

[2024] 5 S.C.R. 400 : 2024 INSC 344

Leonard Xavier Valdaris
v.
Jitendra Ramnayaran Rathod & Ors.

(Criminal Appeal No. 2198 of 2024)

22 April 2024

[Sanjiv Khanna and Dipankar Datta JJ.]

Issue for Consideration

Whether a Single Judge of the High Court can disagree with an earlier order of a Single Judge based on the same set of facts and one trial, and give a conflicting order.

Headnotes

Practice and Procedure – Conflicting Decisions – Two conflicting orders by co-ordinate benches arising out of same set of facts and one trial – Subsequent order to be treated as order referring the matter to larger Bench of two judges for consideration

Held: Single Judge of High Court upheld order passed by the Special Judge framing charge under Section 302 of the Penal Code, 1860 – Order attained finality – Subsequently, another Single Judge of High Court disagreed and directed charge under s.302 not to be framed – Same set of facts and one trial leading to two conflicting orders – Rule 8 of the Bombay High Court Appellate Side Rules, 1960, considered – If Single Judge is of the opinion that the earlier order was unsustainable and contrary to law should have referred to a Division Bench/ two judges Bench – Should not have passed conflicting order – Subsequent decision of the Single Judge to be treated as one differing with the view expressed in the earlier order and as one referring the matter to a larger bench of two Judges/ Division Bench for consideration – Chief Justice of High Court requested to constitute appropriate Bench. [Paras 5, 8-10]

Case Law Cited

Shri Bhagwan & Another v. Shri Ram Chand & Another [\[1965\] 3 SCR 218](#) : AIR 1965 SC 1767; *Eknath Shankarrao Mukkawar v. State of Maharashtra* [\[1977\] 3 SCR 513](#) : (1977) 3 SCC 25 – relied on.

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Penal Code, 1860; Bombay High Court Appellate Side Rules, 1960.

List of Keywords

Conflicting decisions; Coordinate bench; Referring to larger bench.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.2198 of 2024

From the Judgment and Order dated 20.04.2023 of the High Court of Judicature at Bombay in CRLWP No. 4451 of 2022

Appearances for Parties

Payoshi Roy, S. Prabu Ramasubramanian, Raghunatha Sethupathy B, Bharathimohan M, Avinash Kumar, Advs. for the Appellant.

Rizwan Merchant, Mrs. Yugandhara Pawar Jha, Kunal Verma, Sultan Khan, Sagar Shete, Ms. Lavanya Dhawan, Shivraj Pawar, Shrirang B. Varma, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Ms. Nidhi Khanna, Ms. Vimla Sinha, Sanjay Kr. Tyagi, Ms. Harshita Raghuvanshi, Pratyush Shrivastav, Ms. Aarushi Singh, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Order**

1. Leave granted.
2. A peculiar situation has arisen. A Single Judge of the High Court in Criminal Writ Petition No.4104/2022 titled as "*Archana Maruti Pujari & Ors. v. Central Bureau of Investigation & Ors.*" decided on 16.12.2022, had upheld the order passed by the Special Judge framing charge under Section 302 of the Indian Penal Code, 1860 (IPC). The order/judgment dated 16.12.2022 was not challenged and has attained finality.
3. By the impugned judgment/order dated 20.4.2023 in Criminal Writ Petition No.4451/2022 titled "*Jitendra Ramnarayan Rathod v. Central Bureau of Investigation & Ors.*" another Single Judge of the High Court disagreed with the view expressed in the judgment/order dated

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16.12.2022 and has directed that the charge under Section 302 of IPC should not be framed.

4. This leads to an incongruous situation where, in the same set of facts and one trial, there are two conflicting orders, one rejecting the challenge to framing of charge under Section 302 of IPC and other directing that the charge under Section 302 of IPC should not be framed.
5. In our opinion, once the Single Judge, while deciding Criminal Writ Petition No. 4451/2022 formed an opinion that the judgment/order dated 16.12.2022 passed by the learned Single Judge was unsustainable and contrary to law, the matter should have been referred to a Division Bench/two-Judges Bench instead of passing a conflicting judgment in the same set of facts. Rule 8 of the Bombay High Court Appellate Side Rules, 1960, reads:

“Reference to two or more Judges.- If it shall appear to any Judge, either on the application of a party or otherwise, that an appeal or matter can be more advantageously heard by a Bench of two or more Judges, he may report to that effect to the Chief Justice who shall make such order thereon as he shall think fit.”

6. Previously, this Court in *Lala Shri Bhagwan & Another v. Shri Ram Chand & Another*¹ held that:

“It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, needed to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question.”

7. Similarly, in *Eknath Shankarrao Mukkawar v. State of Maharashtra*², this Court stated that:

1 [1965] 3 SCR 218 : AIR 1965 SC 1767

2 [1977] 3 SCR 513 : (1977) 3 SCC 25

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“When there was a decision of a coordinate court, it was open to the learned Judge to differ from it but in that case the only judicial alternative was to refer it to a larger bench and not to dispose of the appeal by taking a contrary view. Judicial discipline as well as decorum should suggest that as the only course.”

8. Accordingly, we are of the opinion that the impugned judgment dated 20.4.2023 would be treated as an order differing with the view expressed in the judgment/order dated 16.12.2022. It would be also treated as an order referring the matter to a larger Bench of two Judges/Division Bench for consideration.
9. The impugned judgment/order is accordingly partly set aside and the appeal is allowed and disposed of in the aforesaid terms. We clarify we have not expressed any opinion on the merits of the case.
10. We request the Chief Justice of the High Court of Judicature at Bombay to constitute an appropriate Bench.

Headnotes prepared by:
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(*Verified by:* Shibani Ghosh, Adv.)

Result of the case:
Appeal disposed of.