State Of Maharashtra vs Ramdas Shrinivas Nayak & Anr on 28 July, 1982

Equivalent citations: 1982 AIR 1249, 1983 SCR (1) 8, AIR 1982 SUPREME COURT 1249, 1982 BBCJ 143, 1982 CRI APP R (SC) 179, 1982 (14) LAWYER 59, 1982 UP CRIR 246, 1982 SCC(CRI) 464, 1982 CRIAPPR(SC) 228, 1982 (2) SCC 483, 1982 SC CRIR 353, 1982 SC CRI R 358, 1982 UJ (SC) 473, 1982 CRILR(SC MAH GUJ) 284, 1982 BLJR 413, 1982 SC CRI R 185, 1982 BLJR 381, 1982 (2) SCC 436, (1982) ALLCRIR 270, (1982) ALLCRIC 210

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, A.P. Sen

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
RAMDAS SHRINIVAS NAYAK & ANR.

DATE OF JUDGMENT28/07/1982

BENCH:
REDDY, O. CHINNAPPA (J)
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REDDY, O. CHINNAPPA (J)
SEN, A.P. (J)

CITATION:
1982 AIR 1249 1983 SCR (1) 8
1982 SCC (2) 463 1982 SCALE (1)554
CITATOR INFO :
RF 1984 SC 684 (5)
RF 1988 SC1531 (143)
R 1989 SC 129 (9)
RF 1991 SC1420 (62)

ACT:
Evidence - Conclusive proof of statements recorded in the judgment - Any concession made before the court and as recorded in the judgment cannot be resiled later, except in rare end appropriate case - Stage at which the circumstances of the record to be rectified, explained - Constitution of India, Article 136 - Interference by the Supreme Court, impermissible.

HEADNOTE:

Sanction for the prosecution of the Chief Minister under Section 6 of the Prevention of Corruption Act - Whether the Governor should act in his discretion or with the aid and advice of the Council of Ministers-Constitution of India, 1950, Article 163.

Dismissing the Special Leave Petition, the Court,

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HELD: 1:1. Supreme Court is bound to accept the statement of the judges recorded in their judgment and, therefore, it cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public policy bars such an action and judicial decorum restrains it. [12 C]

1:2. Supreme Court cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. Matters of judicial record are unquestionable and not open to doubt. Judges cannot be dragged into the arena. If the judges say in their judgments that something was done, said or admitted before them, that has to be the last word on the subject. Judges record is conclusive. [12 C-E]

1:3. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course, a party may resile and an Appellate Court may permit him, in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice, but he may not call in question the very fact of making the concession as recorded in the judgment. [12 F-H, 13 A]

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Rex v. Mellor 7 Cox C.C. 454, quoted with approval.

Madhusudan v. Chandrawati, A.l.R. 1917 P.C. 30; King Emperor v. Barendra Kumar Ghose, 28 C.W.N. 170: Sarat Chandra v. Bibhabati Debi, 34 Cal. L.J. 302. Samasundaram v. Subramanian. A.I.R 1926 P.C. 136: approved.

2. In the facts and circumstances of the present case, it is clear that, when there is to be a prosecution of the Chief Minister, tho Governor would, while determining whether sanction for such prosecution should be granted or not under section 6 of the Prevention of Corruption Act, as a matter of propriety, necessarily act in his own discretion and not on the advice of the Council of Ministers. [14 F-G]

3. In the instant case, the cause of justice would in no way be advanced by permitting the state of Maharashtra to now resile from the concession so made. On the other hand the concession was rightly made before the High Court to advance the cause of justice. [15 A]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Petition for Special Leave to Appeal (CRL) No. 1523 of 1982.

From the judgment and order dated the 12th April, 1982 of the Bombay High Court in Criminal Revision Application No. 1742 of 1981.

L.N. Sinha, Attorney General, Dr. Y.S. Chitale, and Miss A. Subhashini for the petitioner.

Soli J. Sorabjee and Miss Rani Jethmalani for Respondent No. 1.

A.K. Sen and B.R. Handa for Respondent No. 2. The order of the Court was delivered by CHINNAPA REDDY, J. Abdul Rehman Antulay was the Chief Minister of the State of Maharashtra till January 12, 1982. While he was yet holding the office of Chief Minister one Ramdas Shrinivas Nayak, an erstwhile Member of the Maharashtra Legislative Assembly, professing a keen interest in clean administration and so keeping a watchful eye on centres of power and sources of corruption, filed a complaint against Shri Antulay, in the court of the Metropolitan Magistrate, 28th Court, Esplanade, Bombay charging him with the commission of offences punishable under ss. 161 and 185 of the Indian Penal Code and S of the Prevention of Corruption Act. The substance of the allegation was that Shri Antulay founded and controlled a number of trusts called by various names freely, and falsely making it appear that the Prime Minister and the Government of Maharashtra were either interested or had sponsored the trusts, collected contributions and donations for the alleged benefit of the Trusts by misuse of his position and power by dispensing favours and holding out threats, and, thereby placed himself in a position where he could juggle and manipulate a sum of over Rs. five crores. The learned Metropolitan Magistrate refused to enteratain the complaint holding that it was not maintainable without the requisite sanction of the Government under s. 6 of the Prevention of Corruption Act. Against the order of the learned Metropolitan Magistrate, R.S. Nayak presented a Criminal Revision Application to the High Court of Maharashtra purporting to be under ss. 407 and 482 of the Code of Criminal Procedure and Art. 228 of the Constitution. The State of Maharashtra and Shri Antulay were impleaded as Respondents. During the course of the pendency of the Criminal Revision Application, Shri Antualy resigned his position as the Chief Minister of the State of Maharashtra. By an elaborate order dated April 12, 1982, Gadgil and Kotwal, JJ upheld the view that sanction was necessary and dismissed the Revision Application. While dismissing the application, the learned Judges noticed that an application had been made to the Governor of Maharashtra for grant of the requisite sanction and observed that the application should not be decided by the Law Minister or any other Minister, but that "it deserved to be decided by the Governor in his individual discretion". The State of Maharashtra though not aggrieved by the

dismissal of the Criminal Revision Application, seeks special leave to appeal to this Court under Art. 136 of the Constitution against the judgment of the High Court of Maharashtra in so far as the judgment may be said to have directed the Governor of Maharashtra to exercise his individual discretion in deciding the question whether sanction should or should not be granted to prosecute Shri Antulay. The learned Attorney General, who appeared for the State of Maharashtra, raised the contention that it was not for the Court to decide whether in respect of a particular matter, the Governor should act in his discretion or with the aid and advice of the Council of Ministers and that under Art. 163(2), if any question arose whether any matter was or was not a matter as respects which the Governor was by or under the Constitution required to act in his discretion, the decision of the Governor in his discretion was final, and the validity of anything done by the Governor was not liable to be called in question on the ground that he ought not to have acted in his discretion. He also invited our attention to Art. 163 (3) which provides that the question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any Court. The question posed by the learned Attorney General is no doubt an important question, probably worthy of serious consideration by this court under Art. 136 of the Constitution. But, in the present case, we do not propose to grant special leave under Art. 136 of the Constitution, solely in order to consider this question firstly because the Criminal Revision a Application itself has been dismissed by the High Court and secondly-and this is important-there was an express concession made in the High Court by the Respondents that in the situation presented by the facts of the present case, the Governor should act in the exercise of his individual discretion.

Gadgil, J. referred to the concession in the following words :-

> "However, I may observe at this juncture itself that at one stage it was expressly submitted by the learned counsel on behalf of the respondent that in case if it is felt that bias is well apparently inherent in the proposed action of the concerned Ministry, then in such a case situation notwithstanding the other Ministers not being joined in the arena of the prospective accused, it would be a justified ground for the Governor on his own, independently and without any reference to any Ministry. to decide that question. Kotwal, J. put it even more explicitly and said:
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> "...At one stage it was unequivocally submitted by the learned counsel on behalf of the respondents in no uncertain terms that even in this case notwithstanding there being no accusation against the Law Minister as such if the court feels that in the nature of things a bias in favour of the respondent and against a complainant would be manifestly inherent, apparent and implied in the mind of the Law Minister, then in that event, he would not be entitled to consider complainant's application and on the equal footing even the other Ministers may not be qualified to do so and the learned counsel further expressly submitted that in such an event, it would only the Governor, who on his own, independently, will be entitled to consider that question."

When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened

and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation".(1) We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. (2) That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate (I) Per Lord Atkinson in Somasundaran v. Subramanian, A.I.R 1926 P.C. 136.

(2) (Per Lord Buckmaster in Madhusudan v. Chanderwati, A.I.R. 1917 P.C. 30.

Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

In Rev. Mellor, 7 Cox. P.C. 454 Martin was reported to have said: "we must consider the statement of the learned judge as absolute verity and we ought to take his statement precisely as a record and act on it in the same manner as on a record of Court which of itself implies an absolute verity".

In Ring Emperor v. Barendra Kumar Ghose (1): said, ".. these proceedings emphasise the importance of rigidly maintaining the rule that a statement by a learned judge as to what took place during the course of a trial before him is final and decisive; it is not to be criticised or circumvented; much less is it to be exposed to animad version".

In Sarat Chandra v. Bibhabati Debi (2) Sir Asutosh Mookerjee explained what had to be done:

> "It is plain that in cases of this character where a litigant feels aggrieved by the statement in a judgment that an admission has been made, the most convenient and satisfactory course to follow, wherever practicable, is to apply to the Judge without delay and ask for rectification or review of the judgment"

So the judges, record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the judge himself, but nowhere else.

On the invitation of Mr. Sen, we have also perused the written submissions made by him before the High Court. We have two comments to make: First, oral submissions do not always conform to written submissions. In the course of argument, counsel, often, wisely and fairly, make concessions which may not find a place in the written submissions. Discussion draws out many a concession.

(1) 28 C.W.N. 170.

(2) 34 C.L.J. 302.

Second, there are some significant sentences in the written submissions which probabilise the concession. They are: "If in the existing case, the entire Council of Ministers becomes interested in the use of the statutory power one way or the other, the doctrine of necessity will fill up the gap by enabling the Governor by dispensing with the advice of His Council of Ministers and take a decision of his own on the merits of the case. Such a discretion of the Governor must be implied as inherent in his constitutional powers.. The doctrine of necessity will supply the necessary power to the Governor to act without the advice of the Council of Ministers in such a case where the entire Council of Ministers is biased. In fact, it will be contrary to the Constitution and the principles of democratic Government which it enshrines if the Governor was obliged not to act and to decline to perform his statutory duties because his Ministers had become involved personally. For the interest of democratic Government and its functioning, the Governor must act in such a case on his own. Otherwise, he will become an instrument for serving the personal and selfish interest of his Ministers." We wish to say no more. As we said, we cannot and we will not embark upon an enquiry. We will go by the judges' record.

We may add, there is nothing before us to think that any such mistake occurred, nor is there any ground taken in the petition for grant of special leave that the learned judges proceeded on a mistaken view that the learned counsel had made a concession that there might arise circumstances, under which the Governor in granting sanction to prosecute a Minister must act in his own discretion and not on the advice of the Council of Ministers. The statement in the judgment that such a concession was made is conclusive and, if we may say so, the concession was rightly made. [n the facts and circumstances of the present case, we have no doubt in our mind that when there is to be a prosecution of the Chief Minister, the Governor would, while determining whether sanction for such prosecution should be granted or not under s. 6 of the Prevention of Corruption Act, as a matter of propriety, necessarily act in his own discretion and not on the advice of the Council of Ministers.

The question then is whether we should permit the State of Maharashtra to resile from the concession made before the High Court and raise before us the contention now advanced by the learned Attorney General. We have not the slightest doubt that the cause of justice would in no way be advanced by permitting the State of Maharashtra to now resile from the concession and agitate the question posed by the learned Attorney General. On the other hand we are satisfied that the concession was made to advance the cause of justice as it was rightly thought that in deciding to sanction or not to sanction the prosecution of a Chief Minister, the Governor would act in the exercise of his discretion and not with the aid and advice of the Council of Ministers. The application

for grant of special leave is, therefore, dismissed.

S.R. Petition dismissed.