
(2014) 03 SC CK 0024

In the Supreme Court Of India

Case No : Criminal M.P. No. 25683 of 2013 in Special Leave Petition (Criminal)
No. 2448 of 2014

Phool Chandra and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 96
Constitution of India, 1950 — Article 136
Penal Code, 1860 (IPC) — Section 363, 366, 506

Citation : (2014) 5 AD (SC) 560 : (2014) ALLMR(Cri) 3389 : (2015) 2 ALT(Cri)
427 : (2014) 3 RCR(Criminal) 30 : (2015) 5 SCJ 390

Hon'ble Judges : Jasti Chelameswar, J; Balbir Singh Chauhan, J

Bench : Division Bench

Advocate : Ajit Kumar Pande, for the Appellant;

Final Decision : Partly Allowed

Judgement

1. This petition has been filed against the order dated 14.5.2013 passed by High Court of Judicature at Allahabad while dealing with the application for early hearing in Criminal Appeal No. 4309 of 2012.

2. The Petitioners stood convicted for the offences punishable under Sections 363/366/506 of Indian Penal Code, 1860, (hereinafter referred to as the 'Indian Penal Code') in Sessions Trial No. 879 of 2010 (State of U.P. v. Phool Chandra and Anr.) arising out of Case Crime No. 28 of 2009, Police Station Utraon, District Allahabad in which FIR was lodged on 8.2.2009 by one Bhola Nath alleging that his daughter Kumari Manita aged 14 years, student of class 10th had gone to school on 6.2.2009 but did not return. He also expressed suspicion that his neighbour Sharda Prasad Gupta might be involved in the incident. In pursuance of the aforesaid complaint, investigation ensued and the victim Manita was recovered by the police on 12.2.2009. After completing the investigation, the chargesheet was filed against the Petitioners and some other persons under the

aforesaid Sections of the Indian Penal Code and after conclusion of the trial, vide judgment and order dated 8.10.2012, the Petitioners stood convicted under Sections 363/366/506 Indian Penal Code and rigorous imprisonment for a period of 7, 8 and 3 years respectively, had been imposed alongwith fines and further sentence in case of default in making payment. Some of the co-accused who also faced the trial were acquitted.

3. Aggrieved, the Petitioners preferred Criminal Appeal No. 4309 of 2012 before the High Court and vide order dated 20.11.2012 they had been enlarged on bail.

4. The Petitioners moved an application for early hearing of the Criminal Appeal wherein the Court was pleased to pass the following order:

The case is released.

Put up this case before appropriate Bench.

Hence this petition.

5. This matter was heard on 17.12.2013, however, Shri Pardeep Kumar Yadav who argued the case, could not satisfy the court regarding the maintainability of the petition against the impugned order. Thus, we requested him to call the Advocate-on-Record in the second round. Shri Ajit Kumar Pande, learned Advocate-on-Record, appeared, argued and thereafter sought time as he could not satisfy the court regarding the maintainability of the petition, nor he could explain what was the grave urgency for seeking early hearing of the criminal appeal when the Petitioners had been enlarged on bail, and particularly, when many people are waiting in the jail and their cases are not being heard by the Allahabad High Court for 20-30 years. He sought time to satisfy the court regarding its maintainability and, hence, the matter had been adjourned several times.

6. This petition has been filed with a delay of 108 days. Though, during this period, had the Petitioners made any attempt, their application for early hearing could have been heard by the appropriate Bench of Allahabad High Court, however, no effort was made.

7. It is a settled principle of law that the power under Article 136 of the Constitution of India, 1950 (hereinafter referred to as 'Constitution') is to be invoked not in a routine manner but in very exceptional circumstances when a question of law of general public importance arises or a decision sought to be impugned before this Court shocks the conscience of the court. This overriding and exceptional power vested in this Court has to be exercised sparingly and only in furtherance of the cause of justice. (Vide: Subedar Vs. The State of U.P., and Arunachalam Vs. P.S.R. Sadhanantham and Another,

8. The Constitution Bench of this Court in Pritam Singh Vs. The State, cautioned that the wide discretionary power vested in this Court should be exercised sparingly and in exceptional cases only when special circumstances are shown to

exist.

9. Another Constitution Bench in *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, reiterated the caution couching it in a different phraseology and said that this Court would not, under Article 136 of the Constitution, constitute itself into a Tribunal or Court just settling disputes and reduce itself into a mere Court of error. The power under Article 136 of the Constitution is an extraordinary power to be exercised in rare and exceptional cases and on well-known principles.

10. In *Manish Goel v. Rohini Goel* AIR 2010 SC 932, this Court while dealing with a similar case held as under:

Article 136 of the Constitution enables this Court, in its discretion to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. Undoubtedly, under Article 136 in the widest possible terms, a plenary jurisdiction exercisable on assuming appellate jurisdiction has been conferred upon this Court. However, it is an extra-ordinary jurisdiction vested by the Constitution in the Court with implicit trust and faith and thus, extraordinary care and caution has to be observed while exercising this jurisdiction. There is no vested right of a party to approach this Court for the exercise of such a vast discretion, however, such a course can be resorted to when this Court feels that it is so warranted to eradicate injustice. Such a jurisdiction is to be exercised by the consideration of justice and call of duty. The power has to be exercised with great care and due consideration but while exercising the power, the order should be passed taking into consideration all binding precedents otherwise such an order would create problems in the future. The object of keeping such a wide power with this Court has been to see that injustice is not perpetuated or perpetrated by decisions of courts below. More so, there should be a question of law of general public importance or a decision which shocks the conscience of the court are some of the prime requisites for grant of special leave. Thus, unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity warranting review of the decision appealed against, such exercise should not be done.

11. In *Mathai @ Joby Vs. George and Another*, this Court while dealing with a similar case observed that now-a-days it has become a practice of filing SLPs against all kinds of orders of the High Court or other authorities without realising the scope of Article 136. Hence, the court felt it incumbent on it to reiterate that Article 136 was never meant to be an ordinary forum of appeal at all like Section 96 or even Section 100 of the Code of Civil Procedure, 1908. Under the constitutional scheme, ordinarily the last court in the country in ordinary cases was meant to be the High Court. The Supreme Court as the Apex Court in the country was meant to deal with important issues like constitutional questions, questions of law of general importance or where grave injustice has been done to

a party. If the Supreme Court entertains all and sundry kinds of cases it will soon be flooded with a huge amount of backlog and will not be able to deal with important questions relating to the Constitution or the law or where grave injustice has been done, for which it was really meant under the Constitutional Scheme. After all, the Supreme Court has limited time at its disposal and it cannot be expected to hear every kind of dispute. The court expressed its sympathy with the judges as they struggle with an unbearable burden. The judges spend late nights trying to read briefs for a Monday or a Friday. When each of the 13 Benches have to dispose off about 60 cases in a day, the functioning of the Supreme Court of India is a far cry from what should be desiderate for disposal of cases in a calm and detached atmosphere.

All these are aberrations in the functioning of the Apex Court of any country. Of-lately, there has been an increase in the trend of litigants rushing to the courts, including this Court, for all kinds of trivial and silly matters which results in wastage of public money and time. A closer scrutiny of all such matters would disclose that there was not even a remote justification for filing the case. It is a pity that the time of the Court which is becoming acutely precious because of the piling arrears has to be wasted on hearing such matters. There is an urgent need to put a check on such frivolous litigation. Perhaps many such cases can be avoided if learned Counsel who are officers of the court and who are expected to assist the court tender proper advice to their clients. The Bar has to realise that the great burden upon the Bench of dispensing justice imposes a simultaneous duty upon them to share this burden and it is their duty to see that the burden should not needlessly be made unbearable. The Judges of this Nation are struggling bravely against the odds to tackle the problem of dispensing quick justice. But, without the cooperation of the gentlemen of the Bar, nothing can be done.

12. It is high time that the Courts should come down heavily upon such frivolous litigation and unless we ensure that the wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigation. In order to curb such kind of litigation, the courts have to ensure that there is no incentive or motive which can be ensured by imposing exemplary costs upon the parties as well as on learned Counsel who act in an irresponsible manner. (Vide: K.P. Varghese v. ITO and Anr.; Rameshwari Devi and Others Vs. Nirmala Devi and Others, ; and Gurgaon Gramin Bank Vs. Smt. Khazani and Another,

13. Many a times this Court has expressed its anguish and unhappiness about the time of the Court being wasted for petty matters. (See: Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, ; and Kadra Pahadiya and Others Vs. State of Bihar,

14. In view of the above, we are of the considered opinion that this petition has

been filed by the Petitioners and accepted to do so by the Advocate-on-Record without any sense of responsibility. If the Hon'ble Judge has directed to list the application before another Bench, we fail to understand as which of the Petitioners right got violated. There could have been some reasonable cause for the Hon'ble Judge to pass such an order.

We have no words to express our displeasure for the attitude and course adopted by the Petitioners and the Advocate-on-Record. The SLP is dismissed.