Ranjit Singh Vs. Hon'ble the Chief Justice and others

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Court : Delhi

Decided On : May-31-1985

Reported in : ILR1985Delhi388

Judge : H.C. Goel and; Rajinder Sachar, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302; Code of Criminal Procedure (CrPC) , 1973 - Sections 9(6)

Appeal No. : Criminal Writ No. 58 of 1985 and 581 of 1985

Appellant : Ranjit Singh

Respondent : Hon'ble the Chief Justice and others

Judgement :

Sachar, J.

1. This petition challenges the notification issued by the High Court under S. 9(6) of the Cr.P.C. 1973. The notification reads as under :-

'In exercise of the powers conferred by S. 9(6) of the Cr.P.C. 1973, the Hon'ble the Chief Justice and Judges of this Court have been pleased to order that Shri Mahesh Chander, Additional Sessions Judge, New Delhi, shall hold his Court for the trial of the Sessions case relating to FIR No. RC-2/80 SPE/CBI/C-IV, State v. Ranjit Singh & others according to law, in Central Jail, Tihar'.

2. There is a criminal trial going on in which this petition is moved by one of the co-accused Ranjit Singh in which he has been arrested by the CBI on 24th November 1983 and the case is relating to the murder of Nirankari Baba and his aide. The notification has directed that the Additional Sessions Judge shall hold his Court for the trial of this case in the Central Jail, Tihar.

3. Mr. Bawa Gurcharan Singh who appears for the petitioner submits in the first instance that there is no power in the High Court to have issued a notification under S. 9(6) of the Code. His argument is that S. 9(6) specifically provides only that the Court of Session shall ordinarily hold its sitting at a place as specified by the High court. According to him the High Court has not notified that the Court of Sh. Mahesh Chander shall hold its sitting in jail. What the notification amounts to, according to him is that the trial of this particular case mentioned in the notification will be held in jail and this, he says, is not within the power of the High Court. The learned counsel will have it that the only power which the High Court has is to fix one particular place where any Court of Session or Additional Court of Session will hold its sitting, and as Mr. Mahesh Chander is also holding his Court at Patiala House in other cases, the impugned notification is bad. We cannot agree.

4. Section 9(6) does not provide that there shall be only one place where the Court of Sessions Judge will hold its sitting, Rather it provides that it may hold its sitting at such place or places as the High Court may specify. It is apparent, thereforee, that the High Court is competent to fix more than one place where the Court of Sessions will hold its sitting. Of course, though the High Court will normally fix a place whereby far and large the Court of Session will hold its sitting, there may be circumstances necessitating the holding of the sitting of the Court of Session at a place other than its ordinary place of siting. This is what precisely has been done under the impugned notification. It is not, thereforee, correct to say that since the ordinary place of sitting of the Court of Mr. Mahesh Chander is at place other than at Tihar Jail, High Court could not have specified Tihar Jail as a place where Mr. Mahesh Chander will hold his Court for the trial of this particular case. In this Mr. Gurcharan Singh relies on 1976 Cri LJ 521 (All) Visheshwar Pathak v. State, where a direction was given that the trial shall take place in open Court and not in Jail where it was being held. But the facts of that case were totally different. A

reading of the authority, however, goes against the petitioner. The discussion is in para. 9, from where it appears that Sate sought justification for trying the case in jail by seeking to invoke the letter of request sent by the State Government to the High Court. But then the letter written by the High Court to the District Judge was only to the effect that he was directed to transfer the cases to Senior Additional and District Sessions Judge and to direct them to try the case expeditiously and to do other work only when they were free. That is why the Court concluded that

'there is no direction that the cases be tried in jail'.

and thereforee the trial in Jail was not proper till a clear notification was issued by the High Court to this effect under S. 9(6). The Allahabad High Court specifically recognised :

'It is also possible that the High Court on the administrative side may issue a notification as provided under S. 9(6) Cr.P.C. specifically notifying that the trial be conducted in jail. However, the proceedings so far taken shall not be deemed to be invalid on this ground.'

The authority is a clear answer against the petitioner when he urges that power under S. 9(6) of the Code does not permit the High Court to direct the trial to take place in jail. It may be noted that this authority was given earlier to the State amendment in Uttar Pradesh made of S. 9(6). In the initial part of his argument Mr. Gurcharan Singh had sought to rely on U.P. Amendment and had suggested that the High Court had held that there was no power under the unamended S. 9(6) of the Code to direct the trial to take place in jail and that is why U.P. amendment was necessitated. We have already shown that this assumption of the counsel is misconceived. As a matter of fact the High Court specifically held that under the unamended S. 9(6) of the Code High Court had undoubted power to direct the trial of a case to take place in jail. What, however, has been done by U.P. amendment of S. 9(6) of the Code is to limit the exercise of such a power by the High Court to a case where it appears expedient to do so for consideration of internal security or public order and in such cases the consent of prosecution of an accused may not be necessary. This amendment has in no way conferred a power to direct that holding of the trial in jail; that power was already in the unamended S. 9(6) of the

Code. It has only limited the situations upon the existence of which such a power may be exercised. But though there is no limitation in S. 9(6) of the Code so far as Delhi is concerned, we have no manner of doubt that this power is to be exercised on considerations broadly similar or analogous to those which are specifically mentioned, now by the U.P. Amendment Act and on overall considerations of expediency of a fair and quick trial. Of course if such a power under S. 9(6) can be shown to have been exercised not for the purpose for which it was given or in the interest of a fair trial the same is liable to be impugned. But that argument is very different from the argument of Mr. Gurcharan Singh that S. 9(6) does not authorise the High Court to issue the notification which it has. In our view the High Court has full competence to issue the impugned notification.

5. The next argument was that there should have been a separate notification constituting Court to sit at Tihar Jail. This argument is without any substance. The notification when it says that Mr. Mahesh Chander will hold his Court at Tihar Jail is both specifically and implicitly directing that the Court of Mr. Mahesh Chander which may have its ordinary sitting at some other place will for the purpose of this case as mentioned therein hold his Court in Tihar Jail. This is in full compliance with S. 9(6) of the Code.

6. The next argument was that open trial is the minimum requisite of a fair trial and as the trial is to be held in jail, Where for obvious reasons unrestricted access to public is not permitted. This course is destructive of principles of fair trial and the proceeding if held there would be vitiated. Again unfortunately the reliance by the counsel on the authority Naresh v. State of Maharashtra, 0044/1966 : [1966]3SCR744 negatives assumption of such sweeping proposition. There the Court no doubt emphasised the importance of public trial, but at the same time noted that they cannot overlook the fact that the primary function of judiciary is to do justice between the parties and that it was difficult to accede to the proposition that there can be no exception to the rule that all cases must be tried in open Court. The Court further emphasised -

'If the principle that all trials before Courts must be held in public was treated as inflexible and universal, and it is held that it admits of no exceptions whatever,

cases may arise where by following the principle, justice itself may be defeated. Hence it must be held that the High Court has inherent jurisdiction to hold a trial in camera if the ends of justice clearly and necessarily require the adoption of such a course.'

7. The assumption that holding a trial in public is a fundamental right and a direction for holding it in jail is vocative of that, stands negatived by Naresh v. State of Maharashtra, (supra) which though recognises the importance of public trial nevertheless recognises that even in the interest of justice total unrestricted public trial cannot always be insisted. Of course such power is to be exercised sparingly and with caution. But the broad proposition that the mere holding of a trial in jail is vocative of fundamental right must be rejected. In the petition before us there is no grievance that the accused's right to be represented by his counsel or any assistance that he requires in the prosecution of his case has been curtailed or lessened by holding of trial in jail. The only matter that Mr. Gurcharan Singh tells us is that the accused cannot afford a counsel. But that is a grievance which has nothing to do with holding the trial in jail. If that be so, we are surprised that the accused should not have asked the Court to make arrangements for lawyer's assistance. Had such a request been made or even if now made, we have no doubt that the Court will appoint a counsel at State expense and such assistance is always provided where the accused is being prosecuted for an offence under S. 302, IPC and he has no lawyer. The grievance that a particular lawyer will refuse to conduct the trial in jail is a matter on which this Court obviously cannot comment because that is a matter for the professional body like the Bar Council of India and Delhi Bar Council to look into. We have no doubt that if the accused is without a counsel, it is open to him to ask the Court for such assistance and further that the impugned notification has not taken this right of his to get the assistance of a lawyer. Objection on this score is misplaced. The next complaint was that the High Court had issued the notification without giving hearing to the accused. Mr. Gurcharan Singh referred us to Smt. Maneka Gandhi v. Union of India, : [1978]2SCR621 and urged that the horizons of natural justice have been greatly widened and that not hearing the accused before deciding whether the case should be held in jail violated the principles of natural justice and the decision on that ground is vitiated. We do not agree. S. 9(6) recognises that

the Court of Session if it wishes to hold its sitting at another place can only do so with the consent of prosecution and the accused. As to the specifying of places of sitting of Court of Session no such restriction is there and it is left to the best judgment of the High Court. Of course, this does not mean that such a power can be exercised arbitrarily. But then it must also be noted that Courts have consistently held that where power is vested in a high official it must ordinarily be presumed that the power is exercised in a bona fide and reasonable manner. Surely, it is a reasonable presumption to hold that when the Full Court exercised its power, like in the present case, directing that the Court of Session may hold its sitting at a place other than its ordinary place of sitting considerations of the interest of justice, expeditious hearing of the trial and the requirement of a fair and open trial are the considerations which have weighed with the High Court in issuing the impugned notification. It should be borne in mind that very rarely does the High Court exercise its power to direct any particular case to be tried in jail. When it does so it is done only because of overwhelming consideration of public order, internal security and a realisation that holding of trial outside jail may be held in such a surcharged atmosphere as to completely spoil and vitiate the Court atmosphere where it will not be possible to have a calm, detached and fair trial. It is these considerations which necessitated the High Court to issue the impugned notification. Decision is taken on these policy considerations and the question of giving a hearing to the accused before issuing the notification is totally out of place in such matters. These are matters which evidently have to be left to the good sense and to the impartiality of the Full Court in taking a decision in a particular case. Mr. Gurcharan Singh's reference to the case of State of West Bengal v. Anwar Ali Sarkar, : 1952 CriLJ510 is inopposite. In that case power was given to the State Government to pick up and determine the case to be tried by a Special Court. The Court held 4that there was no valid clarification or guidance for the State Government. But here the guidance is implicit that only in exceptional cases and in the interest of justice will the Full Court exercise such a power. The charge of arbitrariness is without substance and futile.

8. Counsel then referred us to the Terrorists Affected Areas Special Court Act and referred to S. 6 of the Act which provides that a special Court may if it considers it expedient or desirable to do so sit for its proceeding at any place other than its

ordinary place of sitting in a State where it is established. We fail to see its relevance. Here is a power which is given to the Special Court to sit at a place other than its ordinary place of sitting : that is why it was necessary to so provide specifically because S. 9 of the Code does not permit the Sessions Judge to choose the place of its sitting other than the one which has been specified by the High Court. As a matter of fact S. 6 of the Terrorists Act dispenses with the requirement of seeking the High Court's permission for holding of a special court at a place than its ordinary place of sitting. This provision enhances the power of the special Court to act on its own which power it could not exercise under the Code. Hence the necessity of providing the specific power. This provision cannot dilute the power of the High Court which is specifically provided under Section 9(6) of the Code. The proviso to S. 6 of Terrorist Act is again a right given to the public prosecutor to certify that in his opinion the interest of justice requires that the trial should be held at some place other than the ordinary place of sitting and further provides that special Court may after hearing the accused make an order to that effect, unless for reasons to be recorded in writing the special Court may think fit to make any other. The proviso merely emphasises the special role of a public prosecutor and the certificate issued by him suggesting that the trial should normally be held at a place other than the ordinary place of sitting of the Court, of course, after hearing the accused, unless for reasons to be recorded in writing holds otherwise. This again is a dilution of the right of the accused given to him under S. 9(6) of the Code where the Court of Session cannot hold its sitting at another place even if the public prosecutor so suggests unless the consent of the accused was available. It was because of these modifications from the Code that these specific provisions were incorporated in the Act. No such considerations arise here.

9. The next argument is that Art. 14 is violated because no principles are laid down in what circumstances a particular case will be directed to be held in jail and it is left to the unfettered discretion of the Judges in the Full Court to decide where it should be held. Mr. Gurcharan Singh emphasises and we accept that Judges taking a decision on the administrative side are as much subject to the restraint of not acting arbitrarily or whimsically or irrationally as others. Judges claim no immunity from having their administrative decisions judged on any other touch

stone than that of fair play, objectively and in cases like the present on consideration of the interest of justice and the necessity to provide a calm and detached Court atmosphere so that a fair trial can take place. We will never suggest that Judges actions when taking an administrative decision are immune from having their acts scrutinised judicially or that their administrative actions need not be tested by the requirement of Art. 14. We willingly and unreservedly accept this restraint when acting on the administrative side. So long as the Constitution is supreme as indeed it is, no instrumentality of the State whether Executive or Legislature or Judiciary can act in a manner which is contrary to the provisions of the Constitution. This position without even emphasis by Mr. Gurcharan Singh we accept. That is why we have devoted our anxious consideration to this matter. We are convinced that the decision to issue the impugned notification was bona fide and in the best interest of administration of justice and with a view to see that an impartial trial is held in the proper atmosphere.

10. We see no ground to interfere. The petition is dismissed.

11. Petition dismissed.