

Md. Shahabuddin Vs. the State of Bihar

Md. Shahabuddin Vs. the State of Bihar

SooperKanoon Citation : sooperkanoon.com/134944

Court : Patna

Decided On : Feb-08-2005

Judge : Rajendra Prasad, J.

Acts : Indian Penal Code (IPC) - Sections 34 and 364; Arms Act - Sections 27;
[Contempt of Courts Act, 1971](#) - Sections 2, 6, 10, 13 and 16

Appeal No. : Cr. Misc. No. 8435 of 2004

Appellant : Md. Shahabuddin

Respondent : The State of Bihar

Advocate for Pet/Ap. : Mr. Y.V. Giri

Judgement :

Rajendra Prasad, J.

1. Heard Mr. Y.V. Giri learned Sr. counsel for the petitioner. Mr. Birendra Kr. Sinha learned Sr. Counsel for the Presiding Officer. Fast Track Court Mr. Rakesh Kumar learned Standing Counsel. C.B.I. Mr. Lala Kailash Bihari Prasad learned counsel appearing as amicus curiae and the learned Govt. Advocate Mr. S.D. Yadav.

2. In view of the direction of the Hon'ble Supreme Court passed in Criminal Appeal No. 1242 of 2004, arising out of SLP (Crl). No. 3778 of 2004. On 1st November, 2004 this order shall dispose of the contempt proceedings initiated against the

petitioner and the Presiding Officer. Fast Track Court together with bail prayer of the petitioner on merit.

3. The petitioner is in custody and facing trial in Sessions Trial No. 63 of 2004 arising out of Siwan (Mufassil) P.S. case no. 8 of 2001 for offences under Sections 364/34 IPC and 27 of the Arms Act. Earlier trial of petitioner was being conducted by the then Presiding Officer. Fast Track Court Sri Anan Prasad Srivastava. Siwan, but now trial of petitioner is pending before the learned Sessions Judge Siwan.

4. The facts on record indicate that petitioner was lodged in District Jail. Siwan. He moved for bail before learned Chief Judicial Magistrate and thereafter to learned Sessions Judge. Siwan and both these courts refused bail to the petitioner. Thereafter, the petitioner filed Cr. Misc. No. 30923 of 2003 for grant of regular bail but the same was rejected by the High Court vide its order dated 1.3.2004 with an observation that the petitioner may renew his prayer for bail after framing of charge. Thereafter, the petitioner by filing the instant Cr. Misc. No. 8435 of 2004 on 16.3.04 renewed his prayer for bail as the charge against the petitioner had already been framed. During pendency of the instant Cr. Misc. No. 8435 of 2004 the petitioner further filed I.A (Cr.) No. 439 of 2004 with a prayer to release petitioner on provisional bail on the ground that the petitioner had been declared elected Member of Parliament from Siwan Parliamentary Constituency and that the budget session of newly constituted 14th Lok Sabha was scheduled to start from 2nd June, 2004 in which the newly elected Member of Parliament had to take oath on 2nd and 3rd June, 2004. It further appears that when both the instant application for bail and I.A. No. 439 of 2004 for release of petitioner on provisional bail were pending before the High Court the petitioner filed an application before Fast Track Court Siwan, for granting permission to him to go to Delhi for taking oath as a Member of Parliament and participate in the Parliamentary proceedings from 2.6.2004 to 11.6.2004. On this application of petitioner learned Fast Track Court allowed movement of petitioner for taking oath and attending Parliamentary Session vide order dated 28.5.2004 and on the same day i.e. on 28.5.2004 learned Presiding Officer, Fast Track Court further passed another order and 3rd order was also passed on 28.5.2004. All these orders were passed when the

instant bail application and I.A. filed by the petitioner were pending before the High Court. It further appears that when the matter came to notice of this Court, this Court vide order dated 15.7.2004 cancelled order dated 28.5.2004 passed by Fast Track Court directing that petitioner be kept behind the bar and the matter was also reported to the Hon'ble Chief Justice on the same day on 5.7.2004. The matter was ultimately placed before the Standing Committee of this Court for consideration and specific effective decision followed in the matter on 17.7.2004 which is as follows : 'A contempt proceeding will be drawn up by the Registrar General without any delay (1) against the accused for interfering with the process of the justice in a matter pending before this Court and (2) against the Judge concerned of the Fast Track Court likewise. The Standing Committee was of the view that the matter be handed over to C.B.I. for thorough probe with due speed and a report be submitted to the High Court preferably within one month. On the basis of decision of Standing Committee follow up action was taken, i.e., steps were taken for contempt proceeding against both Sri Anant Prasad Srivastava, the then Presiding Officer, Fast Track Court, Siwan and the petitioner Md. Shahabuddin and the matter was also handed over to the C.B.I. for thorough investigation and submission of report under letter No. 6041 dated 22.7.2004 of the Registrar General, High Court Patna C.B.I. registered a case vide No. PE1/S/2004 in SCBI Branch Delhi and after completion of inquiry the C.B.I. submitted final status report to the Registrar General High Court Patna under letter No. PE.1/S/04/SCBI/DLI 9716 dated 27.12.2004. Thereafter the report of the C.B.I. was placed before the Hon'ble the Acting Chief Justice on 4.1.2005 and the same was placed before the Standing Committee for consideration, Pursuant to the decision of the Standing Committee dated 12.1.2005 the final status report of the C.B.I. was placed before the Bench for consideration. It further appears that order dated 9.8.2004, by which this Court rejected prayer for bail of the petitioner, and both the petitioner and the Presiding Officer, Fast Track Court were directed to show cause as to why contempt proceeding be not initiated against them, was challenged before the Hon'ble Supreme Court by the petitioner. It further appears that the Hon'ble Supreme Court vide order dated 1st November, 2004 in Cr. Appeal No. 1242 of 2004 (arising out of S.L.P. (Criminal) No. 3778 of 2004) passed the following order:

'..... It is true that the High Court has not considered the various grounds raised by the appellant in the application for bail on merits but rejected it taking note of the conduct of the appellant, as indicated in the order of the High Court extracted above. This position now is that the contempt proceedings initiated against the appellant and the Presiding Officer are pending before the High Court. In these circumstances, the appropriate course to be followed by the High Court would be to decide the contempt proceedings initiated against the appellant and the Presiding Officer and the application for bail filed by the appellant on merits together or decide the contempt proceedings in the first instance and then take up the application for bail for decision on merits immediately thereafter. In this view, we set aside the impugned order, so far as it relates to the rejection of the application for bail filed by the appellant making it clear that the impugned order initiating contempt proceedings against the appellant and the Presiding Officer remains undisturbed.

Having regard to the pendency of the proceedings for quite some time, we request the High Court to dispose of the contempt proceedings and the application for bail as expeditiously as possible, preferably within a period of two months.'

5. Both the petitioner and the Presiding Officer, Fast Track Court Siwan have shown their causes.

6. The contention of learned counsel appearing for petitioner is that the petitioner never committed any act so as to constitute an offence of contempt of court. Learned counsel pointed out that after the petitioner was elected Member of Parliament and his both bail application and L.A. were pending before this Court he consulted his Lawyer who advised him to file a petition before the trial court for his movement and the petitioner had to depend upon the legal advice of his Lawyer as the petitioner himself had no legal knowledge and on the basis of legal advice a petition before the court below with a prayer to permit him to go to Delhi for taking oath was filed and the same as decided by the learned court below and the case was decided in his favour. The contention was that such act of the petitioner did neither amount to wilful disobedience to any judgment, decree, direction order, writ or other process of a court or wilful breach of an undertaking

given to a court nor such act was to the extent so as to substantially interfere with the due course of justice. The contention was that the act committed by the petitioner does neither constitute a civil contempt nor criminal contempt.

7. Similarly, submission and contention of Mr. B.K. Sinha, learned Sr. Counsel appearing on behalf of the Presiding Officer, Fast Track Court was that 'acts alleged to have been committed by the Fast Track Court working in his judicial capacity do not constitute contempt of court as defined under Section 2 of [Contempt of Courts Act, 1971](#). It was further pointed out and contended that the Presiding Officer, Fast Track Court, had passed order in good faith and he had no intention to disobey any order so as to interfere with the due course of justice.

8. Learned Standing Counsel, C.B.I., was also heard who assisted the Court and pointed out the material collected during the course of preliminary enquiry. From the enquiry report it appears that the enquiry report though refers detailed facts under which the petitioner was permitted to go to Delhi yet the recommendation of C.B.I. as regards Presiding Officer is only to the extent that the Presiding-Officer, Fast Track Court should not be given any such appointment with judicial powers in future and recommendation against the petitioner is that he be shifted from Siwan jail and the trial of the case be held at some other place and strict orders be passed that the accused should not be provided with mobile phones and other facilities and that the accused should only be given the normal facilities as available to any other same category of under trial prisoners. The status report submitted is kept on record.

9. Learned Counsel appearing as amicus curiae also assisted the Court and referred to Sections 2, 6, 10, 13 and 16 of the Contempt of Courts Act and submitted that in the facts no criminal contempt is made out. However, learned amicus curiae was of the view that in the facts a civil contempt is made out if the act was not done in good faith.

10. Before coming to a conclusion that acts committed by the petitioner and the Presiding Officer, Fast Track Court, in the facts on record, constitute an offence of contempt of court making the petitioner and Presiding Officer, Fast Track Court liable for contempt of court, the acts of both the petitioner and the Presiding

Officer, Fast Track Court, are required to be considered in the backgrounds of facts on record as it is always the relevant facts and acts committed by any person which shall determine that such person committed any offence and in this case offence under Contempt of Courts Act. Undisputed facts emerging from record are that the petitioner prayed learned trial court for permission to go to Delhi for taking oath as an elected Member of Parliament while his application for regular bail and also a prayer for granting him provisional bail were pending before this Court and such prayer of the petitioner was allowed by the learned trial court. These facts on record may further indicate that the act committed by the petitioner was to the extent only that the petitioner prayed learned trial court for permission to go to Delhi for taking oath as an elected Member of Parliament and the act attributable to the learned trial court (Fast Track Court) is that the learned trial court (Fast Track Court) allowed the prayer of the petitioner permitting him to go to Delhi to take oath and also participate in the Parliamentary session. The only point for consideration would be whether such acts of both the petitioner and the Presiding Officer, Fast Track Court shall constitute an offence of contempt of court. Section 2 of Contempt of Courts Act reads as follows :

'2. Definitions.--In this Act, unless the context otherwise requires.-

(a) 'Contempt, of Court' means civil contempt or criminal contempt:

(b) 'Civil Contempt' means wilful disobedience to any judgment, decree, direction, order writ or other process of a court or wilful breach of an undertaking given to a court;

(c) 'Criminal Contempt' means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any Court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

(d) 'High Court' means the High Court for a State or a Union territory, and includes the court of the Judicial Commissioner in any Union territory.'

11. From bare reading of Section 2, quoted above, it would be evident that there are two types of contempt, i.e., civil contempt or criminal contempt. As per Section 2(b) civil contempt means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court and as per Section 2(c) criminal contempt means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. If one takes into consideration the act of both petitioner and Presiding Officer, Fast Track Court it can easily be construed and held that act of the petitioner and the Presiding Officer, Fast Track Court do not constitute either civil or criminal contempt of court, inasmuch as the act attributable to the petitioner is only to the extent of praying learned trial court (Fast Track Court) for permission to go to Delhi for taking oath as an elected Member of Parliament and also participate in Parliamentary session and that to Presiding Officer, Fast Track Court only to the extent he allowed such prayer while the prayer for regular bail and also prayer for provisional bail of the petitioner were pending before this Court.

12. Taking into consideration the facts on record, acts attributed to both the petitioner and the Presiding Officer, Fast Track Court, status report submitted by the C.B.I., and also unconditional apology begged by the petitioner and the Presiding Officer in its totality, I am of the view that acts alleged to have been committed by both the petitioner and the Presiding Officer, Fast Track Court, Siwan do not constitute either civil or criminal contempt of court and so no proceeding of contempt of court against either petitioner or Presiding Officer, Fast

Track Court is required to be initiated. The causes shown by both the petitioner and the Presiding Officer, Fast Track Court are accepted. It is ordered accordingly.

13. On the point of bail of the petitioner, learned counsel for the petitioner referring order dated 9.8.2004 passed by this Court pointed out that the prayer for bail of the petitioner was not considered on merits and the same was rejected holding that case of the petitioner was distinguishable from the case of other co-accused on bail as the act of petitioner obtaining order from the court in seisin of his case was deliberate violation of courts order passed on 1.3.2004 which could be described to be contemptus in nature. Learned counsel further referring order dated 1st November, 2004 passed by the Hon'ble Supreme Court in Cr. Appeal No. 1242 of 2004 arising out of S.L.P. (Crl.) No. 3778 of 2004 pointed out that Hon'ble Supreme Court had also found that the High Court had not considered the various grounds raised by the appellant in the application for bail on merits but rejected it taking note of the conduct of the appellant and the Supreme Court set aside the order dated 27.8.2004 of this Court to the extent that this Court had rejected prayer of bail of the petitioner. Learned counsel for the petitioner submits that the petitioner is innocent, has committed no offence and has falsely been implicated in this case. Learned counsel further pointed out that though prayer for regular bail of the petitioner was earlier rejected by this Court in Cr. Misc. No. 30923 of 2003 vide order dated .3.2004 the Court had given liberty to the petitioner to renew prayer for bail after framing of charge and so the petitioner moved the instant application for bail only after charge was framed against the petitioner. Learned counsel further submits and points out that also similarly situated all other five co-accused in this case have already been granted bail by this Court and the learned Sessions Judge, Siwan itself and the petitioner is in custody since 13.8.2003. Learned counsel also points out that as many as 12 prosecution witnesses including informant and husband of informant examined so far have not stated anything against the petitioner.

14. Learned Govt., Advocate has not controverted the submission of the learned counsel for the petitioner that the case of the petitioner stands on similar footing to those of co-accused who have already been granted bail either by this Court or by the learned trial court.

15. Having regard to the facts and circumstances in which offence alleged is said to have been committed, almost similarly situated as many as five co-accused having been granted bail either by this Court or by the learned trial court and the petitioner being in custody since 13.8.2003, i.e., of about 18 months, the petitioner Md. Shahabuddin is directed to be enlarged on bail on his furnishing bond of Rs. 5000/- (Rupees five thousand) with two sureties of the like amount each to the satisfaction of District and Sessions Judge, Siwan, in Sessions Trial No. 63 of 2004 arising out of Siwan (Mufassil) P.S. case No. 8 of 2001 with a condition that while bail the petitioner shall not commit any act so as to be a ground of cancelling bail granted to him and ordering his arrest and committing him to custody. The petitioner shall not commit any act amounting to threatening the witnesses and tampering with the evidences. Govt., Advocate, who is present in Court, is also directed to bring to the notice of this Court of any such conduct of the petitioner amounting to threatening witnesses and tampering with the evidences and effecting and delaying. The trial of the case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com