

A.K. Subbaiah Vs. State of Karnataka

A.K. Subbaiah Vs. State of Karnataka

SooperKanoon Citation : sooperkanoon.com/382338

Court : Karnataka

Decided On : May-31-1991

Reported in : ILR1992KAR386

Judge : M.P. Chandrakantaraj Urs and ;R. Ramakrishna, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; Karnataka High Court Act, 1961 - Sections 4; Karnataka High Court Rules, 1959; Code of Civil Procedure (CPC) ; [Constitution of India](#) - Articles 226 and 227

Appeal No. : O.S.A. No. 6 of 1991

Appellant : A.K. Subbaiah

Respondent : State of Karnataka

Advocate for Def. : B.J. Somayaji, HCGP

Advocate for Pet/Ap. : L.G. Havanur, Sr. Counsel and ;Ravivarma Kumar, Adv.

Judgement :

Chandrakantaraj Urs, J.

1. This matter has come before us on account of the office objection,
2. The facts leading to this Appeal which are required to be stated briefly are as follows: The appellants presented a Criminal Revision Petition No. 482/1986 in this

Court purporting to be a Criminal Revision Petition under Sections 397 and 401 read with Section 482 of the Cr.P.C.,. While that petition was pending disposal, three applications were filed as interlocutory applications namely, I.As. II, III and IV, I.A. No. II was an application to urge additional grounds mentioned therein to be included in the Revision Application which was pending, I.A. No. III was an application to implead one Shri Rajendfa Prasad who had been named as accused-5 in Criminal Case No. 52/1986 on the file of the Principal City Civil and Sessions Judge, Bangalore City. I.A. No. IV was an application which was somewhat consequential to the prayer made in I.A. No. II seeking Union of India also to be impleaded as a party. I.A. No. II was dismissed i.e., additional grounds to be urged were not permitted to be urged for the reasons given by the learned Judge. But however, he came to allow I.A. No. III and consequently I.A. No. IV was also rejected in view of the rejection of I.A. No. II. Against that Common Order dated 30th November, 1990 the present Appeal on the Original Side is presented purporting to be an Appeal filed in accordance with the provisions of Section 4 of the Karnataka High Court Act, 1961.

3. Shri L.G.Havanur, learned Senior Counsel appearing for the appellants has submitted that a Original Side Appeal as presented is maintainable because the Revision Petition which is not merely a Revision Petition under Sections 397 and 401 of the Cr.P.C. but also as an application invoking the inherent powers of this Court under Section 482 of the Cr.P.C., and therefore it was a original proceeding initiated in this Court in terms of the provisions contained in Section 482 of the Cr.P.C. In other words, the thrust of the argument is that inherent powers confer jurisdiction on this Court on the Original Side in any matter and therefore an order passed pursuant to that jurisdiction is appealable. In that circumstance Section 482 of the Cr.P.C. would confer Original Side jurisdiction on this Court. Simply stated the argument means that Section 482 Cr.P.C. has done no more than save the jurisdiction of all Courts to do every thing that is necessary to prevent the abuse of the process of the Court and to meet the ends of justice and as such even though there is no specific conferment of appellate jurisdiction, this Court has such jurisdiction in all matters.

4. We find ourselves in great difficulty to accept this broad proposition. If accepted it would lead us to disastrous conclusion rendering dispensation of justice and administration of law in this Country, a chaos. The effect of accepting such a broad proposition is, this Court may entertain any petition in any manner and exercise and adjudicate the matters in issue because of its inherent powers.

5. It is possible to confuse between the powers of the Court and the jurisdiction of the Court. We mention this because Mr. L.G.Havanur, learned Counsel, drew our attention to Section 9 of the Karnataka High Court Act which enumerates the powers of a Single Judge of this High Court. One such power is, he may pass interlocutory orders in matters in which he is empowered to adjudicate as enumerated in that Section itself. In fact, the power of the Single Judge extends to all matters which are not specifically conferred on a Division Bench expressly as under Clause (ix) of that Section or any other enactment.

6. Therefore, judicially understood, one must have due regard to the meanings of the terms jurisdiction and powers of Courts. Jurisdiction is the power conferred expressly by statute or an instrument. For instance, as in the case of High Courts of Judicature at Bombay, Madras and Calcutta or Letter Patent Courts or the Delhi High Court Act or the Karnataka High Court Act which specifically provides for the establishment of High Court in each State. In fact Constitution has provided for establishment of a High Court in each State. That High Court in the State may be High Court for more than one State. In that circumstance, the High Court is created and jurisdiction conferred on it expressly by some instrument or statute. For instance Article 226 of the Constitution confers jurisdiction on the High Court to decide matters which will come before it, when litigant seeks issuance one or the other of the prerogative Writs asserting the litigant's rights, legal or constitutional and in that behalf the Court in addition to issuing prerogative Writs has powers to make any order to meet the ends of justice as may be required in a given set of circumstances. Such conferment of power is expressly specific in the Article itself; but for which the High Court would not have jurisdiction to issue prerogative Writs or pass any other order appropriate in the facts and circumstances of a case. This position read with Articles 323A and 323B which exclude the jurisdiction of the High Court and the Supreme Court which otherwise

would have been competent to adjudicate the matters which now stand assigned to the Administrative Tribunal or the River Dispute Tribunal. Therefore, the matter of conferment of jurisdiction or taking away the jurisdiction must necessarily be by express act of the Legislature. It cannot be otherwise.

7. It is only when the Court has jurisdiction it has the power to exercise its inherent power which is saved expressly by Cr.P.C. or the C.P.C. If there is no jurisdiction, question of exercising inherent powers does not arise. It is only when the Court is seized legitimately of a matter which it can adjudicate, then in furtherance of that power to adjudicate it may exercise its inherent power to prevent any injustice being done or to meet the ends of justice or the preventing of the abuse of the process of the Court.

8. Understood that way, application purporting to have been filed under Section 482 of the Cr.P.C. a Criminal Revision Petition cannot be a petition involving the Original Side jurisdiction of this Court. This Court has been expressly denied Original Side civil and criminal jurisdiction, not being conferred by the statute, namely, the Act. No other law has been made conferring that jurisdiction. Articles 226, 227 and 228 of the Constitution, Companies Act, the Stamp Act, Indian Succession Act, the Representation of the People Act; all confer original jurisdiction on the High Courts in general, to exercise jurisdiction in the limited field in which those laws operate and within the bounds of the provisions contained in such laws. Viewed thus, the Criminal Revision Petition being one which was capable of being disposed of by the learned Single Judge, of this Court has been entertained as such. In terms of the provisions contained in Chapter-X of the Karnataka High Court Rules, Court is enabled to pass all such interlocutory orders which may become necessary during the pendency of the Petition or other matters before him. No specific provision is made conferring on a Division Bench of this Court appellate jurisdiction against the orders of a learned Single Judge, except when such an order is made as a final or as an interim order in exercise of this Court's power to issue a Writ under Articles 226 or 227 of the Constitution.

9. This was the view expressed by a Division Bench of this Court in the case of B.N. RANGEGOWDA v. AKBAR SAIT, ILR 1990 KAR 2937 wherein Sections 4

and 10 (iv a) of the Karnataka High Court fell for specific consideration. The Decision rendered therein is binding on us as a Division Bench and one of us is a party to that Judgment. The effect is that it becomes more than binding. The arguments advanced do not compel us to take any contrary view. In the said case it has been held by the Division Bench as follows:

'From the plain language of Sub-section (iv a) of Section 10 of the Act it is clear that any order made in a Writ Petition under Article 226 of the [Constitution of India](#) or its modification, necessarily by implication, shall be disposed of by a Bench of two Judges. Therefore, Sub-section (iv a) of Section 10 of the Act is supplementary to Section 4 of the Act. Under the Writ Proceedings Rules 1977 framed by the High Court by virtue of the powers conferred on it under Articles 226 and 227 of the Constitution and all other powers thereunto enabling and in supersession of the existing Rules, as per Notification dated 29-1-1977 a Writ Appeal is provided from the order of a learned Single Judge to a Division Bench of this Court, and is governed by the provisions contained in Part HI of the Writ Proceedings Rules. Therefore, when the order in Writ Petition is modified, the aggrieved party has a distinct cause of action to prosecute an appeal under Part III of the Writ Proceedings Rules and he can pursue only that remedy and no other. As such no appeal lies under Section 4 of the Act to a Division Bench, though an appeal does lie on the Writ side.'

Therefore, we are fully satisfied that the office objection is well taken and the appellants must seek their remedy in some other forum but not by proceedings initiated purportedly under Section 4 of the Karnataka High Court Act. We are unable to agree with the learned Counsel. The interlocutory order is not an order passed under the inherent powers of the Court. It is true that specific provision is not made in the Cr.P.C. similar to the provisions made in the C.P.C. for entertaining interlocutory applications and passing interlocutory orders. In that sense the inherent powers must be pressed into service to implead, amend or otherwise to meet the ends of justice in criminal proceedings pending in this Court. But that cannot be said to confer original jurisdiction on a Single Judge in criminal matters. But it is only an enabling jurisdiction.

10. Subject to these observations, we uphold the office objection and hold that the Appeal under Section 4 of the Karnataka High Court is not maintainable.

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