Damo Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-29-1985

Reported in : AIR1985Raj230; 1985(2)WLN182

Judge : Dwarka Prasad,; N.M. Kasliwal and; S.C. Agrawal, JJ.

Acts : Rajasthan High Court Rules, 1952 - Rule 68; Constitution of India - Articles 14, 21 and 39-A

Appeal No. : Criminal Misc. Second Bail Appln. No. 155 of 1985 in Criminal Appeal No. 512 of 1984

Appellant : Damo

Respondent : State of Rajasthan

Advocate for Def. : G.C. Chatterjee, Public Prosecutor

Advocate for Pet/Ap. : P.K. Sharma, Adv.; A.K. Bhandari,; A.K. Sharma and;

Judgement :

Kasuwal, J.

1. The accused Damo submitted a second bail application under Section 389, Cr. P.C. in S. B. Criminal Appeal No. 512/1984. Learned Public Prosecutor placing reliance on a decision of Division Bench of this Court in Ramju v. State of

Rajasthan, (1985) 1 WLN 57 raised an objection that the Court cannot pass an order for an early hearing of the above appeal. Learned single Judge referred the following question for decision by a larger bench :--

'Whether the law laid down in Ramju v. State (supra) admits of no exception and fetters the discretion of a Judge in ordering a case to be listed at an early date even though the case involves a shorter sentence and can be disposed of in a considerable shorter period.?'

In these circumstances, the matter has come before us for considering the correctness of the decision given in Ramju's case (supra).

2. In Ramju's case (supra) third bail application was moved by the accused-petitioner which came up for consideration before the Division Bench. It was held in the above case that it was the practice of the courts that whenever a request was made for early hearing of the case out of turn, it was accepted while rejecting the application for suspension of sentence. The parties, who engaged counsel with long purse prayed to the court for preparation of paper book out of the Court, such prayer was granted and as soon as the preparation of the paper book was completed within a shorter space of a month or two, then a further prayer was made that the case may be heard out of turn. It had become the practice of the court to grant such prayer.

3. It was further observed that the Judges were on trial Millions of down-trodden people, who were looking to the affairs of the court, felt that the Courts were meant for the rich and not for the poor. There was a general feeling that the rich people engaged a goodlawyer as they were in a position to make heavy payments to the advocates. The people having long purses and having vocal advocates prayed to the court to get their cases decided at the earliest and it was generally accepted.

It was further observed that:

'Today in the cause-list we find that the appeals, which were instituted in the year 1980 are pending and most of the appellants in these cases are persons, who are not in a position to engage a lawyer and who have been provided legal aid by the

Court If the courts cannot decide the innocence or the guilt of the persons, who are behind the bars for years together, then in fact we are not imparting justice. Article 21 of the Constitution provides that no person shall be deprived of life or personal liberty without following the procedure established by law. If the procedure established by law is violative of the principles of natural justice or equality, then it is no procedure and it will tantamount to denying the liberty to a citizen in the guise of the so-called procedure. The object of Article 21 is to prevent the encroachment upon the personal liberty by any of the wings of the State, save in accordance with the law and in conformity with the provisions thereof. There is no doctrine of 'State Necessity in India'. In Article 21, the word 'law' has been used in the sense of State made or enacted law and not as equivalent of law in abstract or general sense embodying the principles of natural justice. The expression 'procedure established by law' means the procedure prescribed by law of the State but it should not be unfair or unreasonable. Law would not include mere executive or departmental instructions which have no statutory force but would include intra vires or regulations made in exercise of the statutory powers, inherent powers of the High Courts or the Supreme Court which have force of law. It is the procedure of law which directs that the persons who are behind the bars since 1980 or prior to that, should get the decision about their innocence or guilt and the persons, who have just come to the Court in the year 1983 or 1984 should not be given priority in the matter of disposal of their cases and thereby providing them the facility of getting the decision on the point of their innocence or guilt.'

4. It was further observed in the abovecase that the people, who were appellants before the Court and who were behind the bars and whose sentence had not been suspended, were the persons of the same class and were situated equally. It was also observed that to hear the appeals of 1983 and 1984 first and to direct the Registry that the appeals of 1983 and 1984 should be listed as first case will result in discrimination against those persons, who were behind the bars since 1980 and who were not in a position to engage a senior lawyer who could come before the court and get the prayer of early hearing accepted. It was expected that there should be equality before law and as such to give a direction that the case of 1984 should be fixed for hearing as first case may be in the month of Jan. or Feb. 1985, will tantamount to denial of justice to the persons, whose appeals were pending

since 1980 or prior to that.

5. It was further observed that everyone of us knew that there was a dearth of judges and there was no regular criminal bench. Article 14 of the Constitution provided that the State shall not deny to any person equality before the law or the equal protection of law within the territory of India. It was the general principle that first come first serve and the persons, who were behind the bars and whose sentences have not been suspended, should be served first and in this class of persons there should not be any discrimination between one and another. It was further observed :

'People have a right to ask us, why we are giving priority to those who have preferred appeals in the year 1984.? The people who have preferred appeals in the year 1980 have a right to ask the court why this court is discriminating between the persons of the same class. Their grievance is that the persons having long purses get the relief from the court out of turn though they come within the same class of appellants who are behind the bars. For this reason, we are of the view that no departure could be made in the matter of hearing of the appeals of the convicts whose sentences have not been suspended. All the similarly situated persons should be taken as one class and their appeals should be heard on the basis of date of institution or on the basis of the date from which they are behind the bars as under-trial or as convicts.'

After taking the above view following direction was given in the case : --

'We, however, direct that all the convicts and appellants, whose sentences have not been suspended, should be treated at par and their cases should be listed for hearing either on the basis of the date of institution of the appeals before this Court or on the basis of period spent in jail as under trial prisoners as well as the period spent after conviction and during the pendency of appeals.'

6. After the above decision a large number of cases came up before the Single Benches as well as Division Benches of this court in which in peculiar facts and circumstances of those cases, the Court felt that the appeal itself may be disposed of immediately or soon thereafter on merits but orders could not be passed in view

of the above decision given in Ramju's case (supra). Learned single Judge has thus, referred the above question for consideration by the larger bench.

7. Learned members of the Bar also felt greatly agitated in view of the above decision of Ramju's case and many of them appeared as interveners and argued before us challenging the view taken in Ramju's case (supra). It was argued by Mr. P. K. Sharma that all the accused persons cannot form one class even though their applications for suspending the sentence and grant of bail were rejected. It was submitted that each case depended on its own facts and circumstances and no hard and fast rule can be laid down that no priority for early hearing can be given over the old cases. It was also submitted that even Rule 68 of the Rules of the High Court of Judicature for Rajasthan, 1952, (hereinafter referred to as 'the High Court Rules') provided that an application for expediting the hearing of a case could be laid before the Chief Justice for orders and the case could be heard at an early date if such application was allowed by the Chief Justice. It was also submitted that in all the High Courts in India as well as the Supreme Court, the cases are heard and decided by giving priority over the old cases.

8. Mr. A. K. Bhandari, submitted that the courts do not take note of a senior or junior counsel while deciding the prayer for early hearing of a case and the learned Judges in Ramju's case (supra) were not correct in observing that the parties, who engaged counsel with long purses could get theirapplications for early hearing of the case out of turn being accepted.

9. It was submitted by Mr. A. K. Sharma that the view taken in Ramju's case takes away the inherent powers of the court given under Section 482, Cr. P.C. It was argued that the view taken in Ramju's case works injustice to number of accused persons whose cases are required to be disposed of out of turn on account of their sickness, based on circumstantial evidence, border line cases or cases in which facts are not disputed and the same are to be decided merely on the basis whether they are to be convicted under Section 304 Part I or Part II, I.P.C. instead of Section 302, IPC. It was also submitted that the rules of procedure cannot fetter the right of the Court to decide appeal as and when the Court considers it proper in the facts and circumstances of the given case.

10. Mr. G. C. Chatterjee, learned Public Prosecutor, supported the judgment given in Ramju's case (supra). It was submitted by Mr. Chatterjee that Article 39A of the Constitution provided for equal justice and free legal aid. It was submitted that Article 39A provides that:

'State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.'

11. It was thus, argued that in case new cases are given priority in the matter of hearing over old cases, it would deny promotion of justice on the basis of equal opportunity. It was also submitted that under Section 389, Cr. P.C. a provision has been made for suspension of sentence pending the hearing of the appeal and for release of appellant on bail. In case the convicted person makes out a good case his sentence can be suspended and he can be released on bail, instead of giving an order for hearing of his appeal at an early date.

12. Mr. Dhankar though did not support the reasoning given in Ramju's case (supra), but contended that no tune limit was fixed in the Code of Criminal Procedure for deciding a criminal revision or criminal appeal. UnderS. 167(2) of the Code of Criminal Procedure there is a safeguard that the accused cannot be detained in the custody of the police for a term exceeding 15 days in the whole. Under Sub-section (5) of Section 167, Criminal P.C. in any case triable by a Magistrate as a summons case if the investigation is not concluded within a period of six months from the date of which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuance of investigation beyond a period of six months was necessary. It was also pointed out that under Sub-section (6) of Section 437, Criminal P.C. it was provided that if, in any case, triable by a Magistrate, the trial of a person accused of any non-bailable offence was not concluded within a period of 60 days from the first date fixed for taking evidence in

the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate unless for reasons be recorded in writing, the Magistrate otherwise directs. It was thus submitted by Mr. Dhankar that though safeguards are provided to the accused persons at several stages of the criminal proceedings, but no such safeguard in the matter of suspension of sentence or release on bail has been granted during the pendency of appeal after his conviction from the trial Court. It was submitted that in the absence of such provision either the appeals should be heard and decided within a short time or the accused persons should be released on bail if their appeals are not decided even for five or six years.

13. We have given our anxious thought to the entire problem posed before us. There can be no dispute or controversy in the general principle that cases should be heard on the basis of the date of institution of the appeals or revisions before the Court and the above principle is being followed while listing the cases for hearing in the High Court. The question which, however, arises is whether the Court can within its judicial discretion grant a priority or not in the matter of hearing of a particular case over the old cases. We may clearly mention at the outset that the learned Judges of the Division Bench in Ramju's case (supra) took a wrong andincorrect notion of Articles 14 and 21 of the Constitution in such matters. Article 14 guarantees that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. The principle of equality does not mean that every law must have universal application for all persons, who are not by nature, attainment or circumstances in the same position. In the matter of judicial decision of a case every case forms its own class. The conviction as well as the sentence awarded or acquittal always depend on various factors which are peculiar to that case. It cannot be said that all the appellants before the Courts and whose sentences have not been suspended, are the persons forming the same class and situate equally. There can be no manner of doubt that every accused person has a right to file an appeal as provided under law and no discrimination can be made between one accused and another in the matter of his right to file an appeal Apart from the right of filing an appeal, he has also a right to be heard. This does not, however, mean that if in a given case looking to its own peculiar facts and circumstances, the Court hears and decides

the same at an early date, it would mean to deny the right of equality guaranteed under Article 14 to persons who have filed appeal in point of time earlier to such cases. Many cases are of such nature, which are required and can be disposed of at the admission stage. Many cases are such, which on account of old or tender age of the accused, infirmity, affecting a large number of other cases, high stakes of the State or otherwise, need early decision by the Court. There might be cases where a convict-appellant does not challenge the facts proved by the prosecution, but merely challenges either the award of sentence or the section under which he has been convicted by the trial Court There may be a case where the conviction is based only on the basis of one eye witness and the appellant challenges the appreciation of his evidence by the trial Court and which can be disposed of by the appellate Court within a short time. Some cases come to the High Court against the orders of acquittal passed by the trial Court and in which the State is granted leave to appeal and the Court does not feel inclined to keep such accused persons free and their bail applications are also rejected and they are sent behind thebars. Cases also come in appeal where some accused persons are convicted with the aid of Section 34 or 149 I.P.C. In every case motive, magnitude and character of the accused persons are entirely based on the peculiar facts and circumstances of that case. We have only given a few illustrations but the same can be multiplied by number of other cases in which early hearing may not only be necessary but even do injustice if the same is not granted.

14. Apart from the circumstances mentioned above the principle enunciated in Ramju's case (supra) becomes impracticable and impossible to be adhered to in many cases. To illustrate even after the cases are listed in strict priority, according to the institution of the cases or on the basis of period spent in jail during investigation, inquiry or trial, the cases have to be adjourned on account of illness or otherwise of learned counsel appearing for the parties. Sometimes the counsel remain busy in other courts and if counsel of lower cases in the cause list are present in the court and ready to argue the same, such cases are taken out of priority as the Court has to save its precious time. Such eventualities are bound to happen and it becomes well nigh impossible to strictly adhere to the rule of first come first serve.

15. In our view, learned Judges of the Division Bench were clearly wrong in making the observation that the parties, who engaged counsel with long purses could get an order that their case may be taken out of turn and it has become the practice of the court to grant such prayers. It was also wrong to observe that people having long purses and having vocal advocates when prayed to the Court to get their cases decided at the earliest, such prayer was generally accepted. It was also wrong to observe that the persons, who were not in a position to engage a senior lawyer for getting the prayer of early hearing accepted, they were being discriminated. There is neither any such practice in this court nor the Court takes notice of a senior lawyer nor any difference is made in a junior and a senior lawyer while deciding any case or disposing of the application for early hearing. The Court always decides every case as well as any application or prayer for taking a case out of priority, on its own merits and in a judicialmanner. It is rather the function of the legal aid machinery to engage competent counsel to defend such accused persons, who remain unrepresented rather than to blame the court that they give undue preference to the senior counsel. We also fail to understand as to what the learned Judges meant by senior counsel. is it by way of long period in the profession or those who are earning more than others? Even amongst junior counsel who have put in only a few years in the profession, there are very competent and able lawyers who can plead the cause of their clients in a more vocal and forceful manner. Thus, what we mean to say is that it depends on the facts and circumstances of each individual case to accept or not to accept the prayer for expeditious disposal of the case and not the counsel who appears in the case.

16. In our view, it was also wrong to hold that any principle of natural justice is violated in hearing a case out of turn. There are only two well recognised principles of natural justice. One is audi alteram partem that no person can be condemned unheard and the other is that a person cannot be a judge in his own cause. Neither of such principles is contravened in hearing and deciding the case out of priority.

17. We are also of the view that no general order can be given for listing every case either on the basis of the date of institution of appeal or on the basis of the

period spent in jail as under-trial prisoners as well as the period spent after conviction and during the pendency of appeals. It would be an encroachment on the judicial powers and discretion of the bench concerned to give any direction in a particular case. Once the case comes before the court for disposal, it alone can pass an order looking to the facts and circumstances of that case and no direction can be given while deciding Ramju's case (supra) in respect of other cases which were not listed before the Division Bench deciding Ramju's case (supra). The view taken in Ramju's case (supra) has created a difficulty for the Registry also inasmuch as if the Bench hearing a particular case gives a direction to list that case for hearing on a particular date such direction comes in conflict with the direction given in Ramju's ease (supra). We fail to understand as to how Art 14 or 21 of the Constitution may at all be applied in respectof an order passed by a court in its judicial discretion in a particular case.

17A. It may also be important to mention that the final hearing and decision of a case also involves the process as to when it would be heard. Unless a case is taken for hearing, it cannot be decided and for that purpose an order will have to be passed for listing the case out of priority at an early date. There is no law nor it can be so encroaching upon such right of the court. It is absolute right of the bench concerned to follow the manner and procedure in which cases shall be heard and disposed of by it. Art 39A is one of the directive principles of State Policy which promotes justice on a basis of equal opportunity. It nowhere envisages a situation that a court has no judicial discretion to hear a case out of priority. It envisages for providing free legal aid to ensure that the process for securing justice is not denied to any citizen by reason of economic or other disabilities. It is the duty of legal aid functionaries in the State to provide free legal aid by suitable legislation or schemes to give assistance to such persons, who are unable to engage a counsel on account of poverty. Unless such aid is given to a poor citizen, simply listing the case according to their turn will merely be an eyewash to the principles enshrined under this Article.

18. It has been observed by their Lordships of the Supreme Court in Budhan Choudhary v. State of Bihar, AIR 1955 SC 191 : (1955 Cri LJ 374) (Para 9):-

'The judicial decision must of necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination.'

19. It was also observed by their Lordships of the Supreme Court in Jagmohan Singh v. State of U.P., AIR 1973 SC 947 : (1973 Cri LJ 370) (Para 26):--

'If the law has given to the Judge a wide discretion in the matter of sentence to be exercised by him after balancing all the aggravating and mitigating circumstances of the crime, it will be impossible to say that there would be at all any discrimination, sincefacts and circumstances of one case can hardly be the same as the facts and circumstances of another.'

20. Before parting with the case, we would like to observe that it is the most anxious and earnest desire of every Court to hear and decide every case at the earliest. It is also the desire to dispose of the old cases and for that purpose normally and generally cases are listed according to the priority of their institution, but in the present set up when there is large number of pending cases and in their proportion the judges are few, it is difficult, well nigh impossible, to dispose of every case within a year or two of its institution at least in the High Court. The remedy is not to suspend the sentence of every accused and to release him on bail on this ground alone nor it is possible to decide every case within a short time. In this view of the situation the Courts are left with no other remedy except to exercise the judicial discretion in giving priority and to hear cases even out of turn.

21. In the result, we hold that the view taken in Ramju's case (supra) is not correct and we answer the reference in the following manner:

'The law laid down in Ramju v. State of Rajasthan is not correct. It cannot fetter the discretion of a Judge in ordering a case to be listed at an early date which would depend on the facts and circumstances of each individual case.'