

Jitendera Taneja vs State Of U P And Another on 9 November, 2020

Author: Raj Beer Singh

Bench: Raj Beer Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

Reserved on 06.10.2020

Delivered on 09.11.2020

Court No. - 87

Case :- MATTERS UNDER ARTICLE 227 No. - 2227 of 2020

Petitioner :- Jitendera Taneja

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Pawan Kumar Bhardwaj, Pramod Bhardwaj

Counsel for Respondent :- G.A., Arun Kumar Singh

Hon'ble Raj Beer Singh,J.

1. Heard Sri Pawan Kumar Bhardwaj, learned counsel for the petitioner, Sri H.N. Singh, learned Senior Advocate assisted by Sri Arun Kumar Singh, learned counsel for respondent no. 2, learned A.G.A. for the State and perused the record.

2. The present misc. petition has been preferred under Article 227 of the Constitution of India for quashing the order dated 24.02.2020 passed by learned Sessions Judge, Ghaziabad in Criminal Revision No. 69 of 2020 as well as for quashing the order dated 30.01.2020 passed by learned Chief Judicial Magistrate, Ghaziabad in Case No. 33800 of 2019, under Sections 420, 406 IPC, police station Indrapuram, district Ghaziabad, whereby the bail of applicant in above said case has been cancelled.

3. It has been argued by learned counsel for the petitioner that both the impugned orders are against facts and law and that FIR of alleged case was lodged by respondent no. 2 by making several false and baseless allegations. It was submitted that in proceedings of said case, petitioner was arrested on 09.03.2020 and after submission of charge-sheet, learned C.J.M., Ghaziabad has taken cognizance vide order dated 04.09.2019 in a very mechanical manner and without applying the judicial mind and perusing the record. The said order dated 04.09.2019 was challenged by the petitioner in criminal revision no. 400 of 2019, which was allowed vide order dated 20.01.2020 passed by Additional Sessions Judge/Special Judge (SC/ST, Act), Ghaziabad and the cognizance order dated 04.09.2019 was set aside and the matter was remanded back to the trial court to pass an order afresh on the point of cognizance and parties were directed to appear before the trial court. Learned counsel has submitted that meanwhile the petitioner was granted bail by the court of Chief Judicial Magistrate, Ghaziabad on 21.01.2020, but that order was recalled by the court of Chief Judicial Magistrate vide impugned order dated 30.01.2020 in an illegal and arbitrary manner and without providing any opportunity of hearing to the petitioner and the bail of petitioner was cancelled. The order dated 30.01.2020 was challenged in revision, but the said revision was also dismissed by the court of Sessions Judge, Ghaziabad vide impugned order dated 24.02.2020 passed in criminal revision no. 69 of 2020. Learned counsel further submitted that when petitioner was granted bail vide order dated 21.01.2020, there was no summoning order against the petitioner, as the earlier summoning order has already been set aside by the revisional court and thus, the petitioner was granted bail in accordance with law, but the said order was withdrawn by the court of Chief Judicial Magistrate, Ghaziabad vide impugned order dated 30.01.2020. It was stated that petitioner has not concealed any material fact and in fact, as there was no summoning order at that time, thus, the court of Chief Judicial Magistrate, Ghaziabad has no option, but to grant bail to the petitioner vide order dated 21.01.2020. Learned counsel has submitted that in view of above-stated facts it is apparent that impugned orders are against facts and law and thus, liable to be set aside and the petitioner may be released on bail.

4. On the other hand, learned A.G.A. as well as learned Senior Counsel for respondent no. 2 have opposed the petition and argued that there is no illegality or perversity in the impugned orders. It was submitted by learned Senior Advocate for respondent no. 2 that the bail application of revisionist was rejected by this court vide order dated 17.12.2019 passed in Crl Misc B.A. No. 36512 of 2019 but the applicant concealed this fact and he was granted bail by the court of Chief Judicial Magistrate, Ghaziabad vide order dated 21.01.2020. As soon as the fact that bail of applicant has already been rejected by this court, was brought in to the notice of the learned Chief Judicial Magistrate, Ghaziabad, the bail of petitioner was cancelled by the court of Chief Judicial Magistrate vide impugned order dated 30.01.2020 and that order was upheld by the revisional court vide impugned order dated 24.02.2020 passed in criminal revision no. 69 of 2020.

5. The instant petition has been preferred under Article 227 of the Constitution of India. It is well settled that in supervisory jurisdiction of this Court over subordinate Courts, the scope of judicial review is very limited and narrow. It is not to correct the errors in the orders of the court below but to remove manifest and patent errors of law and jurisdiction without acting as an appellate authority. This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they

do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes.

In D. N. Banerji Vs. P. R. Mukherjee 1953 SC 58 the Apex Court said:

"Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under articles 226 and 227 of the Constitution to interfere."

A Constitution Bench of Apex Court examined the scope of Article 227 of the Constitution in Waryam Singh and another Vs. Amarnath and another AIR 1954 SC 215 and made following observations at p. 571:

"This power of superintendence conferred by article 227 is, as pointed out by Harries, C.J. in Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee AIR 1951 Cal. 193, to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors".

In Mohd. Yunus v. Mohd. Mustaqim and Ors. AIR 1984 SC 38 the Court held that this Court has very limited scope under Article 227 of the Constitution and even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution. The power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice.

For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record. (See: Nibaran Chandra Bag Vs. Mahendra Nath Ghughu, AIR 1963 SC 1895; Rukmanand Bairoliya Vs. the State of Bihar & ors., AIR 1971 SC 746; Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Mazdoor Sabha & ors., AIR 1980 SC 1896; Laxmikant R. Bhojwani Vs. Pratapsing Mohansingh Singh Pardeshi, (1995) 6 SCC 576; Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel & ors., (1997) 7 SCC 300; M/s. Pepsi Food Ltd. & Anr. Vs. Sub-Judicial Magistrate & ors., (1998) 5 SCC 749; and Virendra Kashinath Ravat & ors. Vs. Vinayak N. Joshi & ors. (1999) 1 SCC 47).

It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. (See: Rena Drego Vs. Lalchand Soni & ors., (1998) 3 SCC 341; Chandra Bhushan Vs. Beni Prasad & ors., (1999) 1 SCC 70;

Savitrabai Bhausaheb Kevate & ors. Vs. Raichand Dhanraj Lunja, (1999) 2 SCC 171; and Savita Chemical (P) Ltd. Vs. Dyes & Chemical Workers' Union & Anr., (1999) 2 SCC 143).

Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling re-appreciation of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (See: Union of India & ors. Vs. Himmat Singh Chahar, (1999) 4 SCC 521).

In Ajaib Singh Vs. Sirhind Co-operative Marketing cum Processing Service Society Ltd., (1999) 6 SCC 82, the Court has held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/ Courts below as the same is not permissible in proceedings under Articles 226/227 of the Constitution.

In Mohan Amba Prasad Agnihotri Vs. Bhaskar Balwant Aheer, AIR 2000 SC 931, the Court said that jurisdiction of High Court under Article 227 of the Constitution is not appealable but supervisory. Therefore, it cannot interfere with the findings of fact recorded by Courts below unless there is no evidence to support findings or the findings are totally perverse.

In Indian Overseas Bank Vs. Indian Overseas Bank Staff Canteen Workers' Union (2000) 4 SCC 245, the Court observed that it is impermissible for the Writ Court to reappreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere.

In Union of India Vs. Rajendra Prabhu, (2001) 4 SCC 472, the Court observed that the High Court, in exercise of its extraordinary powers under Article 227 of the Constitution, cannot re-appreciate the evidence nor it can substitute its subjective opinion in place of the findings of Authorities below.

Similar view has been reiterated in State of Maharashtra Vs. Milind & ors., (2001) 1 SCC 4; Extrella Rubber Vs. Dass Estate (P) Ltd., (2001) 8 SCC 97; and Omeph Mathai & ors. Vs. M. Abdul Khader, (2002) 1 SCC 319.

In Surya Dev Rai Vs. Ram Chander Rai and others (2003) 6 SCC 675, it was held that in exercise of supervisory power under Article 227, High Court can correct errors of jurisdiction committed by subordinate Courts. It also held that when subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has occasioned, the Court may step in to exercise its supervisory jurisdiction. However, it also said that be it a writ of certiorari or exercise of supervisory jurisdiction, none is available to correct mere

errors of fact or law unless error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law; or, a grave injustice or gross failure of justice has occasioned thereby.

In Jasbir Singh Vs. State of Punjab (2006) 8 SCC 294, the Hon'ble Apex Court held as under:

"...while invoking the provisions of Article 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. The power of superintendence exercised over the subordinate courts and tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions."

6. It is apparent from the above stated pronouncements that in supervisory jurisdiction of this Court over subordinate Courts, the scope of judicial review is very limited and narrow and even the errors of law cannot be corrected in exercise of such powers. The power enshrined under Article 227 of the Constitution is of judicial superintendence and it cannot be used to upset conclusions of fact, however, erroneous, unless such conclusions are so perverted or unreasonable that no court could have ever reached than.

7. In the instant matter, perusal of record shows that after submission of charge-sheet, learned C.J.M., Ghaziabad has taken cognizance vide order dated 04.09.2019 but that order was set aside by revisional court vide order 20.01.2020 passed in criminal revision no. 400 of 2019 and the matter was remanded back to the trial court to pass an order afresh on the point of cognizance. Meanwhile the petitioner was granted bail by the court of Chief Judicial Magistrate, Ghaziabad on 21.01.2020, but that order was recalled by the court of Chief Judicial Magistrate vide impugned order dated 30.01.2020 and bail was cancelled that order was upheld in revision vide second impugned order dated 24.02.2020 passed in criminal revision no. 69 of 2020. It is not in dispute that before that the bail application of petitioner was rejected by this court vide order dated 17.12.2019 passed in CrI Misc B.A. No. 36512 of 2019 but the applicant concealed this fact and moved second bail application before the court of Chief Judicial Magistrate, Ghaziabad and he was granted bail vide order dated 21.01.2020. As soon as the fact that bail of applicant has already been rejected by this court, was brought in to the notice of the learned Chief Judicial Magistrate, Ghaziabad, the bail of petitioner was cancelled by the court of Chief Judicial Magistrate vide impugned order dated 30.01.2020 and that order was upheld by the revisional court vide impugned order dated 24.02.2020 passed in criminal revision no. 69 of 2020. From the above stated facts it is quite apparent that while seeking bail, the petitioner has concealed this material fact that his bail has already been rejected by the High Court and thus the bail order dated 21.01.2020 was obtained by playing fraud upon the court below. The argument that as at that time there was no summoning order against the petitioner, thus the said bail order was perfectly justified, can not be accepted. It can also not be accepted that petitioner has not concealed any material fact while seeking bail from the court of court of Chief Judicial Magistrate, Ghaziabad. The argument that as at that time there was no

summoning order against petitioner and the court has no option, but to grant bail to the petitioner has no substance at all.

8. Considering entire facts, there is no any such illegality, perversity or any error of jurisdiction in the impugned orders so as to warrant exercise of powers under Article 227 of the Constitution of India.

9. Considering the entire facts in the light of the above stated legal position, there is no justification warranting any interference with the impugned orders in this writ petition. Consequently, the present petition is liable to be dismissed.

10. Accordingly, the instant petition is dismissed.

Order Date :- 09.11.2020 Anand