

Sandeep @ Raja Vs. State

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SooperKanoon Citation : sooperkanoon.com/1171647

Court : Orissa

Decided On : Nov-24-2014

Appellant : Sandeep @ Raja

Respondent : State

Judgement :

CRLA NO 28 OF 2011 22 24.11.2014 This appeal was specifically fixed for today at the request of Sr.H.S.Mishra, learned advocate.

Today, a memo has been moved by Sr.H.S.Mishra, learned advocate which reads thus ;.MEMO Since Mr.Narasingha Mishra has become Leader of the opposition party, his appearance in the appeal my be ignored.

Shri H.S.Mishra, Advocate, having appeared as an associate of Mr.Narasingha Mishra to assist him in the appeal, his appearance may also be ignored.

As the mother of the appellant is seriously ill, and has undergone operation, the appellant being in custody, No.able to give proper instruction, through the appellant desired to engage Shri H.S.Mishra, he is unable to instruct him to proceed with the appeal.

Hence otherwise his appearance may be ignored.

Cuttack, 24.11.2014 H.S.Mishra.

ADVOCATE The aforesaid memo filed today is taken on record and will form part of the record.

This appeal has got a chequered history.

It has been reverted back from the Apex Court and just to know how the appellant has conducted himself in the most unsyllabous manner and has made a mockery of the appellate power of this Court.

We hereby record in detail what has transpired in this appeal since the date of its inception.

The appeal was filed in this Court and according to the office report, it was got reported on 20.1.2011.

On 24.1.2011, the appeal was admitted and LCR was called for.

On the same day, on a Miscellaneous Application no.58 of 2011 attached with the memo of appeal was filed, its realization of fine was stayed, although, in the order, fine is missing but the purport of the order is that the realization of fine shall remain stayed.

On the same day, in Miscellaneous Application no.57 of 2011, the order was to put up this application after receipt of the Lower Court Record.

Urgent Certified Copy be granted on proper application.

The appeal again was listed on 1.3.2011 where it was ordered that the appeal be placed on third instant as requested by learned counsel for the appellant.

Appeal again was listed on 4th March, 2011 when the present appellant Sandeep @ Raja Acharya filed an application, the affidavit of which was sworn to by one MaNo.Kumar Bisoi with a prayer to release the aforesaid appellant (Sandeep @ Raja Acharya for a period of one month to attend obsequies of his grandfather from 5.3.2011 to 8.3.2011).Mr.D.Dash, learned advocate who represented the appellant and Mr.Ashok Mohanty, learned Advocate General for the State were heard and by a very detailed order, this Court passed the following order,

operative portion of which for the sake of brevity is reproduced hereinbelow;xx xx
xx Perused the record.

Considering the submission made by the learned counsel for the appellant/
petitioner as well as learned Advocate General and keeping in mind the fact that
the appellant/petitioner is to attend the 10th day ritual in the TUTHA i.e.ion
05.03.2011, this Court, No.being inclined to release the appellant/petitioner on
interim bail, directs the Commissioner of Police, Bhubaneswar and Cuttack as well
as Jail Superintendent of the concerned jail to produce the appellant/petitioner
(Sandeep @ Raja Acharya) in police custody at the TUTHA for one hour i.e.from
12 noon to 1.00 PM to enable him to complete the ritual within one hour.

It is further directed that no person except the KARTA of the DASHA KARMA will
be permitted to interact with the appellant/petitioner.

The Barber and the Priest will enter the TUTHA after the KARTA leaves the place.

The appellant/petitioner will remain in police security and outsiders including
media people will be kept away at a distance of 100 yards from the petitioner.

For the above purpose, this Court further directs that Sr.Susanta Kumar Panda,
the KARTA, will have to give a consent to abide by the aforesaid directions and
furnish a list of the family members who are to attend the DASHA KARMA along
with an affidavit to the Commissioner of Police for security purpose in couRs.of the
date.

Learned counsel for the appellant/petitioner is also directed to produce a certified
copy of this order before the Commissioner of Police, Bhubaneswar and Cuttack
and in his absence, before the Deputy Commissioner of Police, Bhubaneswar,
who shall take immediate steps.

The misc.

case is disposed of.

Issue urgent certified copy in couRs.of the day.

A free copy of this order shall be supplied to Mr.S.K.Nayak, learned AGA to communicate the same to the commissioner of Police, Bhubaneswar and Cuttack and the Jail Superintendent, Jharpara Jail, Bhubaneswar for taking immediate steps.

The appeal again came up on 5.5.2011 and on that day, at the request of counsel for the appellant, it was passed over for one week.

Again on 19.5.2011, counsel for the appellant Sr.D.

Dash and Sr.S.K.Nayak, learned Advocate, Additional Government Advocate were heard for and against the application filed for under Section 389 Cr.P.C for bail and the Division Bench of this Court after hearing both the sides passed the following order, operative portion of which is reproduced hereinbelow;xxx xxx xxx Perused the L.C.R.Considering the evidence of P.Ws.2,4,10 and 12, this Court is No.inclined to admit the appellant to bail.

The misc.

case filed for bail is dismissed.

The appeal again was listed on 19.7.2011, 26.7.2011 and on both the dates, at the request of Counsel for the appellant, the same was got passed over.

On 27.10.2011 was the next date fixed.

On the aforesaid date, on Miscellaneous Application No.962 of 2011, this Court passed the following orders;The Apex Court in S.L.P No.6207 of 2011 while dismissing the Special Leave Petition has requested this Court to dispose of the appeal as expeditiously as possible instead of getting ready for hearing of the appeal, this application has been filed for appropriate ordeRs.Learned counsel appearing for the appellant also prays for a long adjournment.

Put up this case in the week commencing from 28th November, 2011.

We made a note here that in spite of the order passed by the Apex Court requesting this Court to dispose of the appeal finally, in the teeth of the order of the Apex Court, the application was filed for adjournment.

Be that as it may, the appeal again came up on 29.11.2011 when no body appeared for the appellant.

Order by the Honble Apex Court was perused by the Bench which ordered for preparation of paper book out of turn.

It was directed that the appeal be added to the hearing list after the paper books are prepared.

The appeal again was listed before the Bench on 2.12.2013.

At this day, the counsel was changed by the appellant.

Another senior counsel Mr.Mallick appeared and has stated that senior advocates have already entered appearance in this case on behalf of the petitioner (should have been appellant).The appearance memo to that effect has already been filed.

This Court, therefore, directed the office to verify and indicate the name of the senior advocates in the cause list and further directed the appeal to come up next week.

The appeal again was listed on 9.12.2013 on which date appearance memo of Sr.Narasingha Mishra, learned senior advocate was filed in the Court on behalf of the appellant.

It was, therefore, directed to the office to indicate the name of Sr.Narasingha Mishra, senior advocate in the cause list.

The Bench heard Sr.Mishra, learned senior advocate for the appellant (wrongly mentioned petitioner) and Mr.B.Pradhan, learned Additional Government Advocate

for the State and directed the matter to come up in the cause list on Monday (16.12.2013).The Court directed Additional Government Advocate to obtain instruction about the status of the trial of the pending cases against the appellant.

The appeal again was listed on 16.12.2013 when Sr.H.S.Mishra, learned counsel for the appellant and Mr.B.Pradhan, learned Additional Government Advocate for the State were heard and this Court directed learned Additional Government Advocate to file an affidavit indicating the details of the cases in which the appellant has been convicted and in which the order of acquittal has been passed and also the status of the other cases in the Court below, where the same is pending, within two weeks hence.

The matter was directed to come up in the 2nd week of January, 2014.

The appeal was again listed on 16.1.2014 and on that date, at the request of Additional Government Advocate, the appeal was passed over.

Appeal again came up on Board on 7.2.2014 when at the behest of the appellant, the appeal was directed to come up on 20.2.2014.

On 20.2.2014, Mr.Narasingha Mishra, learned senior advocate for the appellant and Mr.B.Pradhan, learned Additional Government Advocate were heard.

It was stated by Mr.B.Pradhan on an affidavit, 21 cases were pending against the present appellant.

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The Court, therefore, directed the office to verify the same and tagged the same with the case record.

On the other hand, it was contended by Sr.Mishra that out of the said cases, two cases had ended in acquittal and most of the cases had been instituted while the appellant was in custody.

On the aforesaid contention by the appellant, this Court directed the appellant to file an affidavit with the above contentions.

The appeal was directed to come up in the 1st week of March, 2014.

Perusal of order-sheet further indicates that the appeal came up on 18.9.2014.

On the aforesaid date, Additional Public Prosecutor Sk.

Zafrulla was directed to file an affidavit (of a responsible officer) in compliance with the earlier orders passed by this Court detailing therein criminal background and the current status of all the trials pending.

The list already submitted to this Court was also directed to be appended along with the affidavit for cross verification and the appeal was directed to come up for further orders on 24.9.2014.

It was also directed on the said date that the appellant be produced before this Court on the next date and Superintendent of Jail where the appellant was incarcerated was directed to make all necessary arrangements for his production.

On 24.9.2014, when the appeal came up before the Bench, appellant Sandeep @ Raja Acharya was produced before this Court by SI (A) S.K.Choudhury with one platoon, D.S.I.R.K.Khandual, Havildar R.R.Jaysingh, C-1062 S.K.Nayak and C-263 M.R.Ratna.

On an enquiry being made by the Bench from the appellant as to whether he has engaged the present counsel for moving the bail application only or the same counsel will argue the appeal also, Sandeep @ Raja Acharya in no uncertain terms replied that in addition to the present counsel, he wants to engage Mr.H.S.

Mishra and Mr.Debasis Panda, advocate as well to argue his appeal finally.

Since on the aforesaid date, there was a strike by the members of the Bar, the appeal was directed to come up on 27.10.2014.

It was requested by the Bench from the counsel for the appellant to argue the appeal on that date.

We make it clear that since the appellant is in custody, no adjournment shall be granted on the next date.

Appellant Sandeep @ Raja Acharya is directed to be relodged in Bhubaneswar Jail and again produced before us on the next date i.e.27.10.2014. When the appeal came up on 27.10.2014 , there was a very big scene in the Court as when the appellant was produced before the Court, he make a statement before (both the members of the Bench) that his appeal be dismissed.

When the Court asked whether the appellant withdraw his appeal or not, Sandeep @ Raja Acharya is stated making excuses.

There was lot of commotion and the appellant tried his level best to disturb the genial atmosphere of the Court.

After hearing Sr.H.S.Mishra, learned counsel appeared for the appellant Sandeep @ Raja Acharya at a very great length assisted by Sr.Panda, this Bench passed a detailed order which as follows; Heard Sr.H.S.Mishra, learned Senior Counsel for the appellant-Sandeep alias Raja Acharya, who is personally present before us.

This is appeal is listed today for final hearing.

Paper Books has already been prepared.

The appellant Raja Acharya had a long history of criminal cases as it is clear from the order dated 20.02.2014.

Looking to his criminal history the Bench was No.inclined to grant him bail.

On the last occasion, mention was made that Sr.H.S.Mishra, learned Senior Advocate has been engaged to argue interim bail prayer for the appellant.

The said request was rejected.

On 24.9.2014 the appellant was categorically informed by this Bench that he should get his appeal finally decided as the Bench was No.inclined to grant interim bail in any event.

In consultation with appellant, the appeal was fixed for today for final hearing.

The appellant had informed that he has engaged Sr.H.S.Mishra, learned Senior Advocate and Sr.D.Panda, learned Advocate to argue his appeal.

It was mentioned in the order sheet dated 24.9.2014 that since the appellant is in custody, no adjournment shall be granted on the next date.

Today Sandeep alias Raja Acharya along with his counsel Sr.H.S.Mishra appeared and impressed upon to grant interim bail.

Looking to overall facts and circumstances and the criminal back grounds of the appellant, which was informed to us and was incorporated in the order dated 20.02,2014, we are No.inclined to grant interim bail to the appellant for the reasons that his mother is ill and there is no body to look after her.

In view of the aforesaid interim bail prayer stands rejected and the Misc.

Case is dismissed.

After the aforesaid order was dictated, Sr.H.S.Mishra, learned counsel requested us to incorporate in the order that he was informed about his engagement to argue the appeal finally today in court only and the appellant had never intimated him earlier about his engagement as such for the said purpose.

This statement was also given by Sr.H.S.Mishra, earlier also while he was impressing upon us to consider the interim bail application.

It is a matter between the client and the advocate.

The Court does No.come in between them at all.

It is for the appellant to inform Sr.H.S.Mishra, learned Senior Advocate that he has engaged him to argue the appeal finally and it was for the appellant to get himself prepared.

Sr.H.S.Mishra also stated that the appellant had no means of communication.

We record that if the appellant desired he could have communicated his counsel through jail authorities or by sending letters. It was for the appellant to properly instruct his counsel in order to get him prepared.

After the aforesaid order was dictated in the open Court, we enquired from Sr.H.S.Mishra, learned Senior Advocate about the date on which he shall argue the appeal finally.

At his request, we direct the appeal to come up for final hearing on 24.11.2014.

The appellant, who has been brought from jail and is personally present before us, is directed to be taken back and redodged in jail till further order passed by us.

We also direct concerned Jail Superintendent, where the appellant is incarcerated, to make arrangement for the appellant to give instructions to his advocate between 10.00A.M.and 5.00 P.M.if he so desires.

List this matter on 24.11.2014 for final hearing showing it as part heard.

A free copy of this order be handed over to the learned Standing Counsel for the State.

In view of the aforesaid background facts, this appeal is listed today when an application on behalf of Sr.H.S.Mishra, learned advocate has been filed.

Sr.Panda has No.been disengaged by the appellant.

He is still continues to be his advocate.

Mr.Panda is present in Court and since there is a direction by the Apex Court since 2014 to decide the appeal at the earliest and already three years have gone by for which we have already given the reasons hereinabove.

We hereby request Sr.Panda to start the argument with the appeal.

After the aforesaid order was dictated in open Court, Sr.Panda stood up and request us to grant him one day time.

Since the appellant is in custody and he has been convicted for life sentence, we as a matter of last opportunity, grant indulgence to Sr.Panda.

At his request, the matter is directed to come up at 10.30 A.M day after tomorrow (26.11.2014) for final hearing showing it in the supplementary cause list and printing the name of the counsel for the appellant who have appeared till date in the appeal.

Sr.H.S.Mishra, learned counsel through the memo moved today has requested that his name as well as the name of Sr.Narasingha Mishra be ignored.

We resolve our order on the said memo and will pass appropriate order day after tomorrow (26.11.2014).After this order was dictated, Sr.Panda requested us that he be made available a copy of the paper book.

For doing complete justice to the appellant and No.to give an impression that he was denied access to justice in all fair play, we direct the office to get an legible copy of the paper book prepare today and hand it over to Sr.Panda.

In case the paper book becomes ready after the court houRs.an Officer of the Court will take the paper book to Sr.Pandas residence and hand him over at his residence and get his signature about the receipt of the paper book
....ViNo.Prasad, J.

.....P.Patnaik, J.

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