

Gopal Vs. State of M.P.

Gopal Vs. State of M.P.

SooperKanoon Citation : sooperkanoon.com/508623

Court : Madhya Pradesh

Decided On : Dec-11-1998

Reported in : 1999CriLJ1438

Judge : B.A. Khan and ;Shambhoosingh, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 389 and 439

Appeal No. : Criminal Appeal No. 997/98

Appellant : Gopal

Respondent : State of M.P.

Advocate for Def. : G. Desai, G.A.

Advocate for Pet/Ap. : A.H. Khan L/c

Judgement :

B.A. Khan, J.

1. We are seized of a reference from Lord Chief Justice on :-'Whether bail application filed with Cr. A. No. 997/98 was to be treated as first bail application or not.'

2. The issue arises in none-too happy circumstances. It all started with filing of Cr. A. No. 997/ 98 by appellant along with accompanying LA. No. 3002/98 under

Section 389 Cr. P.C. praying for suspension of his sentence. The application was rejected by the concerned Roaster Bench (Chitre, J) by order dated 9-9-1998. Meanwhile there was a change in Roaster and Criminal Appeal Roaster went to Vyas, J. Appellant filed second application (LA. No. 3612/98) again under Section 389 Cr. P.C. perhaps to try his luck before the new Bench. This application was directed to be listed before the same bench who had decided the first application (Chitre, J.) The matter was placed before Chitre (J) who directed Registrar to follow general roaster. The Registrar treating the second application as bail application listed it before Chitre (J) leading to passing of order dated 16-10-1998 holding that the application was for suspension of sentence and could not be disintegrated from main appeal. This order suggested that application was to be listed before Criminal Roaster Bench. Caught between two fires, Registrar referred the matter to Lord Chief Justice resulting in present reference.

3. We were taken from pillar to post in search of an answer. Our attention was also drawn to Supreme Court judgment in Shahzad Hassan Khan's case AIR 1987 SC 1613 : 1997 Cri LJ 1872 and Full Bench judgment of this Court in 1993 MPLJ (I) (sic) observing that it was a rule of convenience based on judicial discipline that all subsequent bail applications should be placed before the same Bench/Judge who dealt with the first application. But we are not impressed. Not that we want to break loose or that we fail to grasp the rationale of observations made in these judgments. We only wish to make it clear that observations in these judgments required to be read in their particular context and it cannot be said that these judgments laid down an abstract rule that all subsequent bail applications had to be listed before the same Judge/Bench who had dealt with first bail application. Therefore, as on today there is no law or precedent which prescribes that a subsequent bail application was to be posted before the same Judge/Bench who handled the first application. Nor could there be one because it would just, be not be workable in the present day functioning where Roaster was controlled by Lord Chief Justice and was changeable at the drop of hat. No Bench was sure what it would be handling tomorrow, nor could it deal with a subject which was not assigned to it in roaster.

4. But all this apart, present controversy appears to be much ado about nothing because both applications stand filed by appellant for suspension of his sentence under Section 389 Cr. P.C. These are not liable to be treated as bail applications invoking jurisdiction of High Court under Section 439 Cr. P.C. Needless to point out that an application for suspension of sentence is different from a bail application simpliciter. The two fall under separate jurisdiction - the first under Section 389 of Chapter 29 and the Other under Section 439 of Chapter 32, Cr. P.C. The first application can only be maintained by a convict in a pending appeal, and an order passed in it, by its very nature, is an interim order which suspends the sentence of a convict and puts it in abeyance pending adjudication of his appeal. It is temporary in nature and holds good till the outcome of appeal becomes known. The fact that it also ends up in a bail order would not change its character, to convert it into a bail application. As against this, an order passed in bail application in exercise of jurisdiction under Section 439 is a final order which ends the custody of an accused person finally. Therefore, both types of applications stand on a different footing and fall in separate compartments. The one cannot be equated with the other, more so for purposes of listing before a Bench. What is important to note is that an application for suspension of sentence is a class by itself maintainable only in a pending appeal and this forms an integral part of the appeal. It would thus sink or swim with the appeal and would receive consideration wherever the appeal does. If the appeal falls under a different roaster from time to time, so would the application for suspension of sentence. This application cannot be detached or disintegrated from the appeal to be posted before the same Bench/Judge who had dealt with such like application earlier. Such a practise, if adopted, would lead to anomalous situations, besides hampering judicial functioning with appeal being handled by one Bench and the application for suspension of sentence by the other.

5. Proceeding on this premise, we accordingly hold that an application for suspension of sentence under Section 389, Cr. P.C. filed in a pending criminal appeal is an integral part of such appeal and would move, along with the appeal and be posted before the Bench holding criminal appeal roaster. It cannot be treated as an ordinary bail application and detached from the appeal for posting before the Bench/Court who had handled a similar or first such application earlier.

The ratio of the Full Bench judgment of this Court in 1993 MPLJ cannot be overstretched to lay down an abstract rule that a second application for suspension of sentence was to be treated as bail application and posted before the same Bench/Judge who dealt with the first application.

6. Viewed thus, the question of any first or second bail application in the present case does not arise because the two applications in the case were for suspension of sentence under Section 389, Cr. P.C. and liable to be posted before and considered by the Bench handling criminal appeal roaster.

7. The reference is answered accordingly.

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