
(2015) 05 SC CK 0022

In the Supreme Court Of India

Case No : Criminal Appeal No. 789 of 2015 (Arising out of S.L.P. (Criminal) No. 6054 of 2013)

State of Uttar Pradesh and Others

APPELLANT

Vs

Anil Kumar Sharma and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 173, 173(2), 207, 209
Penal Code, 1860 (IPC) — Section 409

Citation : (2016) 1 ALD(Cri) 267 : (2016) 1 ALJ 159 : (2016) CriLJ 213 :
(2015) 4 Crimes 166 : (2015) 4 JCC 2241 : (2015) 2 LW(Cri) 746 : (2015) 3
RCR(Criminal) 67 : (2015) 6 SCALE 590 : (2015) 6 SCC 716

Hon'ble Judges : Dipak Misra, J;R.K. Agrawal, J;Prafulla C. Pant, J

Bench : Full Bench

Advocate : Vijay Bahadur Singh, Advocate Gen., Ravi Prakash Mehrotra, Syed Ali Mortaza, Vibhu Tiwari, Ashutosh Kr. Sharma, Uday Pratap Singh and Ashok Kumar Lal, for the Appellant; Ashok K. Srivasatava, Rakesh K. Sharma and Surya Kant, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—Leave granted.

2. A substantial question of law has been raised in this appeal, as to what extent a High Court can exercise its powers in issuing directions on judicial side, relating to the procedure to be adopted in criminal trials.

3. This appeal is directed against the order dated 24.5.2013 passed by High Court of Judicature at Allahabad in Criminal Misc. Writ Petition No. 62 of 2013 which has been kept alive even after it has become infructuous.

4. Brief facts of the case are that Respondent No. 1, Anil Kumar Sharma (writ Petitioner), was a clerk with ESI Hospital at Agra. He was transferred and posted on 23.5.2012 to KRB Hospital, Agra. A First Information Report (FIR) was lodged against him in respect of offence punishable Under Section 409 of Indian Penal

Code (Indian Penal Code) at Police Station Hari Parvat, District Agra, which was registered as Crime Case No. 1044 of 2012. Said Respondent filed writ petition (Crl.) No. 62 of 2013 before the High Court on 3.1.2013 with the following prayer:

issue a writ, order or direction in the nature of certiorari, quashing the first information report dated 21.12.2012 in Case Crime No. 1044 of 2012, Under Section 409 Indian Penal Code, P.S. Hari Parvat, District Agra.

5. It was pleaded by the writ Petitioner that he was assigned the job at the Enquiry and Registration counter, and had nothing to do with the purchase of medicines or working as a storekeeper, as such First Information Report in question, lodged against him was liable to be quashed.

6. On 7.1.2013, the High Court granted interim stay of arrest of the writ Petitioner, and strangely made certain observations relating as to why the trials get prolonged due to various factors, including the non-arrest of accused by police while submitting the reports Under Section 173(2) of Code of Criminal Procedure, 1973 (Code of Criminal Procedure).

7. On the next date, i.e. 17.1.2013, the High Court directed the Appellant authorities to file compliance reports with affidavits, to the above order, as also with regard to the supply of copies to the accused Under Section 207 Code of Criminal Procedure.

8. Thereafter, on 5.2.2013, though the FIR in question was still under investigation, but the High Court, on its own motion, referred to procedural issues relating to criminal trials which were never adverted to in the writ petition, and directed the police authorities to get installed photocopying machines at the police stations for preparing the copies required to be supplied Under Section 207 Code of Criminal Procedure. On this, on 8.3.2013, the Home Department of the State Government filed affidavit of compliance in response to order dated 5.2.2013 placing the minutes of the meeting held on 5.3.2013.

9. Next, on 24.5.2013, the High Court passed the impugned order wherein even after noting that final closure report has been filed in respect of the FIR in question (though the writ petition had become infructuous), it started monitoring the process of expediting the criminal trials in the State.

10. It is pleaded by the Appellants before us that due to the general directions issued by the High Court to the trial courts not to accept the reports Under Section 173 Code of Criminal Procedure unless the accused are produced, thousands of cases got held up in which reports could not be filed in the courts. It is further pleaded that the High Court insisted to provide feed back on the suggested amendments in the Code of Criminal Procedure, including the one relating to enabling the police to file charge sheets in connection with Sessions case directly before the Sessions Courts, and to get dispensed with the procedure of committal by the Magistrate (required Under Section 209 Code of

Criminal Procedure, even though the Central Government was not a party to the writ petition). The High Court, vide its order dated 24.5.2013, further directed the Principal Secretaries of Departments of Home, Finance and that of Law of the State Government, and the Director (Prosecution) of the State to file their personal affidavits regarding compliance of the directions issued by it. It is urged on behalf of the State Government that on 19.7.2013 when the Appellants sought further time, as the issues required wider consultation, with the Central Government, the High Court allowed time only up to 23.7.2012, i.e., three days, including the Sunday, to comply with the direction.

11. After Special Leave Petition is filed before this Court, the High Court has moved Criminal Misc. Petition No. 20573 of 2013 before this Court as intervener, stating in paragraph 6 that since Respondent Nos. 1 and 2 (accused in Crime Case No. 1044 of 2012) might have lost their interest, as the final reports have been submitted, certain facts relating to delay in trial and importance in dispensation of criminal justice are required to be placed on record. In paragraph 3 of the petition, the High Court has categorized four stages of delay in trials, i.e., (i) delay in completion of investigation and filing of charge-sheet, (ii) matters relating to stay of arrest even not only before filing of the charge-sheet but subsequent thereto; (iii) delay in preparation of copies of the prosecution papers to be provided to the accused and delay in procuring attendance of the accused, and (iv) delay in procuring attendance of prosecution witnesses and their cross-examination.

12. We have heard learned Advocate General of State of Uttar Pradesh, and learned Counsel for the intervener at length.

13. We can appreciate the concern of the High Court regarding delay in criminal trials, expressed by it, but the manner in which sweeping directions issued in the present case by the High Court, cannot be appreciated, particularly the directions, which are not in conformity with the provisions of Code of Criminal Procedure.

14. In *State of U.P. and Others Vs. Mahindra and Mahindra Ltd.*, (2011) 5 SCALE 188 : (2011) 5 SCR 509 : (2011) 42 VST 365, this Court has made following observations, in paragraph 10, as to the power and scope of the High Court in issuance of directions to the legislature:

10. Within our Constitution, we have specifically demarcated the ambit of power and the boundaries of the three organs of the society by laying down the principles of separation of powers, which is being adhered to for carrying out democratic functioning of the country. So far as the legislation is concerned, the exclusive domain is with the legislature. Subordinate legislations are framed by the executive by exercising the delegated power conferred by the statute, which is the rule-making power. The judiciary has been vested with the power to interpret the aforesaid legislations and to give effect to them since the parameters of the jurisdiction of both the organs are earmarked. Therefore, it is

always appropriate for each of the organs to function within its domain. It is inappropriate for the courts to issue a mandate to legislate an Act and also to make a subordinate legislation in a particular manner. In this particular case, the High Court has directed the subordinate legislation to substitute wordings in a particular manner, thereby assuming to itself the role of a supervisory authority, which according to us, is not a power vested in the High Court.

15. This Court has time and again held that no court can issue a mandate to a legislature to enact a particular law.

16. In *Pravasi Bhalai Sangathan Vs. Union of India (UOI) and Others*, AIR 2014 SC 1591 : (2014) AIRSCW 1713 , a three-Judge Bench of this Court, in paragraph 20, has reminded the courts with regard to their limitations as follows:

...This Court has persistently held that our Constitution clearly provides for separation of powers and the court merely applies the law that it gets from the legislature. Consequently, the Anglo-Saxon legal tradition has insisted that the Judges should only reflect the law regardless of the anticipated consequences, considerations of fairness or public policy and the Judge is simply not authorised to legislate law. "If there is a law, Judges can certainly enforce it, but Judges cannot create a law and seek to enforce it." The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The very power to legislate has not been conferred on the courts. However, of lately, judicial activism of the superior courts in India has raised public eyebrows time and again....

17. In *Pravasi Bhalai Sangathan* (supra), this Court has further observed in paragraphs 23 and 24 as under:

23. Further, the court should not grant a relief or pass order/direction which is not capable of implementation. This Court in *State of U.P. and Another Vs. U.P. Rajya Khanij Vikas Nigam S.S. and Others*, (2009) 121 FLR 424 : (2008) 6 JT 489 : (2008) 9 SCALE 1 : (2008) 12 SCC 675 : (2009) 1 SCC(L&S) 237 has held as under: (SCC pp. 690-91, para 48)

48. To us, one of the considerations in such matters is whether an order passed or direction issued is susceptible of implementation and enforcement, and if it is not implemented whether appropriate proceedings including proceedings for wilful disobedience of the order of the Court can be initiated against the opposite party. The direction issued by the High Court falls short of this test and on that ground also, the order is vulnerable.

(Emphasis supplied)

24. Judicial review is subject to the principles of judicial restraint and must not become unmanageable in other aspects. (Vide *Emperor vs. Khwaja Nazir Ahmad* AIR 1945 18 (Privy Council) , *State of Haryana and others Vs. Ch. Bhajan Lal and others*, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp and *Akhilesh*

Yadav Vs. Vishwanath Chaturvedi and Others, (2013) 3 ABR 429 : (2013) 1 AD 297 : (2013) CriLJ 1636 : (2012) 12 JT 565 : (2013) 1 RCR(Criminal) 321 : (2012) 12 SCALE 371 : (2013) 2 SCC 1 .)

18. In Manoj Sharma Vs. State and Others, (2008) 11 JT 674 , while discussing the scope of Section 482 Code of Criminal Procedure, this Court has held as under:

The doctrine of judicial restraint which has been emphasised repeatedly by this Court e.g. in Divisional Manager, Aravali Golf Club and Another Vs. Chander Hass and Another, (2008) 2 CLT 620 : (2008) 3 JT 221 : (2008) 149 PLR 485 : (2007) 14 SCALE 1 : (2008) 1 SCC 683 : (2008) 1 SCC(L&S) 289 : (2007) 12 SCR 1084 : (2008) 1 UJ 17 and Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi, AIR 2008 SC 1640 : (2008) 2 JT 639 : (2008) 3 SCALE 45 : (2008) 4 SCC 720 : (2008) AIRSCW 1826 : (2008) 2 Supreme 472 restricts the power of the Court and does not permit the Court to ordinarily encroach into the legislative or executive domain. As observed by this Court in the above decisions, there is a broad separation of powers in the Constitution and it would not be proper for one organ of the State to encroach into the domain of another organ."

19. Quoting the observations in respect of policy making by Lord Justice Lawton in Laker Airways 1977 (2) WLR 234 at 267, Chief Justice A.S. Anand, as he then was, reiterated the principle that the "role of the judge is that of a referee. I can blow my judicial whistle when the ball goes out of play; but when the game restarts, I must neither take part in it nor tell the players how to play". Justice Anand added:

The judicial whistle needs to be blown for a purpose and with caution. It needs to be remembered that court cannot run the government. It has the duty of implementing the constitutional safeguards that protect individual rights but they cannot push back the limits of the Constitution to accommodate the challenged violation.

20. A three-Judge Bench of this Court in Census Commissioner Vs. R. Krishnamurthy, (2014) 4 RCR(Civil) 991 : (2014) 10 SCJ 222 , has observed as under:

25....It is not within the domain of the court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But, the courts are not to plunge into policy-making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for remembering what we have stated in the beginning....

21. In Braj Kishore Thakur Vs. Union of India, AIR 1997 SC 1157 : (1997) 1 Crimes 199 : (1997) 3 JT 26 : (1997) 2 SCALE 312 : (1997) 4 SCC 65 : (1997) 2

SCR 420 : (1997) AIRSCW 1166 : (1997) 2 Supreme 471 , this Court has made following observations:

2. Judicial restraint is a virtue. A virtue which shall be concomitant of every judicial disposition. It is an attribute of a Judge which he is obliged to keep refurbished from time to time, particularly while dealing with matters before him whether in exercise of appellate or revisional or other supervisory jurisdiction....

22. In *S.C. Chandra and Others Vs. State of Jharkhand and Others*, AIR 2007 SC 3021 : (2007) 10 JT 272 : (2007) 10 SCALE 209 : (2007) 8 SCC 279 : (2007) 2 SCC(L&S) 897 : (2007) 9 SCR 130 : (2008) 1 SLJ 282 : (2007) AIRSCW 5480 , this Court observed:

34. There is broad separation of powers under the Constitution, and the judiciary should not ordinarily encroach into the executive or legislative domain. The theory of separation of powers, first propounded by the French philosopher Montesquieu in his book *The Spirit of Laws* still broadly holds the field in India today. Thus, in *Asif Hameed and others Vs. State of Jammu and Kashmir and Others*, AIR 1989 SC 1899 : (1989) 2 JT 548 : (1989) 1 SCALE 1547 : (1989) 2 SCC 364 Supp : (1989) 3 SCR 19 a three-Judge Bench of this Court observed (vide paras 17 to 19): (SCC pp. 373-74)

17. Before advertng to the controversy directly involved in these appeals we may have a fresh look at the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognised under the Constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, they have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self-imposed discipline of judicial restraint.

18. Frankfurter, J. of the U.S. Supreme Court dissenting in the controversial expatriation case of *Trop v. Dulles* [2 L Ed 2d 630 : 356 US 86 (1958)] observed as under: (US pp. 119-20)

All power is, in Madison's phrase, "of an encroaching nature".... Judicial power is

not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint....

Rigorous observance of the difference between limits of power and wise exercise of power--between questions of authority and questions of prudence--requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere to the difference. It is not easy to stand aloof and allow want of wisdom to prevail, to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorised the judges to sit in judgment on the wisdom of what Congress and the Executive Branch do.

19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonise qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.

(Emphasis supplied)

23. In *State of U.P. and Others Vs. Jeet S. Bisht and Another*, (2007) 8 SCALE 35 : (2007) 6 SCC 586 : (2007) 8 SCR 705 , this Court observed as under:

49. Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the State. It accomplishes this in two ways. First, judicial restraint not only recognises the equality of the other two branches with the judiciary, it also fosters that equality by minimising inter-branch interference by the judiciary. In this analysis, judicial restraint may also be called judicial respect, that is, respect by the judiciary for the other coequal branches. In contrast, judicial activism's unpredictable results make the judiciary a moving target and thus decreases the ability to maintain equality with the co-branches. Restraint stabilises the judiciary so that it may better function in a system of inter-branch equality.

24. In *A.M. Mathur Vs. Pramod Kumar Gupta*, AIR 1990 SC 1737 : (1990) 1 JT 545 : (1990) 1 SCALE 527 : (1990) 2 SCC 533 : (1990) 2 SCR 110 : (1990) 1 UJ 595 this Court observed that judicial restraint and discipline are necessary to the

orderly administration of justice. The duty of restraint and the humility of function has to be the constant theme for a Judge, for the said quality in decision-making is as much necessary for the Judges to command respect as to protect the independence of the judiciary. Para 13 of A.M. Mathur v. Pramod Kumar Gupta and Ors. (supra) reads as under:

13. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well to other co-ordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process.

25. No person, however high, is above the law. No institution is exempt from accountability, including the judiciary. Accountability of the judiciary in respect of its judicial functions and orders is vouchsafed by provisions for appeal, reversion and review of orders.

26. In view of law laid down by this Court, as discussed above, we are of the view that the High Court has clearly erred in law in treating the writ petition which was filed for quashing of FIR, and had become infructuous, as Public Interest Litigation, and issued sweeping directions, without there being sufficient data and material before it to pass directions. There is no requirement Under Section 173 Code of Criminal Procedure for the Investigating Officer to produce the accused along with the charge-sheet. The High Court has not cared to see that where there are several accused and only some of them could be arrested and remanded to judicial custody, and Others are on bail, how all of them can be produced together by the police. The High Court should have realized that trial of under-trial prisoners cannot be allowed to be delayed, for want of presence of accused absconding in the case. Learned Advocate General has argued before us that several thousand charge-sheets got stuck up because of sweeping directions of the High Court from being filed in the courts. However, the learned Advocate General for the State submitted that all arrangements have been made for preparation of copies of the papers before the charge sheet is filed so that they can be served on the accused persons. It is also accepted by him that all efforts have to be made to apprehend the accused persons so that the trial can be expedited. As there is a concession by the learned Advocate General before us which is in consonance with the law and that the State shall comply with the same so that the delay does not occur on these grounds.

27. We also feel it pertinent to mention here that there is no mandate in Section 207 Code of Criminal Procedure which requires the police to prepare copies of all the papers before the chargesheet is filed. For example, the confessional

statements recorded Under Section 164 Code of Criminal Procedure by the Magistrates cannot be supposed to be lying with the Investigating Officer. As far as requirement of photocopying machine at the police station is concerned, similar machines could have been directed to be provided in the courts.

28. In our opinion, the High Court has exceeded its jurisdiction in asking the State Authorities to file compliance report, in the matter of dispensing with requirement of committal of cases by the Magistrate to the Court of Sessions, as provided in Section 209 Code of Criminal Procedure. It is relevant to mention here that the Central Government was not even party in the writ petition in which direction was issued to get amended the Code of Criminal Procedure.

29. For the reasons, as discussed above, we are of the considered opinion that the impugned order dated 24.5.2013 passed in W.P. (Crl.) No. 62 of 2013 by which sweeping directions are given by the High Court, is liable to be set aside. Accordingly, the appeal is allowed and the impugned order is set aside. However, the direction contained in paragraph 26 above, to the State on the basis of the concession given by the learned Advocate General shall be religiously followed.