

Jabbar Vs. State of Rajasthan

Jabbar Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/770683

Court : Rajasthan

Decided On : Sep-14-1987

Reported in : 1987WLN(UC)599

Judge : Vinod Shanker Dave, J.

Appeal No. : S.B. Cr. Misc. Application No. 2204 of 1987

Appellant : Jabbar

Respondent : State of Rajasthan

Judgement :

Vinod Shanker Dave, J.

1. This is an application for grant of bail moved under Section 439 Cr. PC. A similar application has been rejected by Addl. Sessions Judge, Gangapur City by his order, dated August 24, 1987, without entering into the merits of the case holding that he has no jurisdiction to hear the case. The reasoning assigned by him in the order is that this case arises from Tehsil Hindaun which area falls within the jurisdiction of Dacoits Affected Area and since Special Courts for such areas have been created under Section 6 of the Rajasthan Dacoits Affected Areas Act, 1986 (here in after referred to as 'the Act') hence he has no jurisdiction to hear the matter.

2. Learned counsel for the petitioner submits that though the order of the learned Addl. Sessions Judge is not a detailed order but it appears that he look this view as the offence under Section 307 IPC has been included in the Schedule appended to the Act and offences enumerated in the Schedule are defined as Scheduled offences in the Act. He submits that the provisions of Section 2(c) of the Act are not happily worded and particularly the word 'including' has created a confusion. It is submitted that intention of the Legislature can never be to oust the jurisdiction of the regular courts in respect of the cases not connected with offence of dacoity. He refers to the preamble of the Act and submits that the law has been enacted for effectively dealing with the persons whose acts arise out of, or form part of, or are connected with the offence of dacoity. He submits that the Special Courts have been given the jurisdiction to deal with other offences also provided they are connected or arise out of or form part of an act of dacoity else different trials in different courts would have to be launched and it would be against the spirit of even the Constitution of India.

3. Mr. Khan appearing on behalf of the State very frankly admitted that the intention of the Legislature was never to oust the jurisdiction of regular courts in respect of cases unconnected with the dacoity. He submits that Special Courts have been created for the Dacoity Affected Areas and the purpose is to eradicate the menace of dacoity and to effectively deal with the cases of dacoity and other offences which are also committed in relation with the offence of dacoity. He also pointed out that inadvertently the word 'including' has crept in the definition of Scheduled offences given in Section 2(c) of the Act and the gazette notification published in the Hindi language itself carries a different meaning than the one given in English version, He has further submitted that the State Government is aware of the ambiguity created and a suitable amendment in the statute has been suggested so that the underlying object in bringing the Act may be effectively brought forward and he stated that the State Government has in principle agreed to bring amendment which is likely he brought in the next session of the assembly.

4. Mr. Biri Singh, learned Counsel for the complainant concedes to the legal position.

5. I have heard learned Counsel for the parties and perused the provisions of law Before dealing with the provisions it would be worth while to reproduce Section 2(c) and Section 2(d) of the Act which read as under:

Section 2(c) 'Scheduled offences' in relation to a dacoity-affected area, means an offence specified in the schedule appended to the Act, including an offence forming part of, arising out of or connected with the commission of dacoity.

Section 2(d) 'Scheduled offender', in relation to a dacoity-affected area, means a person who commits or has committed or is a person accused of the commission of any scheduled offence.

It would also be proper to reproduce the definition given in the Act which has been passed in Hindi:

fdlh M+dSrh izHkkfor {ks= es ^vuqlwfpv vij/k/kh^ ls bl vf/kfu;e ls layXu vuqlwph es fofrfrnZ'V dksbZ vij/k/k ftles fdlh MdSrh dk Hkkx] :i ;k mlds Mkys tkus ls mn~/k`r vFkok lalDr dksbZ vij/k/k lfEefyr gS] vfHkizSr]

fdlh MdSrh izHkkfor {ks= ds lEcU/k es ^vuqlwfpv vij/k/kh^^ ls ,slk O;fDr vfHkizSr gS tks dksbZ Hkh vuqlwfpv vij/k/k djrk gS ;k dj pqdk gS ;k tks fdlh Hkh vuqlwfpv vij/k/k ds fy, tkus dk vfHk;qDr dk dksbZ O;fDr g SA

A paraphrasing of Section 2(c) in Hindi and English obviously carries a different meaning and the one given in Hindi is nearer to the intention of the Legislature as given in preamble of the Special Courts Act have been created to effectively deal with all the situations created in the Dacoity Affected Areas in relation to commission of dacoities and the offences connected therewith. The Courts created under the Act are Special Courts having special powers conferred by the Act and the scheduled offences have been incorporated into the Act so that there may not be either different trials in different forum or different procedure adopted for those offences which are directly connected with the offence of dacoity and those which either arise out of or connected with, or form the part of dacoity. If strict meaning to the word 'including' is given, then it would at times have absurd results, for example Section 325, IPC is one of the offences included in the

Schedule is therefore, a scheduled offence. If independently without being connected with any offence of dacoity a person accused of offence under Section 325 IPC is brought before the Special Court and he moves an application for bail his application shall have to be dealt with under Section 5 of the Act and if so, then it would be directly in contravention to the provisions of the Code of Criminal Procedure. Thus if the offence mentioned in the Schedule which are unconnected with offence relating to dacoity, are committed by certain persons and if the narrow interpretation is given and are dealt with under the Act while deciding the bail applications then necessary corollary is that in such cases due consideration will have to be given to the provisions of Section 5 of the Act which reads as follow:

Section 5--Regulation of grant of bail--Not with standing anything contained in the Code, no person accused or convicted of scheduled offence shall, if in a custody be released on bail or on his own bond unless

(a) the prosecution has been given opportunity to oppose the application for bail; and

(b) where the prosecution opposes the application for bail, the court is satisfied that there are reasonable grounds believing that he is not guilty of such offence:

Provided that a person accused of a scheduled offence, who has been in custody for a total period of one hundred and eighty days, may be released on bail subject to such conditions as the court may think fit to impose.

6. In such a situation court will have to record a finding that there are reasonable grounds for believing that he is not guilty of such offence and if there is evidence available on record their bail may have to be refused in bailable offence. This obviously would not only be against the Code of Criminal Procedure but would also frustrate the law. I am, therefore, firmly of the opinion that Special Courts created under the Act, while dealing with the scheduled offences as given in the Schedule, will only consider those offences under the Act, if they form part of, or arise out of, or are connected, in any manner, with the offence of dacoity and in those cases where the offence mentioned in the Schedule are committed but not connected with the dacoity, then they will be dealt with by the regular criminal

courts under the provisions of the Code of Criminal Procedure.

7. I may also incidently mention here that a similar situation arose in Madhya Pradesh that the M.P. Dacoity Affected Areas Act was brought into force and a provision almost similar to the one in the Act was incorporated therein. The provision was challenged and it became the subject matter of consideration by a Full Bench of Madhya Pradesh High Court in Gulab Chand v. State of M.P. and Ors., 1982 Cr. L.J. 663 considered the entire case and held as under:

A plain reading of the definition as contained in Section 2(f) makes it clear that for an offence to be a specified offence within the definition it is not enough that it should be an offence mentioned in the schedule and that it is further necessary that the offence should form part or arise out of or be connected with the commission of dacoity. This is the effect of the word 'being' an offence forming part or arising out of, or connected with, the commission of dacoity' as used in Section 2 (f). The word 'being' properly denotes a state or condition existent at the time when the conclusion of law or fact has to be ascertained.

The word 'or' before the words 'being an offence' cannot be read in the definition. The Hindi version of the definition of 'specified offence' makes it clear that two conditions are necessary for making an offence a specified offence; (i) that it should be mentioned in the schedule to the Ordinance & (ii) that it should be an offence forming part, or arising out of or connected with the commission of dacoity. Hindi is the official language in Madhya Pradesh for use in Bills, Acts and Ordinances. The English version is a translation of the Ordinance promulgated in Hindi and is published under Article 348 of the Constitution. As an Act or Ordinance in Madhya Pradesh is passed or promulgated in Hindi, the Hindi version can be used for explaining any ambiguity in the English text published under Article 348. The second reason for not reading the word 'or' before the words 'being an offence' is that it is not permissible for the courts to read word in a statute unless it is absolutely necessary to do so and there is no such necessity in the construction of the Ordinance. Thirdly the Ordinance is a penal enactment, which in itself is a reason for hesitating before ascribing to phrases used in it a meaning broader than that they would ordinarily bear. Fourthly, reading of the

word 'or' will lead to very strange results which will also not be consistent with the object of the Ordinance which is to curb 'the menace of organised and unorganised gangs of dacoits' in areas affected by dacoity. Lastly, a perusal of the M.P. Dakaiti Aur Vyapharan Prabhavit Kshetra Act, 1981 which has replaced the Ordinance will go to show that it is designed to be wider in scope to meet also the object of curbing the menace of kidnapping for ransom. The definition of 'Specified offence' contained in Section 2(f) of the Act makes it clear that a specified offence is one which is mentioned in the Schedule and which has nexus with dacoity or kidnapping. The definition makes two conditions necessary for making an offence a specified offence. These conditions are: (i) that the offence as mentioned in the Schedule must have been committed in relation to a dacoity and kidnapping affected area, and (ii) the same must be forming part or arising out of or connected with the commission of dacoity or kidnapping. Kidnapping for ransom under the Act has become a specified offence although it may or may not be connected with the commission of the offence of dacoity.

8. In view of the aforesaid discussion I am firmly of the opinion that the word 'including' mentioned in Section (c) of the Act is an erroneous phraseology used and the offence included in the schedule will only be 'scheduled offence' only when such offence forms part of, or arises out of, or is, in any way, connected with the commission of dacoity and it is only those case, Section 5 of the Act would be applicable.

9. Having taken the aforesaid view I would have sent the case back to Addl. Sessions Judge, Gangapur City because offences alleged neither form part of, nor arise out of, nor are connected in any manner, with an offence of dacoity. But keeping in view the fact that some of the accused persons had been granted bail by this Court earlier it would be no use in sending the petition back to the said court. Having looked into the facts and circumstances of the case I am of the opinion that this is a fit case that the accused petitioner should be granted bail. I, therefore, direct that the accused-petitioner, Jabbar, shall be released on bail provided he executes a personal bond in the sum of Rupees 10,000/- with two sureties in the sum of Rupees 5,000/- each to the satisfaction of Addl. Sessions Judge, Gangapur City for his appearance in the trial court and as and when

required to do so.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com