Ratanlal vs Prahlad Jat on 15 September, 2017

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURSIDCITON

CRIMINAL APPEAL NO. 499 OF 2014

RATANLAL … APPELLANT

VERSUS

PRAHLAD JAT & ORS. …RESPONDENTS

JUDGMENT

S.ABDUL NAZEER, J.

1 This appeal is directed against the order dated 22.5.2012 in S.B. Criminal Miscellaneous Petition No.1679 of 2012, whereby the High Court of Rajasthan (Jaipur Bench) has allowed the criminal miscellaneous petition filed under Section 482 of Code of Signature Not Verified Digitally signed by DEEPAK MANSUKHANI Date: 2017.09.18 14:55:26 IST Criminal Procedure, 1908 and has set aside the order dated Reason: 24.04.2012 passed by Additional Sessions Judge (Fast – Track), Sikar.

2. A charge sheet No.22 of 2009 dated 20.3.2009 was presented under Sections 302, 201, 342, 120-BIPC against respondent Nos.1 and 2 and three others. Charges have been framed under the aforesaid Sections against the accused persons. Statements of 28 witnesses have been recorded in the trial. The statements of Sawarmal and Chandri have been recorded as PW4 and PW5 respectively. Thereafter, both moved applications before the Sessions Judge under Section 311 of Cr.P.C. for re-recording their statements on the ground that the previous statements were made under the influence of the police. In the applications, the witnesses have stated that respondent Nos.1 and 2 had no role in the incident.

3. The Sessions Judge by the order dated 24.4.2012, dismissed the applications observing that the 28 witnesses had already been examined in the case so far. The witnesses were also cross-examined at length and it cannot be said that they were in any kind of pressure and that the applications were filed with a view to favour the accused persons. Prahlad Jat and Mahavir, the two accused persons, moved the petition before the High Court for quashing the said order and the High Court has allowed the applications of PW4 and PW5.

4. Learned counsel for the appellant, urged that PW4 and PW5 were examined in the Court on different dates in the months of November and December 2010 and in March 2011. Out of total 35 witnesses, 28 witnesses have already been examined and they were cross-examined at length. PWs 4 and 5 filed applications before the trial court for further examination on 27.2.2012 and 26.3.2012 respectively. During police investigation and examination conducted by the prosecution, they had supported the prosecution story. The applications have been filed with an intention to provide assistance to the accused persons which cannot be permitted in law. The applications are highly belated and no reason, whatsoever, has been assigned for the delay. Therefore, the High Court was not justified in setting aside the well-reasoned order of the Sessions Judge.

5. On the other hand, learned counsel appearing for respondent No.4 submits that the appellant has no locus standi to file this appeal. It is contended that the Sessions Judge has ample power to examine or re-examine any witness under Section 311 of the Cr.P.C. to bring on record the best possible evidence to meet the ends of justice. Keeping this principle in mind the High Court has allowed the petition. Learned counsel appearing for the third respondent has supported the case of the appellant. We have carefully considered the arguments of the learned counsel made at the Bar.

6. The appellant is the paternal brother of the deceased and is one of the prosecution witnesses. The evidence of PW4 and PW5 was recorded on different dates in the months of November and December 2010 and in March 2011. Both of them had supported the case of the prosecution. After passage of about 14 months, PW4 and PW5 filed applications under Section 311 of the Cr.P.C., inter alia, praying for their re-examination as witnesses for the reason that the statements recorded earlier were made on the instructions of the police. The Sessions Judge dismissed the application by holding as under:

"The charges have already been framed under sections 302, 201, 342, 120 B IPC against the accused persons. Statements of 28 witnesses have already been recorded in the trial. The statements of applicant namely Sawarmal has already been recorded as witness PW4 and the statements of applicant namely Chandri have also already been recorded as witness PW5. Thereafter, the said applications have been filed. Said witnesses have already undergone a lengthy cross examination. During the police investigation and examination conducted by the prosecution, wherein they have supported prosecution story, it cannot be said that at such time, the witnesses were under any pressure. In such circumstances, it is not justified to make the Court as weapon to adjudicate in own favour and the above both applications are without any merit and presented with the intention to provide assistance to the accused persons, due to which, the same are not liable to be admitted. Resultant, the above presented both applications dated 27.02.2012 and 26.03.2012 under section 311CrPC on behalf of the applicants are not liable to be admitted, therefore, the same are dismissed". This order of the Sessions Judge has been set aside by the High Court.

7. Having regard to the contentions urged, the first question for consideration is whether the appellant has locus standi to challenge the order of the High Court.

8. In Black's Law Dictionary, the meaning assigned to the term 'locus standi' is 'the right to bring an action or to be heard in a given forum'. One of the meanings assigned to the term 'locus standi' in Law Lexicon of Sri P.Ramanatha Aiyar, is 'a right of appearance in a Court of justice'. The traditional view of

locus standi has been that the person who is aggrieved or affected has the standing before the court, that is to say, he only has a right to move the court for seeking justice. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in India and the Constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds. It is now well-settled that if the person is found to be not merely a stranger to the case, he cannot be non-suited on the ground of his not having locus standi.

9. However, criminal trial is conducted largely by following the procedure laid down in Cr.P.C. Locus standi of the complaint is a concept foreign to criminal jurisprudence. Anyone can set the criminal law in motion except where the statute enacting or creating an offence indicates to the contrary. This general principle is founded on a policy that an offence, that is an act or omission made punishable by any law for the time being in force, is not merely an offence committed in relation to the person who suffers harm but is also an offence against the society. Therefore, in respect of such offences which are treated against the society, it becomes the duty of the State to punish the offender. In A.R. Antulay v. Ramdas Sriniwas Nayak & Anr. (1984) 2 SCC 500, a Constitution Bench of this Court has considered this aspect as under:-

"In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force [See Section 2(n) CrPC] is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception".

10. In Manohar Lal v. Vinesh Anand & Ors. (2001) 5 SCC 407, this Court has held that doctrine of locus standi is totally foreign to criminal jurisprudence. To punish an offender in the event of commission of an offence is to subserve a social need. Society cannot afford to have a criminal escape his liability since that would bring about a state of social pollution which is neither desired nor warranted and this is irrespective of the concept of locus.

11. In Arunachalam v. P.S.R. SADHANANTHAM & ANR. (1979) 2 SCC 297, this Court has considered the competence of a private party, as distinguished from the State to invoke the jurisdiction of this Court under Article 136 of the Constitution against a judgment of acquittal by the High Court. It was held that appellate power vested in the Supreme Court under Article 136 of the Constitution is not to be confused with ordinary appellate power exercised by appellate courts and appellate tribunals under specific statutes. Article 136 of the Constitution vests the Supreme Court with a plentitude of plenary, appellate power over all Courts and Tribunals in India. The power is plenary in the sense that there are no words in Article 136 itself qualifying that power. But, the very nature of the power has led the Court to set limits to itself within which it has to exercise such power. The power is vested in the Supreme Court but the right to invoke the Court's jurisdiction is vested in no one. The exercise of the power of the Supreme Court is not circumscribed by any limitation as to who may invoke it. The Court found that the judgment of acquittal by the High Court has led to serious miscarriage of justice. Therefore, it was held that

Supreme Court cannot refrain from doing its duty and abstain from interfering on the ground that a private party and not the State has invoked the Court's jurisdiction.

12. The accused in Arunachalam (supra) had filed a writ petition under Article 32 contending that the Supreme Court has no power to grant special leave to the brother of the deceased. This writ petition was decided by a Constitution Bench in P.S.R Sadhanantham v. Arunachalam & Anr. (1980) 3 SCC 141. Rejecting the contention of the petitioner, this Court held as under:-

"In express terms, Article 136 does not confer a right of appeal on a party as such but it confers a wide discretionary power on the Supreme Court to interfere in suitable cases. It is residuary power and is extraordinary in its amplitude. But the Constitution makers intended in the very terms of Article 136 that it shall be exercised by the highest judges of the land with scrupulous adherence to judicial principles well established by precedents in ourjurisprudence. Article 136 has a composite structure of power-cum-procedure inasmuch as there is an in-built prescription of exercise of judicial discretion and mode of hearing. It is fair to assume that while considering the petition under Article 136 the court will pay attention to the question of liberty, the person who seeks such leave from the court, his motive and his locus standi and the weighty factors which persuade the court to grant special leave. When this conspectus of processual circumstances and criteria play upon the jurisdiction of the court under Article 136, it is reasonable to conclude that the desideratum of fair procedure implied in Article 21 is adequately answered. Though parties promiscuously 'provoke' this jurisdiction, the court parsimoniously invokes the power. Moreover, the court may not, save in special situations, grant leave to one who is not eo nomine a party on the record. Thus, procedural limitations exist and are governed by well-worn rules of guidance".

13. In Ramakant Rai v. Madan Rai & Ors. (2003) 12 SCC 395, and Esher Singh v. State of A.P. (2004) 11 SCC 585, it was held that the Supreme Court can entertain appeals against the judgment of acquittal by the High Court at the instance of interested parties also. The circumstance that Criminal Procedure Code does not provide for an appeal to the High Court against an order of acquittal by a subordinate court at the instance of a private party has no relevance to the question of power of Supreme Court under Article 136.

14. In Amanullah and Anr. v. State of Bihar and Ors. (2016) 6 SCC 699, this Court has held that the aggrieved party cannot be left to the mercy of the State to file an appeal. It was held as under :-

"19…… Now turning our attention towards the criminal trial, which is conducted, largely, by following the procedure laid down in CrPC. Since, offence is considered to be a wrong committed against the society, the prosecution against the accused person is launched by the State. It is the duty of the State to get the culprit booked for the offence committed by him. The focal point, here, is that if the State fails in this regard and the party having bona fide connection with the cause of action, who is aggrieved by the order of the court cannot be left at the mercy of the State and without any option to approach the appellate court for seeking justice".

15. It is thus clear that Article 136 does not confer a right to appeal on any party but it confers a discretionary power on the Supreme Court to interfere in suitable cases. The exercise of the power of the court is not circumscribed by any limitation as to who may invoke it. It does not confer a right to appeal, it confers only a right to apply for special leave to appeal. Therefore, there was no bar for the appellant to apply for special leave to appeal as he is an aggrieved person. This Court in exercise of its discretion granted permission to the appellant to file the special leave petition on 03.08.2012 and leave was granted on 24.02.2014.

16. That brings us to the next question as to whether the High Court was justified in setting aside the order of the Sessions Judge and allowing the application filed by PWs 4 and 5 for their re-examination. For ready reference Section 311 of the Cr.P.C. is as under:

"311. Power to summon material witness, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case".

17. In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order.

18. In Vijay Kumar v. State of Uttar Pradesh and Anr., (2011) 8 SCC 136, this Court while explaining scope and ambit of Section 311 has held as under:-

"Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of CrPC and the principles of criminal law. The discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously".

19. In Zahira Habibullah Sheikh (5) and Anr. v. State of Gujarat and Others, (2006) 3 SCC 374, this Court has considered the concept underlining under Section 311 as under:-

"The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind".

20. In State (NCT of Delhi) v. Shiv Kumar Yadav & Anr., (2016) 2 SCC 402, it was held thus:-

"…… Certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary "for

ensuring fair trial" is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including uncalled for hardship to the witnesses and uncalled for delay in the trial. Having regard to these considerations, there is no ground to justify the recall of witnesses already examined".

21. The delay in filing the application is one of the important factors which has to explained in the application. In Umar Mohammad & Ors. v. State of Rajasthan, (2007) 14 SCC 711, this Court has held as under:-

"Before parting, however, we may notice that a contention has been raised by the learned counsel for the appellant that PW 1 who was examined in Court on 5-7-1994 purported to have filed an application on 1-5-1995 stating that five accused persons named therein were innocent. An application filed by him purported to be under Section 311 of the Code of Criminal Procedure was rejected by the learned trial Judge by order dated 13-5-1995. A revision petition was filed thereagainst and the High Court also rejected the said contention. It is not a case where stricto sensu the provisions of Section 311 of the Code of Criminal Procedure could have been invoked. The very fact that such an application was got filed by PW 1 nine months after his deposition is itself pointer to the fact that he had been won over. It is absurd to contend that he, after a period of four years and that too after his examination-in-chief and cross-examination was complete, would file an application on his own will and volition. The said application was, therefore, rightly dismissed".

22. Coming to the facts of the present case, PWs 4 and 5 were examined between 29.11.2010 and 11.3.2011. They were cross-examined at length during the said period. During the police investigation and in their evidence, they have supported the prosecution story. The Sessions Judge has recorded a finding that they were not under any pressure while recording their evidence. After a passage of 14 months, they have filed the application for their re-examination on the ground that the statements made by them earlier were under pressure. They have not assigned any reasons for the delay in making application. It is obvious that they had been won over. We do not find any reasons to allow such an application. The Sessions Judge, therefore, was justified in rejecting the application. In our view, High Court was not right in setting aside the said order.

23. In the result, the appeal succeeds and it is accordingly allowed. The order of the High Court in S.B. Criminal Miscellaneous Petition No.1679 of 2012, dated 22.5.2012 is hereby set aside. All pending applications also stand disposed of.

24. We find from the records that after the order of the High Court, PWs 4 and 5 were re-examined before the Trial Court. The Trial Court is directed to proceed with the matter without taking into consideration the evidence of PWs 4 and 5 recorded after the order of the High Court.

…….J.

(J. CHELAMESWAR) …….J.

(S. ABDUL NAZEER) New Delhi;

September 15, 2017.