

The State of Rajasthan Vs. Hari Singh

The State of Rajasthan Vs. Hari Singh

SooperKanoon Citation : sooperkanoon.com/764050

Court : Rajasthan

Decided On : Feb-08-1985

Reported in : 1985(1)WLN594

Judge : K.S. Lodha, J.

Appeal No. : S.B. Criminal Reference No. 1 of 1984

Appellant : The State of Rajasthan

Respondent : Hari Singh

Judgement :

K.S. Lodha, J.

1. The learned Sessions Judge, Bikaner, has referred this matter to this Court Under Section 395(2) Cr. P.C. as according to him, a serious question of law arises in the disposal of the bail application filed before him. The question which vexed him was whether in view of Section 8(3) of the Prevention of Corruption Act (he appears to refer to the Criminal Law Amendment Act, 1952) a court of Special Judge is to be deemed to be a Sessions Judge for the purpose of the application Under Section 438 Cr. P.C. In other words, whether in the presence of Section 8(3) of the Criminal Law Amendment Act, 1952 here in after called 'the Act of 1952'), a Sessions Judge of any sessions division can grant bail Under Section 438 Cr. P.C. to a person who apprehends to be arrested in any of the offences

triable by the Special Judge, or only the Special Judge has the power to do so in such a case.

2. The matter arose before him on an application filed by the petitioner Hari Singh Under Section 438 Cr. P.C. alleging that the police or the Anti-Corruption Department had registered a case against him Under Section 5(1)(d)(a) and (c) of the Prevention of Corruption Act and Section 438 & 120B of the Indian Penal Code and may arrest him. It appears that the petitioner had earlier approached the Special Judge but by order dated 28-5-83, the learned Special Judge declined to entertain the application as according to him, he had no powers Under Section 438 Cr. P.C. On the other hand, when the co-accused Inder Singh approached this Court Under Section 438 Cr. P.C. this Court directed him first to approach the Court of Sessions. The learned Counsel for the petitioner as also the learned Public Prosecutor assailed before the learned Sessions Judge that the Sessions Judge had the power to entertain application Under Section 430. However, despite this argument the learned Sessions Judge proceeded to examine the provisions of the Act of 1952. He referred to Section 8 and its various sub-sections and in view of Section 8(3) of the said Act, he was of the opinion that there was a serious question of law involved and it appeared to him proper that the matter should be referred to this Court. He has observed that the question is 'which is the Court of Sessions referred to in Section 438 Cr. P.C. whether the Court of Sessions of every sessions division or the Special Judge who has to be deemed to be a Sessions Judge Under Section 8(3) of the 1952 Act'. Accordingly, he has referred this question to this Court.

3. I have heard the learned Public Prosecutor, Mr. M.M. Singhvi and Mr. Bhagwati Prasad have also appeared to assist the Court, for which the Court is thankful to them.

4. Having heard the learned Public Prosecutor and the learned Counsel and having examined the scheme of the Act of 1952 as also the relevant provisions of the Criminal Procedure Code, I am of the opinion that the Court of Sessions of a sessions division is competent to entertain application Under Section 438 Cr. P.C. in respect of persons, who are under the apprehension of arrest in connection with

an offence triable by a Special Judge appointed under the 1952 Act. The matter does not require much of an argument since the position appears to be clear from the decision of their Lordships of the Supreme Court in *A.R. Antuley v. R.S. Nayak* : 1984 CriLJ647 . After examining the scheme of the 1952 Act, and the relevant provisions of the Criminal Procedure Code, their Lordships were of the opinion that 'shorn of all embellishment, the Court of a special Judge is a Court of original criminal jurisdiction'. They have also further observed as under:

Now that a new Criminal Court was being set up, the Legislature took the first step of providing its comparative position in the hierarchy of Courts under Section 6, Cr. P.C. by bringing it on level more or less comparable to the Court of Sessions, but in order to avoid any confusion arising out of comparison by level, it was made explicit in Section 8(1) itself that it is not a Court of Sessions because it can take cognizance of offences without commitment as contemplated by Section 193, Cr. P.C. Undoubtedly in Section 8(3) it was clearly laid down that subject to the provisions of Sub-sections (1) and (2) of Section 8, the Court of Special Judge shall be deemed to be a Court of Sessions trying cases without a jury or without the aid of assessors. In contradistinction to the Sessions Court this new Court was to be a Court of original jurisdiction.

In this view of the matter, there is no scope for doubt that the Special Judge appointed under the Act of 1952 is not a Sessions Judge for all purposes. He has been made to be deemed to be Sessions Judge for the purpose of giving him status but not all the powers of Sessions Judge as would be clear from the very provisions of Section 8 of the Act of 1952. Section 8(1) provides that Special Judge may take cognizance of offence without the accused being committed to him and he shall follow the procedure prescribed by the Code of Criminal Procedure for the trial of warrant cases by Magistrates. Sub-section (2) then clothes a Special Judge with the powers of granting pardon etc. and then Sub-section (3) prescribes the procedure. It reads as under:

Save as provided in Sub-section (1) or Sub-section (2), the provisions of the Code of Criminal Procedure, 1898 shall, as far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge; and for the purposes of the said

provisions the Court of the Special Judge shall be deemed to be a Court of Sessions trying cases without a jury or without the aid of assessors and the person conducting a prosecution before a Special Judge shall be deemed to be a Public Prosecutor.

Then Sub-section (3) further describes that in particular and without prejudice to the generality of the provisions contained in Sub-section (3), the provisions of Sections 350 and 549 of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to the proceedings before a Special Judge, and for the purpose of the said provisions a Special Judge shall be deemed to be a Magistrate. This clearly shows that the Special Judge is not a Sessions Judge for all purposes.

5. Thus, in my opinions, there is nothing in the provisions of the Act of 1952, which may indicate that the Special Judge is a Sessions Judge for all purposes including the provisions of Section 438 Cr. P.C.

6. I shall now proceed to refer to the relevant provisions of the Code of Cr. Procedure, Section 438 Cr. P.C. empowers the High Court or the Court of Sessions to grant anticipatory bail to a person who has reason to believe that he may be arrested of an accusation for having committed a non-bailable offence. The Court of Sessions is established Under Section 9 of the Code of Criminal Procedure and the State Govt. has to establish Court of Sessions for every sessions division and such Court of Sessions has to be presided over by Judge to be appointed by the High Court. Under Section 9, the High Court may also appoint Addl. Sessions Judge and Assistant Sessions Judge. It is not disputed before me that the Addl. Sessions Judge and Asstt. Sessions Judge cannot be deemed to be Sessions Judge for the purposes of Section 438 Cr. P.C. and therefore, I need not dwell on this point in detail. Therefore, certainly the Court of Sessions referred to Under Section 438 must mean the Court of Sessions established Under Section 9 of the Criminal Procedure Code. A Special Judge appointed Under Section 6 of the 1952 Act is not a Judge appointed to a Court of Sessions as envisaged by Section 9 of the Criminal Procedure Code. Therefore, that court cannot be deemed to have powers Under Section 438 Cr. P.C. merely because it is deemed to be a Court of Sessions for certain purpose as envisaged by Section 8(3) of the

1952 Act.

7. If the State Govt. or the High Court as the case may be, was to confer special powers on any Court that can be done Under Section 32 of the Criminal Procedure Code but powers Under Section 438 Cr. P.C. have not been conferred upon a Special Judge appointed under the 1952 Act and, therefore, also it is only the Sessions Judge of the sessions division, who can act Under Section 438 Cr. P.C. in respect of persons who are apprehending their arrest even in connection with offences triable by a Special Judge.

8. I am, therefore, clearly of the opinion that the learned Sessions Judge had jurisdiction to entertain the application Under Section 438 Cr. P.C. in this case. As a matter of fact when both the counsel for the petitioner as well as the learned Public Prosecutor had submitted before the Court that Court had jurisdiction to entertain the application, the Special Judge had refused to exercise powers Under Section 438 Cr. P.C. and this Court had directed a co-accused to first approach the Court of Sessions for grant of bail Under Section 438 Cr. P.C. before coming to this Court, the learned Sessions Judge need not have made this reference. While making the reference, the learned Sessions Judge has merely stated that there was an important question of law about the interpretation of Section 8(3) of the 1952 Act and Section 438 Cr. P.C. but he has not tried to resolve the difficulty himself nor has he recorded any opinion in this respect. It would have been much better if this had been done.

9. The reference is, accordingly, answered to the effect that the Court of Sessions referred to in Section 438 Cr. P.C. is the Court Sessions of a sessions division established Under Section 9 of the Criminal Procedure Code even in respect of cases triable by a Special Judge appointed Under Section 6 of the Act of 1952.