

In Re: Reference by District and Sessions Judge

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Court : Kerala

Decided On : Nov-19-1985

Reported in : 1986CriLJ1966

Judge : S. Padmanabhan, J.

Appellant : In Re: Reference by District and Sessions Judge

Judgement :

ORDER

S. Padmanabhan, J.

1. In the Sessions Division, Tellicherry, there are three District and Sessions Judges. Sri. P. Ramachandran Nair was the Second Additional District and Sessions Judge. Till 29-9-1985 he was attending Court and discharging his duties. On the early morning of 30-9-1985 he suddenly fell ill and had to be hospitalised. Thereafter he was removed to the Medical College Hospital, Calicut for expert treatment. All the records available with him at his residence were got back by the District and Sessions Judge on 5-10-1980.

2. Crl. Revision Petitions Nos. 42 of 1984, 64 of 1984 and 26 of 1985 were heard by Mr. P. Ramachandran Nair at a time when he was attending Courts. Orders were not pronounced in those cases till he was laid up. On 14-10-1985 the Bench Clerk of the Second Additional District and Sessions Court handed over to the District and Sessions Judge a cover containing the orders in the above three

cases signed by Mr. P. Ramachandran Nair on 30-9-1985. In the proceedings papers Sri. Ramachandran Nair has also written 'orders passed - vide separate order' under his initials. On 30-9-1985 itself he has written 'order handed over for pronouncing to the District Judge, Tellicherry, in view of my personal inconvenience/disability.'

3. The District and Sessions Judge who received the papers entertained a doubt whether he was competent to pronounce the orders written and signed by the Second Additional District and Sessions Judge in Criminal Cases, since there is no express provision either in the Cr. P.C. or in the Criminal Rules of Practice similar to the one contained in Order XX, Rule 2 of the Civil Procedure Code. Therefore, he has written to this Court for direction. The matter was placed on the judicial side and that is how the reference came up before me for decision.

4. Order XX, Rule 2 of the C.P.C. provides that a Judge shall pronounce a judgment written but not pronounced by his predecessor. Such a direction is not there either in the Criminal Procedure Code or in the Criminal Rules of Practice. I was told that the matter has been placed before the Rules Committee for appropriate action. Anyhow the interest of justice requires that even in the absence of specific provisions for that purpose orders or judgments must be capable of being pronounced in Courts even during the incapacity of the Presiding Officer who has prepared and signed the same. In this case due to reasons beyond control the Second Additional Sessions Judge was not in a position to pronounce the orders. He has prepared the orders, signed them and made notes in the order sheets that orders are passed -- vide separate orders, probably anticipating that he may be in a position to sit in Court and pronounce the orders himself. We are not now at the question of the propriety or otherwise of such an entry even before the matter was pronounced in open Court. The fact remains that in spite of what was written by the Second Additional District and Sessions Judge in the order sheets in the respective cases, the orders are not so far pronounced in Court.

5. When a judicial officer signs the order or judgment it becomes final so far as he is concerned. What then remains is only the formality of pronouncement in open

Court by which alone the concerned persons will get notice of the disposal of the case. When a matter is heard by a Court interest of justice demands that decision on the matter will have to be pronounced. Otherwise the concerned parties will be put to serious prejudice and inconvenience. Courts are existing for dispensation of justice and therefore in cases like this the Courts cannot be said to be powerless.

6. When something requires to be done in the ends of justice in the absence of specific statutory provisions the approach of the subordinate Courts should not be to plead helplessness on the ground that specific provision authorising the requisite action is lacking. The approach should be whether there is any statutory prohibition which prevents the Court from doing what it considers necessary in the interest of justice and avoid harassment or prejudice.. The provisions of the Criminal Procedure Code or the rules of practice need not be taken as exhaustive in the matter of authorising things to be done under whatever contingency in the ends of justice. Courts are existing for dispensation of justice and avoid prejudice or harassment. Courts may have to deal with contingencies not contemplated by the framers of the Code and act in the interest of justice. Absence of specific provision should not fetter the hands of the Court in meeting out justice which is absolutely essential in given circumstances. What is necessary to be done in the interest of justice and not prohibited must be taken as permitted. Even though the existing inherent powers saved under Section 482 of the Code are available only for the High Courts, the subordinate Courts are also not powerless. They are also having what could be called auxiliary powers to do what is necessary for dispensation of justice even in the absence of specific provision if there is no prohibition.

7. There is no legal provision which says that a judgment or order in a criminal case prepared and signed by a judicial officer could be pronounced in Court only by him. When he is unable to sit in Court and pronounce the judgment or order there should not occur a stalemate. When pronouncement of the judgment or order is necessary there is no provision which prohibits his successor or some other competent officer pronouncing the same in Court. Such a power must be there for the proper dispensation of justice and the provisions of the Code must be taken to have authorised the same. Such a course is not going to cause prejudice

to anybody. On the other hand it only accelerates dispensation of justice. Pronouncement of the order or judgment need not await the contingency of the selfsame officer returning. In this case when this reference was made the District and Sessions Judge was not put in charge of the Second Additional Sessions Court and that was one of the reasons for the doubt entertained by him. Now he is put in charge of the Second Additional District and Sessions Court also. On that ground he could now pronounce the order.

The District and Sessions Judge is competent to pronounce the orders and he is directed to pronounce them after notice to parties. The reference is answered accordingly..

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