
(2008) 09 MAD CK 0185

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 757 of 2008 and Rev. Appln (MD) (SR) 32166 of 2008 in Criminal A. No. 268 of 1997

Johnsi Rani @ Arasi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:

Citation : (2008) 09 MAD CK 0185

Hon'ble Judges : T. Sudanthiram, J;D. Murugesan, J

Bench : Division Bench

Advocate : R. Sankarasubbu, for the Appellant; C. Daniel Manoharan, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

T. Sudanthiram, J.—H.C.P. No. 757 of 2008 and Unnumbered Review Application in C.A. No. 268 of 1997 for maintainability are posted together for hearing.

2. Petitioner in H.C.P. No. 757 of 2008 is one Johnsi Rani @ Arasi, who is wife of Pozhilan, S/o. Perunchithirananar.

3. Pozhilan is confined in Central Prison, Puzhal, Chennai as a convict prisoner, who is undergoing sentence imposed on him by Court of law.

4. In the Unnumbered Review Application, the said Pozhilan is the Petitioner. He was convicted by the learned Principal Sessions Judge, Dindigul in S.C. No. 63 of 1993 for offences u/s 3, 4 and 6 of Explosives Substance Act, 1908 read with 120-B I.P.C. and was sentenced to undergo life imprisonment u/s 3 of Explosives Substance Act read with 120-B I.P.C. and in the appeal C.A. No. 268 of 1997 preferred by him, this Court while confirming conviction, modified the sentence to a period of ten years rigorous imprisonment.

5. The grievance raised in both the applications are one and the same which is as follows:

The Petitioner was charged and convicted as per the old Act i.e., "The Explosives Substance Act (VI of 1908). The said Act was amended and substituted by Act 54 of 2001 with effect from 01.02.2002. As per new Act, the punishment u/s 3 could not be less than 10 years of rigorous imprisonment, wherein as per the old Act, no minimum period of imprisonment was prescribed. While so, the appellate Court after confirming the conviction, imposed sentence of 10 years rigorous imprisonment, mistakenly following the amended new Act 54 of 2001. If the Court had not followed the new Act, the sentence on the accused could be lesser than 10 years of rigorous imprisonment.

6. The Habeas Corpus Petition is filed on the ground that the sentence of 10 years rigorous imprisonment awarded is illegal and Section 235(2) Code of Criminal Procedure is not followed and as such continued detention is illegal and Article 20(1) of the Constitution of India is violated.

7. The Review is filed on the ground that imposing sentence under the amended Act is violative of Article 14 of the Constitution of India and this Court has got jurisdiction to review and set right the mistake.

8. It is to be mentioned at this juncture that both Habeas Corpus Petition and Review Application are filed only after the accused Pozhilan had preferred a SLP before the Hon''ble Supreme Court and the same was dismissed.

9. The learned Counsel Mr. R. Sankarasubbu appearing for the Petitioner, vehemently submitted that the SLP being dismissed at the admission stage, it could never be considered as resjudicata and there is no bar to entertain either writ of Habeas Corpus or Review application. He also relied on the decision of the Hon''ble Supreme Court in Common Cause, A Registered Society Vs. Union of India and Others, . It is held in paragraph 170 as follows:

170. We may also point out that the powers of this Court under Article 32 and that of the High Court under Article 226 are plenary powers and are not fettered by any legal constraints. If the Court, in exercise of these powers has itself committed a mistake, it has the plenary power to correct its own mistake as pointed out by this Court in S. Nagaraj and Others Vs. State of Karnataka and Another, , in which it was observed as under:

Justice is a virtue which transeends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher Courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order.

The Court also observed:

Review literally and even judicially means re-examination or reconstruction. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the Courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order the Courts culled out such power to avoid abuse of process or miscarriage of justice.

The Court further observed:

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality.

10. This Court considered the submissions made by the learned Counsel Mr. R. Sankarasubbu, appearing for the Petitioner.

11. It is true that the sentence that could be imposed under the new Act for the offence u/s 3 shall not be less than 10 years imprisonment, wherein under the old Act, the imprisonment could be even less than 10 years. As far as the accused/convict viz., Pozhilan is concerned only the old Act is applicable. He was tried by the Sessions Court and convicted and sentenced to undergo life imprisonment by a judgment dated 17.02.1997, much earlier to the amended new Act. The maximum sentence of imprisonment that could be awarded even as per the old Act u/s 3 was life and that was imposed on him. In the appeal, while confirming conviction, the sentence alone was modified by reducing it to a period of 10 years rigorous imprisonment. Pozhilan was the first accused in the case and another person viz., Ilango was the second accused, whose conviction also was similarly confirmed and the sentence was reduced for both.

12. The whole argument of the learned Counsel is based on erroneous presumption that the appellate Court has followed the new Act, while sentencing the accused. It is not known how and where from such presumption has been drawn as the learned Counsel is not able to point out from the judgment rendered in C.A. No. 268 of 1997. On the other hand, it is clearly mentioned in paragraph 26(d) as follows:

(d) The conviction of A-1 and A-2 under Sections 3,4 and 6 of Explosives Substance Act, 1908 read with 120-B I.P.C. is confirmed, but the sentence of life imprisonment, which is the maximum sentence provided under the section is modified to a period of ten years rigorous imprisonment. The period already undergone shall be given set off.

13. It is mentioned that conviction is only under Explosives Substance Act, 1908 and further it is specifically mentioned that the maximum sentence of life imprisonment is modified to a period of 10 years rigorous imprisonment. At the

same time, it is not mentioned that the minimum sentence is awarded. Therefore, the Court knowing fully well that 10 years imprisonment is not the minimum sentence, still imposed a sentence of 10 years rigorous imprisonment.

14. When the maximum sentence provided is life imprisonment and the trial Court also imposed the same, the appellate Court reducing it to 10 years imprisonment, the sentence is in conformity with the unamended Act. As the accused had already been questioned by the trial Court before awarding sentence, for imposing a lesser sentence, the accused need not be heard. Absolutely there is no illegality, no error and no mistake in the sentence awarded.

15. When a prisoner is undergoing imprisonment on the basis of imprisonment awarded by Court of law, the said detention cannot be held to be illegal and the quantum of sentence could be challenged only by way of procedures laid down.

16. In the absence of any specific provision in the Code of Criminal Procedure, the power of Review is generally unknown to Criminal law, especially with regard to the findings and the quantum of sentence. The system does not permit the Courts to review the orders/Judgments, unless there is apparent error or clerical mistake that had resulted in miscarriage of Justice. Added to this, we cannot overlook the fact that the SLP filed by the Petitioner was also dismissed.

17. On the facts of the given case, we do not find any error apparent on the face of records or mistakes which had resulted in miscarriage of justice, so as to apply the decision in Common Cause, A Registered Society Vs. Union of India and Others, .

18. In the result both the Habeas Corpus Petition and the Unnumbered Review Application are dismissed as not maintainable.