Dhola and ors. Vs. the State

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Court : Rajasthan

Decided On : Nov-11-1974

Reported in : 1975CriLJ1274; 1974(7)WLN889

Judge : B.P. Beri, C.J.

Appellant : Dhola and ors.

Respondent : The State

Judgement :
ORDER

B.P. Beri, C.J.

1. By his order dated October 19, 1974 the learned Additional Sessions Judge, Jalore cancelled the bail of Dhola, Asu and Lalla accused of an offence under Section 302 read with Section 34 of the Indian Penal Code, in exercise of his power under Section 439(2) of the Code of Criminal Procedure, 1973(hereinafter to be referred to as 'the New Code'). This order is being assailed firstly on the ground that the powers for cancellation of bail reside in the High Court and the Court of Session under Section 439(2) of the New Code and the learned Additional Sessions Judge had no jurisdiction. Secondly, it is urged that the grant of bail by the learned Magistrate was an interlocutory order against which no revision is now competent under Section 397(2) of the New Code and the learned Additional Sessions Judge had no jurisdiction to accept the revision under the New

Code.

2. Mr. Purohit contests both the contentions.

3. A brief resume of facts seems to be necessary. A challan was presented before the Judicial Magistrate, Sanchore on September 17, 1974 against the above named three applicants under Section 302 read with Section 34, Indian Penal Code. On September 2, 1974, the applicants moved an application for bail which was rejected by the learned Magistrate. After the presentation of the challan another application was moved and that was allowed by him by his order dated September 24, 1974. The State was aggrieved and it moved two applications before the learned Additional Sessions Judge, Jalore; one was under Section 439(2) for the cancellation of the bail and the other was by way of revision under Section 397 of the New Code.

4. Section 397 of the New Code reads:

Section 397-

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior criminal court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality, or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior court and may when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Explanation,- All Magistrates, whether Executive or Judicial and whether exercising original or appellate jurisdiction shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

(2) The powers of revision conferred by Sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding,

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

This section introduces a discernible effort on the part of the legislature to cut short the journey of criminal litigation in two directions. The first is that interlocutory orders are no longer revisable and the second is that the revision application is not repeat-able in courts of two tiers as under the Old Criminal Procedure Code. While frequent revision applications of interlocutory orders had a tendency of paralysing the progress of an inquiry and a trial the repeating of revision applications before District Magistrate/ Sessions Judge and High Court gave birth to multiplicity of proceedings. Without damaging the general superintendence enshrined in the superior Courts under Section 397(1), which repeats verbatim the language of Section 435 of the Code of Criminal Procedure, 1898 (hereinafter to be referred to as 'the Old Code') the legislature has now introduced these two blockades to lend speed to criminal justice. The short question agitated before me is whether the grant or refusal of a bail is an interlocutory order.

5. The learned Public Prosecutor states that it is not interlocutory order but Mr. Bishnoi submits with matched vehemence that it is an interlocutory order. The world of law has long been acquainted with the word 'interlocutory' although it has found its place in the Code of Criminal Procedure probably for the first time. Let us first examine the connotation of this important word in legal phraseology, and then we would determine whether its attributes are in any manner altered while employing it in the field of criminal jurisprudence.

6. The leading case on the nature of interlocutory order is Smith v. Gowell (1880) 29 WR 227, C. A. wherein Brett, L. J. observed.

I think the proper meaning of 'interlocutory order' in this sub-section is an order other than the final judgment or decree in an action.' (Cf. Words & Phrases Judicially Defined, Vol. 3, paga 142).

7. In the Jowitt's Dictionary of English Law at page 995 interlocutory means,

A proceeding in an action is said to be interlocutory when it is incidental to the principal object of the action, namely, the judgment. Thus, interlocutory applications in an action include all steps taken for the purpose of assisting either party in the prosecution of his case, whether before or after final judgment; or of protecting or otherwise dealing with the subject-matter of the action before the rights of the parties are finally determined.

8. Stroud also quotes the case of Smith v. Cowell (1880) 6 QBD 75 for ascertaining the amplitude of the expression 'interlocutory order.'

9. The Supreme Court in the Central Bank of India Ltd. v. Gokalchand : [1967]1SCR310 has observed that interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding.

10. I have been able to locate one criminal case in American Law where the expression interlocutory has been employed namely, U. S. v. Brown C.A. No. 301 where the order was of re-transferring a criminal case from the District Court to Western District of North Carolina.

11. On the basis of the aforesaid survey, it is reasonable to say that an interlocutory order is one which is passed at some intermediate stage of a proceeding generally to advance the cause of justice for the final determination of the rights between the parties. I see no reason to hold that the expression 'interlocutory order' changes its complexion when applied to the Code of Criminal Procedure, and on the touch-stone of the authorities mentioned above, I am inclined to be of the view that the grant or refusal of a bail application is essentially an interlocutory order. My reasons briefly are that |an accused is usually enlarged on bail in non-bailable cases to enable him to defend himself adequately and thereby assist the cause of justice. It is ordinarily at some intermediate stage between the commencement and the end of criminal cases that it is granted and further that it is open to re-call or modification and it does not determine the guilt or innocence of the accused and thus fulfils all the characteristics usually attached to an interlocutory order. Therefore, Mr. Bishnoi is right when he says that the learned additional Sessions Judge had no jurisdiction to revise the order of the

grant of bail by the learned Magistrate in view of the provisions of Section 397(2) of the New Code.

12. The matter would have ended here but for the added caution which persuaded the State to make an application under Section 439(2) which has also been decided by the same order of the Additional Sessions Judge. This is being questioned by Mr. Bishnoi on the authority of Kalu v. State . In this case, Ranawat, J. examined an order dated 11-11-1950 and came to the conclusion that the aforesaid order was not made under Section 17 of the Criminal Procedure Code.

13. Dave, J. in Pratapsingh v. The State S. B. Criminal Revision No. 215 of 1961 decided by this Court on 11-7-1961 (Raj) followed Kalu's case 1954 Cri LJ 119 (Raj) without examining any relevant notification touching the subject and decided the criminal revision both on the ground of jurisdiction and in appropriateness of the cancellation of bail. There is no observation in this case that powers under Section 17 of the Old Code could not be conferred.

14. In the Rajasthan Rajpatra dated May 19, 1956 Part II (a) at page 49 however is published a notification from the office of the Sessions Judge, Salotra dated April 27, 1956 under the Old Code which reads as follows-

No. 1123.- In exercise of the powers vested in me by Sub-section (4) of Section 17 of the Code of Criminal P. C. 1898 I hereby empower the additional Sessions Judge at Jalore the power to dispose of urgent applications including bail applications under Section 498 of the said Code arising within the local limits of his jurisdiction.

15. By virtue of Section 484(2)(b) of the New Code this notification retains its force.

16. Learned Counsel for the applicant submits that the order of the learned Additional Sessions Judge indicates that he allowed the application which he had no power to allow and, therefore, the order dated October 19, 1974 is bad and is vitiated. This argument, in my opinion, has no substance. The last but two paragraphs of the learned Additional Sessions Judge's order read,-

I am of the opinion that the order dated 24-9-1974 of the learned magistrate enlarging the accused persons on bail was illegal and unjustified and therefore, it is to be set aside. At the same time the application for the cancellation of bail is also to be accepted and the accused are to be arrested again and committed to this Court in custody to stand their trial.'

'Both the petitions filed on behalf of the prosecution viz., the petition for cancellation of bail and the revision petition in respect of the order dated 24-9-1974 of the learned magistrate are hereby accepted, the order dated 24-9-1974 of the learned magistrate is hereby set aside and the order enlarging the accused persons on bail by the learned magistrate is hereby cancelled, and it is ordered that the learned magistrate will take steps to arrest the accused persons immediately and commit them to this Court in custody for trial.

As the learned Additional Sessions Judge has in paragraph 11 of his order under attack clearly indicated that he may be prepared to reconsider the bail application I would advisedly make no comments in the circumstances of ibis case beyond saying that the learned Additional Sessions Judge had power to cancel the bail in the circumstances of this case which power he exercised by disposing of the application made by the State under Section 439(2) of the New Code.

17. The result is that this revision application fails and it is dismissed. The order suspending the operation of the order of the Additional Sessions Judge is vacated. It will, however, be open to the learned Additional Sessions Judge to apply his mind if any bail application is made before him.