

CASE NO.:
Appeal (crl.) 1039 of 2006

PETITIONER:
Jasbir Singh

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 11/10/2006

BENCH:
K.G. BALAKRISHNAN & Dr. AR. LAKSHMANAN

JUDGMENT:
J U D G M E N T
(ARISING OUT OF SLP (CRL.) NO. 3604 OF 2004)

K.G. BALAKRISHNAN, J.

Leave granted.

A case was registered by P.S. Sirhind against seven persons, including the appellant under Sections 469/467, 468/218-120B of IPC and also under the provisions of the Prevention of Corruption Act. The appellant was arrested and remanded to judicial custody and the final report was filed by the police. It appears that the appellant moved an application for bail, but the same was rejected. The appellant moved another bail application on 24.4.2003 before the Sessions Judge, Fatehpur Sahib, which was fixed for hearing on 5.5.2003. Meanwhile, on 29.4.2003 the Administrative Judge of the High Court of Punjab & Haryana came for annual inspection to the District & Sessions Court, Fatehpur Sahib, and the Deputy Commissioner, S.S.P. and other police officers were present. The Hon'ble Judge visited the Jail at Nabha as part of the inspection programme. The appellant moved an application for bail during the course of inspection and the learned Judge noticed the police officers as representative of the prosecution, and as they had no objection to the granting of bail to the appellant, the learned Judge passed the following Order:

"The applicant is facing trial for commission of offences under Sections 409, 447, 468, 218, 120-B IPC and also under the provisions of Prevention of Corruption Act. His co-accused similarly situated has since been enlarged on bail. Applicant is in jail for the last seven months. Sessions Judge asked to look into his application and enlarge him on bail as his trial is likely to take some time before it is concluded"
(emphasis supplied)

Thereafter, the bail application of the appellant came up for hearing before the Sessions Judge, Fatehpur Sahib, who, without making a reference to the directions contained in the order of the Administrative Judge, dismissed the application. But, on the next day, i.e. 6.5.2003, when his attention was drawn to the order of the Administrative Judge, the Sessions Judge granted bail to the appellant. The appellant also moved an application for the release of his earth-moving machine, which was seized by the police during investigations and the same was released to the appellant

on furnishing a bond in the sum of Rs. 20 lacs.

On 13.6.2003, one Usha Rani made a complaint to the Chief Justice of the Punjab & Haryana High Court, alleging mala fides on the part of the Sessions Judge, Fatehpur Saheb, in granting bail to the appellant. The Chief Justice called for the proceedings and directed that the entire matter be placed before the very same Administrative Judge on the judicial side. Thereupon, notice was issued to the appellant. The de facto complainant also entered appearance. She reiterated her allegation and sought for cancellation of bail granted to the appellant. The learned Administrative Judge held that while passing the order of bail on 6.5.2003, the Sessions Judge had not discussed the matter on merit and therefore the order dated 6.5.2003 was set aside. Aggrieved by the same the appellant has preferred the instant appeal by way of special leave.

When the matter came before this Court on 16.2.2004, the following Order was passed:-

"Application for exemption from surrendering is dismissed.

At the request of learned senior counsel for the petitioner this special leave petition is adjourned by four weeks.

The above special leave petition has been adjourned even at the stage of calling for orders on admission. In the meantime while going through the order under challenge, we find that observations have been made to the effect that there is a practice of passing orders by an Administration Judge on the spot at the time of inspection and the handing over of petitions for bail etc. at that time. The Registrar of the Punjab & Haryana High Court at Chandigarh, by taking instructions/directions from the Chief Justice will send a detailed report to this Registry to be placed when the matter is taken up as to for how long this type of practice, if any, has been followed in the State and as to whether there is any sanction for the same under any law; or administrative orders by the Hon'ble Chief Justice of the Court at any time. Copies of such orders, if any, in the matter shall be enclosed to the report."

The report received from the Chief Justice of Punjab & Haryana, indicates that there has been a constant practice of the Inspecting/Administrative Judges receiving applications from inmates of jail, for grant of bail, and while in some cases the Inspecting Judge by himself would pass the order, in other cases he would direct the Sessions Judges to grant bail or direct the application to be dealt with in accordance with law. The Chief Justice has furnished the details of the various orders where the Inspecting Judges had granted bail to the inmates of jail during the course of inspection. Some of the judges gave the opinion to the Chief Justice that they used to receive bail applications, which they were marking to the Registry of the High Court for further action. Some of the Judges asserted that they had never granted

any bail application in the course of inspection and those applications were only directed to be placed before the concerned Sessions Judge.

The Registrar General in his report has made certain startling revelations to the effect that series of bail orders were granted by the Judges in the course of inspection, on applications received from undertrial prisoners. The Chief Justice has emphatically denied having given any jurisdiction to any of the Judges to hear and pass orders on bail applications during inspection. It seems that the stand taken by some of the Judges is that the Judges of the High Court are vested with the power of superintendence and control over all courts and tribunals subordinate to the High Court under Article 227, and as part of such Constitutional power, the Inspecting Judges have the right and duty to consider the bail applications during inspection.

The learned counsel appearing on behalf of the Bar Council of the State of Haryana submitted that in many cases the bail applications are not considered by the Sessions Judges in time and the accused have to remain in jail for unnecessarily long periods and that in such cases it is the duty of the Inspecting Judges to receive bail applications and pass appropriate directions.

What is the width and amplitude of the power of superintendence over subordinate courts and whether it authorizes the Inspecting Judges to transact any judicial work, which is in the domain of the subordinate courts, is the question that arises for consideration in this appeal.

The power of superintendence over all the subordinate courts and tribunals is given to the High Court under Article 227 of the Constitution. So also, under Article 235 of the Constitution, the High Courts exercise control over all the district courts and courts subordinate thereto on all matters relating to posting, promotion and grant of leave to officers belonging to the judicial service of the State. The power of superintendence conferred on the High Court under Article 227 over all the courts and tribunals throughout the territory of the State is both of administrative and judicial nature and it could be exercised suo motu also. However, such power of superintendence does not imply that the High Courts can influence the subordinate judiciary to pass any order or judgment in a particular manner. The extraordinary power under Article 227 can only be used by the High Courts to ensure that the subordinate courts function within the limits of their authority. The High Court cannot interfere with the judicial functions of a subordinate Judge. Speaking on the power of superintendence of the High Court under Article 227 in *Waryam Singh vs. Amarnath* (AIR 1954 SC 215), at page 217, Justice S.R. Das observed :-

"The material part of Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 except that the power of superintendence has been extended by the Article also to Tribunals\005\005.. Further, the preponderance of judicial opinion in India was that Section 107 which was similar in terms to Section 15 of the High Courts Act, 1861, gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Court.

In this connection it has to be remembered that Section 107 of the Government of India Act, 1915 was reproduced in the Government of India Act, 1935 as Section 224. Section 224 of the 1935 Act, however, introduced sub-section (2), which was new, providing that nothing in the section should be construed as giving the High Court any jurisdiction to question any judgment of any inferior court which was not otherwise subject to appeal or revision. The idea presumably was to nullify the effect of the decisions of the different High Courts referred to above. Section 224 of the 1935 Act has been reproduced with certain modifications in Article 227 of the Constitution. It is significant to note that sub-section (2) to Section 224 of the 1935 Act has been omitted from Article 227.

This significant omission has been regarded by all High Courts in India before whom this question has arisen as having restored to the High Court the power of judicial superintendence it had under Section 15 of the High Courts Act, 1861 and Section 107 of the Government of India Act, 1915\005\005..

This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in \026 Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, AIR 1951 Cal 193 (SB (B), 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".

This view expressed was later followed by this Court in *Timbak Vs. Ram Chandra* AIR 1977 SC 1222, by Justice Jaswant Singh, at page 1225 :-

"It is also well established that it is only when an order of the Tribunal is violative of the fundamental basic principles of justice and fair play or a patent or flagrant error in the procedure of law has crept or where the order passed results in manifest injustice, that a court can justifiably intervene under Article 227 of the Constitution."

In *Mohd. Yunus Vs. Mohd. Mustaqim* AIR 1984 SC 38, this Court held :-

"The supervisory jurisdiction conferred on the High Court's under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law\005.. In exercising its supervisory powers under Article 227, the High Court does not act as an appellate court or Tribunal. It will not review or reweigh the evidence upon which the inferior court or tribunal purports to be based or to correct any errors of law in the decision."

This Court also made almost similar observations in State Vs. Navjot Sandhu (2003) 6 SCC 641.

So, even 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. It is the members of the subordinate judiciary who directly interact with the parties in the course of proceedings of the case and therefore, it is no less important that their independence should be protected effectively to the satisfaction of the litigants. The independence of the judiciary has been considered as a part of the basic structure of the Constitution and such independence is postulated not only from the Executive, but also from all other sources of pressure. In S.P. Gupta Vs. Union of India 1981 (Supp.) SCC 87, speaking on the independence of the judiciary, a Bench of seven Judges observed as under at page 221-222 :-

"The concept of independence of judiciary is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity\005.. But it is necessary to remind ourselves that the concept of independence of judiciary is not limited only to independence from executive pressure or influence but it is a much wider concept which takes within its sweep independence from many other pressures and prejudices. It has many dimensions, namely, fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the Judges belong."

The counsel appearing for the respondent submitted that the power of superintendence and control over the subordinate courts is conferred on the High Court under Article 235 of the Constitution and therefore the Inspecting Judge was fully justified under certain circumstances to entertain the bail petitions or transfer applications and direct the District Judges or other courts to pass appropriate orders. We find no force in this contention. This plea has been raised without any basis. Article 235 of the Constitution gives power to the High Court to exercise control over the subordinate courts. This power has been specifically described in Article 235 in a comprehensive sense so as to include the powers of general superintendence over the working of the subordinate courts; disciplinary control over the Presiding Judges of the subordinate courts which includes power to make inquiry; and impose punishments other than dismissal, removal or reduction in rank subject, of course, to the rules of services and Article 311(2) of the Constitution. This power also would include the power to order disciplinary inquiry, transfers, promotions of members of subordinate judiciary and confirmation of officers etc.

It also includes the power to recall officers of the subordinate courts holding ex cadre posts or to send officers on deputation to other administrative posts or award selection grade or pass orders on any such matters connected with service. The powers of control to be exercised under Article 235 of the Constitution do not extend to interfering with the judicial functions of the subordinate courts. By virtue of the power under Article 235 the High Court cannot direct the presiding officer to pass a judicial order in a particular manner as that would certainly amount to interfering with the independence of the subordinate judiciary.

In the course of inspection, the High Court Judge is required to examine whether the courts are functioning within the norms laid down by the High Court. Mostly the inspection is to be confined to the administrative functioning of the courts and its officers. If any member of the administrative staff is not doing the work assigned to him or is causing any delay in the process of administration of justice, the Inspecting Judge can give proper direction and see that the courts function smoothly. But under no circumstances, the Inspecting Judge, as part of his administrative duty enjoys the power to interfere with the judicial functions of the subordinate courts in individual cases. In the course of inspection, a High Court Judge cannot pass any order on interim applications, such as bail petitions or transfer applications or applications for interim injunction, howsoever justified they may be. Orders on bail applications are passed under the provisions of the Code of Criminal Procedure or under various other enactments, which provide for grant of bail and such orders are passed as part of the judicial work. The Inspecting Judge is not supposed to pass any judicial order in individual cases in the course of inspection. Of course, he can give administrative directions to the Presiding Officer or to any of the subordinate staff, if such directions are pertinent in the context of administration of justice. Except giving general directions regarding any matter concerning administration of justice, any interference in the judicial functions of the Presiding Officer would amount to interference with the independence of the subordinate judiciary.

So also, while on inspection, the Inspecting Judge is not supposed to perform any judicial work.

A question of a similar nature came before this Court in Alok Kumar Vs. Dr. S.N. Sarma AIR1968 SC 453. That was a case where the Judge of the High Court of Guwahati was nominated as the Vacation Judge and certain dates were fixed on which he was to sit and hear urgent civil and criminal applications. One of these dates was October 31, 1966 and another was November 10, 1966. It was also stated in the order that if there was any matter which was extremely urgent, it would be heard on any other day by appointment through the Registrar. This Judge was also working as a Commission of Enquiry during that period. For that purpose, he had to go out of Gauhati, (the seat of the High Court) to Sibsagar after the vacation sitting on October 31, 1966. Therefore, on November 2, 1966 he was not available at Gauhati, even though he was the Vacation Judge. Petitioner filed a writ petition seeking permission to write an examination which was to be held on November 4, 1966. The petitioner gave notice to the Government Advocate and thereafter went to Sibsagar where the Judge was holding the Commission of Enquiry and presented his petition. The writ petition was entertained and the learned Judge passed an interim order permitting the petitioner to write the examination. This order was challenged later and this Court held that by virtue of appointment as a head of Commission, the Judge does not demit his office and

while holding a Commission of Enquiry at Sibsagar if he received the petition and passed an order, all that can be said is that the petition was irregularly presented at Sibsagar when it should have been presented at Gauhati.

Therefore, even if any application for bail is received by the Inspecting Judge, the proper course is to send the application to the concerned court to pass appropriate orders. When the Inspecting Judge visits the jail, it is quite likely that so many inmates of the jail may file petitions before the concerned Judge. It is the duty of the Judge to see whether there is any merit in any of these petitions. If any application for bail is received, he can very well send it to the concerned court without making any comments on the merits of the case. On the contrary, if the learned Inspecting Judge passes any order in such matter, he would only be usurping the powers of the courts authorized to pass such orders. It may also be remembered that normally a High Court Judge passes orders on matters assigned by the Chief Justice and this Court in State of Rajasthan Vs. Prakash Chand & Ors, AIR 1998 SC 1344 deprecated the practice of the Single Judge directing the listing of certain part-heard cases before him without there being any orders of Hon'ble the Chief Justice of the High Court. It is the prerogative of the Chief Justice to assign business of the High Court both on judicial and administrative sides. The Chief Justice alone has the power to decide as to how the Benches of the High Court are to be constituted. That necessarily means that it is not within the competence of any Single or Division Bench of the High Court to give any direction to the Registry in that behalf which will run contrary to the directions of the Chief Justice. Therefore, in the scheme of things, judicial discipline demands that in the event a single Judge or a Division Bench considers that a particular case requires to be listed before it for valid reasons, it should direct the Registry to obtain appropriate orders from the Chief Justice.

The Inspecting Judges would be at liberty to receive complaints or petitions in the course of inspection so as to bring the same to the notice of the appropriate court or to the Registry of the High Court, so that it may, in turn, be brought to the notice of the Chief Justice who may place it before an appropriate forum for passing orders.

In the instant case, as the accused has already been released on bail, we need not pass any order. With the above observations, the appeal is disposed of.