

SUPREME COURT OF INDIA

R.Rathinam

Vs.

State By Dsp, District Crime Branch

(K.T. Thomas and D.P. Mohapatra JJ.)

08.02.2000

JUDGMENT

THOMAS J.

Seventy five advocates, practising in various courts situated in Tamil Nadu, presented two petitions addressed to the Chief Justice of Madras High Court for cancellation of the bail granted to certain persons. It was further prayed therein that the Chief Justice might place the matter before a Division Bench of the High Court for its consideration.

On 4.5.1998, the Chief Justice of Madras High Court directed the petitions to be placed before a Division Bench. Finally the matters came before the Division Bench consisting of T.Jayarama Chouta and V.Bakthavatsalu, JJ. Learned Judges held that those petitions, presented before the Chief Justice, are not maintainable and hence no proceedings could be initiated thereon. Accordingly, the Division Bench "closed the suo motu proceedings" by an order passed on 24.9.1998. The first among those advocates has moved the petition for special leave in this Court against the said order. Leave is granted.

The back ground for presenting the said petitions is a carnage which took place on 30.6.1997 at a village in Madurai District. In the gory episode six persons belonging to a Scheduled Caste community were done to death. One of the slaughtered persons was described as President of the local Panchayat Committee. The police arrested 34 persons in connection with the said massacre. Though initially they were not released on bail, subsequently by orders passed by Madras High Court in the months of March and April 1998, many of them were released on bail and that number reached

30. A brother of one of the deceased, in association with some other persons, submitted a representation to the Chief Minister of Tamil Nadu on 16.4.1998, pressing him to adopt steps for moving the High Court to cancel the bail granted to those accused for reasons which have been elaborated in the representation. But the Government did not favourably respond to it. It was in such a situation that appellant and his colleagues at the Bar filed the petitions before the Chief Justice of the High Court.

Learned Judges of the Division Bench formulated the following question:

"When there is a statutory remedy to the aggrieved party by filing applications/petitions for cancellation of the bail granted by the learned Judges of this court, whether a representation made by some Advocates who have nothing to do with the said case could be entertained by the High

Court and dispose of it on merits as a suo motu proceedings." While answering the said question the Division Bench pointed out that neither the State nor any aggrieved persons on the side of the victims of the crimes moved the High Court for cancellation of the bail granted to various accused earlier. At the same time learned Judges expressed that the competency of the Chief Justice to place those petitions before the Division Bench is undisputed and hence unquestionable. However, the Division Bench doubted the sustainability of petitions filed by some advocates in respect of a matter when remedy in a proper forum was otherwise available. While refusing to act on the said petitions the Division Bench gave its reasoning in the following lines:

"The petitioners by filing these memorandum before the Honourable Chief Justice seeking to initiate suo motu proceedings by posting it before a Division Bench cannot bye-pass the statutory provisions. If such representations are entertained, then there will be no end and the High Court will be flooded with such petitions and the genuine prayers and the relief therein will be delayed and further, the judicial system itself will fall." We agree with the learned Judges that neither those 75 advocates nor any other person can challenge the correctness of the order passed by the Single Judge of the Madras High Court by moving the same High Court subsequently. If they had any grievance against the orders passed by the single judge, the only remedy open was to move this Court seeking special leave under Article 136 of the Constitution. They have not done so.

Be that as it may, the next question is whether the same High Court can cancel the bail for other reasons. The answer is explicit in Section 439(2) of the Code of Criminal Procedure. It reads thus:

"A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody." The frame of the sub-section indicates that it is a power conferred on the said courts. Exercise of that power is not banned on the premise that bail was earlier granted by the High Court on judicial consideration. In fact the power can be exercised only in respect of a person who was released on bail by an order already passed. There is nothing to indicate that the said power can be exercised only if the State or investigating agency or even a public prosecutor moves for it by a petition.

It is not disputed before us that the power so vested in the High Court can be invoked either by the State or by any aggrieved party. Nor is it disputed that the said power can be exercised suo motu by the High Court. If so, any members of the public, whether he belongs to any particular profession or otherwise, who has a concern in the matter can move the High Court to remind it of the need to invoke the said power suo motu. There is no barrier either in Section 439 of the Code or in any other law which inhibits a person from moving the High Court to have such powers exercised suo motu. If the High Court considers that there is no need to cancel the bail for the reasons stated in such petition, after making such considerations it is open for the High Court to dismiss the petition. If that is the position, it is also open to the High Court to cancel the bail if the High Court feels that the reasons stated in the petition are sufficient enough for doing so. It is, therefore, improper to refuse to look into the matter on the premise that such a petition is not maintainable in law.

Every matter to be decided by a High Court is normally decided by a two Judge Bench of the High Court. For achieving expediency in disposal of cases, statutes have provided that certain categories of cases can be heard and disposed of by single judges of the High Court. But it must be pointed out that all matters which can be heard and decided by a single judge, can as well be heard and decided by a Division Bench but not vice-versa, subject to statutory restrictions passed by the legislature. It is the prerogative of the Chief Justice of a High Court to allot cases to different judges of the High Court for disposal, subject to such statutory provisions.

In *State of Rajasthan vs. Prakash Chand* [1998(1) SCC 1] a three Judge Bench of this Court has held that the Chief Justice of the High Court has a prerogative to distribute business of the High Court, both judicial and administrative. "The Chief Justice is the master of the roster. He alone has the right and the power to decide how the Benches of the High Court are to be constituted: which Judge is to sit alone and which cases he can and is required to hear and also as which Judges shall constitute a Division Bench and what work those Benches shall do." Though the aforesaid position has not been deviated from by the Division Bench of the Madras High Court it is necessary to remind all concerned of the legal principles involving the prerogative of a Chief Justice. The Division Bench has gone wrong in holding that the petition submitted by the concerned advocates was not maintainable at all.

Refusing to exercise the suo motu powers contemplated in Section 439(2) cannot be on such a fallacious premise. The Division Bench ought to have considered the petitions on merits.

We therefore, allow this appeal and set aside the order under challenge. A Division Bench of the Madras High Court will now hear the petitions afresh and dispose them of in accordance with law and in the light of the observations made above. It is open to the Chief Justice of the Madras High Court to allot this matter before a Bench of that High Court.