

Vikramjit Singh,

Vs

State of M.P.

Criminal Appeal No. 581 of 1991

(L. M. Sharma, J. S. Verma JJ)

10.09.1991

JUDGMENT

1. Special leave is granted.

2. The appellant is an accused in a murder case. After his prayer for bail was rejected by the trial Court he filed an application before the High Court which was dismissed with the observation that he could renew the prayer after the submission of the report by the police on completion of investigation. After the charge sheet was filed in the case the appellant along with two other accused persons renewed the prayer before the Sessions Judge who again rejected the same. The appellant, thereafter, filed another petition before the High Court which was allowed by Mr. Justice B. C. Varma on 6-7-90 and the appellant was directed to be released on bail. Another accused, Dharmendra Kumar Sharma, thereafter, approached the High Court for bail which was placed before Mr. Justice G. C. Gupta who made an order in his favour by his judgment dated 8-9-90 but, observed that the accused persons (including the present appellant) who had been earlier granted bail by the High Court did not deserve to be enlarged on bail, and that it was "a fit case where the State should apply for cancellation of bail of all the accused persons". In view of this observation the State filed a petition for cancellation of the bail order passed by Mr. Justice B. C. Varma. In this application no additional fact was stated nor any allegation against the appellant was made which could be relevant for the prayer of cancellation of earlier bail order. The prayer for cancellation was founded on the observations in the order of Mr. Justice Gupta which was verbatim quoted in the petition.

3. The application was listed before Mr. Justice Gupta who by the impugned judgment cancelled the earlier order of Mr. Justice B. C. Varma and while so doing made strong remarks against grant of bail in cases like the present one. The appellant has now challenged the judgment before this Court. It appears that the learned Judge while passing the impugned order, failed to appreciate that no Bench can comment on the functioning of a co-ordinate Bench of the same Court, much less sit in judgment as an appellate Court over its decision. If the State was aggrieved by the order of bail by Mr. Justice B. C. Varma it could have approached this Court but, that was not done. The judgment of Mr. Justice B. C. Varma, therefore, became final so far the High Court was concerned. If the appellant had misused the bail or new materials came to light, it would have been open to the prosecution to move for cancellation, but that is not the position in the present case. On the basis of the same materials and in the same circumstances in which the order was earlier passed in favour of the appellant by the High Court, the application for cancellation was made entirely as a sequel of the observations made by Mr. Justice Gupta while dealing with the application of another accused. It must be, therefore, held that Mr. Justice Gupta had no authority to upset the earlier order of the High Court. That which could not be done directly could also not be done indirectly. Otherwise, a party

aggrieved by an order passed by one Bench of the High Court would be tempted to attempt to get the matter re-opened before another Bench, and there would not be any end to such attempts. Besides, it was not consistent with the judicial discipline which must be maintained by Courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final, and the faith of the people in the judiciary. The impugned order dated 16-7-91 is, therefore, set aside and the order dated 6-7-90 granting bail to the appellant is restored.

4. It is, however, made clear that it would be open to the State to make a prayer for the cancellation of the bail on the ground of any objectionable conduct on the part of the appellant or any other fresh relevant material, which may be a permissible ground for cancellation of bail. But, in such a case it will be highly desirable for the Chief Justice of the High Court to hear the case himself or assign it to some other Judge who had not earlier dealt with the present matter.

5. The appeal is accordingly allowed.

Appeal allowed.

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