

Arun Shankar

Vs

State of Uttar Pradesh

Criminal Appeal No. 688 of 1999.

(K. T. Thomas, M. B. Shah JJ)

23.07.1999

JUDGMENT

M.B. Shah, J. –

1. Leave granted.

2. It appears that unfortunately the High Court by exercising its inherent jurisdiction under Section 482 of the Criminal Procedure Code (for short "the Code") has prevented the flow of justice on the alleged contention of the convicted accused that it was polluted by so called misconduct of the judicial officer. It is true that under Section 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any Court or otherwise to secure the ends of justice. But the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well nigh settled that inherent power is not to be invoked in respect of any matter covered by specific provision of the Code or if its exercise would infringe any specific provision of the Code. In the present case, the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence. High Court has intervened at an uncalled for stage and soft-pedaled the course of justice at a very crucial stage of the trial.

3. In the present case, accused-respondents were charged for the offences punishable under Sections 148, 302, 149 and also under Section 307/149 of the IPC for the incident which took place at about 1.30 P.M. on 26th July, 1981 at the village in Jhahirpur District, Lucknow. It appears that for one or the other reason, the trial dragged on till the end of November 1997. The proceedings as minuted by the Sessions Judge show that on 20.11.1997 judgment was pronounced convicting Ram Gopal Misra, Ram Naresh and Radhey Sham Mishra under Sections 302 and 307 read with Section 149 of IPC. Accused Ram Gopal Misra was absent, but the other two accused went outside the court and did not return. So the case was posted to the succeeding days and since none of the accused turned up the sessions court ordered non-bailable warrants of arrest to be issued against them on 25.11.1997.

4. Instead of appearing before the trial court the accused filed a petition under Section 482 of the Code which was numbered as Criminal Miscellaneous Case No. 743 of 1997 before the Lucknow

Bench of the High Court of Allahabad. The matter was placed before Virendera Saran J. The learned Judge called for the comments of the Sessions Judge concerned. The court also directed the Sessions Judge to send the record including the short-hand book in a sealed cover. Thereafter on 6th January, 1998 the High Court stayed the execution of warrants of arrest issued against the accused. It appears that from 6th January, 1998 to 29th January, 1999 the High Court posted the Criminal Miscellaneous Case to a large number of days for hearing, but unfortunately on every such day the hearing was merely adjourned, with a direction that interim order shall continue.

5. From the facts stated above, it is seen that Additional Sessions Judge pronounced judgment dated 20-11-1997 convicting the accused-respondents and as the accused were required to be heard on the question of sentence, the matter was kept on 21st, 22nd and 25th of November, 1997. But as the accused failed to appear, the trial judge issued non-bailable warrants returnable by 2nd December, 1997.

6. When the informant-injured witness moved an application in the High Court for modification of the order dated 9th December, 1997 that was placed before I.P. Vashishth, J. who observed that it was contended by counsel for the private respondent that since the convicting judgment was already pronounced by the trial court and the matter was fixed for hearing, the petition was no longer maintainable, however, as the application seeks modification of the Order, the same may be placed before the Hon'ble Judge whose order is sought to be modified. Thereafter, Virendra Saran, J. on 6.1.1998 directed the matter to be placed before the appropriate Bench on 20th January, 1998 and till that date the execution of the warrants of arrest and the process issued under Sections 82 and 83 Cr.P.C. were stayed. From that date onwards, the matter was adjourned for one or the other reason, as stated above.

7. The informant-injured witness filed this appeal by Special Leave and contended that the accused who were convicted of the offence of murder of two persons have succeeded in evading the arrest till that date and it amounts to abuse of the process of the Court and the judicial system. It was submitted that accused have misled the High Court by their misrepresentations and having obtained an interim order of stay of arrest, accused on one pretext or the other, succeeded in getting adjournments and thus delayed hearing of the matter. It was, therefore, prayed that the proceedings in the High Court be quashed or the High Court be directed to dispose of the application under Section 482 filed by the accused. On 1st April, 1999 this Court directed as under:-

"Issue notice. The order passed by the High Court staying the arrest of respondent Nos. 2, 3 & 4 in connection with their conviction under Section 302/34 IPC is put in abeyance. In other words, the said respondents are liable to surrender or it is open to the authority to put them in prison."

On 12th May, 1999 we directed that all further proceedings in the Criminal Miscellaneous Case No. 743 of 1997 of the Allahabad High Court, Lucknow Bench be stayed until further orders from this Court.

8. In our view, the order passed by the High Court entertaining the petition of the convicted accused under Section 482 of the Code is, on the face of it, illegal, erroneous and to say the least, unfortunate. It was known to the High Court that the trial court passed proceedings to the effect that final judgment and order convicting the accused were pronounced by the trial court. It was also recorded by the trial court that as the accused were absent, the court had issued non-bailable warrants. In such a situation, instead of directing the accused to remain present before the Court for

resorting to the steps contemplated by the law for passing the sentence, the High Court has stayed further proceedings including the operation of the non-bailable warrants issued by the trial court. It is disquieting that the High Court has overlooked the important legal aspect that accused have a right of appeal against the order of conviction purported to have been passed by the trial court. In such circumstances the High Court ought not to have entertained a petition under Section 482 of the Code and stonewalled the very efficacious alternative remedy of appeal as provided in the Code. Merely because the accused made certain allegations against the trial judge the substantive law cannot be bypassed.

9. In this view of the matter, this appeal is allowed and the order passed by the High Court entertaining the petition under Section 482 and the other interim orders passed thereunder are quashed. The learned Sessions Judge is directed to hear the accused on the question of sentence and pass appropriate orders according to law. Till then the accused shall remain in jail. This appeal stands disposed of accordingly.

10. We make it clear that it is open to the High Court to consider all the contentions which the accused may raise against the said conviction either in the appeal which they may file, or administratively, untrammelled by any of the observations made by us in the judgment.

Appeal allowed.