitous.

9. While Mr. Venugopal, learned counsel appearing on behalf of the petitioner, was making his submissions to this Court and was addressing the Court on the first contention raised by him, namely, that the judgment of Baharul Islam, J. is vitiated because of reasonable likelihood of bias, we pointed out to him that on the materials on record we were not impressed by this argument. Having regard to the observations made by us, Mr. Venugopal very fairly submitted to this Court that he was not pressing the point and he was withdrawing all the allegations and the grounds in the review petition in relation to this contention. The petitioner has field a memorandum in writing to this Court which is kept on the records of this proceeding and is to the following effect :

The petitioner begs to state as follows :

> The petitioner submits that all allegations and grounds in the review petition relating

to the reasonable likelihood of bias of Shri Justice Baharul Islam are hereby withdrawn and are not pressed.

In that view of the matter it does not become necessary for me to consider this aspect and to deal with the same.

10. In support of the second contention that the majority decision suffers from very serious legal infirmities and errors apparent on the face of the record, Mr. Venugopal has taken us through the judgments of Baharul Islam, J. and R. B. Misra, J. and has offered various criticisms of these two judgments and particularly of the judgment of Baharul Islam, J. On the basis of the various criticisms offered by him, Mr. Venugopal submits that there are various errors, both of fact and law, apparent on the face of the record and the review petition should be admitted.

11. The learned counsel appearing on behalf of the respondents have argued that the criticisms made by Mr. Venugopal of the judgments of Baharul Islam, J. and R. B. Misra, J. are not sound and in any event they do not constitute errors apparent on the face of the record. It is their contention that the learned Judges, for their views recorded in their judgments, have dismissed the appeal, after stating cogent reasons for the views expressed by them. It is contended by them that in this proceeding this Court is not concerned with the correctness or otherwise of the views expressed by the two learned Judges who for the reasons recorded in their judgments have held that the appeal should be dismissed. They have further submitted that in the facts and circumstances of this case, the decision of the majority dismissing the appeal is correct.

12. In view of the limited scope of the present proceeding I do not consider it necessary to deal at length with the various submissions made by the learned counsel appearing on behalf of the parties. In the view that I have taken after a very anxious and careful consideration of the facts and circumstances of this case I am further of the opinion that it will not be proper for me in this proceeding to express any views on the same. Applying the well-settled principles governing a review petition and giving my very anxious and careful consideration to the facts and circumstances of this case, I have come to the conclusion that the review petition should be admitted and the appeal should be re-heard. I have deliberately refrained from stating my reasons and the various grounds which have led me to this conclusion. Any decision of the facts and circumstances which, to my mind, constitute errors apparent on the face of the record and my reasons for the finding that these facts and circumstances constitute errors apparent on the face of the record resulting in the success of the review petition, may have the possibility of prejudicing the appeal which as a result of my decision has to be re-heard.

13. I, therefore, admit the review petition and direct the re-hearing of the appeal.

14. In the case of Mohd. Mumtaz v. Smt. Nandini Satpathy [Criminal Appeals Nos. 48-49 of 1983 arising out of S.L.Ps. (Criminal) Nos. 2515 and 2518 of 1981] a very similar question came up for consideration before a Bench of this Court of which I was a member. Taking into consideration the great importance of the questions involved and in view of the earlier decisions of this Court, this Court in the above matters passed an order to which I was a party on January 28, 1983 to the following effect :

Special leave granted in both the matters. In view of certain decisions referred to at the time of the hearing of the petitions with differing interpretations, it appears that in order to clarify the legal issues connected with power of withdrawal of criminal cases and put them beyond pale of

controversy, it is better the matter be placed before Hon'ble the Chief Justice to place the matter before a larger Bench of the five Judges.

15. Accordingly, I further direct that the appeal be re-heard immediately after the decision of Nandani Satpathy case [Criminal Appeals Nos. 48-49 of 1983 arising out of S.L.Ps. (Criminal) Nos. 2515 and 2518 of 1981].

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