
(2003) 04 AP CK 0085
In the Andhra Pradesh High Court
Case No : CRP No. 1885 of 2003

Board of Control for Cricket in India	Vs	APPELLANT
Mohammed Azharuddin and Others		RESPONDENT

Date of Decision : 23-04-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, 115, 115(1)
Constitution of India, 1950 — Article 227

Citation : (2003) 3 ALD 873

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : S. Niranjan Reddy, for the Appellant; T. Jagadish, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The Board of Control for Cricket in India (BCCI) is the petitioner in this civil revision petition filed under Article 227 of the Constitution of India. It is aggrieved by the interlocutory order dated 28-3-2003 passed by the Court of the II Additional Chief Judge, City Civil Court, Hyderabad in O.S. No. 10 of 2001.

2. The first respondent herein filed O.S. No. 10 of 2001 on the file of the Court of the II Additional Chief Judge, City Civil Court, Hyderabad, seeking a declaration that the proceedings of the BCCI, the first defendant therein, dated 5-12-2000 as null and void and for a further declaration that the appointment of the second defendant and the report drawn by him as null and void and contrary to rules and regulations of the BCCI and violative of principles of natural justice. Be it noted, proceedings dated 5-12-2000 was issued by the BCCI imposing a life ban on the first respondent herein on the allegations of match fixing, under-performance of the players, and having relations or nexus with various bookies. The BCCI filed a written statement contesting the suit. On the completion of pleadings, issues were framed and the matter went into trial. The petitioner herein filed an interlocutory application being I.A. No. 568 of 2003 under Order XVI, Rule 6 of the Code of Civil Procedure, 1908 (CPC) praying the trial Court to

issue summons to the Director of Central Bureau of Investigation (CBI), New Delhi to produce the "Report on Cricket match fixing and related malpractices" submitted to the Central Government on 31-10-2000 and related record. The trial Court, by an order dated 24-2-2003, directed to issue summons to the Director of CBI to produce the report relating to cricket match fixing and related malpractices. A summons was issued to the Director of CBI, New Delhi accordingly.

3. It appears that a xerox copy of the report of CBI was already marked as Ex.B21. On 28-3-2003, Mr. Rajesh Kumar, Inspector, CBI, New Delhi, appeared in person and filed a memo together with a copy of the letter dated 30-10-2000 of the Special Director of CBI showing that the original enquiry report of the CBI was sent to the Government of India and that the record leading to the report i.e., record of enquiry is voluminous and bulky. The Counsel for the plaintiff-first respondent also informed the Court that the plaintiff is not disputing the fact that CBI has drawn a report and Ex.B21 is copy of the same and, therefore, the trial Court, by the impugned order, observed that there is no necessity to call for any further document from CBI. As the petitioner-first defendant and defendants 2 and 3 represented that they have no further evidence, the matter was posted for arguments.

4. Learned Counsel for the petitioner, Sri S. Niranjan Reddy, submits that the trial Court committed manifest irregularity by passing the impugned order. The trial Court having issued summons in I.A. No. 568 of 2003, to CBI to produce the record, now passed the impugned order, which is in contradiction with the earlier orders. He also contends that if the original record based on which the report Ex.B21 was drawn is not produced by the CBI, prejudice would be caused to the petitioner in presenting its case.

5. Learned Counsel for the first respondent, Sri T. Jagdish, submits that by order dated 24-2-2003, the trial Court summoned the report to be produced and record was not directed to be produced. Even otherwise, the learned Counsel would contend that the order passed by the trial Court does not suffer from any grave error apparent on the face of the record and that the trial Court acted within its jurisdiction in accepting Ex.B21 and in holding that there is no necessity to produce the original record which is bulky and voluminous. He also questions the maintainability of the revision petition under Article 227 of the Constitution.

6. The only point that arises for consideration is whether in the facts and circumstances of the case, a revision petition under Article 227 of the Constitution of India is maintainable?

7. It is well settled that the power under Article 227 is wider than the power conferred on the High Court u/s 115 CPC. It is also well settled that the power under Article 227 of the Constitution cannot be exercised for correcting all errors so as to mitigate all hardships. It is also well settled that Section 115 CPC deals

with revisional jurisdiction of High Court. Prior to CPC (Amendment) Act, 1999, there was no fetter on the power of the High Court while exercising revisional jurisdiction. However, Section 115 amended in 1976 brought out drastic changes in exercise of jurisdiction. The High Court cannot interfere with any order unless it is shown that if the order is allowed to stand, it will occasion in failure of justice or cause irreparable injury to the party. The provision was interpreted broadly so as to allow revision against interlocutory orders as well. This resulted in huge accumulation of pre-trial revisions against all sorts of interlocutory orders of lower Courts passed in exercise of their supplemental and incidental powers under CPC. This, in most of the cases, resulted in delay in disposal of the suits. Presumably, for this reason, Section 115 CPC was again amended by CPC (Amendment) Act, 1999.

8. The proviso to Sub-section (1) of Section 115 CPC, as amended, categorically lays down that while exercising power u/s 115(1), the High Court shall not vary or reverse any order made or any order deciding an issue in a suit or other proceedings except where the order made in favour of the party applying for revision would have finally disposed of the suit or other proceedings. It was also made clear that revision shall not operate as a stay of suit or other proceedings before the lower Court where the suit or other proceedings are pending.

9. In *D. Kyathappa and Others Vs. K.L. Siddaramappa*, my learned brother Sri Justice A. Gopal Reddy considered the question whether Section 115 CPC as amended by 1999 Act applies to pending revision petitions as well. In that context, His Lordship interpreted Section 115(1) holding that revisional power could be exercised by the High Court only in case the impugned order had it been allowed favourably to petitioner would result in disposal of the suit or other proceedings. His Lordship also laid down as under:

(a) Section 115 as amended by Act 46/99 which had come into force with effect from 1-7-2002 is applicable to all revision applications pending adjudication, whether admitted or not and the same will have to be dealt with strictly in accordance with the proviso to Section 115 with effect from 1-7-2002;

(b) On coming into force of the Amendment Act 46/99 if the order complained is interlocutory in nature and that will not have the effect of disposal of suit or other proceedings, the same cannot be varied or reversed in exercise of revisional jurisdiction u/s 115;

(c) In the absence of any saving clause u/s 32, pending revisions which were instituted prior to 1-7-2002 have to be dealt within accordance with the provisions of Section 115 as the same are not saved by recourse to the provisions of Section 6 of General Clauses Act, 1897.

10. In view of the said legal position with far reaching consequences, most of the petitioners approaching for a revision of interlocutory orders started filing cases under Article 227 of the Constitution. There has been enormous increase in the institution of cases under Article 227.

11. In a recent un-reported judgment in CRP No. 1292 of 2003, disposed of on 16-4-2003, after considering Section 115 of CPC and Article 227 of the Constitution in the light of the law laid down by the Supreme Court of India, I have culled out various principles in relation to exercise of jurisdiction under Article 227. These are --

(i) In exercise of power under Article 227 of the Constitution, the High Court cannot assume appellate powers to correct every mistake of law (See *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*,);-

(ii) Assumption of excessive jurisdiction or refusal to exercise jurisdiction or any irregularity or illegality -procedural or any breach of any rule of natural justice - are some of the grounds which might warrant exercise of jurisdiction, provided that such illegal assumption, illegality or irregularity results in miscarriage of justice {See *Satyanarayan v. Mallikarjun* (supra)};

(iii) In exercise of powers under Article 227, the High Court will not review or reweigh evidence upon which determination of the inferior Court or tribunal purports to be based or to correct errors of law in the decision. If elaborate reasons become necessary for the conclusion that the decision or finding of the lower Court is incorrect or wrong so such an error cannot be treated as apparent on the face of the record (See *Mohd. Yunus Vs. Mohd. Mustaqim and Others*,);

(iv) If two views are conceivably possible on a question of fact, merely because the High Court feels that its view is correct, the same cannot be a ground for exercising jurisdiction under Article 227. The decision of the lower Court must receive *impri matur* {See *Satyanarayan v. Mallikarjun* (supra)};

(v) If, by a special enactment, the Legislature, in its wisdom, specifies the principles of appeal or revision against the decision or a finding, the power of superintendence under Article 227 cannot be exercised by assuming un-limited prerogative to correct all species of hardship and wrong decision {See *Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives*, };

(vi) A revision under Article 227 of the Constitution is maintainable only when the remedy of revision u/s 115 is expressly barred by the State enactment and even in such a case, the supervisory jurisdiction of the High Court is confined only to see that the inferior Court or Tribunal proceeded within its parameters and not to correct an error apparent on the face of the record, much less an error of law. The High Court is not an appellate forum under Article 227 and, therefore, it is not permissible to review or re-weigh the evidence (See *Mohd. Yunus v. Mohd. Mustaqim* (supra) and *Sadhana Lodh v. National Insurance Co.Ltd*, 2003 AIR SCW 930);

(vii) When an alternative remedy is available, judicial prudence demands that the High Court should refrain from exercising jurisdiction under Article 227 of the

Constitution {See Punjab Notional Bank v. O.C. Krishnan(2001) 20 Comp. Cases107 };

(viii) The High Court in exercise of power under Article 227 of the Constitution is not to pick out any error of law and correct it when justice became the byproduct of such erroneous view of law (See Roshan Deen Vs. Preeti Lal,); and

(ix) Whether or not a decision of the lower Court is incorrect or clearly wrong, unless and until gross error resulting in miscarriage of justice is shown, the power under Article 227 cannot be exercised {See Roshan Deen v. Preeti Lal (supra)}.

12. Learned Counsel for the petitioner placed reliance on a judgment of the Supreme Court in Achutananda Baidya Vs. Prafulla Kumar Gayen and others, , in support of the submission that in exercise of power under Article 227 of the Constitution, the Court can judicially review the finding of fact recorded by the lower Court. In the said judgment, the apex Court observed as under:

The power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the Courts and tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior Court, the High Court should not quash the judgment of the subordinate Court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the subordinate Court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse."

13. There cannot be any dispute with the above proposition of law. If the lower Court records a finding of fact totally divest from the records it amounts to not acting within the parameters of law or jurisdiction. Therefore, the jurisdiction under Article 227 of the Constitution cannot be exercised. The said judgment does not in any manner assist the learned Counsel for the petitioner.

14. As held by the Supreme Court in Sadhana Lodh v. National Insurance Co., Ltd. (supra), if the remedy u/s 115 of CPC is not expressly barred, a petition under Article 227 of the Constitution is not maintainable.

15. No doubt, by reason of the amendment of Section 115 CPC, a revision

petition would not be maintainable unless the applicant shows that disposal of the interlocutory application would have resulted in the final disposal of the suit itself. Merely because the exercise of power u/s 115 CPC is now circumscribed by various factors, it does not mean that the remedy of revision u/s 115 CPC is barred. Further, the judgment and decree passed by the lower Court is not final and is subject to appeal u/s 96 read with Order XLI, Rule 1 CPC. Therefore, in another view, the petitioner is not without any remedy. u/s 115(1) CPC, it is always open to the petitioner to set out any error, defect or irregularity, in any interlocutory order during trial as a ground of appeal. From this point of view also, the revision petition is not maintainable.

16. The submission of the learned Counsel for the petitioner that the impugned order tends to modify the earlier order in I.A. No. 568 of 2003, even if it is true, does not give rise to a case to exercise, jurisdiction under Article 227 of the Constitution, Indeed, the contention that the impugned order amounts or modifying the earlier order is belied by reference to the order passed by the Trial Court in I.A. No. 568 of 2003. In the said application, the Court directed to issue summons to CBI to produce the report given by the second defendant second respondent herein. The record was not directed to be produced. Learned Counsel for the petitioner has also enclosed a xerox copy of Form No. 23 (summons for production of public records) issued to the Director of CBI, New Delhi. In the summons, the description of the documents is given. It shows that what was summoned to be produced is only "Report on Cricket match fixing and related malpractices October, 2000". The trial Court did not summon the record based on which such report was prepared. Even otherwise, an officer of CBI has appeared and filed a memo. When a witness is summoned to produce the record, it is always permissible, under law, to the witness or a public authority to seek exemption by showing valid reasons for non-production of records. It was also submitted in the memo filed by the CBI that the record is voluminous and bulky and the plaintiff also admitted Ex.B21 as true report of the CBI. Therefore, the trial Court exercised its discretion and came to a conclusion that the production of record is not necessary. In spite of the same, the petitioner reported that they have no further evidence and, therefore, the petitioner cannot now be heard that it would cause prejudice to them if the record is not summoned.

17. The submission that the impugned order amounts to reversing and unsettling the earlier order in I.A. No. 568 of 2003, is wholly misconceived. When I.A. No. 568 of 2003 was ordered directing issue of summons and the officer on behalf of the CBI appeared and produced the necessary report and also filed a memo, the order in IA No. 568 of 2003 worked itself out and there is no binding order on both the sides. When a witness is summoned at the instance of the plaintiff or the defendant under Order XVI, Rule 6 CPC and the same order is disobeyed, it is for the Court to take appropriate action under Order XVI, Rule 10 and not for the applicant who summoned the documents to complain that such order stands reversed or unsettled even when the witness appears in obedience to the summons issued by the Court.

18. The CRP is devoid of any merits and is accordingly dismissed with costs quantified at Rs. 5,000/-.