Superintendent And Remembrancer Of ... vs Mohan Singh And Ors. on 8 October, 1974

Equivalent citations: AIR1975SC1002, 1975CRILJ812, (1975)77PLR147, (1975)3SCC706, AIR 1975 SUPREME COURT 1002, (1975) 3 SCC 706, 1975 SCC(CRI) 156, 77 PUN L R 147, 1976 MADLJ(CRI) 1, 1975 2 SCJ 478, 1975 ALLCRIC 1

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Bench: P. Jaganmohan Reddy, P.N. Bhagwati

JUDGMENT

P.N. Bhagwati, J.

1. On 17th May, 1965 a lorry loaded with heavy logs of wood was driven by the third respondent through a narrow lane off Kalighat Road and brought to a halt in front of a saw mill of which Respondent No. 1 was the owner and Respondent No. 2, the manager. Whilst the logs of wood were being unloaded from the lorry by two coolies, they fell on a girl called Mita Mukherjee and resulted in her death. A first information report was thereupon lodged with Bhawanipur Police Station against Respondents Nos. 2 and 3 and the two coolies who were unloading the logs of wood. On the basis of this first information report, Respondents Nos. 2 and 3 were prosecuted in the Court of the Magistrate, Alipore. Respondent No. 1 was also joined as an accused though his name did not appear in the first information report. The two coolies were absconding and they were, therefore, left out of the criminal case. The charge against Respondent No. 1 was that though residents of the locality had repeatedly asked him not to allow entry of lorries dangerously loaded with heavy logs of wood into the narrow lane, he did not pay any heed and on or about 17th May, 1965 the third respondent engaged by him drove the lorry in question dangerously with heavy logs of wood and kept the lorry in the narrow lane in front of the saw mill rashly and negligently and his manager, the 2nd respondent, had logs of wood unloaded rashly and negligently without due care and caution to guard against the dangerous consequences and caused the death of Mita Mukherjee and thereby committed an offence under Section 304A read with Section 109 of the Indian Penal Code. There was also a similar charge against respondent No. 2 under Section 304A of the Indian Penal Code. The 1st respondent filed an application being Criminal Revision No. 1375 of 1965 in the Calcutta High Court for quashing the proceeding on the ground that it constituted an abuse of the process of the Court and in any event, its quashing would secure the ends of justice. A Division Bench of the High Court rejected the application by an Order dated 12th December, 1968. The only ground on which the application was rejected was that "the points raised... depend on certain questions of fact which have to be ascertained on evidence by the Court of facts" and the Division Bench did not,

therefore, propose "to interfere with the proceeding against the petitioner at this stage". Though this Order rejecting the application was made on 12th December, 1968, no progress at all was made in the criminal case until March, 1970. Respondents Nos. 1 and 2, therefore, once again moved the Calcutta High Court for quashing the proceeding and this time the Division Bench of the High Court by an Order dated 7th April, 1970 allowed the application and quashed the proceeding on the ground that no prima facie case was at all made out and the continuance of the proceeding was, therefore, an abuse of the process of the Court. The State was of the view that once the High Court had rejected an application for quashing the proceeding by its Order dated 12th December, 1968, it was not competent to the High Court to entertain another application for the same purpose as that would amount to the High Court reviewing its earlier Order which the High Court had no jurisdiction to do: An application was, therefore, made by the State to the High Court for leave to appeal to this Court under Article 134 of the Constitution and such leave was granted by an Order dated 25th November, 1970. Hence, the present appeal.

2. The main question debated before us was whether the High Court had jurisdiction to make the Order, dated 7th April, 1970 quashing the proceeding against Respondents Nos. 1, 2 and 3 when on an earlier application made by the 1st respondent, the High Court had by its Order dated 12th December, 1968 refused to quash the proceeding. Mr. Chatterjee on behalf of the State strenuously contended that the High Court was not competent to entertain the subsequent application of Respondents Nos. 1 and 2 and make the Order dated 7th April, 1970 quashing the proceeding, because that was tantamount to a review of its earlier Order by the High Court, which was outside the jurisdiction of the High Court to do. He relied on two decisions of the Punjab and Orissa High Courts in support of his contention, namely, Hoshiar Singh v. The State and Namdeo Sindhi v. The State . But we fail to see how these decisions can be of any help to him in his contention. They deal with a situation where an attempt was made to persuade the High Court in exercise of its revisional jurisdiction to reopen an earlier drctet passed by it in appeal or in revision finally disposing of a criminal proceeding and it was held, that the High Court had no, jurisdiction to revise its earlier Order, because the power of revision could be exercised only against an Order of a subordinate Court. Mr. Chatterjee also relied on a decision of this Court in U. J. S. Chopra v. State of Bombay where M. H. Bhagwati, J., speaking on behalf of himself and Imam, J., observed that once a judgment has been pronounced by the High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment and there is no provision in the Criminal Procedure Code which would enable the High Court to review the same or to exercise revisional jurisdiction over the same. These observations were sought to be explained by Mr. Mukherjee on behalf of the first respondent by saying that they should not be read as laying down any general proposition excluding the applicability of Section 561A in respect of an Order made by the High Court in exercise of its appellate or revisional jurisdiction even if the conditions attracting the applicability of that Section were satisfied in respect of such Order, because that was not the question before the Court in that case and the Court was not concerned to inquire whether the High Court can in exercise of its inherent power under Section 561A review an earlier Order made by it in exercise of its appellate or revisional jurisdiction. The question as to the scope and ambit of the inherent power of the High Court under Section 561A vis-a-vis an earlier Order made by it was, therefore, not concluded by this decision and the matter was res Integra so far as this Court is concerned. Mr. Mukherjee cited in support of this contention three decisions, namely, Raj

Narain v. The State , Lai Singh v. The State. and Ram Vallabh v. State of Bihar . It is, however, not necessary for us to examine the true effect of these observations as they have no application because the present case is not one where the High Court was invited to revise or review an earlier Order made by it in exercise of its revisional jurisdiction finally disposing of a criminal proceeding. Here, the situation is wholly different. The earlier application which was rejected by the High Court was an application under Section 561A of the CrPC to quash the proceeding and the High Court rejected it on the ground that the evidence was yet to be led and it was not desirable to interfere with the proceeding at that stage. But, thereafter, the criminal case dragged on for a period of about one and half years without any progress at all and it was in these circumstances that respondents Nos. 1 and 2 were constrained to make a fresh application to the High Court under Section 561-A to quash the proceeding. It is difficult to see how in these circumstances it could ever be contended that what the High Court was being asked to do by making the subsequent application was to review or revise the Order made by it on the earlier application. Section 561-A preserves the inherent power of the High Court to make such Orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of Respondents Nos. 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of respondents Nos. 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and a half years. It was for this reason that, despite the earlier Order dated 12th December, 1968, the High Court proceeded to consider the subsequent application of respondents Nos. 1 and 2 for the of deciding whether it should exercise its inherent jurisdiction under Section 561 A. This the High Court was perfectly entitled to do and we do not see any jurisdictional infirmity in the Order of the High Court. Even on the merits, we find that the Order of the High Court was justified as no prima facie case appears to have been made out against respondents Nos. 1 and 2.

3. The appeal, therefore, fails and is dismissed.