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State Vs. Tukkanna

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Court : Delhi

Decided On : Jul-23-1984

Reported in : 1984CriLJ1866; 1984(2)Crimes665; 1984RLR523

Judge : D.R. Khanna, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 397

Appeal No. : Criminal Revision Appeal No. 13 of 1983 and Criminal Miscellaneous (Main) Appeal No. 130 of 1983

Appellant : State

Respondent : Tukkanna

Advocate for Pet/Ap. : I.U. Khan and; J.P. Gupta, Advs

Judgement :

D.R. Khanna, J.

(1) This order will dispose of Cr. R. No. 13/83 & Cr.M. (M) 130/83 both moved by the Delhi Admin. These are against the orders of the Addl. Sessions Judge, Mr. K.B. Andley, directing return of the passports on superdari to respondents.

(2) The background is that two cases stand registered u/Ss 420/468471/120-B, Indian Penal Code read with Section 25 & 26 of Immigration Act, 1922 at Police

Station Palam Airport. They are to the effect that some unscrupulous persons have been sending Indian citizens to Middle East countries on the basis of forged Protector of Emigrants clearing stamps besides forged signatures of Protector of Emigrants, New Delhi. The passports of the respondents who in one case are 17 in number and in the other 15, were seized after they had been initially cleared by the air-port staff for going abroad. The investigation later by the crime branch revealed that those stamps and signatures of the Protector of Emigrants were, in-fact forged, The investigation is still continuing and no challans have been submitted in any court, although the cases were registered in October & Nov., 1982.

(3) So far as the respondents are concerned, it is not the case of the investigating agency that they have committed any offence or that they have been instrument in the said forgeries. The racket instead has been enacted by some other persons who have rather duped these respondents by extracting various amounts from them. It is stated that in case these passports are returned to the respondents valuable evidence would not be available at the trial stage against the real culprits and thus administration of justice will suffer.

(4) The respondents on their part have pleaded that these passports belong to them which are otherwise genuine, and they want to use them for going abroad. Some of them have already jobs there from where they had come on leave and wanted to go back. The others have assurances of jobs, and as such want to join them. The action of the police in seizing the passports it has been contended, has resulted in grave injury to them inasmuch as they are all stranded in India & had been made to either lose their jobs or the wages for all this period.

(5) Mr. Balbir Singh, Metropolitan Magistrate (M.M.), on applications moved by different respondents, directed the release of their passports and the air tickets. Against those orders, two revision petitions were moved by the State before Shri K.B. Andley, Additional Sessions Judge. They were disposed of by the impugned orders. It was accepted that the revision petition could be maintained as thereby the matters relating to return of passports were finally decided, and to that extend they could not be treated as interlocutory orders. On merits the offer made by the

State was taken note that the prosecution agency was prepared to help the respondents in getting them duplicate passports prepared from the authorities concerned. The respondents were directed to avail of this offer. It was also observed that the blanket retention of the passports by the investigation agency could not be permitted who was required to complete the remaining investigation at least so far as it required the retention of the passports of the respondent maximum within one month of the dates of the orders, made in Dec. & Jan., 1983. Some time was further allowed to the investigation agency to retain the passports after which they were required to be returned.

(6) It is against these orders of the Additional Session Judge that the State has now moved the present revision and the Cr. M. (M) u/s 482 Criminal Procedure Code .

(7) At the outset it must be taken note that it has been unfortunate that in spite of the directions of the Additional Sessions Judge, the investigation of the case which involved the retention of the passports of the respondents has not been completed. The matters have been allowed to drag on in spite of the great hardship resulting to the respondents in the retention of their passports. Not much indulgence is, thereforee, called for in favor of the investigating agency, more so when no crime is alleged against the respondents. The respondents have already been required to furnish securities that they would produce the passports given to them on superdari whenever required by the court. On merits, thereforee. I find no infirmity in the orders of the Additional Sessions Judge. If the inv. agency so desires, it can retain photo copies of those passports and lead secondary evidence during the trial in accordance with law in case the originals are then not available. There are no reasons to deprive the respondents of the benefit of their otherwise valid passports. They are competent to obtain genuine endorsements from the Protector of Emigrants as and when they desire. Moreover, it is for the inv. agency to get the duplicate passports issued to the respondents by its own efforts if it so considers proper and in that case the originals can be retained. However, the expenses and other things of those duplicate passports must be borne by the inv. agency and the inv. agency must approach the respondents to get all the formalities completed within 15 days. Thereafter the passports will in

any case be returned to the respondents.

(8) Apart from what has been observed above, I am of the opinion that the criminal revision now moved before this courts is clearly not maintainable. The State has already exhausted its remedy of such revision before the Additional Sessions Judge, and thereforee no further revision can lie before the High Court. Section 397(3) Criminal Procedure Code . is quite explicit in this regard, and is (.....)

(9) The object of Section 397(3) is to prevent a multiple exercise of revisional powers and to secure early finality to orders. Any person aggrieved by an order of an inferior criminal court is given the option to approach either the Sessions Judge or the High Court and once he exercises his option, he is precluded from invoking the revisional jurisdiction of other authority. The language of Section 397(3) is clear and peremptory and it does not admit of any other interpretation. Furthermore, the revision application before the High Court cannot be treated as an application directed against the order of the Sessions Judge or as one directed against the order of the Magistrate. It is not permissible to do go. What may not be done directly cannot be allowed to be done indirectly; that would be an evasion of the statute. It is a well-known principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance. This view of law has been recognised by the Supreme Court in the case Jagbir Singh v. Ranbir Singh 1979 Cr.L.J. 318.

(10) I am further of the opinion that the petition u/s 482 Criminal Procedure Code . is as well not maintainable. It is now too well settled that inherent powers of the court have to be very sparingly exercised to prevent abuse of process of court or to otherwise secure the ends of justice. It cannot be invoked if there is specific provision in the Code for the redress of the grievance of the aggrieved party. It should also not be exercised as against express bar of law engrafted in any other provision of the Code. (See in this regard Madhu Limaye v. State : 1978 CriLJ165). This authority on which the state has attempted to rely as well as the other decisions to which reference was made, viz. Raj Kapoor V. State : 1980 CriLJ202 ; Amar Nath V. State 1977 Crl. L.J. 1891, and Mcd V. Ram Krishan : 1983 CriLJ159 are of no avail in the present case as those decisions were u/s 397(2) of the Code.

The questions to be considered were what could be the nature of interlocutory orders, and whether inherent powers could be exercised by the High Court where such orders resulted in abuse of process of court or otherwise to secure the ends of justice. The revisional powers were not available in those cases and, thereforee, recourse to S. 482 Criminal Procedure Code . was made permissible. In the present cases, however, the revisional powers were available, and they were in fact got exercised. Once this happened, there is no scope now available to file another revision or seek exercise of inherent powers against the orders which moreover cannot in any manner, be treated as abuse of process of court or otherwise require rectification or reversal to secure the ends of justice. In fact, it has been recognised in these authorities that the inherent powers are not available where specific remedy is provided for and also where express bar of law is engrafted in any other provision of the Code. The scope and purport of the respective provisions contained in S. 397(2) & (3) are different. One is to bar challenge to interlocutory orders, an abuse which in the past was defeating the expeditious disposal of criminal cases. The other is to limit the exercise of revisional power against orders other than interlocutory to once and no further. On the latter provision, the decision in the case of Jagbir Singh (supra) is directly on the point and leaves no room for controversy that once revisional jurisdiction has been exercised before the Sessions Judge, it cannot be invoked again before the High Court. Moreover as noted above, the impugned orders are not interlocutory as envisaged by Section 397(2). The Magistrate's order in this regard being final, as successfully asserted by the State before the Additional Sessions Judge, the present invocation of recourse to inherent powers becomes plainly misplaced as the existence of revisional remedy shuts out the exercise of inherent powers. Petition rejected.

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