SUPREME COURT OF INDIA

Arun Kumar Aggarwal

Vs.

State of M.P.& Ors.

Crl.A.No.1706-1708 of 2011

(G.S.Singhvi and H.L.Dattu,JJ.,)

02.09.2011

JUDGMENT

H.L.Dattu,J.,

SLP(Crl.)No.364-366 of 2010

1. Leave granted.

2. These appeals, by special leave, are directed against the Judgment and Order dated 22.4.2009 passed by the High Court of Madhya Pradesh in Criminal Revision No. 821 of 2005, Criminal Revision Petition No. 966 of 2005 and Criminal Case No. 3403 of 2005, whereby the High Court has allowed the revision application and inter alia quashed the Order dated 26.4.2005 in case diary of Crime No. 165 of 2002 passed by the First Additional Sessions Judge and Special Judge, Katni (hereinafter referred to as "learned Special Judge").

3. The brief factual matrix relating to this appeal is as follows:

> "The respondent no. 2, Shri. Raghav Chandra, who is a Commissioner of M.P. Housing Board, Bhopal along with respondent no. 3, Shri. Shahjad Khan, posted as the then Collector, Katni, Jabalpur and respondent no. 4, Shri. Ram Meshram, posted as the Land Acquisition Officer, M.P. Housing Board, Bhopal, whilst, discharging their functions, had allegedly entered into conspiracy and made a secret plot with Shri. B.D. Gautam, the Director of Olphert Company and, subsequently, purchased the land belonging to Olphert Company at higher rates for the M.P. Housing Board, thereby, caused a financial loss of over `4 Crores to the Government.
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> The appellant reported this alleged transaction of purchase of land by the M.P. Housing Board, alleging financial loss to the Government, to the Lokayukta, Bhopal. Subsequently, the Special Police Establishment (Lokayukta), Jabalpur (hereinafter referred to as "the Lokayukta Police") registered an FIR No. 165 of 2002 against

accused respondent nos. 2 to 4, as the alleged act or conduct of the accused respondents, all working as Government Servants, amounts to an offence under Section 13 (1-d) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the PCA") and Section 120-B of the Indian Penal Code (hereinafter referred to as "the IPC"). Accordingly a Criminal Case No. 165 of 2002 was registered against respondent nos. 2 to 4 in the Court of learned Special Judge. However, the sanction of the Government was necessary as mandated by Section 19 of the PCA in order to prosecute the said accused respondents. Acting upon the complaint of the appellant, the Lokayukta Police, after conducting the investigation, had exonerated respondent nos. 2 to 4 of all the charges leveled against them and submitted final closure report, under Section 169 of the Criminal Procedure Code (hereinafter referred to as "the Cr. P.C."), to the learned Special Judge, Katni as no case had been made out to prosecute respondents. Thereafter, the learned Special Judge, Katni after hearing the respondents, appreciating the evidence on record and perusing the case diary, had rejected the closure report vide his Order dated 26.4.2005. The operative portion of the order dated 26.4.2005 passed by the learned Special Judge is extracted below:

"31. In this way from above record produced, even prima facie, it is evident that the accused had made secrete plot (durabhi sandhi) with Shri B.D. Gautam the Director of Olphert Company with conspiracy and purchased land of Olphert Company on higher rate and caused financial loss over four crores to the Government which there are sufficient grounds for taking cognizance against the accused persons.

32. Accused person Shri Raghav Chandra is posted as Commissioner of M.P. Housing Board and Shri Ram Meshram is posted as Land Acquiring Officer in M.P. Housing Board and Shri Shahjaad Khan while remaining posted as Collector, all above accused persons working as Government servant, while discharging their government duties, committed above crime- under section 19 of Anti Corruption Act 1988, it is necessary to obtain sanction to prosecute Government Servant U/S 13 of Anti-Corruption Act. Therefore matter may be taken up seeking necessary sanction to prosecute the accused persons Raghav Chandra, Shri Ram Meshram and Shahjaad Khan to prosecute them under Section 13 (1-d), 13 (2) Anti Corruption Act and under Section 120-B I.P.C. and for necessary further action, case be registered in the criminal case diary."

4. Aggrieved by the above observation, respondent nos. 2 to 4 preferred Criminal Revision Petitions under Section 482 of the Cr.P.C. before the High Court. The High Court allowed the revision petitions and quashed the Order dated 26.4.2005 of the learned Special Judge on the ground that the Order of the learned Special Judge is illegal and without jurisdiction, in view of the decision of this Court in Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117, as the Magistrate cannot impinge upon the jurisdiction of the police by directing them to change their opinion when the closure report had been submitted by the police under Section 169 of the Cr.P.C. The reliance is also placed on the observation made by this Court in the case of *Mansukh Lal Vithaldas Chauhan v. State of Gujarat*[1] wherein it is observed that:

"19. Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority of the facts of the case as also the material and evidence collected during investigation it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. It is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

5. Being aggrieved, the appellant is before us in this appeal.

6. The issue involved in the present appeal for our consideration is: Whether the High Court is justified in treating the operative portion of the Order of the learned Special Judge as a direction issued to the sanctioning authority to sanction the prosecution of the accused respondent Nos. 2 to 4.

7. We have heard the learned counsel for the parties to the lis and perused the record.

8. The learned counsel for the appellant submits that the Special Judge, vide his Order dated 26.4.2005, refused to accept the closure report submitted before him by the Lokayukta Police as he found it to be not reasonable and finally rejected it. The other portion of the Order, wherein the learned Special Judge observed particularly about the initiation of Challan proceedings, is a mere observation or passing remark. In other words, the learned counsel submits that this portion of the Order, dealing with Challan proceedings, can, at the most, be treated as expression of his personal opinion. He further submits that wholistic reading of this Order clearly suggests that the learned Special Judge's remark pertaining to Challan proceedings is in the nature of mere obiter dicta and could not qualify to be treated as a direction of the Court even by any stretch of imagination. The learned counsel contends that the Order of the learned Special Judge cannot be treated as direction issued to the sanctioning authority to prosecute the respondents as this Order nowhere addresses sanctioning authority and moreover, nowhere directs sanctioning authority to do any affirmative action or abstain from doing anything. Therefore, the High Court is not justified in quashing the Order of the learned Special Judge and treating it to be a direction issued to the sanctioning authority to prosecute the accused respondent nos.2 to 4.

9. Per contra, the learned counsel for the respondents submits that the Order of the learned Special Judge is in the nature of command and amounts to a direction to the sanctioning authority to prosecute respondent nos. 2 to 4. Therefore, this Order of the learned Special

Judge is illegal and without jurisdiction. The learned counsel further supported the impugned Order and Judgment of the High Court.

10. We have heard the learned counsel for the parties before us. The short point in issue before us is based on the nature of the Order passed by the learned Special Judge whether it amounts to a direction issued by the Court to the concerned authority or mere observation of the Court.

11. We will first discuss the nature and scope of the expression `direction' issued by the Court. This Court in *Rameshwar Bhartia v. The State of Assam*[2], whilst distinguishing the expression `Sanction' from the `Direction', for the purpose of initiating the prosecution has held:

> "15. But where a prosecution is directed, it means that the authority who gives the direction is satisfied in his own mind that the case must be initiated. Sanction is in the nature of a permission, while a direction is in the nature of a command."
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> (Emphasis supplied).

12. In *Income Tax Officer, A-Ward, Sitapur v. Murlidhar Bhagwan Das, Lakhimpur kheri*[3], this Court has observed that the expression "direction" cannot be construed in vacuum, but must be collated to the directions which the Assistant Appellate Commissioner can give under Section 31 of the Indian Income Tax Act, 1922.

13. This Court in *Rajinder Nath v. CIT*[4], while considering the meaning of expression `finding' and `direction', occurring in Section 153(3)(ii) of the Income Tax Act, 1961, has held:

> "11. ... As regards the expression "direction" in Section 153(3)(ii) of the Act, it is now well settled that it must be an express direction necessary for the disposal of the case before the authority or court. It must also be a direction which the authority or court is empowered to give while deciding the case before it. The expressions "finding" and "direction" in Section 153(3)(ii) of the Act must be accordingly confined."
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> (Emphasis supplied).

14. In *Kanhiya Lal Omar v. R.K. Trivedi & Ors.*[5], this Court has observed that "A direction may mean an order issued to a particular individual or a precept which many may have to follow. It may be a specific or a general order."

15. In *Giani Devender Singh v. Union of India*[6], this Court, whilst considering the direction issued by the High Court in a Public Interest Litigation, has observed that the directions should not be vague, sweeping or affected by sarcasm which are not capable of being implemented. It should be specific, just and proper in the facts and circumstances of the case. This Court further held:

"10. It appears to us that when the High Court was not in a position to precisely discern what was the complaint alleged by the petitioner and when the High Court was of the view that the prayer made by the petitioner was absurd and it also held that the officers who were alleged to have been carrying on nefarious activities were more imaginary than real, the direction in general and sweeping terms to sack erring officers (whomsoever they may be) and overhaul the administration by recruiting only conscientious and devoted people like the petitioner in order to satisfy the vanity of the petitioner, should not have been made. If the High Court intends to pass an order on an application presented before it by treating it as a public interest litigation, the High Court must precisely indicate the allegations or the statements contained in such petition relating to public interest litigation and should indicate how public interest was involved and only after ascertaining the correctness of the allegation, should give specific direction as may deem just and proper in the facts of the case.

11. It appears to us that the application was disposed of by the Division Bench of Madhya Pradesh High Court in a lighter vein and the order dated 27-2-1992 is couched in veiled sarcasm. Such course of action, to say the least, is not desirable and the High Court should not have issued mandate in general and sweeping terms which were not intended to be implemented and were not capable of being implemented because of utter vagueness of the mandate and of its inherent absurdity." (Emphasis supplied)

16. The Blacks Law Dictionary (9th ed. 2009) defines the term `Direction' as an order; an instruction on how to proceed.

17. The meaning of expression "Direction" has been discussed in Corpus Juris Secundum, Vol. 26A, at pg. 955-956 as thus:

"The word "direction" is of common usage, and is defined as meaning the act of governing, ordering, or ruling; the act of directing, authority to direct as circumstances may require; guidance; management; superintendence; "prescription;" also a command, an instruction, an order, an order prescribed, either verbally or written, or indicated by acts; that which is imposed by directing, a guiding or authoritative instruction; information as to method."

18. According to P. Ramanatha Aiyar, Advanced Law Lexicon (3rd ed. 2005) the word `Direction' means: address of letter, order or instruction as to what one has to do. A direction may serve to direct to places as well as to persons. Direction contains most of instruction in it and should be followed. It is necessary to direct those who are unable to act for themselves. Directions given to servants must be clear, simple and precise.

19. According to the Words and Phrases, Permanent Edition, Vol. 12A, the term `Direction' means a guiding or authoritative instruction, prescription, order, command.

20. To sum up, the direction issued by the Court is in the nature of a command or authoritative instruction which contemplates the performance of certain duty or act by a person upon whom it has been issued. The direction should be specific, simple, clear and just and proper depending upon the facts and circumstances of the case but it should not be vague or sweeping.

21. At this stage, it is pertinent to consider the nature and scope of a mere observation or obiter dictum in the Order of the Court. The expression obiter dicta or dicta has been discussed in American Jurisprudence 2d, Vol. 20, at pg. 437 as thus:

> "74. -Dicta Ordinarily, a court will decide only the questions necessary for determining the particular case presented. But once a court acquires jurisdiction, all material questions are open for its decision; it may properly decided all questions so involved, even though it is not absolutely essential to the result that all should be decided. It may, for instance, determine the question of the constitutionality of a statute, although it is not absolutely necessary to the disposition of the case, if the issue of constitutionality is involved in the suit and its settlement is of public importance. An expression in an opinion which is not necessary to support the decision reached by the court is dictum or obiter dictum."Dictum" or "obiter dictum: is distinguished from the "holding of the court in that the so- called "law of the case" does not extend to mere dicta, and mere dicta are not binding under the doctrine of stare decisis, As applied to a particular opinion, the question of whether or not a certain part thereof is or is not a mere dictum is sometimes a matter of argument. And while the terms "dictum" and "obiter dictum" are generally used synonymously with regard to expressions in an opinion which are not necessary to support the decision, in connection with the doctrine of stare decisis, a distinction has been drawn between mere obiter and "judicial dicta," the latter being an expression of opinion on a point deliberately passed upon by the court."
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> (Emphasis supplied).

Further at pg. 525 and 526, the effect of dictum has been discussed:

> "190. Decision on legal point; effect of dictum In applying the doctrine of stare decisis, a distinction is made between a holding and a dictum. Generally stare decisis does not attach to such parts of an opinion of a court which are mere dicta. The reason for distinguishing a dictum from a holding has been said to be that a question actually before the court and decided by it is investigated with care and considered in its full extent, whereas other principles, although considered in their relation to the case decided, are seldom completely investigated as to their possible bearing on other cases. Nevertheless courts have sometimes given dicta the same effect as holdings, particularly where "judicial dicta" as distinguished from "obiter dicta" are involved."

22. According to P. Ramanatha Aiyar, Advanced Law Lexicon (3rd ed. 2005), the expression "observation" means a view, reflection; remark; statement; observed truth or facts; remarks in speech or writing in reference to something observed.

23. The Wharton's Law Lexicon (14th Ed. 1993) defines term `obiter dictum' as an opinion not necessary to a judgment; an observation as to the law made by a judge in the course of a case, but not necessary to its decision, and therefore of no binding effect; often called as obiter dictum, ; a remark by the way.

24. The Blacks Law Dictionary, (9th ed, 2009) defines term `obiter dictum' as a judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive). -- Often shortened to dictum or, less commonly, obiter. "Strictly speaking an `obiter dictum' is a remark made or opinion expressed by a judge, in his decision upon a cause, `by the way' -- that is, incidentally or collaterally, and not directly upon the question before the court; or it is any statement of law enunciated by the judge or court merely by way of illustration, argument, analogy, or suggestion.... In the common speech of lawyers, all such extrajudicial expressions of legal opinion are referred to as `dicta,' or `obiter dicta,' these two terms being used interchangeably."

25 The Word and Phrases, Permanent Edition, Vol. 29 defines the expression `obiter dicta' or `dicta' thus:

> "Dicta are opinions of a judge which do not embody the resolution or determination of the court, and made without argument or full consideration of the point, are not the professed deliberate determinations of the judge himself; obiter dicta are opinions uttered by the way, not upon the point or question pending, as if turning aside for the time from the main topic of the case to collateral subjects; It is mere observation by a judge on a legal question suggested by the case before him, but not arising in such a manner as to require decision by him; "Obiter dictum" is made as argument or illustration, as pertinent to other cases as to the one on hand, and which may enlighten or convince, but which in no sense are a part of the judgment in the particular issue, not binding as a precedent, but entitled to receive the respect due to the opinion of the judge who utters them; Discussion in an opinion of principles of law which are not pertinent, relevant, or essential to determination of issues before court is "obiter dictum"

26. The concept of "Dicta" has also been considered in Corpus Juris Secundum, Vol. 21, at pg. 309-12 as thus:

> "190. Dicta a. In General A Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, lacks the force of an adjudication; an opinion expressed by a judge on a point not necessarily arising in the case; a statement or holding in an opinion not responsive to any issue and noty necessary to the decision of the case; an opinion expressed on a point in which the judicial mind is not directed

> to the precise question necessary to be determined to fix the rights of the parties; or an opinion of a judge which does not embody the resolution or determination of the court, and made without argument, or full consideration of the point, not the professed deliberate determination of the judge himself. The term "dictum" is generally used as an abbreviation of "obiter dictum" which means a remark or opinion uttered by the way. Such an expression or opinion, as a general rule, is not binding as authority or precedent within the stare decisis rule, even on courts inferior to the court from which such expression emanated, no matter how often it may be repeated. This general rule is particularly applicable where there are prior decisions to the contrary of the statement regarded as dictum; where the statement is declared, on rehearing, to be dictum; where the dictum is on a question which the court expressly states that it does not decide; or where it is contrary to statute and would produce an inequitable result. It has also been held that a dictum is not the "law of the case," nor res judicata."

27. The concept of "Dicta" has been discussed in Halsbury's Laws of England, Fourth Edition (Reissue), Vol. 26, para. 574 as thus:

> "574. Dicta. Statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that it is unnecessary for the purpose in hand are generally termed "dicta". They have no binding authority on another court, although they may have some persuasive efficacy. Mere passing remarks of a judge are known as "obiter dicta", whilst considered enunciations of the judge's opinion on a point not arising for decision, and so not part of the ratio decidendi, have been termed "judicial dicta". A third type of dictum may consist in a statement by a judge as to what has been done in other cases which have not been reported. Practice notes, being directions given without argument, do not have binding judicial effect. Interlocutory observations by members of a court during argument, while of persuasive weight, are not judicial pronouncements and do not decide anything."

28. In *Municipal Corporation of Delhi v. Gurnam Kaur*[7]*, and Divisional Controller, KSRTC v. Mahadeva Shetty*[8]*,* this Court has observed that "Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

29. In *State of Haryana v. Ranbir*,[9] this Court has discussed the concept of the obiter dictum thus:

> "A decision, it is well settled, is an authority for what it decides and not what can logically be deduced therefrom. The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a viewpoint or sentiments which has no binding effect. See ADM, Jabalpur v. Shivakant Shukla. It is also well settled that the statements which are not part of the ratio decidendi constitute obiter dicta and are not authoritative. (See Divisional Controller, KSRTC v. Mahadeva Shetty)"

30. In *Girnar Traders v. State of Maharashtra*[10], this Court has held:

> "Thus, observations of the Court did not relate to any of the legal questions arising in the case and, accordingly, cannot be considered as the part of ratio decidendi. Hence, in light of the aforementioned judicial pronouncements, which have well settled the proposition that only the ratio decidendi can act as the binding or authoritative precedent, it is clear that the reliance placed on mere general observations or casual expressions of the Court, is not of much avail to the respondents."

31. In view of above, it is well settled that obiter dictum is a mere observation or remark made by the court by way of aside while deciding the actual issue before it. The mere casual statement or observation which is not relevant, pertinent or essential to decide the issue in hand does not form the part of the judgment of the Court and have no authoritative value. The expression of the personal view or opinion of the Judge is just a casual remark made whilst deviating from answering the actual issues pending before the Court. These casual remarks are considered or treated as beyond the ambit of the authoritative or operative part of the judgment.

32. In the facts and circumstances of the present case, we are of the opinion that the refusal of the learned Special Judge, vide its Order dated 26.4.2005, to accept the final closure report submitted by Lokayukta Police is the only ratio decidendi of the Order. The other part of the Order which deals with the initiation of Challan proceedings cannot be treated as the direction issued by the learned Special Judge. The relevant portion of the Order of the learned Special Judge dealing with Challan Proceeding reads as "Therefore matter may be taken up seeking necessary sanction to prosecute the accused persons Raghav Chandra, Shri Ram Meshram and Shahjaad Khan to prosecute them under Section 13 (1-d), 13 (2) Anti Corruption Act and under Section 120-B I.P.C and for necessary further action, case be registered in the criminal case diary." The wordings of this Order clearly suggest that it is not in the nature of the command or authoritative instruction. This Order is also not specific or clear in order to direct or address any authority or body to perform any act or duty. Therefore, by no stretch of imagination, this Order can be considered or treated as the direction issued by the learned Special Judge. The wholistic reading of this Order leads to only one conclusion, that is, it is in the nature of `Obiter Dictum' or mere passing remark made by the learned Special Judge, which only amounts to expression of his personal view. Therefore, this portion of the Order dealing with Challan proceeding, is neither relevant, pertinent nor essential, while deciding the actual issues which were before the learned Special Judge and hence, cannot be treated as the part of the Judgment of the learned Special Judge.

33. In the light of the above discussion, we are of the opinion that, the portion of the Order of the learned Special Judge which deals with the Challan proceedings is a mere observation or remark made by way of aside. In view of this, the High Court had grossly erred in considering and treating this mere observation of the learned Special Judge as the direction

of the Court. Therefore, there was no occasion for the High Court to interfere with the Order of the learned Special Judge.

34. In the result, the appeals are allowed. The impugned Order and Judgment of the High Court in Criminal Revision No. 821 of 2005, Criminal Revision Petition No. 966 of 2005 and Criminal Case No. 3403 of 2005 dated 22.4.2009 is set aside. We restore the Order of the learned Special Judge dated 26.4.2005.

35. We direct the respondents to comply with the order passed by the Trial Court within two months from this date.

Judgment Referred.

[1]*AIR 1997 SC 3400*
[2]*(1953) SCR 0126*
[3]*(1964) 6 SCR 0411*
[4]*(1979) 4 SCC 0282*
[5]*(1985) 4 SCC 0628*
[6]*(1995) 1 SCC 0391*
[7]*(1989) 1 SCC 0101*
[8]*(2003) 7 SCC 0197*
[9]*(2006) 5 SCC 0167*
[10]*(2007) 7 SCC 0555*