

Sukhdev Singh Jamval Vs. State of Maharashtra and ors.

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Court : Mumbai

Decided On : May-06-1997

Reported in : (1997)99BOMLR280

Judge : D.G. Deshpande, J.

Appeal No. : Cri. Writ Petition No. 1182 of 1995

Appellant : Sukhdev Singh Jamval

Respondent : State of Maharashtra and ors.

Advocate for Pet/Ap. : Mr. Gavnekar

Disposition : Petition dismissed

Judgement :

D.G. Deshpande, J.

1. I heard Mr. Bagaria for the Petitioner and Mr. Mehta For the C.B.I. In this case, previously. I heard arguments of Mr.C.G. Gavnekar who appeared for the Petitioner; State was represented by Smt. J.S. Pawar. After hearing the parties, the petition was partly allowed and the proceedings in Special Case No. 27/92 were quashed and set aside.

2. This was done by me on the basis of a ruling of this Court which was relied upon and cited by Mr. Gavnekar i.e. reported in 1995 (1) M.L.J. 558 - State of Maharashtra v. Ramkrishna Dorkar delivered by Mr. Justice R.M. Lodha. This Judgment in consequence was based upon a Judgment of Mr. Justice M.F. Saldanha Ishwar Piraj Kalpatri and Ors. v. State of Maharashtra and Ors. 1993 M.L.J. 152

3. Within couple of days of my order dt 18th February, 1997, I came across the judgment of Supreme Court reported in State of Maharashtra Ors. v. Ishwar Piraji Kalpatri : 1996 CriLJ1127 - by which the Supreme Court reversed the judgment of Mr. Justice Saldanha reported above. After going through the judgment of the Supreme Court I realised that the learned Counsel for the accused has procured order from this Court in favour of the accused on the basis of the ruling which was reversed by the Supreme Court subsequently. I therefore immediately issued notice to Mr. Gavnekar and the learned A.P.P. for the State and when they appeared before me. I brought to their notice the judgment of the Supreme Court which had reversed the judgment of Mr. Justice Saldanha.

4. Mr. Gavnekar the learned Counsel for the Petitioner, insisted that the notice be given to the accused and consequently notice was given to the accused and when the matter came before me for hearing on my notice, Mr. Gavnekar did not appear and the accused was represented by Mr. Bagaria. I heard Mr. Bagaria for the accused and the learned Counsel for the C.B.I. on 30th April, 1997 and on 2nd May, 1997. The learned Counsel for the C.B.I. tried to tender an application for review of my order dt. 18th February, 1997. on the ground that for the reasons beyond control, the learned Counsel for the C.B.I. did not and could not remain present before me on 18th February, 1997. I refused to entertain such an application firstly because it was filed beyond time, and secondly, it was not an exparte order and thirdly because this Court had issued notice to the parties as to why the order dt. 18th February. 1997. should not be set aside as it is based on the reversed ruling of this Court.

5. Mr. Bagaria, the learned Counsel for the Petitioner, contented that once the order dt. 18th February, 1997, was passed, writ was signed and sent to the lower

court this Court has no powers to review its own order. He repeatedly urged that even if there was a glaring error in the order dt. 18th February, 1997, the only remedy available for the State was to challenge that Order before the Supreme Court and that this Court could not under any circumstances review its own order. He also cited certain judgments and authorities in support of his contention. The second contention of Mr. Bagaria was that on merit i.e. according to him, the Sanctioning Authority, before according sanction did not satisfy itself under Section 13(1)(e) of the Prevention of the Corruption Act. and therefore even if this Court wanted to review its own order, the original writ petition was liable to be allowed and there was nothing to alter the Order dt. 18th February, 1997. Mr. Bagaria, the learned Counsel for the Petitioner also relied upon a judgment of the Orissa High Court, reported in Original Jurisdiction Case No. 4052/94 and decided on October 25, 1994, in Case of Janaki Vallabh Patnaik v. State of Orissa. He contended that this judgment of the Orissa High Court was confirmed by the Supreme Court and therefore, according to him, the case against the present accused was liable to be quashed. On the other hand, the learned Counsel for the Respondent No. 3 C.B.I. contended that the ruling of the Orissa High Court was not applicable in the instant case in view of the recent judgment of the Supreme Court reported in : 1996 CriLJ1127 which was decided on 30th November, 1995, by the Supreme Court as referred to above.

6. Two questions therefore arise: whether this Court can review its own order and secondly whether there is any defect in the sanction and in the complaint lodged by the C.B.I. and whether the order dt. 18th February, 1997, is liable to be reviewed or revoked. It is true that the order dt. 18th February, 1997, was signed by me and that the writ in accordance with the said order is also sent to the trial courts, However, in exercise of inherent powers given to this Court, the order is required to be reviewed particularly when it is based on judgment of this Court which was reversed by the Supreme Court subsequently. In fact, Mr. Gavnekar, the learned Counsel for the petitioner, when he appeared on a notice issued by this Court, did not raise any kind of objection when it was pointed out by me that there is a judgment of the Supreme Court which has reversed the judgment of Mr. Justice Saldanha. He only insisted that the notice be given to the accused and subsequently pleaded that the client has taken away the papers from him.

7. It is true that there are rulings of the different courts as relied upon by Mr. Bagaria in his application for dismissing the notice dt. 21st March 1997. It must be clear that the notice was not issued on 21st March, 1997, but, it was issued immediately after the order dt. 18th February, 1997. Mr. Bagaria, the learned Counsel for the Petitioner also cited my own orders wherein I refused to entertain review petition on the ground that the order has been finally passed and declared by the Court. However, these orders are required to be distinguished from the facts of the present case because admittedly, the accused in the present case succeeded in getting the order in his favour on the basis of a judgment which was reversed by the Supreme Court. As such, all the cases relied upon by Mr. Bagaria in this application, and even my order cannot be of any help to the accused.

8. It is pertinent to note in this case that nobody appeared for the C.B.I. on 18th February, 1997, and I had to express distress for the callousness and negligence of the C.B.I. in not keeping their Advocate present. Even the learned A.P.P. who was present, it appears that was not aware of the Supreme Court judgment of 1996 reversing the judgment of Mr. Justice Saldandha. In view of this situation, the order dt. 18th February, 1997, is required to be reviewed.

9. So far as the merits of the case are concerned it was argued by Mr. Bagaria, the learned Counsel for the petitioner, that the sanctioning Authority did not apply its mind to the facts and circumstances of the case and did not call upon the accused to explain his asset which was disproportionate to his own source of income, particularly when there was evidence on record to show that (he wife of the accused was in Government service. Mr. Bagaria, the learned Counsel for the Petitioner, placed reliance upon the Orissa High Court case of J.V. Patnik v. State of Orissa referred to above. However, in view of the clear ruling of the Supreme Court reported in : 1996 CriLJ1127 , referred to above, the position of law is very clear and it is that, that the accused has to give explanation about his assets and resources before the court when the trial commences and not at an earlier stage. This clearly means that the Sanctioning Authority has not to call upon the accused to explain his assets which are disproportionate to his own source of income. Consequently, the judgment of the J.V. Patnaik's case is of no help to the accused.

10. The judgment relied upon by Mr. Gavnekar, the learned Counsel for the petitioner, at the time of my order dt. 18th February, 1997. was Stale of Maharashtra v. Ramkrishna Dorkar : 1995(1)MhLj558 delivered by Mr. Justice R.M. Lodha. This judgment is based on the judgment of Mr. Justice Saldanha reported in 1993 M.L.I. 152. Since the judgment of Mr. Justice Saldanha is reversed by the Supreme Court, subsequent judgment of Mr. Justice Lodha cannot help the accused in any manner whatsoever. Admittedly, when Mr. Justice Lodha delivered his judgment on 1st September, 1994, the judgment of the Supreme Court in Kalpatri's case was not because it was not decided, however, when the present case was decided by me, the Supreme Court has already set aside the judgment of Mr. Justice Saldanha and reversed the same and therefore, this Court was bound to take cognizance of the Supreme Court judgment. Admittedly, the accused cannot get advantage of the reversed judgment and cannot claim that the court, even after coming to know true legal position in the matter, should not interfere with its own order.

11. Consequently, the notice issued to the accused is made absolute, and my order dt 18th February, 1997, allowing the petition partly and quashing the proceedings in Special Case No. 27/92 pending before the Special Court. Bombay, is set aside.

As a result, the petition i.e W.P. No. 1182/95 of the petitioner in respect of the proceedings in Special Case No, 27/92,. is dismissed. The proceeding in Special Case No. 27/92 pending before the Special Court, Bombay, stands revived if they are closed by the said court.

The writ of this order will be immediately sent to the Special Court. Bombay, and the said Court will immediately issue notice to the accused and will complete the trial.

After this order was pronounced, Mr. Bagaria, the learned Counsel for the petitioner prayed for stay of operation of this order. Nobody appeared for the Respondents. Considering the facts and circumstances of the case, operation of this order, i.e. order directing the Special Judge to send notice to the accused will be stayed till 21st July, 1997.

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