

Suganiya Vs. The Superintendent of Central Prison, Chennai and Another

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Court : Chennai

Decided On : Jan-27-2016

Judge : R. Sudhakar & P.N. Prakash

Appeal No. : Habeas Corpus Petition Nos. 20 to 22 & 69 to 74 of 2016

Appellant : Suganiya

Respondent : The Superintendent of Central Prison, Chennai and Another

Judgement :

(Prayer: Petitions under Section 226 of The Constitution of India praying for the issuance of Writ of Habeas Corpus directing the respondents to produce the following detenues, viz., (1) Jeeva @ Jeevarathinam, S/o Krishnan [A1]; (2) Manimaran, S/o Munusamy [A2]; (3) Uthiram @ Uthirakumar, S/o Kuppan [A3]; (4) Anbazhagan, S/o Ranganathan [A4]; (5) Velayutham, S/o Elumalai [A5]; (6) Sethu @ Ilango, S/o Govindasamy [A9]; (7) Anbu, S/o Sittrampakkathan @ Krishnan [A15]; (8) Baskar, S/o Murugesan [A16]; (9) Balashankar, S/o Nagalingam [A17]; (10) Thirunavukkarasu, S/o Kaniappan [A16]; (11) Saravanan, S/o Koallapuri [A19]; (12) Vimal @ Vimalraj, S/o Somasundaram [A22]; (13) Anbarasu, S/o Murugesan [A23]; (14) Kumar @ Kuttikumar, S/o Ezhumalai [A25]; (16) Munisamy, S/o Krishnan [A27]; (17) Nagaraj @ Sappai Nagaraj, S/o Krishnan [A28] before this Court and set them at liberty.)

Common Order:

P.N. Prakash, J.

1. The short point that arises for consideration in this batch of Habeas Corpus Petitions is, whether the judgments dated 21.12.2015 passed by the learned I Additional District and Sessions Judge, Thiruvallur in S.C.Nos.140 to 142 of 2007 convicting and sentencing the prisoners named in the petitions, is void on the ground that the judgments were written in English language?

2. Heard the learned counsel for the petitioners.

3. The petitioners are the relatives of the accused, who faced trial in S.C.Nos.140 to 142 of 2007 before the learned I Additional District and Sessions Judge, Thiruvallur for various offences, including offences under Sections 302, 149 and 120B IPC for three distinct incidents and were convicted and sentenced in each of the cases on 21.12.2015, pursuant to which they are undergoing the sentences. It may not be necessary to state the nature of sentence imposed by the trial Court on each of the prisoners, as that is not germane to the fact in issue in these Habeas Corpus Petitions. Suffice to say that the trial Court has written the judgments in English language in S.C.Nos.140 to 142 of 2007 on 21.12.2015, which is assailed on various grounds.

4. At the outset, we brought to the notice of the learned counsel that, the Habeas Corpus Petitions cannot be maintained, because the prisoners are detained pursuant to an order of conviction and sentence by a Court of competent jurisdiction, which can be challenged only by way of a regular appeal under Section 374 Cr.P.C.

5. Learned counsel submitted that when the judgments had been delivered in English language which is not known to the accused, the same are ab initio void and therefore, the further detention of the prisoners pursuant to such a judgment is illegal, on account of which these Habeas Corpus Petitions are maintainable.

6. We are unable to persuade ourselves to concur with this submission. We find that the entire trial has been conducted in Tamil language and the accused were questioned under Section 235(2) Cr.P.C. on the question of sentence and their

answer "vjphpfs; gjpyspf;f kWj;Jtpl;ldh;@ (accused refused to answer) has also been recorded as it is by the learned trial Judge.

7. Learned counsel for the petitioners relied upon Section 353 Cr.P.C., which reads as under:

JUDGMENT

(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment: or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under clause (a) of sub-section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 465."

8. Learned counsel for the petitioners submitted that, after delivering the judgment, it is incumbent on the Judge to sign every page of the transcript, but whereas, she has not done that in the instant case. In support of this plea, learned counsel produced the photocopies of the judgments along with the Habeas Corpus Petitions and submitted that the signature of the Presiding Officer is not there in all the pages. This plea deserves to be dismissed in limine because, only photocopies of the 3 judgments delivered by the trial Court have been produced. However, even on the perusal of the photocopies produced by the learned counsel, it is seen that in the last page it is stated as follows:

" //TRUE COPY//

Sd./- M.Vetrichelvi

I Additional Sessions Judge,

Tiruvallur. "

9. What is produced is only a photocopy of the True copy of the judgment, with which we cannot conclude that, the learned trial Judge has violated the provisions of Sections 353 Cr.P.C. Learned counsel further relied upon Section 354(a) Cr.P.C., which reads as follows:

"(1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353,-

(a) shall be written in the language of the Court."

He submitted that by virtue of Section 4B of the Tamil Nadu Official Languages Act, 1956, [for brevity "the Act"] Tamil is the Official language of the Courts subordinate to the High Courts, and that the judgment should be written in Tamil. He further submitted that a Division Bench of this Court in W.P.(MD)No.2394 of 2010 dated 01.07.2014, has mandated that Tamil should be the language of trial Courts and the impugned judgments in English, is violative of Section 4B of the Act and the Division Bench ruling. The second proviso to Section 4B(1) of the Act states that, the High Court may, by general or special order, permit the Presiding Officers of subordinate Courts and Tribunals to write judgments in English for a specified period. The Act does not say that judgments written in contravention of the provisions are non-est in the eye of law or void. That apart, the Division Bench judgment relied upon by the learned counsel has only set aside the circular exempting all Judicial Officers for all times to come from writing judgments in Tamil, on the ground that it exceeds the mandates of Section 4B of the Act. It may be relevant to state here that the Supreme Court has admitted Special Leave Petition against the judgment and notice has been issued. The most important aspect is, Can this Court hold the judgment so written in English as ab initio void? Chapter XXXV of the Code of Criminal Procedure, 1973 - IRREGULAR PROCEEDINGS, enumerates the irregularities that vitiate and not vitiate the proceedings. Section 354 Cr.P.C. nowhere finds a place therein. Therefore, we cannot hold that, just because the Judicial Officer has translated her thought process into English and written the judgment, her entire judgment is void and the detention of the prisoners is illegal.

10. Learned counsel relied upon the judgment of the Supreme Court in Angrej Kaur v. Union of India [2006 (1) LW (crl.) 21] and relied upon the following observation:

"The judicial system reaches its pinnacle when it serves the ultimate object of all laws; i.e. delivering justice to the recipient who deserves it, not shackled by pitfalls and landmines of technicalities. Within the four corners of legal framework, the reliefs can be moulded to achieve the ultimate objective, that is to deliver justice."

11. We are afraid this judgment is of no avail to the petitioners, because the said case relates to a Habeas Corpus Petition entertained by the Supreme Court for getting to know the whereabouts of a prisoner of war detained in Pakistan. As to the maintainability of the Habeas Corpus Petitions, learned counsel relied upon the judgment of the US Supreme Court in Richard Earl Pilon v. Donald E. Bordenkircher [444 US 1, 62 L Ed 2d 1, 100 S Ct 7]. The law that obtains in US is not in pari materia with the prerogative writs contemplated by Article 226 of the Constitution of India.

12. In this case, by a competent Judicial Officer, a full fledged trial in Tamil language has been conducted and the accused were informed that they are being convicted; and they were questioned on sentence and thereafter, the judgment has been passed. The trial Judge has recorded as follows in the judgment:

"36. Out of the total 27 accused for whom this judgment is being pronounced, the Accused A1 to A5, A9, A15 to A19, A22 to 25, A27, A28 are present and the other accused, i.e. A6, A7, A8, A10, A11, A12, A14, A20, A21, A26 are absent. On perusal of records, it is evident that from the first time when the case was posted for judgment on 12.08.2010, the accused are evading to attend the Court improperly and are filing petitions one after the other from thwarting this Court from delivering judgment. In these circumstances, it is clear that the accused absent have presumed that they would be convicted and are wantonly evading to appear before this Court this day. Hence, this Court has to take adverse inference as against the accused that not availing the opportunity, they wantonly and only in order to evade questioning of sentence in this case have not appeared before this Court and prevent this Court from delivering the judgment. Therefore, the question

of sentence u/s 235(2) Cr.P.C. is questioned only to the above accused present and NBW has to be issued to other accused for committing them to prison to undergo the remaining period of sentence. Accordingly, when the Accused A1 to A5, A9, A15 to A19, A22 to A25, A27, A28 are questioned u/s 235(2) Cr.P.C.

(Tamil ?)

The counsel for the accused submitted that they do not want pronouncement of judgment as they want to prefer transfer petition. However, Even though the appeals preferred by the accused in Crl.Revision Case No.665, 666 and 667/2015 in MP No.1/2015 before the Hon'ble High Court, Madras were dismissed on 14.07.2015 they preferred Crl.O.P.No.29082/2015, 290133/2015 and 290134/2015 before Hon'ble High Court, Madras concerned with SC No.142/2007, 140/2007 and 141/2007 respectively praying to transfer the above sessions cases from this Court to any other Sessions Court in Chennai or Kancheepuram and the same were also dismissed by the Hon'ble High Court on 10.12.2015.

37. Heard as to the sentence. Life imprisonment is the minimum punishment for the offences under section 302 of IPC.

However, on the above Accused A1 to A12 and A14 to A28 have committed murder on the deceased Magesh who was only at his young age. Therefore, this Court is of considered view, in the interest of justice, it is appropriate and just for imposing life imprisonment for both the offences and accordingly, this Court is inclined to the convict the accused A1 to A12 and A14 to A28 and imposed life imprisonment.."

[emphasis supplied]

13. It is trite law that, what is narrated in a Judicial order about events that had taken place in the Court, is conclusive proof of the facts stated therein. When the Judge announced pronouncement of the judgment, the counsel have intervened and they had requested the Judge to postpone the judgment on various grounds. Therefore, it cannot be stated that the accused were quite unaware. In fact, we find that the accused have been putting spokes and preventing the Judge from

proceeding with the pronouncement of the judgment.

14. Learned counsel relied upon the judgment of the Supreme Court in *State of Maharashtra v. Bhaurao Punjabrao Gawande* [(2008) 2 SCC (cri) 128]. This judgment is also not of any use, because it arose under preventive detention law and in paragraph 65, the Supreme Court cautioned as follows:

"65. Before parting with the matter, we may clarify that all observations made by us in this judgment are only for the purpose of deciding the legality of the order passed by the High Court and impugned in the present appeal."

In the result, the Habeas Corpus Petitions are devoid of merits and they are accordingly, dismissed.

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