
(2010) 08 MP CK 0025
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 1609 of 2005

Ram Pratap

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Constitution of India, 1950 — Article 141
Criminal Procedure Code, 1973 (CrPC) — Section 389, 389(1), 438, 439
High Court of Madhya Pradesh Rules, 2008 — Rule 15, 22

Citation : (2010) CriLJ 4582 : (2011) 3 Crimes 244 : (2010) ILR (MP) 1896 :
(2011) 1 JLJ 13 : (2010) 4 MPHT 297 : (2010) 4 MPJR 10 : (2010) 3 MPLJ 598 :
(2010) 5 RCR(Criminal) 845

Hon'ble Judges : Rakesh Saxena, J;Rakesh Chandra Mishra, J;Ajit Singh, J

Bench : Full Bench

Judgement

R.C. Mishra, J.

Though not framed by the referring Division Bench, question to be answered, is- whether non-obstante clause in Rule 22 of Chapter IV of the High Court of M.P. Rules, 2008 overrides the guideline, as incorporated in Rule 15 of the same Chapter, for listing of a subsequent application for suspension of sentence/grant of bail.

The appellant stands convicted for murder of his wife and sentenced to life imprisonment. His first application for suspension of sentence and grant of bail was dismissed as withdrawn by a Division Bench comprising Deepak Verma, J. (as His Lordship then was) and one of us (Rakesh Saxena, J.) whereas the second one (LA. No. 4089/2009) was moved only after transfer of Deepak Verma, J. to Karnataka High Court. On being requested to nominate Judges constituting a Division Bench to hear the repeat application, Hon"ble the Chief Justice, presumably in exercise of the power conferred by Rule 22, directed listing of the case before regular Division Bench. When the matter came up for hearing before the regular Division Bench comprising R.S. Garg and U.C.

Maheshwari, JJ., a question of propriety was raised by learned Deputy Advocate General in view of the fact that one of the members of the Division Bench that dismissed the earlier application was available to hear it. In response, learned Counsel for the appellant submitted that a Division Bench consisting of A.K. Shrivastava and Sushma Shrivastava, JJ. had already overruled a similar objection, by an elaborate order dated 21-1-2009 passed in Criminal Appeal No. 1744/2004, Jagga @ Jagat Singh and Others Vs. The State of Madhya Pradesh, holding that non-obstante clause occurring in Rule 22 does override the other rules including Rule 15. Doubting correctness of the view, the Division Bench postponed hearing of the successive application by making the following observations:

The Division Bench in Criminal Appeal No. 1744/2004 (Jagga @ Jagat Singh v. State of M.P.) in our opinion failed to take into consideration that if the general power is to be exercised then such power is to be exercised in the interest of justice to avoid and not to contaminate the process. Without entering into any further discussion, we are of the considered opinion that the order dated 21-1-2009 passed by the Division Bench in the matter of Jagga @ Jagat Singh v. State of M.P. (Criminal Appeal No. 1744/2004) deserves to be considered by a Larger Bench. The matter be placed before Hon''ble Chief Justice for appropriate orders with a request that as hundreds of the cases are to be affected the matter may be placed before the Full Bench at its earliest.

Before proceeding to answer the reference, attention may be directed to Rule 15 and Rule 22, which read thus-

15. Subsequent applications for Bail.- All subsequent applications under sections 389 (1), 438 and 439 of the Code of Criminal Procedure, 1973, shall be listed before the same Judge/Bench who/which had decided the first application, even if earlier application was dismissed for want of prosecution, or dismissed as not pressed or withdrawn.

*** **

Notwithstanding anything hereinbefore contained in these Rules, the Chief Justice may, by a special or general order, direct a particular case(s) or a particular class(es) of cases to be listed before a particular Bench.

Apparently, Rule 15 is based on epoch-making decision of the Supreme Court in Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and Another, , mandating that the subsequent bail applications must be placed before the same Judge who had passed the earlier orders and who was available. However, we are not required to discuss ramifications of the guidelines laid down in Shahzad Hasan Khan's case (supra), as corresponding opinions have already been well set out by as many as three Full Benches of this Court respectively in Narayan Prasad v. State of M.P. 1993 MPLJ 1 , Santosh Vs. State of M.P., and Gopal and Others Vs. State of Madhya Pradesh, (of which one of us Ajit Singh, J. was also a member). For the sake of convenience, answers governing the references may be reflected as

under:

----- Answer

Given in -----
Successive applications for bail (suspension of Narayan Prasad's sentence) must be placed before the same case Judge/Bench so long as he/it is available

Successive bail applications in a pending appeal or Santosh's case bail application u/s 439 of the Code should be considered by the Bench which has considered the first bail application unless the Bench, which decided the earlier application, is not available for a sufficient duration.

----- (a)

When a first application for bail preferred in a Gopal's case pending appeal u/s 389 (1) of the Code has been considered by a Division Bench and faced rejection and thereafter the second bail application is filed and due to the non-availability of earlier Division Bench, a Second Division Bench deals with the matter and rejects the application, the other successive and subsequent bail applications should go before the said Bench and not before the Bench that has been given the roster to deal with such matter.

----- (b) If

the first application for bail has been preferred under section 389 of the Code and has been rejected by a Bench and if one of the members of the Bench is available, the subsequent bail applications should be listed before a Bench of which he is a member and it should not go before the regular Bench as per roster.

(Emphasis supplied)

The Division Bench in Jagga's case (supra), did not purport to follow the Full Bench decision in Gopal's case (supra), inter alia on the ground that non-obstante clause in Rule 22, brought into force w.e.f. 1-11-2008, has to be construed as a proviso to all other rules including Rule 15. However, as pointed out already, Rule 15 has the binding force of the Apex Court decision in Shahzad Hasan Khan's case (supra), that also entails consequential duty on Hon'ble the Chief Justice. Obviously, the non-obstante clause in Rule 22 cannot override Article 141 of the Constitution of India, which enacts that the law declared by the Supreme Court shall be binding on all Courts within the territory of India.

The matter can also be viewed from other angles. Difference in the phraseology of Rules 15 and 22 is suggestive of a well-marked distinction in the respective objects behind these rules. Rule 22 beginning with a non-obstante clause is general in nature whereas Rule 15 is a special one as it governs listing of subsequent applications for suspension of sentence and grant of bail. As explained by Hon'ble Shri Justice G.P. Singh (formerly the Chief Justice of this Court) at Page 368 of his celebrated work titled as "Principles of Statutory Interpretation" (Twelfth Edition)-

A special enactment or rule cannot be held to be overridden by a later general

enactment or simply because the latter opens up with a non-obstante clause.

Thus, based on the maxim "Generalia specialibus non derogant" (the general does not detract from the specific), the rule interpretation is that general provision yields to the special provision. Further, in the words of Prof. Reed Dickerson, learned Author of Interpretation and Application of Statutes, "a non-obstante tail should not wag a statutory dog".

In *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, , the Supreme Court had the occasion to explain the proper approach to interpret a non-obstante clause. It was held that if the enacting part is clear, the non-obstante clause cannot cut down its scope and as re-expressed by V.R. Krishna Iyer, J., in his inimitable style, such a clause cannot whittle down the wide import of the principal part (*Maru Ram and Others Vs. Union of India (UOI) and Others*,

Adverting to the case in hand, it may be observed that as there is no apparent inconsistency between the Rules, the scope of Rule 15 cannot be cut down by resorting to the non-obstante clause in Rule 22 (See : *R.S. Raghunath Vs. State of Karnataka and another*, . This apart, the Rule of harmonious construction is that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible effect should be given to both. Applying these well settled principles, it can easily be concluded that Rule 22 is merely enabling and not a barring provision as it only reserves the inherent residuary powers of the Chief Justice to direct listing of cases not covered by any special Rule such as Rule 15.

Having considered the matter from different angles, we are clear and we say it respectfully that the view taken by the Division Bench in *Jagga's case* (supra) does not lay down the correct view of the law and it is, accordingly, overruled.

The question is, therefore, answered in the negative. The obvious consequence is that the opinion expressed by the Full Bench in *Gopal's case* (supra), is reaffirmed and supplemented with our answer that the non-obstante clause in Rule 22 does not override Rule 15.