

Gagan Banga vs The State Of West Bengal on 23 September, 2024

Author: Sanjay Kumar

Bench: Aravind Kumar, Sanjay Kumar

2024 INSC 722

Non-reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

Misc. Application No. 1861 of 2023
with
Interlocutory Application No. 138072 of 2023

&

Misc. Application No. 1862 of 2023
with
Interlocutory Application No. 150965 of 2023

in

WRIT PETITION (CRL.) No. 166 OF 2023

Gagan Banga and another

... Writ Petitioners

Versus

The State of West Bengal and others

... Respondents

JUDGMENT

SANJAY KUMAR, J

1. Writ Petition (Crl.) No. 166 of 2023 was filed by Gagan Banga and Indiabulls Housing Finance Limited, New Delhi, under Article 32 of the 17:24:45 IST Reason:

Constitution of India, with the following prayers: -

‘In the facts and circumstances of the instant case, it is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to:

- i. Issue a writ, order or direction in the nature of mandamus or any other appropriate writ or order thereby laying down appropriate guidelines to be followed by all including the police officials and Judicial Magistrate to desist from initiating or directing initiation of criminal proceedings against the financial institutions, its assignees, management, officers, employees, lawful transferees and purchasers of secured assets at the behest of disgruntled defaulting borrowers, so as to protect their fundamental rights inter alia guaranteed under Article 14, 19 and 21 of the Constitution of India, 1950;
 - ii. Issue a writ, order or direction in the nature of certiorari or any other appropriate writ or order thereby quashing the FIR's mentioned at Table 1 above registered by or at the instance of disgruntled defaulting borrowers in abuses of process of law by giving criminal colour to civil dispute, with consequential reliefs; iii. Impose exemplary costs on the Respondents for abusing the process of law;
 - iv. Pass any other other(s) as this Hon'ble Court may deem fit and proper.'
2. Table 1, referred to in prayer ii above, was set out in paragraph 5 of the writ petition and mentioned 3 FIRs, viz., FIR No. 646 of 2022 dated 26.10.2022 registered at PS Titagarh, West Bengal; FIR No. 427 of 2023 dated 09.04.2023 registered at PS Indirapuram, Ghaziabad, Uttar Pradesh; and FIR No. 25 of 2021 dated 27.01.2021 registered at PS Economic Offences Wing, Delhi.
3. By interim order dated 28.04.2023, this Court granted stay of all proceedings pursuant to the impugned FIRs in three different States.
4. Thereafter, on 03.07.2023, the writ petitioners filed three I.A.s in the writ petition. I.A. No. 122408 of 2023 was filed by them seeking to implead Yamuna Industrial Development Authority (YIDA), Greater Noida, Uttar Pradesh, and the Enforcement Directorate, New Delhi, as respondent Nos. 7 and 8 in the writ petition. They stated that FIR No. 197 of 2023 dated 15.04.2023 was registered at PS Bitra-2, Greater Noida, Uttar Pradesh, at the behest of YIDA and then, the Enforcement Directorate, New Delhi, registered ECIR No. ECIR/HIU-1/06/2023 based on the said FIR and the earlier FIR No. 427 dated 09.04.2023. By way of I.A. No. 122410 of 2023, they sought stay of further proceedings pursuant to FIR No. 197 of 2023 and ECIR No. ECIR/HIU-1/06/2023. I.A. No. 122413 of 2023 was filed by them seeking to bring on record additional facts and include an additional prayer to quash FIR No. 197 of 2023 dated 15.04.2023 and ECIR No. ECIR/HIU-1/06/2023 in so far as they were concerned.
5. The writ petition was taken up for hearing on 04.07.2023 and disposed of with directions. The final order records that the IAs for impleadment and to bring on record additional facts were both allowed. Taking note of the facts of the case, this Court deemed it appropriate to permit the writ petitioners to approach the jurisdictional High Courts to challenge all four FIRs and the ECIR within two weeks, requesting the High Courts to consider and decide the petitions expeditiously and not later than six months from the date of their presentation. Till the final disposal of the respective petitions, the earlier interim order dated 28.04.2023 passed in the writ petition in respect of the

first three FIRs was directed to continue.

6. As regards FIR No. 197 of 2023 and ECIR No. ECIR/HIU-I/06/2023, this Court directed that no coercive steps should be taken against the petitioner financial institution and its officers, representatives and managers till the final disposal of such petitions by the High Court and left it open to the petitioners to seek stay of proceedings therein, which had to be considered by the High Court on merits. It was clarified that this interim protection would only be applicable to the petitioner financial institution and its officers, representatives and managers and not to any other persons. All contentions available in law to the parties were kept open to be raised before the High Courts and the said High Courts were to decide the petitions strictly on their own merits and in accordance with law.

7. Though, seemingly innocuous, the order dated 04.07.2023 has led to the filing of the present miscellaneous and interlocutory applications seeking its modification and recall.

8. In the meanwhile, it appears that the writ petitioners approached the jurisdictional High Courts seeking the quashing of criminal proceedings initiated against them. Criminal Miscellaneous Writ Petition No. 10893 of 2023 was filed before the Allahabad High Court to quash FIR No. 197 of 2023 and ECIR No. ECIR/HIU-1/06/2023. Interim order dated 13.07.2023 was passed therein but the same was set aside by this Court on 13.02.2024. Thereafter, judgment was reserved in this case on 22.08.2024. Criminal Miscellaneous Writ Petition No. 14101 of 2023 was filed before the Allahabad High Court to quash FIR No. 427 of 2023. The High Court reserved judgment in this case also on 22.08.2024. Crl. MC. No. 4961 of 2023 was filed before the Delhi High Court assailing FIR No. 25 of 2021 dated 27.01.2021. The date for final arguments in this case is 15.10.2024. C.R.R. No. 4503 of 2022 was filed before the Calcutta High Court in relation to FIR No. 646 of 2022 dated 26.10.2022 and an interim order was passed on 21.12.2022, directing that no coercive steps should be taken. Notably, this writ petition was instituted before Writ Petition (Crl.) No. 166 of 2023 was filed before this Court.

9. Amit Walia, respondent No. 5 in the writ petition, filed an application seeking modification of the order dated 04.07.2023, in so far as it barred investigation till final disposal of the cases by the High Courts. The Enforcement Directorate, New Delhi, sought recall of the order as it was not heard before the disposal of the case with directions adverse to it.

10. It is well settled that, ordinarily and in the usual course, this Court would be averse and opposed to entertaining miscellaneous applications in disposed of cases. In Jaipur Vidyut Vitran Nigam Ltd. and others vs. Adani Power Rajasthan Ltd. and another¹, this Court observed that post-disposal applications for modification and clarification of the disposal order shall lie only in rare cases, where the order passed by this Court is executory in nature and the directions become impossible to implement due to subsequent developments. Reference was made to Supertech Ltd. vs. Emerald Court Owner Resident Welfare Association and others ², wherein this Court had found that the miscellaneous application filed in that disposed of case was to seek substantive modification of the judgment and held that such an attempt is not permissible by way of a modification/ clarification application. In that context, the caselaw, set out below, on the maintainability of such applications

was considered at length.

11. In *Delhi Administration vs. Gurdip Singh Uban and others* 3, it was observed that applications are sometimes filed for “clarification”, “modification” or “recall”, not because any such clarification or modification (2024) 3 SCR 1023 = 2024 INSC 213 (2023) 10 SCC 817 (2000) 7 SCC 296 is necessary but because the applicant, in reality, wants a review and a hearing and, thereby, seeks to avoid listing of the matter in chambers by way of circulation. Again, in *Common Cause vs. Union of India and others* 4, it was affirmed that if a clarification application is, in substance, seeking review of the judgment and that attempt is made by disguising it as a clarification application so as to have a hearing in open Court, avoiding the procedure governing review petitions, such an attempt should be deprecated. Later, in *Meghmala and others vs. G. Narasimha Reddy and others* 5, this Court observed that a disturbing trend has emerged of repeated applications, styled as miscellaneous applications, being filed in the Court after a final judgment is pronounced and condemned the practice as one having no legal foundation, which must be firmly discouraged. More recently, in *Rashid Khan Pathan and Vijay Kurle and others, in re* 6, this Court held that in a country governed by the Rule of Law, finality of judgments is absolutely imperative and great sanctity is attached to such finality. It was further observed that permitting parties to reopen concluded judgments by filing repeated interlocutory applications amounts to an abuse of the process of law which would have a far-reaching adverse impact on the administration of justice.

(2004) 5 SCC 222 (2010) 8 SCC 383 (2021) 12 SCC 64

12. However, when the individual facts of a particular case so warrant, there can be no bar to entertaining a clarification/modification petition in a disposed of case. This would necessarily depend on the facts and circumstances of that individual case. Notably, Rule 6 of Order LV of the Supreme Court Rules, 2013, states that nothing in the said Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Therefore, if any such abuse of process is noticed after the disposal of the case or if a modification is found essential to meet the ends of justice, this Court would be justified in entertaining an application in a disposed of case and exercising such power.

13. As pointed out by this Court in *V.K. Jain v. High Court of Delhi through Registrar General and others* 7, our legal system acknowledges the fallibility of Judges. Though this observation was made in the context of Judges of the District Judiciary, it would be equally applicable to those in higher echelons of the judicial hierarchy. As Courts of record, it is necessary that Constitutional Courts recognize errors that may have crept into their judicial orders and rectify the same when called upon to do so. (2008) 17 SCC 538 In *Rajendra Prasad Arya v. State of Bihar* 8, this Court observed that there can be no dispute with the proposition that the Court always has the power to rectify any mistake committed by it. Being the Court of the last resort, this Court would not shy away from acknowledging any mistakes in its orders and would be ready to set right such wrongs.

14. It is a settled principle that no adverse order should be passed against a party without hearing it. This is the fundamental principle of natural justice and it is a basic canon of jurisprudence (see *Asit*

Kumar Kar vs. State of West Bengal and others⁹). The application filed by the Enforcement Directorate, New Delhi, seeking recall of the order dated 04.07.2023 is premised on the sole ground that it was not given a hearing prior to its passing. As pointed out in *State of Punjab v. Davinder Pal Singh Bhullar and others*¹⁰, the power of recall is different from the power of altering/ reviewing a judgment. It was held therein that if an order is pronounced without giving an opportunity of hearing to a party affected by it, inherent powers of the Court can be exercised to recall such an order.

15. In the case on hand, the Enforcement Directorate, New Delhi, was impleaded as a party respondent in the writ petition on 04.07.2023, by way of the final order disposing of the case. The final order was passed without (2000) 9 SCC 514 (2009) 2 SCC 703 (2011) 14 SCC 770 putting it on notice and affording it an opportunity of hearing. Therefore, the directions of this Court in the said order in relation to ECIR No. ECIR/HIU-1/06/2023 cannot be sustained. More so, as the final order only records that the interlocutory applications for impleadment and to bring on record additional facts were allowed and no more. Significantly, I.A. No. 81083 of 2023, seeking permission to file additional documents/facts/ annexures, was alone reflected in the Record of Proceedings of that day in relation to the writ petition. I.A. No. 122413 of 2023 was not even listed or shown. In any event, the application for amendment of the prayers was not ordered. In effect, FIR No. 197 of 2023 and ECIR No. ECIR/HIU-1/06/2023 were not even made the subject matter of challenge in the writ petition.

16. Further, though this Court relegated the writ petitioners to the jurisdictional High Courts for challenging the FIRs registered against them, certain errors crept in by oversight while doing so. As regards FIR No. 197 of 2023, this Court directed that no coercive steps should be taken in relation thereto against the petitioner financial institution and its people till final disposal of such a petition by the High Court. Having said that, this Court went on to observe that it would be open to the writ petitioners to seek stay of proceedings in relation thereto, which was to be considered by the High Court on merits. In effect, though they stood protected from coercive action in relation to this FIR, proceedings pursuant thereto were permitted to go on and it was left open to them to seek stay of such proceedings before the High Court. Once, no coercive steps were permitted in connection with the said FIR till the final disposal of the petition which was to be filed, the question of permitting the petitioners to again seek stay of proceedings in relation to the said FIR before the High Court was unnecessary.

17. Further, the stay of proceedings granted by this Court in the writ petition, in relation to the first three FIRs, was directed to continue till the disposal of the writ petitions to be filed before the High Courts. When a party is relegated to the High Court to pursue its remedies, it would not be proper, in the normal course, to bind the said High Court with directions in relation to the proceedings to be impugned before such Court. Ordinarily, this Court would leave all issues open for the party so relegated to raise and pursue before the High Court. In *Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others* ¹¹, a 3-Judge Bench of this Court laid down guidelines for exercise of power under Section 482 CrPC, cautioning that criminal proceedings ought not to be scuttled and Courts, in the usual course, should not thwart investigation into cognizable offences. That being so and as no compelling reasons were recorded by this Court in the order (2021) SCC OnLine SC 315 =

2021 INSC 253 dated 04.07.2023 to justify deviation in the case on hand, it clearly manifests that it was purely unintentional and due to sheer oversight.

18. That apart, such directions can be misconstrued by the High Courts to be observations by this Court on the merits of the matter, thereby influencing the adjudication of the case. Thus, for reasons more than one, we are of the opinion that the order dated 04.07.2023 requires to be modified. The said order shall stand recalled insofar as it pertains to ECIR No. ECIR/HIU-1/06/2023. It is left open to the High Court of Allahabad to consider the challenge thereto in Criminal Miscellaneous Writ Petition No. 10893 of 2023 on merits and in accordance with law, uninfluenced by any observations made in the order dated 04.07.2023. Further, the said order dated 04.07.2023 shall stand modified by substituting the words 'till final disposal of the respective petitions...' in paragraph 8 thereof with the words 'till the filing of the respective petitions'. This would mean that the High Courts in which proceedings have been instituted against the FIRs would be at liberty to entertain applications for interim relief in relation thereto and consider such applications and also the main cases on their own merits and in accordance with law, uninfluenced by any observations made in the order dated 04.07.2023. The miscellaneous applications and the interlocutory applications are disposed of accordingly. Registry shall upload and attach a corrigendum to the order dated 04.07.2023 passed in Writ Petition (Crl.) No. 166 of 2023, stating that it stands duly modified by and to the extent indicated in this order.

.....,J (SANJAY KUMAR)J (ARAVIND KUMAR) September 23, 2024;

New Delhi.