

Ram Naresh Vs. State

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Court : Allahabad

Decided On : Sep-15-1965

Reported in : AIR1966All174; 1966CriLJ383

Judge : S.K. Verma and ;B.D. Gupta, JJ.

Acts : Allahabad High Court Rules - Rule 10(2); Uttar Pradesh High Court Amalgamation Order, 1948

Appeal No. : Criminal Misc. Appln. Nos. 1075 and 2163 of 1965

Appellant : Ram Naresh

Respondent : State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : Ram Prasad Singh, Adv.

Disposition : Application dismissed

Judgement :

S.K. Verma, J.

1. This is an application under Section 461-A of the Code of Criminal Procedure. The prayer in the application reads thus:--

'It is, therefore, prayed that the judgment of the Division Bench sitting at Lucknow dismissing the Jail Appeal of the applicant and confirmation of the death sentence be treated as nullity and the appeal noted above be directed to be listed for hearing in the ordinary course.'

2. The facts giving rise to the application are as follows.

The applicant stood his trial (S. T. No. 7 of 1965) in the court of the learned Sessions Judge of Sultanpur for an offence punishable under Section 302 of the Indian Penal Code. He was convicted on the 29th of April, 1965 and sentenced to death. The learned Sessions Judge made the usual reference under Section 374 of the Code of Criminal Procedure to the Lucknow Bench of this Court, as Sultanpur was within the jurisdiction of that Bench. Apparently, the learned Sessions Judge was unaware of the provisions of the new Limitation Act whereunder limitation for filing an appeal in a case like the present is thirty days. Consequently, he informed the applicant that he could file an appeal to the High Court within seven days. The applicant sent an appeal from fail to the Lucknow Bench of this Court. On the 20th of May, 1965 a Division Bench of the Lucknow Bench of this Court, consisting of G.D. Sahgal and U.S. Srivastava, JJ. passed the following order:---

'Admit and connect.'

An application dated the 16th/17th of May, 1965 was sent by the applicant 'to the Hon'ble the Chief Justice, High Court, Allahabad.' This application contained the following recital:--

'Sri Bankey Bihari Singh, Advocate, Jinho Ne Mera Mukadama Sultanpur Sessions judge Mahodaya Ke Nyayalaya Men Kiya Tha Unke Bhateje Sri Ram Prasad Singh Allahabad High Court Men Vakalat Kartey Hain, Unhi Ke Duara Prarthi Ne Appeal Dayar Kar Dee Hai Aur Vahee Uski Pairavee Kareyngne.'

No appeal had, however, been filed at Allahabad until the 16th or the 17th of May, 1965. The only explanation is that the applicant had, perhaps, already instructed his counsel to file AD appeal at Allahabad. An appeal on behalf of the applicant was submitted to the office of this Court at Allahabad for report on the 21st of May,

1965. The office report i.s as follows:--

'A report whether any previous petition of appeal has been filed or not is not possible as this case relates to the district of Sultanpnr which is under the jurisdiction of Lucknow Bench.'

On the 25th of May, 1965 the applicant's appeal with the above mentioned office report was presented before S.S. Dhavan, J. and it was admitted, and registered as Criminal Appeal No. 1075 of 1965. Along with the appeal was presented an application under Clause XIV of the U. P. High Courts Amalgamation Order 1948. The prayer in this application was in the Following terms:--

'It is, therefore, prayed that the jurisdiction of the Lucknow Bench in respect of the appeal noted above be quashed and it be directed that the appeal noted above be heard and decided at Allahabad '

Both the appeal, No. 1075 of 1965, and the application under Clause XIV of the U. P. High Courts Amalgamation Order 1948 were signed by Mr. Ram Prasad Singh, Advocate. On the application S.S. Dhavan, J., the then Senior Vacation Judge, passed the following order:--

'The applicant desires that his case be heard before the Allahabad Bench. I direct that it shall be so heard.'

In paragraph 8 of the affidavit filed in support of the aforesaid application it was wrongly stated that no appeal against the judgment of the learned Sessions Judge of Sultanpur dated the 29th of April, 1965 in Sessions Trial No. 7of 1965 had been filed before the Lucknow Bench.

3. On the facts stated above, it is contended on behalf of the applicant that by virtue of S.S. Dhavan, J.'s order dated the 25th of May, 1965 passed on the applicant's application under Clause XIV of the U. P. High Courts Amalgamation Order 1048, the jurisdiction of the Lucknow Bench to hear the applicant's appeal and the connected reference stood cancelled. Presumably, in view of the assertion contained in paragraph 8 of the affidavit mentioned above, no intimation about the appeal and the application under Clause XIV or the U. P. High Courts

Amalgamation Order 1948 and the orders passed thereon was sent to the Lucknow Bench.

4. The jail appeal filed by the applicant in the Lucknow Bench and the connected reference were heard by a Division Bench, consisting of G.D. Sahgal and U.S. Srivastava, JJ. at Lucknow and on the 27th of July 1965 the appeal was dismissed, the reference was accepted and the death sentence awarded to the applicant was confirmed.

5. Clause XIV of the U. P. High Courts Amalgamation Order 1948 reads as follows:--

'The new High Court, and the Court, and the judges and Division Courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint:--

Provided that unless the Governor of the United Provinces with the concurrence of the Chief Justice, otherwise directs, such judges of the new High Court, not less than two in number, as the Chief Justice may, from time to time nominate, shall sit at Lucknow in order to exercise in respect of cases arising in such areas in Oudh as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court:

Provided further that the Chief Justice may in his discretion order that any case or class of cases arising in the said areas shall be heard at Allahabad.'

A perusal of Clause XIV makes it obvious that the powers conferred by that order are conferred on the Chief Justice as a *persona designata* and unless it can be said that S.S. Dhavan, J. as Senior Vacation Judge had all the powers of the Chief Justice on the 25th of May, 1965, his order would be without jurisdiction.

Learned counsel for the applicant has relied upon Chapter V, Rule 10 (2) of the Rules of this Court which reads as follows:--

'Subject to any general or special order of the Chief Justice, Vacation Judges shall, in the absence of the Chief Justice, exercise jurisdiction at Allahabad or

Lucknow, as the case may be, in connection with the arrangement of Benches, listing of cases and 'other like matters.' (Underlining there into') is ours). It appears to us that Sub-rule (2) of Rule 10 of Chapter V of the Rules of this Court does not confer all the powers of the Chief Justice on the Vacation Judges. The words, 'and other like matters' must be construed ejusdem generis the words preceding them. In other words, the Senior Vacation Judge has been given the power, in the absence of the Chief Justice, to do things similar to arrangement of Benches and listing of cases. The power to direct an appeal which should ordinarily be heard by the Lucknow Bench of this Court to be heard at Allahabad cannot, in our view, be covered by the words, 'In connection with the arrangement of Benches, listing of cases and other like matters.'

6. Apart from the question whether S.S. Dhavan, J.'s order dated the 25th of May, 1965 was with or without jurisdiction, all that the order directed was that the appeal filed in this Court (Criminal Appeal No. 1075 of 1965) be heard at Allahabad. That appeal is still pending; and is before us today. The Lucknow Bench by its judgment dated the 27th of July, 1965 did not hear and dispose of Criminal Appeal No. 1075 of 1965 in respect of which S.S. Dhavan, J. passed the order dated the 25th of May, 1965. So far as the Lucknow Bench was concerned, it had before it a perfectly competent appeal and reference and it had complete jurisdiction to hear and dispose of the same. How S.S. Dhavan, J.'s order in respect of Criminal Appeal No. 1075 of 1965 could deprive the Lucknow Bench of jurisdiction over the appeal and the connected reference pending before that Bench passes our comprehension. If the affidavit filed in support of the applicant's application under Clause XIV of the U. P. High Courts Amalgamation Order 1948 had not misstated facts and had apprised the office of this Court at Allahabad that an appeal from Jail connected with the reference made by the learned Sessions Judge of Sultanpur was pending in the Lucknow Bench of this Court, the position would have been different. It might have been possible to pass an order directing the appeal filed through counsel at Allahabad to be connected with the jail appeal filed in the Lucknow Bench of this Court and the entire matter could have been heard and disposed of at Allahabad, assuming that a valid order to that effect was in existence.

7. We should also like to point out that notice of the date of hearing (the 12th of July, 1965) in his jail appeal and the connected reference pending in the Lucknow Bench was served upon the applicant on the 8th of June, 1965 and on the back of the notice we find the following report by the Superintendent, District Jail, Sultanpur:---

'Notice is hereby returned after service upon the convict with the report that the prisoner says that he cannot afford to engage a private counsel as he is a very poor man.'

From the Order-sheet of the Jail appeal in the Lucknow Bench we find that by an order dated the 6th of July, 1965 Sri K. N. Misra was appointed at State expense under Rule 10 (1) (b) of Chapter XVIII of the Rules of this Court to argue the appeal on behalf of the applicant.

8. For the reasons given above, we find no merit in this application and it is dismissed. The order staying the execution of the sentence of death awarded to the applicant is vacated.

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