

In Re: Mridul Kumar

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SooperKanoon Citation : sooperkanoon.com/474325

Court : Allahabad

Decided On : Jan-12-2005

Reported in : 2005(1)ESC611

Judge : Sunil Ambwani, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 125; ;Allahabad High Court Rules, 1952 - Rules 1, 6 and 7

Appeal No. : Letter/Petition No. 55992 of 2004

Appellant : In Re: Mridul Kumar

Advocate for Pet/Ap. : K.R. Sirohi, Adv.

Judgement :

ORDER

Sunil Ambwani, J.

1. This letter/petition addressed to a Hon'ble Judge of this Court was received on 21.12.2004, with a prayer to pass necessary orders for his compassionate appointment. The Hon'ble Judge to whom it is addressed passed the following order on the back of the first page of the letter.

'Registrar General

Register the letter as a writ petition (Group 'A') (Single Judge) and place it before appropriate Court as a fresh case for appropriate orders.

Dated: 21.12.2004

Sd/-'

2. In compliance of the order, the matter was submitted before the Stamp Reporter, who has reported a deficiency of Rs. 100/- and that has further made a note that the writ petition is not in proper form and is not supported by an affidavit, and that is how the Registrar General of the Court has placed the matter before me, as the appropriate Court.

3. Sri K.R. Sirohi, the Special Counsel appearing on behalf of the High Court on administrative side, was requested to assist the Court. On the basis of the records produced by him, he submits that the authority to register a letter/petition as a writ petition, vests only with Hon'ble the Chief Justice or a Designated Judge nominated by the Hon'ble Chief Justice. A Puisne Judge does not have authority to direct any letter/petition received in his name to be registered as a writ petition and to be placed before the appropriate Court. Such an order is against the procedure established by the Court.

4. In order to provide an appropriate procedure for entertaining letters/petitions addressed to the High Court, Chief Justice or individual Judge, the matter was placed in the Conference of Hon'ble the Chief Justices held on August 30, 31 and September 1, 1991. It was resolved in the conference at item No. 6 Streamlining Public Interest Litigation as follows :

'Resolved that Public Interest Litigation Cell be set up in each High Court, which shall scrutinise the letters/petitions seeking judicial redress. Letters/Petitions shall, thereafter, be registered after obtaining orders of the Chief Justice or a Judge nominated by him, and listed before the appropriate bench as directed by the Chief Justice. The guidelines dated December 1, 1988, followed by the Supreme Court for entertaining letters/petitions received as Public Interest Litigation be adopted by each High Court with suitable modifications, having regard to the local

conditions.'

5. The High Court also felt necessity to provide a fair and reasonable procedure to deal with the increasing number of letters/petitions, and that by order passed by the then Acting Chief Justice dated 27.4.2004, a Committee was constituted to consider the issue and for framing guidelines for entertaining such letters/petitions received by the High Court as Public Interest Litigation. The committee of Three-Judges consisting of Hon'ble Mr. Justice Girdhar Malaviya, Hon'ble Mr. Justice R.A. Sharma and Hon'ble Mr. Justice S.R. Alam, vide their report dated 19.8.1998 recommended for a set of Rules and Guidelines to be followed in such matters. These Rules/Guidelines are quoted as follows :

'Rules/Guidelines to be followed for entertaining Letters/Petitions received by the High Court as Public Interest Litigation

1. No petition involving individual/personal matter shall be entertained as P.I.L. Matter except as indicated hereinafter.

2. Letters/petitions falling under the following categories will ordinarily be entertained as Public Interest Litigation.

(i) Bond Labour matters (ii) Neglected children

(iii) Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases)

(iv) Petitions from jails complaining of harassment for premature release and seeking release after having completed 14 years in jail, death in jail, release on personal bond, speedy-trial as a fundamental right.

(v) Petitions against police for refusing to register a case, harassment by police and death in police custody.

(vi) Petitions against atrocities on women, in particular harassment of bride, bride-burning, rape, murder, kidnapping etc.

(vii) Petitions complaining of harassment or torture of villagers by co-villagers or by police, from persons belonging to Scheduled Caste/Scheduled Tribes and economically backward classes.

(viii) Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wild life and other matters of public importance relating to grievance made on behalf of a class of persons such as petitions for direction to civil authorities to perform their duties; e.g.

(a) Locality deprived of electricity or water supply.

(b) Sanitation.

(c) Bad Roads causing accidents/deaths.

(d) Problems relating to health hazards etc.

(ix) Petitions from riot-victims,

(x) Family pension.

3. All letters/petitions received in the P.I.L. Cell will first be entered in a register serial wise and shall then be screened in the Cell and only such petitions as are covered under the above mentioned categories will be placed before the Hon'ble the Chief Justice or before such Judge so designated by the Chief Justice for directions. The Cell shall also annex with each such letter/ petition a very brief summary of the grievance contained in the letter/petition and the Cell shall also specify in its note whether the letter/petition should be treated as a writ petition or whether a report should be called on it from the department concerned.

(i) After such petitions have been placed before Hon'ble the Chief Justice or the Judge designated by Hon'ble the Chief Justice, the Chief Justice or the Judge so designated may direct such letters/petitions to be either registered as a writ petition or to be forwarded to Heads of Police, Prison or other departments for appropriate action and report or to be 'filed'.

(ii) If a petition is received in the office of Hon'ble the Chief Justice or by any other Hon'ble Judge of the High Court, on the direction by the Chief Justice or the Judge concerned it shall be forwarded to P.I.L. Cell for scrutiny. The letters so received shall be entered in a ledger by the Cell and then it will be dealt with as in indicated hereinabove.

(iii) After the direction by the Chief Justice/Judge designated, if it is ordered to be treated as a writ petition the letter shall be treated as a writ petition and shall be listed before the concerned bench for admission. If the Chief Justice/Judge designated calls for a report from a particular department the same shall be called forthwith by the P.I.L. Cell. After the report has been received from the department it shall again be placed before the Chief Justice/Judge designated who shall then decide whether the letter should be filed or treated as a writ petition and the orders passed thereon shall then be complied with by the P.I.L. Cell.

(iv) The letters/petitions on which the Chief Justice/Judge designated directs the petition to be filed, the same shall be consigned. If the letter/petition is admitted it shall be henceforth treated in every aspect a writ petition.

(v) Where a letter/petition which is proposed to be admitted as a writ petition claims to be on behalf of a class of persons, such letters/petitions should be advertised in the newspaper by the Court in the same manner as in the case of any other represented matter.

(vi) The Court shall appoint a lawyer to represent the petitioners in all admitted writ petitions. The Court may also direct such lawyer to file a detailed affidavit in support of the petition.

(vii) A Judge who desires to have a news item of the newspapers etc. to be treated as a writ petition should forward his request to the Chief Justice for getting that matter entertained as P.I.L. where after the same procedure shall apply as prescribed for the other letters/petitions of Public Interest.

4. Cases filing under the following categories will not be entertained as a Public Interest Litigation and these may be returned to the petitioners or filed in the P.I.L.

Cell, as the case may be :

(1) Landlord-tenant matters

(2) Service matter and those pertaining to pension and gratuity.

(3) Complaints against Central/State Government Departments and Local Bodies except those relating to item Nos. (i) to (x) above.

(4) Admission to medical and other educational institutions.

(5) Petitions for early hearing of cases pending in Subordinate Court.

In regard to the petitions concerning maintenance of wife, children and parents, the petitioner may be asked to file a petition under Section 125 of the Cr.P.C. or a suit in the Court of competent jurisdiction and for that purpose to approach the nearest Legal Aid Committee for legal aid and advice.

It is the considered view of the Committee that the rules as indicated above should be serving the object sought to be achieved by a Public Interest Litigation.'

6. These guidelines were placed before the Administrative Committee and the report was accepted vide Agenda at Item No. 10 of the Administrative Committee meeting dated 13.4.2000.

7. The Guideline No. 3 accepted by this Court provides that all letters/petitions shall be first entered in a register serial wise and then be screened in the Cell nominated by Hon'ble the Acting Chief Justice or before such Judge so designated by Hon'ble the Chief Justice for admission hearing. The Cell or the Hon'ble Judge so designated shall submit a report whether the letters/petitions should be treated as a writ petition or whether a report should be called on it from the department concerned. It is the Hon'ble Chief Justice or the Judge designated by him under the Guideline No. 3, has the authority, after such enquiries and such report which may be placed before him to treat such letters/petitions as a writ petition and to be listed before the Bench concerned for admission. The Guideline No. 4, provides for the nature of cases which are not to be entertained as Public Interest Litigation. The service matters under Guideline No. 4 (2) are not to be treated as P.I.L.

8. The established procedure, as mentioned above, gives the authority to register such petitions to the Hon'ble the Chief Justice or the Judge designated by him and not any Judge of this Court. Even otherwise it will be wholly inappropriate for any Hon'ble Judge who is not sitting in the jurisdiction to entertain and take action on any letter/petition and to direct it to be registered as a writ petition. He can refer it to the P.I.L. Cell or the Hon'ble Chief Justice or the designated Judge to proceed in the matter as detailed in the guidelines.

9. Chapter-V of the Allahabad High Court Rules, 1952 provides for jurisdiction of Judges sitting alone and in Division Courts. Under Rules 1, 6 and 7 of these rules the power of determination of the jurisdiction of the Court vests only with Hon'ble the Chief Justice of the Court as master of the rolls and that such power includes the power to direct the petition to be registered and to be placed before a particular Judge or a Judge having jurisdiction over the matter. The cause list of the Court is also prepared under the authority of Hon'ble the Chief Justice. These powers guide the functioning of the Court. It was held in *Kashi Nath Misra v. Chancellor University of Allahabad*, AIR 1967 All. 101; *A.H. Ansari v. High Court*, (1997) 11 SCC 230; and *State of Rajasthan v. Prakash Chand*, (1998) 1 SCC 1, that the distribution of Business of the Court and the power of determination of jurisdiction and assignment of Benches, fall within the exclusive domain of powers conferred upon the Chief Justice of the High Court.

10. For the aforesaid reasons, I find that the order, dated 21.12.2004, to the Registrar General for registering the letter as a writ petition, is not in accordance with the procedure established by this Court. The order, as such, is recalled. Let the application be placed before the Hon'ble Judge designated by Hon'ble the Chief Justice to entertain the letter/petition for appropriate orders.