

Mohammad Vs. State of Karnataka

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Court : Karnataka

Decided On : Aug-07-1990

Reported in : 1992CriLJ89; 1990(2)KarLJ278

Judge : H.G. Balakrishna, J.

Appeal No. : W.P. No. 5192 of 1983

Appellant : Mohammad

Respondent : State of Karnataka

Advocate for Def. : Mr. Sateesh M. Doddamani, HCGP

Advocate for Pet/Ap. : Mr. P.V. Shetty, Adv.

Judgement :

ORDER

1. Section 104-D of the Karnataka Forest Act, 1963 is challenged in this writ petition and the petitioner has sought for a declaration that the said provision is illegal and void in law. He has also asked for a direction to the Magistrate to release him on bail without reference to Section 104-D of the Karnataka Forest Act, 1963.

2. The contention of the petitioner is that Section 104-D of the Act offends Art. 21 and 22 of the Constitution of India. The argument is that Section 104-D permits

detention of a person even before a trial in regard to the allegation of commission of an offence. The said provision, according to the petitioner, affects the personal liberty. In short, the argument is that the impugned provision is unreasonable and highly arbitrary.

3. The said provision reads as follows :-

'104-D. Special provision regarding bail :-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (Central Act 2 of 1974) no person accused of a forest offence, punishable under Section 86 or 87 or 104A or in respect of ivory, shall, if in custody, be released on bail or on his own bond unless, -

(a) the prosecution has been given an opportunity to oppose the application for such release; and

(b) where the prosecution opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence.'

4. Apparently this is a special provision incorporated in the Act with a specific purpose. The non obstante clause in S. 104-D takes away the effect of the provisions of Criminal Procedure Code making it imperative that a person accused of an offence punishable u/S. 86 or 87 of the Act or Section 104-A of the Act or in respect of an ivory shall not be released on bail or on his own bond if he is in custody unless the prosecution was afforded an opportunity to contest the application for release on bail and in the event of such an opposition, the Court has to satisfy itself about the existence for a reasonable ground for believing that the accused is not guilty of such an offence before proceeding to release the accused on bail.

5. Section 86 of the Act provides for penalty for offence in regard to the cutting, uprooting or removal or damage to sandalwood trees or any part of the sandalwood trees belonging to Government. S. 87 of the Act regulates the sale and manufacture of sandalwood and sandalwood oil making it mandatory that any person selling or manufacturing sandalwood or sandalwood oil as the case may

be, can only do so under a licence issued by competent authority. S. 104A imposes restriction on trade and transport of blackwood or bite trees and timber thereof.

6. Thus it is seen the offence imputed to the accused being of a serious nature in relation to sandalwood, sandalwood oil, ivory and blackwood or Bite tree, the legislature in its wisdom has made a special provision u/S. 104-D of the Act laying down the conditions for grant of bail. From Section 104-D of the Act, it is to be seen that the door is not closed for release of the accused on bail. But for the purpose of such a release, compliance with certain conditions are envisaged. The intendment of the legislature is that in view of the gravity of the offences imputed against the accused, the prosecution should be afforded an opportunity to have a say in the matter of release of the accused and it is only after hearing both the accused and the prosecution, the competent authority should make up its mind and decide whether or not to release the accused on bail or on his own bond. I do not see that there is any unreasonable restriction on the power to be exercised by the competent authority in the matter of release of the accused on bail nor do I see any unreasonable restriction placed on the personal liberty of the accused. The very purpose of introducing the non obstante clause in S. 104-D of the Act makes the intention of the legislature manifest inasmuch as that in regard to offences specified under Ss. 86, 87 and 104A of the Act or in respect of ivory, greater caution and consideration should be exercised by the concerned authority before taking a decision on the question of release on bail of the accused. It is not for this Court to go behind the wisdom of the legislature nor to substitute its own will to the will of the legislature. As rightly observed, the Court does not have a will of its own and the will of the legislature is a reflection of the will of the people.

7. Arbitrariness is conspicuous by its absence inasmuch as opportunity to move the authority for release on bail of the accused in custody is not shut out. While permitting the accused for moving for release on bail, all that the provisions envisages is that the prosecution also should be heard in the matter before a decision is taken. In other words, it may be said that no ex parte release of the accused is permissible under S. 104-D of the Act and the scope for taking a unilateral decision by hearing only one side or one version of the case is not

permitted by the impugned Section. The power of the legislature in precluding the application of the provisions of Criminal Procedure Code and in mandating the application of a specific provision of the Act (S. 104-D) which is a special legislative enactment cannot be construed either as arbitrary or unfair.

8. As already observed, since the legislature taking into account the serious nature of the offences and the consequences thereof, has chosen to insert a special provision u/S. 104-D of the Act virtually laying down the guidelines in the matter of release of the accused to whom are imputed offences of grievous nature, it is not possible to accept the contention that S. 104-D imposes unreasonable restrictions or constitutes arbitrariness so as to render it illegal and void.

9. Article 21 of the Constitution lays down :-

'No person shall be deprived of his life or personal liberty except according to procedure established by law.'

It cannot be said that when an accused is in the custody and offences specified in S. 104-D of the Act are attributed to him and a procedure is laid down for release of such an accused on bail laying down the considerations in deciding on the question of release, the accused is deprived of his personal liberty. On the other hand, it is my opinion that such an accused come within the procedure established by law and, therefore, the question of violation of Art. 21 of the Constitution does not arise.

10. According to Art. 22 of the Constitution :-

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

(3) Nothing in clauses (1) and (2) shall apply - (a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless -

(a) to (b) (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earlier opportunity of making a representation against the order.'

11. It is thus seen that Art. 22 affords certain protection against arrests and detention to the accused in certain circumstances. However, I am not able to see how Art. 22 is attracted to the facts of this case. It is not at all the case of the petitioner that the petitioner has been detained in custody without being informed nor is he denied an intimation of the grounds for such arrest or the right to consult and to be defended by a legal practitioner. It is not the case of the petitioner that after his arrest and detention in custody, he has not been produced before the nearest Magistrate within a period of 24 hours of such arrest. In other words, none of the ingredients contemplated by Art. 22 of the Constitution is brought out or substantiated by the petitioner to seek protection under the said Article.

12. The contention of the petitioner that Art. 22 of the Constitution is offended is totally misconceived.

13. I would even go to the extent of observing that the interest of the State and the interest of the accused have been properly balanced inasmuch as the right to move the Court for release on bail is conceded to the accused on the one hand and at the same time right of the prosecution to state its case against release of the accused on bail is recognised by the legislature. I, therefore, hold that S. 104-D of the Act is constitutional and valid.

14. For the reason stated above, writ petition is dismissed.

15. The learned Govt. Pleader Sri Sateesh M. Doddamani is permitted to file memo of appearance within 2 weeks from today.

16. Petition dismissed.

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