

Satwant Singh Vs. State

Satwant Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/687998

Court : Delhi

Decided On : May-14-1986

Reported in : AIR1986Delhi393; 1986CriLJ1352; ILR1986Delhi168

Judge : S. Ranganathan,; B.N. Kirpal and; M.K. Chawla, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 369

Appeal No. : Criminal Appeal No. 28 of 1986 and Murder Reference No. 2 of 1986

Appellant : Satwant Singh

Respondent : State

Advocate for Pet/Ap. : P.N. Lekhi,; R.S. Sodhi,; K.L. Arora and;

Judgement :

S. Ranganathan, J.

(1) When these matters were taken up for hearing. Mr. P. N. Lekhi, counsel for the appellant in Criminal Appeal No. 28 of 1986 raised a preliminary objection that under the provisions of the Criminal Procedure Code read with the rules of the High Court, a Full Bench cannot be constituted for hearing a criminal appeal or a murder reference.

(2) The Code of Criminal Procedure deals with murder references in Chapter Xxviii. In this Chapter, section 369 provides that in every case submitted for 'confirmation of sentence of death to the High Court, 'the confirmation of the sentence or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them'. Section 370 provides that 'where any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case shall be decided in the manner provided by Section 392'. Section 392 appears in Chapter Xxix which deals with appeals from judgments and orders of criminal courts. In this Chapter, provision relevant for our present purpose is Section 392 which reads as follows :

'WHEN an appeal under this Chapter is heard by a High Court before a Bench of Judges and they are divided in opinion, the appeal, with their opinions, shall be laid before another Judge of that Court, and that Judge, after hearing as he thinks fit, shall deliver his opinion, and the Judgment or order shall follow that opinion :

PROVIDED that if one of the Judges constituting the Bench, or, where the appeal is laid before another Judge under this section, that Judge, so requires, the appeal shall be re-heard and decided by a larger Bench of Judges.'

(3) Mr. Lekhi contends that it is clear from the language of Section 392 that a criminal appeal has to be heard by a Bench of two Judges. According to him, it provides an important and valuable safeguard that, in the event of difference of opinion between the two Judges, the appeal can be re-heard by another Judge of the Court. Such a re-hearing will be a full fledged hearing, where it will be open to the parties to urge all contentions available to them, even though they may not have been urged before the original Bench. He further points out that, under the proviso of Section 392, it is also open to the original Bench or to the third Judge to direct that the appeal shall be re-heard and decided by a larger Bench. He contends that by constituting a Bench of three Judges in this case, this valuable vested right of the accused to have the appeal re-heard in case of difference of opinion, by a third Judge or by a larger Bench, is completely lost and this has caused grave prejudice to the accused in this case. Mr. Lekhi referred to a number

of cases, decided on the language of Section 392, to contend that normally a criminal appeal is heard by a Bench of two Judges and that, advisedly, the legislature has made a provision which will enable the accused or the appellant to have a re-hearing in case of difference of opinion.

(4) It is not necessary to deal in detail with these decisions cited by Mr. Lekhi because they were all cases where the appellants were heard originally by a Bench of two Judges and the matter was then referred to a third Judge. In none of these cases there is any specific or definite pronouncement that a criminal appeal should be listed before a Bench of two Judges and not before a larger Bench. The whole argument of the learned counsel is based on the assumption that Section 392 contemplates that a criminal appeal can be listed only before a Bench of two Judges. This assumption, in our opinion, is not warranted by the language of Section 392. It will be noticed that Section 392 refers to a case where an appeal is heard by a Court before a 'Bench of Judges'. It does not say, 'before a Bench of two Judges'. In our opinion, Chapter Xxix is concerned only with substantive revisions regarding criminal appeals and the manner in which they are to be heard and disposed of. It has nothing to say regarding the constitution of the Benches for hearing these appeals. What Section 392 does is only to provide for a particular situation which may arise where a Bench of Judges hears a case and the Judges are so divided in their opinion that the decision in the case is not clearly ascertainable. From this special provision, it is not appropriate to infer that the legislature intended that a criminal appeal should be laid only before a Bench of two Judges. The language is wide enough to cover hearings by Benches with two or even more Judges.

(5) It may be that it has generally been the practice of this Court, and of High Courts in general, to list criminal appeals only before a Bench of two Judges though, as will be pointed out later, there have been instances where appeal have been heard by a larger Bench. There is, however, no express limitation, prohibition or direction in Section 392 which can possibly lead to the conclusion that a murder reference or an appeal is to be heard, initially, only by a Bench. of two Judges. In our opinion, the language of Section 369 and 370 also reinforces this conclusion. These sections deal with cases of murder references. It is, of course, possible that

there may be cases where a sentence of death comes up for confirmation and there is no appeal by the accused. But this is a case in which both a murder reference and appeals have come, and since the death sentence cannot be confirmed, unless and until the appeals are disposed of, there is an intimate connection between the hearing of the appeal and the murder reference. The language of Section 369 which deals with a reference, clearly postulates that where the High Court consists of two or more Judges, the sentence must be made, passed and signed by at least two of them. The words 'at least two of them' clearly indicates that the hearing of reference by a Bench of two Judges is the minimum, and envisage the possibility of Benches consisting of a larger number of Judges. We may also point out, in the context of this Section that, in a High Court which consists of only one Judge, the confirmation of death sentence can be ordered by that Single Judge. Section 369 or 392 will have no application to such a case. Indeed an instance of such a situation arose and was considered by the We are, therefore, of the opinion that there is nothing in the language of Code of Criminal Procedure which warrants the submission that a Full Bench cannot be constituted to hear a criminal appeal or murder reference.

(6) Before dealing with the arguments based on the High Court Rules and Orders, we must first make reference to the provisions of the Constitution of India and the Government of India Acts preceding it in order to understand the source of power of a High Court to make regulations and rules regarding the constitution of Benches and of the Chief Justice of a High Court to constitute Benches. Article 225 of the Constitution of India continues the Provisions which existed before the commencement of the Constitution, in so far as they related to 'the jurisdiction of, and the law administered in any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sitting of the Court and of members thereof sitting alone or in Division Courts'. Prior to the Constitution Section 223 of the Government of India Act, 1935 and earlier still Section 108 of the Government of India Act, 1915 dealt with the position. So far as this Court is concerned, its powers originate from Clause 26 of the Letters Patent constituting the Lahore High Court. This clause, inter alia, provided :

'THAT any function which is hereby directed to be performed by the High Court of Judicature at Lahore in the exercise of its original or appellate jurisdiction may be performed by any Judge or by any Division Court, thereof appointed or constituted for such purpose in pursuance of section one hundred and eight of the Government of India Act, 1915'.

and proceeds to prescribe the procedure in case of division of opinion amongst the Judges. Section 108 of the Government of India Act was clear in its terms. It provided :

'108.(1) Each High Court may by its own rules provide, as it thinks fit, for the exercise, by one or more judges, or by division courts constituted by two or more judges, of the High Court, of the original and appellate jurisdiction vested in the court.

(2)The Chief Justice of each High Court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the Chief Justice, are to constitute the several division courts.'

it is, therefore, clear that the matter of constitution of Benches and the distribution of work amongst the various Benches is the prerogative of the Chief Justice to be exercised in accordance with rules to be framed by the High Court in this context. In the exercise of the above powers, the Punjab & Haryana High Court made rules which, with certain modifications from time to time, have been adopted by this Court.

(7) We may start with a reference to Rule I of Chapter 9-A of the Delhi High Court Rules, which reads as follows :

'THE Honorable the Chief Justice shall be in control .of the administrative and executive work of the High Court and its distribution amongst the Honourable Judges.'

This is elaborated in Rule 2 of Chapter 3-A which directs :

'THE Judges will sit singly or in Benches of two or more in accordance with a roster to be prepared from time to time. The roster will be prepared by the Deputy Registrar with the approval of the Honourable the Chief Justice.'

Chapter 3-B is the specific Chapter dealing with the 'jurisdiction of a Single Judge and Benches of the High Court'. Rule I, which is the principal rule contains a list of matters which are ordinarily to be heard and disposed of by a Judge sitting alone. This rule, in so far as it is relevant for our present purposes, reads thus :

'1. Subject to the provision hereinafter set fourth, the following classes of cases shall ordinarily be heard and disposed of by a Judge sitting alone :

(XIX) and appeal, petition or reference under the Code of Criminal Procedure, 1898, other than

(A) an appeal or reference or a petition for enhancement of sentence in a case in which a sentence of death or of imprisonment for life has been passed ;

(AA) an application by the complainant, under section 417(3) of the Code, for the grant of special leave to leave from an order of acquittal ;

(B) an appeal under section 417 of the Code from an order of acquittal ;

(C) a case submitted under section 307 of the Code ;

(D) a case in which notice has been issued to a convicted person who has been sentenced to imprisonment for a term of seven years or more to show cause why the sentence should not be enhanced ;

(E) a case in which notice has been issued to a convicted person requiring him to show cause why his conviction should not be altered to one of an offence punishable only with death or imprisonment for life ;

Explanation N:-----Preliminary hearings for admission of : -

(I) a petition for enhancement referred to in sub-clause (a); and

(II) an application for grant of special leave to appeal under sub-clause (aa) ; and

(III)an appeal under section 417 referred to is sub-clause (b), shall be before a Bench of two Judges.'

THE other relevant rules in this Chapter are rules 4, 6, 7, and 9 which read as follows :

'4.Save as provided by law or by these rules or by special order of the Chief Justice, all cases shall be heard and disposed of by a Bench of two Judges.'

6.A Full Bench shall ordinarily be constituted of three Judges, but may be constituted of more than three Judges in pursuance of an order in writing by the Chief Justice.

7.The Chief Justice shall nominate the Judges constituting a Full Bench.

9.If a majority of a Full Bench of three Judges so determine, by order in writing at any time before final decision, the Full Bench for the decision of any question or cases referred to a Full Bench of three Judges shall be constituted by four or more Judges according to such direction.'

(8) Based on these rules, the argument addressed on behalf of the appellant is that an appeal or reference of the nature of the one before us, should be listed before a Bench of two Judges. Learned counsel seems to draw this conclusion from the language of Explanationn to clause (xix) which has been set out above. But the Explanationn- prescribes the constitution of a Bench of two Judges only for the preliminary hearing for admission of certain types of matters, one of which is a petition for enhancement of sentence in a case in which imprisonment of life has been passed. In our view, the meaning of Rule 1 read with clause (xix) thereof is perfectly clear. What it lays down is that an appeal or reference in which a sentence of death or imprisonment of life has been passed, cannot be heard by a Single Judge. This is the only purport of the Rule. From the language of the Explanationn, one cannot infer any restriction in the main clause that an appeal or reference of the type before us, should be listed only before a Bench of two Judges.

(9) The next rule to be considered is rule 4 which lays down that all cases shall be heard by a Bench of two Judges, 'save as provided by law or by these rules or by special order of the Chief Justice.' The law, in the context here, is the Code of Criminal Procedure. We have already examined the provisions of Chapter Xxviii and Xxix of the Code, and expressed our conclusion that there is no provision in the Code which requires that a criminal appeal or murder reference should be heard only by a Bench of two Judges. We have also pointed out that there is nothing in these rules of the High Court which require that such a matter should be listed only before a Bench of two Judges. On the other hand, the purport of Rules 6 and 7 is to confer a wide power on the Chief Justice to constitute a Full Bench in which case he deems fit. This is made further clear by reference to Rule 4 to the special order of the Chief Justice. The resultant position, therefore, is that in the absence of anything to the contrary in the Code of Criminal Procedure or in the High Court Rules, it is perfectly competent for the Chief Justice by a special order to direct that a particular case, even one of the nature before us, should be heard and disposed of by a Bench of two Judges or more Judges, as he may in his discretion decide. This position has been clearly elucidated in the decision of the Punjab High Court in quoting with approval the decisions of the Calcutta High Court in

(10) Mr. Lekhi, however, contended that, having regard to the provisions of Article 21 of the Constitution which guarantees fairness in procedural justice, we should not interpret these provisions in such a way as to confer an arbitrary power in the Chief Justice to list cases before any Bench at his discretion without there being sufficient reasons therefore. Mr. Lekhi submitted that in view of the consistent practice that is prevalent of having criminal appeals involving sentence of death or life imprisonment and murder references listed before a Bench consisting of only two Judges, a departure from the practice, will smack of discrimination. He submitted that the order of the Chief Justice listing the case before a Full Bench is an administrative order which he is competent to challenge before this Bench. He urged in the course of the arguments that he should be allowed inspection of the order of the Chief Justice and also gave a written application requesting that the order of the Chief Justice constituting the Full Bench, should be placed on record.

(11) We are of the opinion that these contentions are without force. From the provisions of the Government of India Act, 1915 and the Constitution of India, as supplemented by the rules which we have already extracted, it will be clear that the Chief Justice has got a wide discretion in the constitution of Benches, and there is nothing in the Code or rules limiting or restricting his discretion in any manner. We are unable to appreciate the arguments based on an allegation of discrimination. What is objectionable under the Constitution is a hostile discrimination by an exercise of arbitrary power or by an unguided discretion. In this case the discretion is conferred on the Chief Justice, and it is in the nature of power enabling him to constitute larger Benches where the requirements of justice so require. We are unable to appreciate how the interests of any accused will be prejudiced by the matter being heard by a Bench of three Judges instead of two Judges, as suggested by Mr. Lekhi. His arguments based in this regard on the language of Section 392 are not tenable. That section does not provide a general right to all accused but is only a provision to cover a particular situation. Where the Judges hearing a particular case are equally divided, there is no alternative but to refer the matter to another Judge. The proviso also enable a reference to a larger Bench if the Judges hearing a case are of opinion that the matter should be placed before a larger Bench. If such a procedure is adopted, there is only one hearing before a larger Bench. Section 392 does not, therefore, envisage in all cases a second hearing before a third Judge. These provisions, intended to meet special situations cannot be construed as creating a vested right to the accused to be heard only by a Bench of two Judges. The argument that the appellant will be deprived of a right of re-hearing before a larger Bench or a third Judge, if the matter is initially before a Full Bench is unfounded in view of the provisions contained in rule 9 of Chapter 3-B which has been extracted earlier. Under this rule if the majority of a Full Bench of three Judges so determine, by order in writing at any time before final decision, the Full Bench for the decision of any question or cases referred to a Full Bench of three Judges shall be constituted by four or more Judges according to such direction. In other words, even in a case when the matter is originally heard by a Full Bench, it is open to the Judges if they are so satisfied, to have the matter listed before a larger Bench. This provision, it will be seen, is a principle analogous to the proviso of Section 392. In other words, no

right conferred on the accused under Section 392 is lost by reference of the matter to a Full Bench. We may also refer in this context to a decision of the Andhra Pradesh High Court in where a similar argument of prejudice alleged to be caused by a Division Bench hearing a case in the first instance instead of a Single Judge was rejected.

(12) A word may now be said about the contention of Mr. Lekhi that a reference to a Full Bench is unprecedented and may give some room for doubts in the minds of the public at large that some special treatment is being meted out to the accused in this case. We may point out that this is not the only case of its type. Instances have a cen earlier in this country where criminal appeals involving death sentence, have been listed before Full Benches. At least two have been brought to our notice : one of them was Mahatma Gandhi murder case, and the other an appeal arising out of murder case of Pratap Singh Kairon (a reference to the latter is given in para 4 of the decision reported in). This shows that it is not really an unusual practice at least in this part of the country. We have also referred to the Punjab and Lahore High Courts of the practice of constituting Full Benches in important cases.

(13) Learned counsel for the appellant insisted that the order of the Chief Justice constituting the Full Bench, should be placed on record or shown to him. We have considered this request, and we are of the opinion that no useful purpose will be served by considering the terms of the order which has been passed by the Chief Justice. We say this for two reasons. In the first place, in our opinion, the constitution of Benches is the absolute discretion of the Chief Justice and it is not competent for the Bench constituted by the Chief Justice to delve into the reasons why the Bench was constituted, nor is it open to challenge by anyone. In the second place, we may assume the best in favor of the accused, namely that no reasons have been recorded by the Chief Justice for constituting the Full Bench to hear this case. Even assuming this, the argument does not carry the appellant further because, by the exercise of discretion no right of the accused are affected and no prejudice caused to them.

(14) For the aforesaid reasons, we over-rule the preliminary objection of the counsel and hold that this Bench has jurisdiction to proceed further with the appeal and murder reference. It is ordered accordingly.

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