

Srinath Prasad Vs. State

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Court : Chennai

Decided On : Apr-06-2004

Reported in : 2004CriLJ3635

Judge : A.K. Rajan, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 414 and 424

Appeal No. : Crl. M.P. No. 2748 of 2004 in Cri. A. No. 60 of 2004

Appellant : Srinath Prasad

Respondent : State

Advocate for Def. : I. Subramaniam, PP and ;M.K. Subramanian, Adv.

Advocate for Pet/Ap. : A.J.A. Kumaran and ;N. Veerasamy, Advs.;R. Raghupathy and ;Saraswathy, Advs.

Disposition : Petition allowed

Judgement :

ORDER

A.K. Rajan, J.

1. This is the second petition for suspension of execution of sentence pending appeal. Earlier petition in Cri. M.P. No. 312 of 2004 was dismissed on 6-2-2004.

The petitioner/A1 along with his parents were charged for offences under Sections 498-A and 308, I.P.C. The trial Court by Judgment dated 19-1-2004, acquitted A2 and A3 of all the charges but found A1 guilty of both the charges. A1 was sentenced to 10 years R.I. and to pay a fine of Rs. 2 lakhs for the offence under Section 498-A.

2. When the appellant filed a petition for suspension of sentence earlier, P.W. 1 the father-in-law of the appellant filed an intervening petition in Cri. M.P. No. 505 of 2004. Order was passed after hearing both the appellant and the intervener. Even in this petition, the intervener wants to intervene on the strength of the earlier petition. No fresh petition filed by the intervener.

3. The learned counsel appearing for the appellant submitted that the intervener has no right to intervene in this application. This is an application for suspension of the execution of sentence; it is only a matter between the Court and the petitioner/appellant, if at all only the prosecution can object and not P.W, 1. The learned counsel for the appellant further submitted that a private person can intervene in a criminal case only under Section 301, Cr.P.C. That provision is applicable only during the trial before the Court. Even during trial, a private person can only assist the prosecution, at the most such person can submit written arguments. Except during a trial, a private person cannot intervene. Therefore, in appeal, the private person has no locus standi to intervene on any ground.

4. The learned counsel appearing for P.W. 1 who earlier filed Cri. M.P. 505 of 2004, submitted that he has a right to intervene even in appeal and also in a petition for suspension of execution of sentence. In support of his argument, he relied upon a Judgment of the Supreme Court in M/s. J.K. International v. State Government of NCT of Delhi, , wherein it has been held as follows :

'..... All these would show that an aggrieved private person is not altogether to be eclipsed from the scenario when the criminal Court takes cognisance of the offences based on the report submitted by the police. The reality cannot be overlooked that the genesis in almost all such cases is the grievance of one or more individual that they were wronged by the accused by committing offences.'

Relying upon this passage, the learned counsel submitted that the grievance of the individual cannot be overlooked and that they have a right even to intervene at the stage of suspension of execution of the sentence. Further, the learned counsel submitted that even a person can intervene at the stage of trial, he can also intervene at the appellate stage, since an appeal is a continuation of trial and therefore, all the right available at the stage of trial is also available in appeal.

5. The learned counsel appearing for the appellant pointed out that in the very same case in *M/s. J.K. International v. State Government of NCT of Delhi* , the Supreme Court has held that (para 12 of Cri LJ) :

'The private person who is permitted to conduct prosecution in the Magistrates Court can engage a counsel to do the needful in the Court in his behalf. It further amplifies the position that if a private person is aggrieved by the offence committed against him or against any one in whom he is interested he can approach the Magistrate and seek permission to conduct the prosecution by himself. It is open to the Court to consider his request. If the Court thinks that cause of justice would be served better by granting such permission the Courts would generally grant such permission. Of course, this wider amplitude is limited to Magistrates Court, as the right of such private individual to participate in the conduct of prosecution in the Sessions Court is very much restricted and is made subject to the control of the Public Prosecutor. The limited role which a private person can be permitted to play for prosecution in the Sessions Court has been adverted to above. '

The learned counsel also referred to the Judgment of this Court in *All India Democratic Women's Association, Tamil Nadu Unit, represented by its Assistant Secretary V. Vasuki v. State represented by the Superintendent of Police, Crime Branch, C.I.D. I, Chennai* reported in , wherein this Court has held that :

'Section 301(2) of the Criminal Procedure Code gives the third party a right to assist the prosecution only. A very limited right seems to have been given to an advocate instructed by a private person and that too assist the Public Prosecutor under Section 301(2) Cr.P.C. The only correct interpretation of Section 301(2), Cr.P.C. can be that the lawyer instructed by a private person has no right of

audience except to assist the Public Prosecutor and that Advocate can certainly assist the Public Prosecutor during the course of Criminal Proceedings'.

Therefore he submitted the role of private person in a case before the Sessions Court is subject to the control of the Public Prosecutor. Therefore, in the appellate stage he has no role to play. Hence, the intervener has no right of audience before this Court.

6. The learned Public Prosecutor appearing for the State also submitted that right of a private counsel is only as provided under Section 301, Cr.P.C. he has no right other than that, he has the right only to submit written arguments during trial after closure of evidence that too with the prior permission of the Court, support of his arguments, the learned Public Prosecutor relied upon a Division Bench Judgment of the Calcutta High Court in *Re. Rakhan Ojha* , wherein it was held that :

'The lawyer engaged by a private person has no right of audience in a case which is in charge of a Public Prosecutor

'When Section 301(2) specifically says that the lawyer engaged by the private person can submit written arguments there is no scope for going behind the letters of the law to hold that such a lawyer can address the Court orally also.'

The learned Public Prosecutor also referred to the Judgment of the Supreme Court in *Shiv Kumar v. Hukam Chand* 1999 SCC (Cri) 1277, which was of bride burning, the trial of father-in-law of the deceased for offence under Section 304-B IPC. In that case, a direction was issued that the counsel appointed by the private person has to act under the direction from the Public Prosecutor who shall conduct the case was upheld as the correct procedure.

Relying upon these decisions, the learned counsel appearing for the appellant submitted that the private party has no right to interfere at the appellate stage. Much less at the stage of execution of suspension of sentence pending appeal. The learned Public Prosecutor submitted that from the scheme of the Cr. P. C., it can be said the purpose for which the private person is permitted during trial, to assist the prosecution, is to enable that private person to furnish materials that has

been omitted by prosecution and to see that there are no lacuna in the evidence adduced and thereafter, to submit a written argument through the Public Prosecutor. That is the purpose of allowing the private person is to furnish necessary materials to the Court. Therefore, since no possibility of furnishing fresh materials, he has no right of audience before the appellate Court. The learned counsel appearing for the intervener relied upon the following passage in the article titled 'Victims of Crime - The Unseen Side', by Justice A.S. Anand, Former Judge of the Supreme Court in 1998 (1) SCC (J) P3 :

'..... the criminal justice system today is basically concerned with criminals, whether it is their conviction, treatment, reformation or rehabilitation. The purpose of criminal justice system appears, at present, to be confined to the simple object of ascertaining guilt or innocence and use the victim only as a witness. Since, the central object of legal process is to promote and maintain public confidence in the administration of justice, therefore there is an urgent need for giving a well defined status to the victim under the criminal law. His interest in getting the offender punished cannot be ignored or completely subordinated to the interest of the State. Otherwise, the victim will remain disconnected and may develop a tendency to take the law into his own hands in order to seek revenge 'A victim of crime is, thus, a mute witness to the whole drama'.

He also refers to the Judgment of the Supreme Court in Bheru Singh v. State of Rajasthan : [1994]1SCR559 , where the Supreme Court has held :

'The measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim.....'

'..... The Courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.'

Relying upon these passages in that article, the learned counsel for the intervener submitted that the rights of the victims cannot be ignored. If the victim is not alive, the close relative like father of the victim has a right to intervene at all stages.

Thereafter, he contended that the intervener can interfere even at this stage with petition to suspend the execution of sentence pending appeal.

7. Considering the arguments of the learned counsel for the appellant as well as the learned Public Prosecutor and the learned counsel for the intervener, it is seen that the only circumstance under which the private person can intervene in any criminal case is as provided for under Section 301 of the Cr. P. C. As held by the Calcutta High Court and by the Supreme Court, (as per the judgment referred above, the private person has no right of audience except to assist the prosecution and to file a written argument during trial. That right is available only during the trial. Even assuming for the sake of argument that an appeal is a continuation of trial, that right would be available only at the time of final argument of the appeal to submit written argument. Therefore, at this stage namely, the suspension of execution of sentence, the private party has no right of audience; since there is no scope for furnishing any new material. Therefore, the learned counsel for the intervener cannot be heard in this petition. At the most he can assist the prosecution and submit written arguments at the stage of final hearing of the appeal. Earlier, the arguments of the learned counsel for the intervener was heard, and was considered, since that was not objected by the counsel for the appellant. In the present petition, in view of the objection raised by the counsel for the appellant, and the arguments of the learned counsel for the appellant and the arguments of the Public Prosecutor the intervener has no right to be heard while deciding the petition to suspend the execution of sentence pending appeal. Therefore, the arguments of the learned counsel for the appellant and that of the Public Prosecutor alone are considered. That apart, Cr. M. P. No. 505 of 2004 was filed to intervene in CrI. O. P. No. 312 of 2004, which was already disposed of.

8. The learned counsel appearing for the appellant referred to the decision of a Full Bench of this Court in *Santhanapandi v. State by Inspector of Police, Sankarankoil Police Station, Sankarankoil* : 1999(1)CTC49 , wherein this Court has considered what all the aspects that are to be considered while suspending the sentence and for grant of bail pending appeal. The Full Bench has held as follows (at para 15 of Cri LJ) :

'The prime object of the Code is to see that no innocent be punished. This Court is always to see the prima facie case and to get satisfied its conscience while considering the bail matters viz., the fact of circumstances leading to the conclusion, whether in the given facts and circumstances of the case, the accused has been implicated falsely with the crime or not, regarding the glaring defect of procedure established by law and applying the facts to the legal principles in arriving at the conclusion vis-a-vis the accused and the other accused, violation if any and many other factors like gravity of offence, motive, intention, mens rea, conduct, any offence is repeated, other antecedents, the effect of the immediate release of the accused to the society at large, etc. of course, without going into the merits and without appreciating the evidence in detail at that stage, in granting or rejecting the bail.'

That is while passing orders on an application for suspension of sentence and granting of bail pending appeal, the Court must bear in mind many factors like gravity of offence, motive, intention, mens rea, conduct, any offence is repeated, other antecedents, the effect of the immediate release of the accused to the society at large etc. This must be done without going into the merits and without appreciating the evidence at this stage. In the earlier order since the learned counsel for the appellant argued referring to the entire evidence, this Court also considered the evidence in detail. But, according to Full Bench decision, the Court should not indulge in appreciation of evidence at this stage. On the other hand, the Court must take the factors like, motive, gravity of the offence, intention, mens rea, conduct of the accused etc. In the earlier petition these aspects were not considered. Admittedly, the victim had committed suicide. It appears that there is no evidence that the accused had any motive to drive his wife to commit suicide. There is no evidence to prove mens rea that the appellant's acts were with the intention to make the wife commit suicide; there is no evidence that the conduct of the accused was with the intention to drive the wife to take decision to commit suicide. The conduct of the accused of not living with her for one year may amount to negligence or dereliction of his duty towards his wife. The immediate release of the appellant/accused will not have any adverse effect on the society at large. The accused is in the custody from 19-1-2004. The earlier order was passed on 6-2-2004, it is more than two months since the earlier order was passed.

The Supreme Court in *Kiran Kumar v. State of M. P.* : (2001)9SCC211 , has held that, the normal rule is that when the appeal of a person convicted and sentence is pending the sentence passed on him should be suspended unless any exceptional reason exists. The Supreme Court held so in an appeal against conviction for an offence under Sections 460, 376, 325 and 506 of IPC; the maximum sentence imposed on the appellant was imprisonment for a period of seven years. The Supreme Court held that no exceptional reason had been shown for not suspending the sentence, and therefore suspended the sentence during the pendency of appeal and directed the release of the appellant on bail. If these principles are applied to the case on hand, it is to be inferred that the suspending the sentence of the appellant will not be dangerous to the society; no exceptional reasons can be shown in this case. Hence, the execution of sentence can be suspended pending appeal.

9. Apart from that, the learned counsel for the petitioner submitted that the petitioner had two children and they are studying in USA and he has to look after them. Further, he has been imposed the maximum sentence of 10 years rigorous imprisonment. Even if ultimately the appeal fails, there is a possibility and likelihood that the sentence imposed may be reduced considerably. Under those circumstances, the petitioner is entitled for suspension of sentence pending appeal.

10. Applying the above principle laid down by the Supreme Court and the decision of the Full Bench of this Court referred above, for grant of bail pending appeal to the facts of the present case, admittedly the wife had committed suicide; there are prima facie no material to hold that husband had the mens rea. Though the personal diary of the victim contained certain materials which proves the conduct of the appellant herein, the evidentiary value of that cannot be considered at this stage in the petition to suspend the execution of sentence of imprisonment. Further it cannot be said that the Court may not reduce the sentence of imprisonment of ten years RI at the conclusion of appeal. When that be so, while there is a possibility and also a likelihood for reduction of sentence in appeal there is no impediment for the suspension of sentence pending appeal. Hence, the execution of sentence of imprisonment is suspended pending appeal.

11. The sentence shall be suspended and the appellant shall be released on bail on his executing a bond for Rs. 10,000/- with two sureties for a like sum to the satisfaction of Mahalir Needhi Mandram, Chennai and on condition that the appellant shall intimate the Judge of that Court when he goes abroad and to appear once in three months before that Court.

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