SUPREME COURT OF INDIA

Kushalbhai Ratanbhai Rohit

Vs.

State of Gujarat

(Dr.B.S.Chauhan, J.Chelameswar and M.Y.Eqbal JJ.)

06.05.2014

ORDER

1. This petition has been filed against the interim order dated 27.12.2013, passed by the High Court of Gujarat at Ahmedabad in Criminal Appeal No.2012 of 2006.

2. Facts and circumstances giving rise to this petition are :

A. That an FIR C.R. No.60 of 2001 was registered at Amraiwadi Police Station, Ahmedabad against one Mahalingam alias Shiva for the offence punishable under the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short NDPS Act). Pursuant to the said FIR, case commenced which was committed to the Sessions Court, Bhadra, Ahmedabad and the trial commenced.
B. On 4.8.2003, Shiva, accused who was detained at Vadodara Central Jail, was required to be taken to the Sessions Court at Bhadra, Ahmedabad and for that purpose an escort was arranged, however, the case was adjourned and the accused while going back was taken for a cup of tea to the Tea stall outside the court compound. Subsequent thereto, he expressed the desire to see his ailing mother and the escort persons tried to find the auto-rickshaw but the escort persons started nauseating and vomiting as some substance was allegedly had been mixed up with tea by the relatives of the accused and it was at that time Shiva, accused absconded from the custody of these persons although in handcuffs. Thus, a complaint was lodged in this respect by the seniormost person of the said escort party. In this regard, Ist C.R. No.442 of 2003 was recorded for the offence punishable under Sections 328, 222, 223, 224 and 114

of the Indian Penal Code 1860 (hereinafter referred to as IPC).

C. After the investigation, chargesheet was filed against the escort personnel including the petitioners on 5.9.2005 and the petitioners were found guilty for the offence punishable under Section 222 IPC vide judgment and order dated 9.11.2006 and the petitioner no.1 was awarded 3 years RI and a fine of Rs.5,000/- and in default thereto, to undergo simple imprisonment for one year. Petitioner nos.2 and 3 were convicted under Section 222 IPC but they had been awarded the sentence for a period of two years each and a fine of Rs.2,000/- each, and in default thereto, to undergo simple imprisonment for six months.

D. Aggrieved, the petitioners preferred Criminal Appeal No.2012 of 2006 before the High Court of Gujarat and during the pendency of the appeal, the petitioners had been enlarged on bail vide order dated 22.11.2006. The appeal was finally heard on 11.12.2013 and the court took a view that sanction of the State Government under Section 197 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) was necessarily required, and in view thereof, the order was dictated in open court allowing the appeal on technical issue. However, the order dictated in open court and acquitting the petitioners vide order dated 11.12.2013 was recalled by the court suo moto vide order dated 27.12.2013 and directed the appeal to be re- heard. The order had been recalled on the ground that the court wanted to examine the issue further as to whether in the facts and circumstances of the case where the accused had been police constables, the offence could not be attributed to have been committed under the commission of their duty where sanction under Section 197 Cr.P.C. would be attracted.

Hence, this petition.

3. Heard Shri Fakhruddin, learned senior counsel for the petitioners and Shri Anurag Ahluwalia, learned counsel for the State and perused the record.

4. We do not find any forcible submission advanced on behalf of the petitioners that once the order had been dictated in open court, the order to review or recall is not permissible in view of the provisions of Section 362 Cr.P.C. for the simple reason that Section 362 Cr.P.C. puts an embargo to call, recall or review any judgment or order

passed in criminal case once it has been pronounced and signed. In the instant case, admittedly, the order was dictated in the court, but had not been signed.

5. In Mohan Singh v. King-Emperor 1943 ILR (Pat) 28, a similar issue was examined wherein the facts had been that the judgment was delivered by the High Court holding that the trial was without jurisdiction and a direction was issued to release the appellant therein. However, before the judgment could be typed and signed the court discovered that the copy of the notification which had been relied upon was an accurate copy and that the Special Judge had jurisdiction in respect of the offence under which the appellant therein had been convicted. Thereupon, the order directing the release of the accused was recalled and the appeal was directed to be heard de novo. When the matter came up for re-hearing, the objection that the court did not have a power to recall the order and hear the appeal de novo, was rejected.

6. In view of the provisions of Section 362 Cr.P.C. while deciding the case, the Patna High Court relied upon the judgment of Calcutta High Court in Amodini Dasee v. Darsan Ghose, 1911 ILR (Cal) 828 and the judgment of Allahabad High Court in Emperor v. Pragmadho Singh, 1932 ILR (All.) 132. A similar view has been reiterated by the Division Bench of the Bombay High Court in State of Bombay v. Geoffrey Manners & Co., AIR 1951 Bom. 49. The Bombay High Court had taken the view that unless the judgment is signed and sealed, it is not a judgment in strict legal sense and therefore, in exceptional circumstances, the order can be recalled and altered to a certain extent.

7. In Sangam Lal v. Rent Control and Eviction Officer, Allahabad & Ors., AIR 1966 All. 221, while dealing with the rent control matter, the court came to the conclusion that until a judgment is signed and sealed after delivering in court, it is not a judgment and it can be changed or altered at any time before it is signed and sealed.

8. This Court has also dealt with the issue in Surendra Singh & Ors. v. State of U.P., AIR 1954 SC 194 observing as under:

> Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort of 'locus paenitentiae' and indeed last minute alterations often do occur. Therefore, however much a draft judgment may have been signed beforehand, it is nothing but a draft till formally delivered as the

> judgment of the Court. Only then does it crystallise into a full fledged judgment and become operative. It follows that the Judge who "delivers" the judgment, or causes it to be delivered by a brother Judge, must be in existence as a member of the Court at the moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in court but he must be in existence as a member of the Court and be in a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and signs it and indicates that he intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery.
>
> But one cannot assume that he would not have changed his mind if he is no longer in a position to do so. A Judge's responsibility is heavy and when a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture; also, a question of public policy is involved. As we have indicated, it is frequently the practice to send a draft, sometimes a signed draft, to a brother Judge who also heard the case. This may be merely for his information, or for consideration and criticism. The mere signing of the draft does not necessarily indicate a closed mind. We feel it would be against public policy to leave the door open for an investigation whether a draft sent by a Judge was intended to embody his final and unalterable opinion or was only intended to be a tentative draft sent with an unwritten understanding that he is free to change his mind should fresh light drawn upon him before the delivery of judgment.

9. Thus, from the above, it is evident that a Judges responsibility is very heavy, particularly, in a case where a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture. Therefore, one cannot assume, that the Judge would not have changed his mind before the judgment become final.

10. In Iqbal Ismail Sodawala v. The State of Maharashtra & Ors., AIR 1974 SC 1880, the judgment in Surendra Singh (supra) referred to hereinabove was considered in this case. In that case, criminal appeal was heard by the Division Bench of the High Court, the judgment was signed by both of them but it was delivered in court by one of them after the death of the other. It was held that there was no valid judgment and the case should be re-heard. This Court took the view that the judgment is the final decision of

the court intimated to the parties and the world at large.

11. In view of the above, we are of the considered opinion that no exception can be taken to the procedure adopted by the High Court in the instant case.

12. The petition is devoid of any merit and is accordingly dismissed.