

State of Karnataka

Vs

Narsa Reddy

Criminal Appeal No. 361 of 1987

(A. P. Sen, B. C. Ray JJ)

14.08.1987

JUDGMENT

SEN, J. -

1. The question involved in this appeal by special leave is whether the High Court of Karnataka was justified in directing the Sessions Judge, Bidar to proceed with the trial of Sessions Case No. 23 of 1984 insofar as it relates to the respondents Narsa Reddy and one Vaijinath, accused 2, arraigned for having committed alleged offences punishable under Sections 302 and 201 both read with Section 34 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

2. While issuing notice, we were not satisfied about the legality and propriety of the order passed by the learned Single Judge which had the effect of splitting up of the trial although the prosecution case against the accused arose out of the same incident and the evidence to be led by the prosecution against them was more or less common. It also seemed to us that if the order passed by the learned Single Judge were to be implemented, the learned Sessions Judge would be constrained to proceed against the respondent and accused 2 Vaijinath and thereby the very object of directing de novo trial would be frustrated. At the hearing, no one appeared for the respondent and therefore we did not have the benefit of hearing his counsel.

3. The prosecution case in brief, is as follows. On February 14, 1984, at about 7 p.m., the respondent Narsa Reddy pushed his wife the deceased Jagdamba into a well situate in his garden to cause her death and he then with the help of accused 2, Vaijinath pulled her out of the well and brought her to the house of the respondent where he assaulted her with a stick and thereafter strangulated her to death. After the committal, the sessions case was posted for evidence and evidence of four witnesses was recorded. The testimony of PW 3 Sangareddy and PW 4 Rangareddy revealed the involvement of Head Constable Govinda Rao and Police Constable John, who were cited as prosecution witnesses, in the disposal of the dead body of the deceased, that they had also committed the offence under Section 201 read with Section 34 of the India Penal Code along with the other two accused. An application was accordingly filed by the learned Public Prosecutor under Section 391(4) of the Code of Criminal Procedure for impleading Head Constable Govinda Rao and Police Constable John as accused 3 and 4 in the sessions case. On the said application, the learned Sessions Judge by his order dated August 22, 1985 ordered that Head Constable Govinda Rao and Police Constable John be impleaded as accused 3 and 4 for the offence under Section 201 read with Section 201 read with Section 34 of the India Penal Code. He also ordered that a de novo trial would be held against the accused persons after reframing charges. Before the trial could proceed further, the newly impleaded accused 3 and 4 filed an application before the learned Sessions Judge contending that they could not be impleaded as accused and that since they were public servants,

sanction under Sections 197 of the Code was required for their prosecution. The application of accused 3 and 4 was rejected by the learned Sessions Judge on October 28, 1985. Thereupon, Head Constable Govinda Rao and Police Constable John, impleaded as accused 3 and 4, preferred a revisions being Criminal Revision No. 886 of 1985 before the High Court. The High Court had admitted the revision and granted stay of proceedings in the sessions case. In the meanwhile, the respondent Narsa Reddy who had been arrayed as accused 1 made an application for bail under Section 439 (1) before the learned Sessions Judge contending that in view of the stay order granted by the High Court in Criminal Revision No. 886 of 1985, the trial of the sessions case was unduly protracted and hence he should be released on bail, apart from the ground that no prima facie case has been made out against him.

4. The learned Sessions Judge by his order dated September 25, 1985 rejected the application on the ground that earlier similar applications for bail were rejected both by him as well as the High Court and it could not be said that the trial was protracted, merely because of stay granted by the High Court, observing that the case was likely to be concluded at an early date. Aggrieved, the respondent preferred a revision before the High Court. The learned Single Judge by his order dated March 28, 1985 rejected the application for bail under Section 439(1) of the Code, vacated the stay granted by the High Court in Criminal Revision No. 886 of 1985 insofar as the trial against the respondent and the aforesaid Vaijinath, accused 2 was concerned and directed the learned Sessions Judge to proceed with the trial against them as early as possible. Hence this appeal by special leave.

5. We have no manner of doubt that the direction made by the learned Single Judge presumably exercising the inherent powers of the High Court under Section 482 of the Code of Criminal Procedure was wholly unwarranted. It is somewhat strange that the learned Single Judge should have made a direction at all requiring the learned Sessions Judge to proceed with the trial as against the respondent and accused 2, vaijinath merely because there was stay granted by the High Court in revision preferred by the co-accused Head Constable Govinda Rao and Police Constable John, accused 3 and 4 against the order passed by the learned Sessions Judge dated October 28, 1985 rejecting the objection as to the validity of the trial for want of sanction. If he felt that the grant of stay would prejudicially affect the respondent and accused 2, Vaijinath and subject them to a protracted trial, the proper course for the learned Single Judge was to have heard and disposed of the Criminal Revision No. 886 of 1985 rather than make a direction of this kind which would, in fact, result in splitting up of the trial which is apt to cause miscarriage of justice, besides serious prejudice to the prosecution. From the nature of the prosecution case, it is quite apparent that the evidence to be led by the prosecution would be more or less common as it relates to the same occurrence. It could not be said that merely because the proceedings before the learned Sessions Judge were held up due to stay granted by the High Court in that revision, the learned Single Judge could have taken recourse to the inherent powers of the High Court under Section 482 of the Code, or that it was necessary to do so either to prevent abuse of the process of court or otherwise to secure ends of justice. Any further delay in the trial could be prevented by taking up the revision for hearing.

6. In the result, the appeal succeeds and is allowed. The order passed by the High Court is set aside and the High Court is directed to hear and dispose of Criminal Revision No. 886 of 1985 as early as possible. In the meanwhile, the proceedings in Sessions Case No. 23 of 1984 before the learned Sessions Judge shall remain stayed till the disposal of the revision.

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