Supreme Court of India
Sanjay Dubey vs The State Of Madhya Pradesh on 11 May, 2023
Author: K.M. Joseph
Bench: K.M. Joseph, B.V. Nagarathna, Ahsanuddin Amanullah

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1466 OF 2023
[@ SPECIAL LEAVE PETITION (CRL.) NO.11377 OF 2022]

SANJAY DUBEY … APPELLANT

VERSUS

THE STATE OF MADHYA PRADESH AND ANOTHER … RESPONDENTS

R1: The State of Madhya Pradesh
R2: Victim A Through Police Station Slimnabad

J U D G M E N T

AHSANUDDIN AMANULLAH,J.

Signature Not Verified Digitally signed by Jagdish Kumar Date: 2023.05.11 16:06:38 IST Heard learned senior counsel/counsel for the Reason:

parties.

2. Leave granted.

3. The present appeal is directed against the Judgment and Order dated 21.09.2022 (hereinafter referred to as the "Impugned Judgment") rendered by a learned Single Bench of the High Court of Madhya Pradesh at Jabalpur (hereinafter referred to as the "High Court") in MCRC No. 43998 of 2022, in which a finding, albeit prima facie, of being guilty of dereliction of duty against the appellant has been recorded. Further, it was observed in the Impugned Judgment that the appellant is not fit to be assigned any important responsibility in the Police Department and is unfit to hold any responsible post. It has further been noted that the Superintendent of Police, Katni had already line-attached the appellant and was initiating enquiry for imposition of major penalty, for which he would get conducted a preliminary enquiry by the Additional Superintendent of Police and forward the report to the Disciplinary Authority for imposition of a major penalty.

4. The Impugned Judgment also records a 'direction' issued to take appropriate action against the appellant for dereliction of duty, insubordination and causing undue disruption in the proceedings of the High Court. THE FACTUAL PRISM:

5. The Appellant was an Inspector of Sleemanabad Police Station, Katni where FIR No. 424 of 2021 dated 18.07.2021 was registered against the accused therein, one Shiv Kumar Kushwah (hereinafter referred to as the "accused") under Sections 376 & 506 of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC"), Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the "POCSO Act"), Sections 3(1)(W)(ii) and 3(2)(V) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 67 and 67A of the Information Technology Act, 2000. The Forensic Science Laboratory Report (hereinafter referred to as the "FSL Report") was forwarded to the office of the Superintendent of Police, Katni on 25.10.2021. The FSL Report was forwarded to the appellant with a note that DNA examination as per guidelines be undertaken. However, the DNA examination was not carried out. In the meantime, the accused filed MCRC No.43998 of 2022 seeking bail before the High Court.

6. During the proceedings, the High Court called for the case-diary, but the FSL Report was not included therewith. This led the High Court to seek the personal appearance of the Superintendent of Police, Katni and the In-charge of the Regional Forensic Science Laboratory, Jabalpur. On 21.09.2022, the duo mentioned supra appeared before the High Court, and informed that the FSL Report was sent to the office of Superintendent of Police, Katni on 25.10.2021. The Superintendent of Police, Katni stated that the FSL report was forwarded to the appellant along with communication dated 27.10.2021, with a note that DNA examination as per guidelines be carried out. However, the same was not done, as the appellant took the stand that the concerned Woman Sub-Inspector had not brought the FSL Report to his knowledge.

7. The learned Government Advocate for the State stated before the High Court that the case-diary had been received in the Office of the learned Advocate General on 13.09.2022, but the FSL Report was not included therewith. This prompted the High Court to pass the Impugned Judgment, as discussed above. SUBMISSIONS BY THE APPELLANT:

8. Learned senior counsel for the appellant submitted that the accused had filed MCRC No.43998 of 2022 under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the

"Code"), which only relates to grant of bail to an accused in custody. Thus, the direction to take action and hold a departmental enquiry as also the recording of finding against the appellant cannot be sustained. In support of his contention, learned counsel referred to and relied upon the decisions of this Court in Sangitaben Shaileshbhai Datanta v State of Gujarat, (2019) 14 SCC 522 and State Represented by Inspector of Police v M Murugesan, (2020) 15 SCC 251. It was contended that no matter how laudable the object, while deciding an application for bail, the Court cannot enter into any other realm.

SUBMISSIONS OF THE RESPONDENT-STATE:

9. Per contra, learned counsel for the State submitted that the appellant had, clearly, exhibited insubordination, incompetence and, dereliction of duty in an important matter and thus, in any way, was liable to be proceeded against. It was submitted that the Departmental Committee concerned had also conducted an enquiry where the appellant and some other officials were found negligent in performing their duties in providing the FSL Report along with the case-diary besides suppressing material documents. Learned counsel added that due to an interim stay apropos the departmental proceedings against the appellant, granted vide Order dated 23.11.2022, the matter could not be taken to its logical end.

ANALYSIS, REASONING AND CONCLUSION:

10. Having given the matter our anxious and thoughtful consideration, though the appellant may have a point that, stricto sensu, in a petition under Section 439 of the Code, the concerned Court ought not to travel beyond considering the specific issue viz. whether to grant bail or reject bail to an accused in custody, it cannot be lost sight of that the Court concerned herein was not a 'Court of Session' but the High Court for the State of Madhya Pradesh, established under Article 214 of the Constitution of India (hereinafter referred to as the "Constitution").

11. This singular fact, for reasons elaborated hereinafter, leads us to decline interfering with the Impugned Judgment, but for different reasons. We have no hesitation in stating that had the Impugned Judgment been rendered by a Court of Session, the factors that would have weighed with us would be starkly different.

12. A little digression is necessitated. The High Court is a Constitutional Court, possessing a wide repertoire of powers. The High Court has original, appellate and suo motu powers under Articles 226 and 227 of the Constitution. The powers under Articles 226 and 227 of the Constitution are meant for taking care of situations where the High Court feels that some direction(s)/order(s) are required in the interest of justice. Recently, in B S Hari Commandant v Union of India, 2023 SCC OnLine SC 413, the present coram had the occasion to hold as under:

> "50. Article 226 of the Constitution is a succour to remedy injustice, and any limit on exercise of such power, is only self-imposed. Gainful refer- ence can be made to, amongst others, A V Venkateswaran v. Ramchand Sobhraj Wadhwani, (1962) 1 SCR 573 and U P State Sugar Corporation Ltd. v. Kamal Swaroop Tandon, (2008) 2 SCC

> 41. The High Courts, under the Constitutional scheme, are endowed with the ability to issue prerogative writs to safeguard rights of citizens. For ex- actly this reason, this Court has never laid down any strait-jacket principles that can be said to have "cribbed, cabined and confined" [to borrow the term employed by the Hon. Bhagwati, J. (as he then was) in E P Royappa v. State of Tamil Nadu, (1974) 4 SCC 3 : AIR 1974 SC 555] the ex- traordinary powers vested under Arti- cles 226 or 227 of the Constitution. Adjudged on the anvil of Nawab Shaqafath Ali Khan (supra), this was a fit case for the High Court to have examined the matter threadbare, more so, when it did not involve navigating a factual minefield." (emphasis supplied)

13. Returning to the present case, though usually the proper course of action of the High Court ought to have been to confine itself to the acceptance/rejection of the prayer for bail made by the accused under Section 439 of the Code; however the High Court, being satisfied that there were, in its opinion, grave lapses on the part of the police/investigative machinery, which may have fatal consequences on the justice delivery system, could not have simply shut its eyes.

14. We are of the view that the learned Single Bench could have directed institution of separate proceedings taking recourse to Article 226 of the Constitution, after formulating reasons and points for consideration. Thereafter, the matter should have been referred to the learned Chief Justice of the High Court for placing it before an appropriate Bench, which would proceed in accordance with law, of course, after affording adequate opportunity to the person(s) proceeded against.

15. With regard to the High Court's justified concern to prevent miscarriage of justice, separate/fresh proceedings could have been instituted as indicated above. We hasten to add that our observations are not to be construed to imply that the High Courts should delve into the efficacy of investigation at the stage of bail, and the present judgment is not to be misread to haul up the investigative agencies/officers in all cases.

16. This Court could have interfered with the 'direction' for departmental proceedings against the appellant, as learned counsel for the appellant advanced, had been so done in Sangitaben Shaileshbhai Datanta (supra) and M Murugesan (supra). However, it would be proper to take note that in the aforesaid two cases, the factual positions were quite different. In Sangitaben Shaileshbhai Datanta (supra), the Court took note of the fact that in the case involving rape of a minor, the High Court ordering the accused and the appellant therein, who was the grandmother of the victim along with parents of the victim to undergo scientific tests viz. lie detection, brain-mapping and narco-analysis was not only in contravention of the first principles of criminal law jurisprudence but also a violation of statutory requirements and thus, the bail granted to the accused was cancelled. The facts of the instant case are quite different, and ergo, Sangitaben Shaileshbhai Datanta (supra) does not aid the appellant.

17. In M Murugesan (supra), it was noted that the jurisdiction of High Court is limited to grant or refuse to grant bail pending trial and such jurisdiction ends when the bail application is finally decided. In this background, the High Court, after taking a decision on the bail application, having retained the file and directing the State to constitute a Committee and seek its recommendation on

reformation, rehabilitation and re-integration of convicts/accused persons and best practices for improving the quality of investigation and also to obtain District-wise data from State and upon submission of final data, after reviewing the same, making such data a part of the order after decision on bail application, was held to be beyond jurisdiction. In the present case, on the date of passing of the Impugned Judgment, the bail application was still at large, and had not yet been decided one way or the other.

18. There is no quibble with the propositions lucidly enunciated in Sangitaben Shaileshbhai Datanta (supra) and M Murugesan (supra). Yet, as our discussions in the preceding paragraphs display, the same are inapplicable to the extant factual matrix. It is too well-settled that judgments are not to be read as Euclid's theorems; they are not to be construed as statutes, and; specific cases are authorities only for what they actually decide. We do not want to be verbose in reproducing the relevant paragraphs but deem it proper to indicate some authorities on this point – Sreenivasa General Traders v State of Andhra Pradesh, (1983) 4 SCC 353 and M/s Amar Nath Om Prakash v State of Punjab, (1985) 1 SCC 345 – which have been reiterated, inter alia, in BGS SGS Soma JV v NHPC Limited, (2020) 4 SCC 234, and Chin- tels India Limited v Bhayana Builders Private Limited, (2021) 4 SCC 602.

19. In the present case, the judgment impugned was passed before the final disposal of the bail application by the High Court. On a closer scrutiny of the judgment impugned, it is clear that the Superintendent of Police, Katni, while appearing in person on 21.09.2022 had submitted that he had already line-attached the appellant vide an order dated 20.09.2022 and was initiating enquiry for imposition of major penalty. The High Court was informed that the Superintendent of Police, Katni would "get conducted preliminary enquiry in the hands of the Additional S.P. and forward the report to the disciplinary authority of the T.I.to initiate inquiry for major penalty."

20. The aforenoted was only reiterated by the High Court in the latter portion of the judgment impugned, in the following terms:

> "Let DNA report be now produced within a period of three weeks by the concerned Officer for which Superintendent of Po- lice, Katni shall personally monitor that sample is sent in time to the concerned DNA Testing Laboratory and report is ob- tained besides taking appropriate action against the concerned T.I. Shri Sanjay Dubey for dereliction of duty, insubordi- nation and causing undue disruption in the proceedings of the High Court." (sic) (emphasis supplied)

21. A combined reading of the afore-extracted snippets makes it crystal clear that the Superintendent of Police, Katni, who was the officer superior to the appellant, himself had stated that he would take action against the appellant and was initiating enquiry for imposition of major penalty, which statement was a suo motu act and not upon or flowing from any direction of the Court. Therefore, there was no occasion for the High Court to further observe for action against the appellant to be taken, as already, the Superintendent of Police, Katni had taken a decision to initiate enquiry against the appellant for imposition of major penalty.

22. Be that as it may, the facts of the case prima facie disclose that in such an important and sensitive case, there had been, at least prima facie, callousness on the part of the police officer(s) concerned, including the appellant, in conducting a proper investigation to bring on record all relevant materials in support of the truth. Amidst such backdrop, the chances of undue benefit accruing to the accused, leading to miscarriage of justice, cannot be ruled out, and may, in fact, have increased. The significance of the investigative component cannot be emphasised enough, and the views of this Court on such aspect have been brought to the fore in Sidhartha Vashist v State (NCT of Delhi), (2010) 6 SCC 1 and Manoj v State of Madhya Pradesh, (2023) 2 SCC 353.

23. In this connection, on a slightly different but connected context, it would be apposite to refer to the judgment in State of Gujarat v Kishanbhai, (2014) 5 SCC 108, wherein the Court opined and directed as under:

> "22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with the aforesaid responsibility. The consideration at the hands of the above Committee, should be utilized for crystallising mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation /prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same Committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above Committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of courts, and on the basis of experiences gained by the Standing Committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses." (emphasis supplied)

24. While respectfully reiterating the above, drawing an analogy therefrom, as the lapses are grave, and additionally, but importantly, the factum that the authority viz. the Superintendent of Police, Katni, itself realised lapses had crept into the investigation, and decided to initiate proceedings against the appellant (and others), the operative portion of the judgment impugned by the High Court, becomes, merely reiterative, perhaps in more direct terms, of what had been stated before it. As such, purely, in the extant facts and circumstances, the Impugned Judgment does not warrant any interference by this Court. We propose no order as to costs.

25. In sum, on an overall circumspection, and in view of the discussion in the preceding paragraphs, the instant appeal deserves to be, and is, dismissed, with the caveat that the High Court's observations are not to be treated as findings against the appellant.

26. Interim order dated 23.11.2022, in the present case, is vacated. However, it is made clear that any observation(s) made by the High Court in relation to the appellant in the judgment impugned shall not cause any prejudice to him in the departmental proceedings, which shall take its own course, in accordance with law, and after providing full and effective opportunity to the appellant.

27. The appellant would be entitled to raise all grounds and contentions, as may be available to him, in facts and law, in the departmental proceedings. Our ob- servations aforesaid, equally, will not prejudice the appellant, nor shall they be used against the accused.

.....J.

[KRISHNA MURARI] .....J.

[AHSANUDDIN AMANULLAH] NEW DELHI MAY 11, 2023