Simranjit Singh Mann vs Union Of India And Another on 16 September, 1992

Equivalent citations: AIR1993SC280, 1993(1)ALT(CRI)156, 1993CRILJ37, JT1992(5)SC441, 1992(2)SCALE506, (1992)4SCC653, [1992]SUPP1SCR592, AIR 1993 SUPREME COURT 280, 1992 (4) SCC 653, 1992 AIR SCW 3133, 1993 CALCRILR 44, 1993 SCC(CRI) 22, 1993 (1) UJ (SC) 32, 1992 (4) SCR 592, 1992 (5) JT 441, (1993) MAD LJ(CRI) 222, (1993) SC CR R 198, (1993) 1 RECCRIR 2, (1992) 3 CURCRIR 357, (1992) 3 ALLCRILR 528, (1992) 4 SCR 592 (SC), 1993 CRI. L. J. 37, 1993 UJ(SC) 1 32, (1992) 5 JT 441 (SC), (1992) 2 LS 28

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Bench: A.M. Ahmadi, K. Ramaswamy

ORDER

A.M. Ahmadi, J.

1. Does a Petitioner-third party who is a total stranger to the prosecution culminating in the conviction of the accused have any 'locus standi' to challenge the conviction and the sentence awarded to the convicts in a petition brought under Article 32 of the Constitution? If the answer to this poser is in the negative this petition must fail on that preliminary ground. Before we proceed to answer the same it would be advantageous to notice a few facts.

2. The assassins of General Vaidya were charge-sheeted under Sections 120B, 302, 307, 465, 468, 471 and 212, I.P.C. read with sections 3 and 4 of the Terrorist and Disruptive Activities Act, 1985, (hereinafter referred to as 'the TADA Act') and Section 10 of the Passport Act. Five persons besides the absconding accused were put up for trial before the Designated Court, Pune. The Designated Court acquitted all the accused of the charges levelled against them except accused No. 1 Sukhdev Singh @ Sukha and accused No. 5 Harjinder Singh @ Jinda who were convicted for the murder of General Vaidya and for causing bullet injury to his wife Bhanumati. Accused No. 1 was convicted under Sections 302 and 307, I.P.C. and accused No. 5 was convicted under the said two provisions with the aid of Section 34, I.P.C. The Designated Court, bearing in mind the gravity of the crime came to the conclusion that the crime falls into the category of 'the rarest of rare' and awarded the capital punishment, death penalty, for the murder of General Vaidya and rigorous imprisonment of ten years for the injury caused to his wife Bhaunumati. The death penalty was of course subject to confirmation by this Court. The State preferred an appeal insofar as the order of acquittal was

concerned but the accused Nos. 1 and 5 did not prefer any appeal against their conviction. However, the entire case was thrown open before this Court in the reference arising from the death sentence imposed on the two convicts by the Designated Court which sentence was subject to confirmation by this Court. This Court on a reassessment of the entire evidence dismissed the State's appeal but affirmed the conviction of the aforesaid two accused and confirmed the death sentence for reasons stated in its judgment dated 15th July, 1992.

3. On 19th August, 1992, the petitioner filed this petition under Article 32 of the Constitution complaining of violation of Articles 22, 21 and 14 of the Constitution. The locus pleaded in paragraph 2 of the petition is as under:

> The petitioner is the President of Akali Dal (M) and is an acknowledged political leader and, therefore, is vitally interested in upholding the rule of law and ensuring that the same is applied equally with fairness, equity and good consciousness to all.
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> The main thrust of the petitioner's case is that once the Designated Court's finding that no case for conviction under Sections 3 and 4 of the TADA Act was made out was affirmed by this Court, this Court had no jurisdiction to confirm the death sentence as the reference for confirmation could only be disposed of by the High Court of Maharashtra. This Court, avers the petitioner, deviated from this course in the case of the two convicts thereby violating the rule of law as well as Articles 22, 21 and 14 of the Constitution. Secondly, contends the petitioner, if the case came to be decided by this Court under the TADA Act, since the constitutional validity of that law was under challenge, it was incumbent on this Court to await the court's adjudication on that point before disposing of the death reference. The petitioner has also questioned this Court's view that the case belongs to the rarest to rare category and hence the sentence of death was justified. On this line of reasoning the petitioner seeks certain declarations, namely, (a) that the trial of the two convicts was bad in law and violative of Articles 14, 21 and 22 of the Constitution as the Designated Court had no jurisdiction to proceed with the case on its holding that no offence under Sections 3 and 4 of the TADA Act was made out (b) the reference to the Supreme Court was bad in law and violative of Articles 14 and 22 of the Constitution and (c) the sentence imposed by the Designated Court and confirmed by this Court was bad in law and violative of Articles 21, 22 and 14 of the Constitution.

4. Before we proceed to deal with this petition we must refer to the fact that this very petitioner had addressed a letter dated 1st February, 1990 to the Hon'ble Chief Justice of India requesting that he may be heard on the propriety, validity and constitutionality of the trial as well as the sentence imposed on the two convicts which was awaiting confirmation by this Court. Mr. R.S. Sodhi, the present counsel for the petitioner, was appointed Amicus Curiae at State expense to argue and assist the Court. However, at the hearing of the State's appeal as well as the death reference, no submission was made by Mr. Sodhi on the petitioner's application dated 1st February, 1990. If that had been done, the need for this petition could have been obviated.

5. We now proceed to deal with the present petition. As stated earlier this is a petition under Article 32 of the Constitution. That article which finds a place in Part III of the Constitution entitled 'Fundamental Rights' provides that the right to move the Supreme Court for the enforcement of the rights conferred in that part is guaranteed. It empowers the Supreme Court to issue directions or orders or writs for the enforcement of any of the fundamental rights. The petitioner does not seek to enforce any of his fundamental rights nor does he complain that any of his fundamental rights is violated. He seeks to enforce the fundamental rights of others, namely, the two condemned convicts who themselves do not complain of their violation.

6. Under the CrPC, Sections 303 and 304, a right is conferred on a person accused of an offence before a Criminal Court or against whom proceedings are instituted under the Code, to be defended by a pleader of his choice and an obligation is cast on the Court to assign to such person a pleader for his defence at State expense if he is not represented by a pleader or where it appears that he has no means to engage one of his choice. Similarly, Sections 384, 385 and 386 of the Code provide for affording an opportunity to the appellant-accused's pleader to be heard in support to his appeal. So also Order XXI of the Supreme Court Rules makes provision for assigning an advocate to an accused who is unrepresented. But there is no provision in the Code or the Rules which permits an accused to be represented by a person other than a lawyer, like the petitioner before us. There is nothing on record to suggest that the two convicts have authorised the petitioner to move this Court on their behalf.

7. Ordinarily, the aggrieved party which is affected by any order has the right to seek redress by questioning the legality, validity or correctness of the order, unless such party is a minor, an insane person or is suffering from any other disability which the law recognises as sufficient to permit another person, e.g. next friend, to move the Court on his behalf. If a guardian or a next friend initiates proceedings for and on behalf of such a disabled aggrieved party, it is in effect proceedings initiated by the party aggrieved and not by a total stranger who has no direct personal stake in the outcome thereof. In the present case no fundamental right of the petitioner before us is violated; if at all the case sought to be made out is that the fundamental rights of the two convicts have been violated. The two convicts could, if so minded, have raised the contention in the earlier proceedings but a third party, a total stranger to the trial commenced against the two convicts, cannot be permitted to question the correctness of the conviction recorded against them. If that were permitted any and every person could challenge convictions recorded day in and day out by courts even if the persons convicted do not desire to do so and are inclined to acquiesce in the decision. If the aggrieved party invokes the jurisdiction of this Court under Article 32 of the Constitution, that may stand on a different footing as in the case of A.R. Antulay v. R.S. Nayak and Anr. . However, we should not be understood to say that in all such cases the aggrieved party has a remedy under Article 32 of the Constitution. Unless an aggrieved party is under some disability recognised by law, it would be unsafe and hazardous to allow any third party to question the decision against him. Take for example a case where a person accused under Section 302, I.P.C. is convicted for a lesser offence under Section 324, I.P.C. The accused is quite satisfied with the decision but a third party questions it under Article 32 and succeeds. The conviction is set aside and a fresh trial commenced ends up in the conviction of the accused under Section 302, I.P.C. The person to suffer for the unilateral act of the third party would by the accused! Many such situations can be pointed out to emphasise the

hazard involved if such third party's unsolicited action is entertained. Cases which have ended in conviction by the apex court after a full gamut of litigation are not comparable with preventive detention cases where a friend or next of kin is permitted to seek a writ of Habeas Corpus. We are, therefore, satisfied that neither under the provisions of the Code nor under any other statute is a third party stranger permitted to question the correctness of the conviction and sentence imposed by the Court after a regular trial. On first principles we find it difficult to accept Mr. Sodhi's contention that such a public interest litigation commenced by a leader of a recognised political party who has a genuine interest in the future of the convicts should be entertained. In S.P. Gupta v. Union of India [1981] Suppl. SCC 87, Bhagwati, J. observed:

> But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others....
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> These observations were made while discussing the question of 'locus standi' in public interest litigation. These words of caution were uttered while expanding the scope of the 'locus standi' rule. These words should deter us from entertaining this petition. This accords with the view expressed by this Court in M. Krishna Swami v. Union of India and Ors. .

8. More apposite is the view expressed by a Division Bench of this Court in Janata Dal v. H.S. Chowdhary and Ors. . That was a public interest litigation for quashing a F.I.R. lodged by the C.B.I. on 22nd January, 1990 based on the core allegation that certain named and unnamed persons had entered into a criminal conspiracy in pursuance whereof they had secured illegal gratification of crores of rupees from Bofors, a Swiss Company, through their agents as a motive or reward. The C.B.I, had moved an application before the learned Judge, Delhi, for the issuance of a letter rotator to the Swiss authorities for assistance in conducting investigation, which request was conceded. An advocate, Shri Harinder Singh Chowdhary, filed a criminal revision application before the High Court of Delhi for quashing the F.I.R. and the letter rotator on certain grounds. Several questions of law and fact were raised in support of the challenge. The High Court came to the conclusion that the said third party litigant had no 'locus standi' to maintain the action and so also the interveners had no right to seek impleadment/intervention in the said proceeding. However, the learned Judge took suo moto cognizance of the matter and for reasons stated in his order directed issue of show cause notice to the C.B.I and the State why the F.I.R. should not be quashed. On appeal this Court came to the conclusion that the learned Judge in the High Court was right in holding that the advocate litigant as well as the interveners had no 'locus standi'. The relevant observations found in paragraph 26 of the judgment read as under:

> Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants.

> (Emphasis supplied) In that case besides the advocate litigant certain political parties like the Janata Dal, the C.P.I. (Marxist), the India Congress (Socialist) and one Dr. P. Nalla Thampy Thera also approached this Court questioning the High Court's rejection of their request for impleadment/intervention. It was in this context that this Court was required to examine the question whether third parties had any 'locus standi' in criminal proceedings and answered the same as stated above. This decision clearly negatives the submission made by Mr. Sodhi in support of the maintainability of this petition. We are, however, in respectful agreement with the view expressed in the observations extracted hereinbefore.

9. For the above reasons we hold that the petitioner has no 'locus standi' to invoke this Court's jurisdiction under Article 32 of the Constitution. We, therefore, summarily reject this petition.