A STATE OF KARNATAKA

v.

NARSA REDDY

AUGUST 14, 1987

B [A.P. SEN AND B.C. RAY, JJ.]

Criminal Procedure Code, 1973—s.482—Inherent Powers of High Court—Power cannot be exercised so as to split trial of accused which is apt to cause miscarriage of justice and serious prejudice to prosecution.

C **While the respondent, alongwith another person, was being tried under ss. 302 and 201 read with s. 34 I.P.C., etc., for causing the death of his wife, the evidence recorded revealed the involvement of two police officials in the disposal of the dead body, and, they were also charged under s. 201 read with s. 34 I.P.C. and the trial was ordered to be held** D ***de novo*** **against all the four accused. However, the trial could not proceed as the two police officials whose plea that, being public servants, it was necessary to obtain a sanction for prosecution under s. 197 Cr. P.C. for impleading them as accused, was rejected, approached the High Court in Revision and obtained stay of the trial. The respondent applied for bail under s. 439(1), Cr. P.C. contending that** E **the trial was unduly protracted, and on its rejection, approached the High Court in Revision. A Single Judge of the High Court rejected the application for bail, vacated the stay granted by the High Court earlier insofar as the respondent and the other person who was originally accused with him was concerned and directed the Sessions Judge to proceed with the trial as against them only.**

F **Allowing the appeal, and, directing continuance of stay of the trial till the disposal of the Revision filed by the two police officials,**

HELD: It is somewhat strange that the learned Single Judge should have made a direction at all requiring the learned Sessions Judge to proceed with the trial as against the respondent and the other G **accused merely because there was stay granted by the High Court in the Revision preferred by the two police officials. If he felt that the stay would prejudicially affect the respondent and the other accused and subject them to a protracted trial, the proper course was to have heard and disposed of the Revision filed by the two police officials rather than make a direction of this kind which would, result in the splitting up of** H **the trial and is apt to cause miscarriage of justice, besides serious pre-**

judice to the prosecution. From the nature of the prosecution case, it is quite apparent that the evidence to be led by the prosecution would be more or less common as it relates to the same occurrence. It could not be said that merely because the proceedings were held up due to stay granted by the High Court the learned Single Judge could have taken recourse to the inherent powers of the High Court under s. 482, Cr. P.C., or that it was necessary to do so either to prevent abuse of the process of Court or otherwise to secure ends of justice. [971C-F]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 361 of 1987.

From the Judgment and Order dated 26.3.1986 of the Karnataka High Court in Crl. P.C. No. 69 of 1986.

P.R. Ramasesh, Adv. for the Appellant.

The Judgment of the Court was delivered by

SEN, J. The question involved in this appeal by special leave is whether the High Court of Karnataka was justified in directing the Sessions Judge, Bidar to proceed with the trial of Sessions Case No. 23 of 1984 insofar as it relates to the respondent Narsa Reddy and one Vaijinath, accused No. 2, arraigned for having committed alleged offences punishable under ss. 302 and 201 both read with s. 34 of the Indian Penal Code, 1860 and ss. 3 and 4 of the Dowry Prohibition Act, 1961.

While issuing notice, we were not satisfied about the legality and propriety of the order passed by the learned Single Judge which had the effect of splitting up of the trial although the prosecution case against the accused arose out of the same incident and the evidence to be led by the prosecution against them was more or less common. It also seemed to us that if the order passed by the learned Single Judge were to be implemented, the learned Sessions Judge would be constrained to proceed against the respondent and accused No. 2 Vaijinath and thereby the very object of directing *de novo* trial would be frustrated. At the hearing, no one appeared for the respondent and therefore we did not have the benefit of hearing his counsel.

The prosecution case, in brief, is as follows. On February 14, 1984, at about 7 p.m., the respondent Narsa Reddy pushed his wife the deceased Jagdamba into a well situate in his garden to cause her death and he then with the help of accused No. 2, Vaijinath pulled her out of

A the well and brought her to the house of the respondent where he assaulted her with a stick and thereafter strangulated her to death. After the committal, the Sessions case was posted for evidence and evidence of four witnesses was recorded. The testimony of PW 3 Sangareddy and PW 4 Rangareddy revealed the involvement of Head Constable Govinda Rao and Police Constable John, who were cited as B prosecution witnesses, in the disposal of the dead body of the deceased, that they had also committed the offence under s. 201 read with s. 34 of the Indian Penal Code along with the other two accused. An application was accordingly filed by the learned Public Prosecutor under s. 319(4) of the Code of Criminal Procedure for impleading Head Constable Govinda Rao and Police Constable John as accused C Nos. 3 and 4 in the Sessions case. On the said application, the learned Sessions Judge by his order dated August 22, 1985 ordered that Head Constable Govinda Rao and Police Constable John be impleaded as accused Nos. 3 and 4 for the offence under s. 201 read with s. 34 of the Indian Penal Code. He also ordered that a *de novo* trial would be held against the accused persons after reframing charges. Before the trial D could proceed further, the newly impleaded accused Nos. 3 and 4 filed an application before the learned Sessions Judge contending that they could not be impleaded as accused and that since they were public servants, sanction under s. 197 of the Code was required for their prosecution. The application of accused Nos. 3 and 4 was rejected by the learned Sessions Judge on October 28, 1985. Thereupon, Head E Constable Govinda Rao and Police Constable John, impleaded as accused Nos. 3 and 4, preferred a revision being Criminal Revision No. 886 of 1985 before the High Court. The High Court has admitted the revision and granted stay of proceedings in the Sessions case. In the meanwhile, the respondent Narsa Reddy who had been arrayed as accused No. 1 made an application for bail under s. 439(1) before the F learned Sessions Judge contending that in view of the stay order granted by the High Court in Criminal Revision No. 886 of 1985, the trial of the Sessions case was unduly protracted and hence he should be released on bail, apart from the ground that no *prima facie* case has been made out against him.

G The learned Sessions Judge by his order dated September 25, 1985 rejected the application on the ground that earlier similar applications for bail were rejected both by him as well as the High Court and it could not be said that the trial was protracted, merely because of stay granted by the High Court, observing that the case was likely to be concluded at an early date. Aggrieved, the respondent preferred a H revision before the High Court. The learned Single Judge by his order

dated March 28, 1985 rejected the application for bail under s. 439(1) of the Code, vacated the stay granted by the High Court in Criminal Revision No. 886 of 1985 insofar as the trial against the respondent and the aforesaid Vaijinath, accused No. 2 was concerned and directed the learned Sessions Judge to proceed with the trial against them as early as possible. Hence this appeal by special leave.

We have no manner of doubt that the direction made by the learned Single Judge presumably exercising the inherent powers of the High Court under s. 482 of the Code of Criminal Procedure was wholly unwarranted. It is somewhat strange that the learned Single Judge should have made a direction at all requiring the learned Sessions Judge to proceed with the trial as against the respondent and accused No. 2, Vaijinath merely because there was stay granted by the High Court in revision preferred by the co-accused Head Constable Govinda Rao and Police Constable John, accused Nos. 3 and 4 against the order passed by the learned Sessions Judge dated October 28, 1985 rejecting the objection as to the validity of trial for want of sanction. If he felt that the grant of stay would prejudicially affect the respondent and accused No. 2, Vaijinath and subject them to a protracted trial, the proper course for the learned Single Judge was to have heard and disposed of the Criminal Revision No. 886 of 1985 rather than make a direction of this kind which would, in fact, result in splitting up of the trial which is apt to cause miscarriage of justice, besides serious prejudice to the prosecution. From the nature of the prosecution case, it is quite apparent that the evidence to be led by the prosecution would be more or less common as it relates to the same occurrence. It could not be said that merely because the proceedings before the learned Sessions Judge were held up due to stay granted by the High Court in that revision, the learned Single Judge could have taken recourse to the inherent powers of the High Court under s. 482 of the Code, or that it was necessary to do so either to prevent abuse of the process of Court or otherwise to secure ends of justice. Any further delay in the trial could be prevented by taking up the revision for hearing.

In the result, the appeal succeeds and is allowed. The order passed by the High Court is set aside and the High Court is directed to hear and dispose of Criminal Revision No. 886 of 1985 as early as possible. In the meanwhile, the proceedings in Sessions Case No. 23 of 1984 before the learned Sessions Judge shall remain stayed till the disposal of the revision.

H.L.C. Appeal allowed.