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In Re: Gopalakrishna Naidu and ors.

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Court : Chennai

Decided On : Feb-03-1976

Reported in : 1977CriLJ50

Judge : Kailasam and; Paul, JJ.

Appellant : In Re: Gopalakrishna Naidu and ors.

Judgement :

Kailasam, J.

1. This petition is filed by nine persons who were accused in S.C. No. 80 of 1969 on the file of the Court of Session, East Thanjavur Division at Nagapattinam. They, along with 12' others, were committed to the Court of Session, East Thanjavur at Nagapattinam. by the Special Additional First Class : Magistrate, Nagapattinam for various offences including an offence under Section 302, I.P.C.

2. The petitioners 1 to 6 were convicted by the learned Sessions Judge in. S.C. No. 80 of 1969 for offences under Sections 148, 436, 307, 436 read with Sections 149, 326 read with 149, I.P.C. and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for 10' years. Petitioners 7 to 9 were acquitted of all the charges framed against them. On appeal by petitioners 1 to 6 against the conviction and sentences passed against them and the appeal preferred by the Public Prosecutor in C.A. No. 593 of 1971 against the acquittal of petitioners 7 to 9, the High Court allowed the appeal of the petitioners and dismissed the appeal'

preferred by the State and acquitted all the accused of all the offences. The State-filed an application for grant of a certificate to appeal to the Supreme Court and' the same was dismissed by this Court. But the State Government moved the Supreme Court for special leave which was granted. In granting the special leave, the Supreme Court ordered as follows:

The Sessions Judge, East Thanjavur Division, Nagapattinam do issue forthwith non-bailable warrants for the arrest of the respondents above named (petitioners).

3. It is contended on behalf of the petitioners by Mr. Gopalaswami that under Section 482 of the Criminal Procedure Code, the High Court has inherent powers to release the petitioners on bail. In support of his contention, the learned Counsel relied on a decision of the Supreme Court reported in Pampapathy v. State of Mysore : 1967 CriLJ287 where it was held that the High Court has inherent power to cancel order of suspension of sentence and grant of bail to the appellant made under Section 426 of the Criminal P.C. and to direct him to be rearrested and committed to jail. The Supreme Court observed that the omission to make express provision in this regard was manifestly due to oversight and cannot be regarded as deliberate. The Supreme Court further held that the High Court can under Section 561-A of the Criminal P.C. exercise its inherent power to cancel the order of suspension of sentence and grant of bail to the appellant under Section 426 of the Criminal P.C. and to order the appellant to be arrested and committed to jail.

4. The decision was in relation to exercise of the power under the Criminal P.C. and Section 482 relates to exercise of the powers of the High Court, to give effect to orders under the Criminal P.C. There is no question of any prevention of any abuse of process of Court for securing ends of justice in this case.

5. The matter is before the Supreme Court which has admitted the appeal and issued an order as detailed earlier. The Criminal Procedure Code is not applicable. It may also be noted that there is no section corresponding to Section 390 of the Criminal P.C. which enables the Court before which the accused is committed in an appeal against the acquittal by the orders of the High Court to release the accused on bail. (There is, therefore, no power conferred by the Criminal P.C. to the High Court or by any other enactment. Neither are we in a position to construe

the Supreme Court as giving this Court any discretion to grant bail pending further orders by the Supreme Court.

6. In this view, this petition is dismissed.

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