State Vs. Subash

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Court : Karnataka

Decided On : Apr-02-1991

Reported in : ILR1991KAR1552; 1991(2)KarLJ132

Judge : Ramachandriah, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 167(2), 439(2) and 482; Code of Criminal Procedure (CrPC) (Amendment) Act, 1978; Code of Criminal Procedure (CrPC) (Amendment) Act, 1988; General Caluses Act, 1897 - Sections 6A; Indian Penal Code (IPC) - Sections 34 and 302

Appeal No. : Crl. Petn. No. 923 of 1990

Appellant : State

Respondent : Subash

Advocate for Def. : N.B. Viswanath, Adv. for ;M.M. Jagirdar, Adv.

Advocate for Pet/Ap. : Y.R. Jagadeesha, HCGP and ;N.B. Viswanath, Adv. for ;M.M. Jagirdar, Adv. in I.A. No. III

Disposition : Appeal dismissed

Judgement :
ORDER

Ramachandriah, J.

1. Respondents 1 and 2 in Cr.P.No. 923/1990 are the applicants in I.A.III filed under Section 362 read with Sections 439(2) and 482 of the Code of Criminal Procedure, 1973 (for short 'the Code'). They have filed I.A.III praying for re-calling and reviewing the order dated 27-11 -1990 by which the said Criminal Petition filed by the State was allowed and bail granted to the respondents in Cr.P.No. 923/1990 and petitioners in I.A.III by the Sessions Judge, Gulbarga (for short 'the Sessions Judge') was cancelled with liberty to the said respondents-accused to file a bail petition before the learned Sessions Judge under Section 439 of the Code praying for their release on bail.

2. The relevant facts are as under:

Respondents-applicants are facing trial for an offence under Section 302 read with Section 34 IPC in Sessions Case No. 24/1990 on the file of the learned Sessions Judge. Respondents are alleged to have committed the murder of one Kashappa in connection with allowing of water to their lands sometime around 10-30 a.m. on 4-12-1989. On that very day, respondents were arrested and produced before the jurisdictional Magistrate on 5-12-1989. They were being remanded to judicial custody from time to time pending investigation and filing of charge-sheet. Respondents were eventually released on bail by the learned Sessions Judge acting under Section 167(2) of the Code on the ground that charge-sheet filed against them was taken cognizance of on 7-3-1990 and by then more than 90 days had elapsed and, therefore, they are entitled to be released on bail. The said order of the learned Sessions Judge was questioned by the State by filing a petition under Section 439(2) of the Code in this Court and it was registered as Criminal Petition No. 923/1990. By order dated 27-11-1990, this Court allowed the petition of the State and cancelled the bail granted to the respondents-accused by holding that the learned Sessions Judge was not justified in ordering the release of the respondents on bail on the slender ground that although the charge sheet is filed on 1-3-1990 the Committal Magistrate had taken cognizance of the offence on 7-3-1990, i.e., 3 days beyond the expiry of 90 days prescribed under Section 167(2)(a)(i) of the Code, inasmuch as the charge sheet had been filed against the

respondents by the prosecution on 1-3-1990 whereas the last date for filing the charge sheet was 4-3-1990. Respondents filed I.A.It under Section 482 read with Section 362 of the Code praying for recalling and reviewing the order dated 27-11-1990. By order dated 18-12-1990, I.A.II was dismissed with the observation that the scope of Section 482 of the Code does not extend to what is expressly barred under the Code and, therefore, inherent power cannot be exercised by the High Court to review its earlier decision in view of Section 362of the Code. Therefore, the respondents have filed an application under the above mentioned provisions for review of the order dated 27-11-1990.

3. In my opinion, the office has committed a mistake in registering that application as I.A.III instead of numbering it as a Criminal Petition.

4. The main point that is urged in I.A.III is that this Court has taken an erroneous view of the provisions of Section 167(2) of the Code while passing the order dated 27-11-1990 inasmuch as the words 'sixty' days originally occurring in Section 167(2) were substituted by the words 'Ninety days' by the Criminal Procedure (Amendment) Act, 1978 (for short the Amending Act'.) and the whole of the said Amending Act had been subsequently repealed by the Parliament by enacting the Repealing and Amending Act, 1988 (for short the Repealing Act') and, therefore, the law that was prevailing on the date of order of the learned Sessions Judge granting bail to the respondents enjoined on the prosecution to file charge-sheet within 'sixty days' from the date of arrest of an accused and if charge-sheet is not filed within the said period of 'sixty days' the accused was entitled to statutory bail under Section 167(2) of the Code. That was also the argument that was strongly pressed by N.B. Vishwanath, appearing for Sri M.M. Jagirdar, learned Counsel for the respondents-applicants in I.A.III.

5. On the other hand, Sri Y.R. Jagdeesh, learned High Court Government Pleader, argued that the Repealing Act had not taken away what had already been incorporated in the Code by the Amending Act and, therefore, charge-sheet filed within 'ninety days' from the date of arrest of the respondents was perfectly in time and as such, there is no justification to review the order dated 27-11-1990.

6. It may be stated at the very outset that respondents are not entitled to press into service the provisions of Section 482 or Section 439(2) of the Code for seeking review of the order dated 27-11-1990 as the Supreme Court has held in MOSST. SIMRIKHIA v. SMT. DOLLEY MUKHERJEE AND ANR. : 1990 CriLJ1599 that:

'The Court is not empowered to review its own decision under the purported exercise of inherent power. The inherent power under Section 482 is intended to prevent the abuse of the process of the Court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code Section 362 of the Code expressly provides that no Court when it has signed its Judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error save as otherwise provided by the Code.'

7. Sri Y.R. Jagadeesh placed strong reliance on Section 6A of the General Clauses Act, 1897 in support of his contention that although the whole of the Amending Act is repealed by the Repealing Act, it has not resulted in restoring the original words 'sixty days' subsequently replaced by the words 'ninety days' by the Amending Act. Section 6A of the General Clauses Act, 1897 reads thus:

'6A, Repeal of Act making textual amendment in Act or Regulation: Where any Central Act or Regulation made after commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.'

Commentary under Section 6A of the General Clauses Act, 1887 found at page 576 of the Principles of Statutory Interpretation by Justice G.P. Singh, 4th Edn., 1988 reads thus:

'Notes: The object of Repealing and Amending Acts is not to bring in any change in law but to remove enactments which have become unnecessary. 'Mostly, they expurgate amending Acts, because having imparted the amendment to the main

Acts, those Acts have served their purpose and have no further reason for their existence 2. The repeal of an amending Act, therefore, has no repercussion on the parent Act which together with the amendments remains unaffected. It was, therefore, held that Section 6(1A) introduced in the Wireless Telegraphy Act, 1933, by the amending Act of 1949 was not affected when the amending Act was repealed by the Repealing and Amending Act of 1952.'

8. In KHUDA BUX v. MANAGER, AIR 1990 SC 1605, the learned Chief Justice has observed at page 486 as under:

'....Such Acts have no legislative effect, but are designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts, because having imparted the amendments to the main Acts, those Acts have served their purpose and have no further reason for their existence. At times, inconsistencies are also removed by repealing and amending Acts. The only object of such Acts which in England, are called Statute Law Revision Acts is legislative spring-cleaning and they are not intended to make any change in the law. Even so, they are guarded by saving clauses drawn with elaborate care, of which Section 3 of the Repealing and Amending Act of 1950 is itself as apt illustration. Besides providing for other savings, that Section says that the Act shall not affect:

'any principle or Rule of Law...notwithstanding that the same may have been...derived by in, or from any enactment hereby repealed.'The principle of law derived from the repeal by Section 120. Factories Act of 1948 of the Act of 1934, namely, that references in other Acts to the Act of 1934 should be read as references to the Act of 1948 is thus not affected by the Repealing and Amending Act of 1950 which repealed the operative part of Section 120 of the Act of 1948. From another principle also, the same result follows. The repeal of the repealing section of the 1948 Act could not have the effect of reviving the Act of 1934, repealed thereby and, consequently, since the repeal of the Act of 1934 continued to subsist, Section 8, General Clauses Act continued to apply.....'

9. In JETHANAND BETAB'S CASE the Supreme Court has quoted with approval the above mentioned observations and has then observed in paragraph-6 at page

91 as under:

'....It is, therefore, clear that the main object of the 1952 Act was only to strike out the unnecessary Acts and excise dead matter from the statute book in order to lighten the burden of ever increasing spate of legislation and to remove confusion from the public mind. The object of the Repealing and Amending Act of 1952 was only to expurgate the Amending Act of 1949, along with similar Act, which had served its purpose...'

Therefore, I find considerable force in the argument of Sri Y.R. Jagadeesh, learned High Court Government Pleader, that there is no force in the stand taken by the respondents in their application and also the argument advanced by their learned Counsel Sri Vishwanath that the Repealing Act has completely wiped out the amendments incorporated in the Code by the Amending Act thereby restoring the words 'sixty days' occurring in Section 167(2) of the Code before the words 'ninety days' were substituted in place of 'sixty days' by the Amending Act, it would be necessary to mention here that Sri Vishwanath did not bring to my notice any Decision in support of his above mentioned contention. Therefore, the resultant position is that the prosecution was entitled to file charge-sheet within 'ninety days' from the date of arrest of the respondents-applicants and as a matter of fact, charge sheet was filed within 'ninety days' from the date of their arrest on 4-12-1989. That being so, the learned Sessions Judge was not justified in ordering the release of the respondents on bail by acting under Section 167(2) of the Code. Consequently, I hold that the respondents have not made out any case for reviewing the order of this Court dated 27-11-1990.

10. In the result, I.A.III is dismissed.