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KARAMJEET SINGH

v.

UNION OF INDIA

OCTOBER 8, 1992

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[A.M. AHMADI AND K. RAMASWAMY, JJ.]

*Constitution of India, 1950 :*

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*Article 32—Writ Petition by third party challenging conviction and sentence by Supreme Court—Maintainability of—Legal disability in invoking writ jurisdiction—Obsession based on religious belief or personal philosophy—Whether included.*

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The petitioner, claiming to be the 'next friend' of two convicts filed a petition under Article 32 of the Constitution questioning the legality and validity of their conviction and sentence by the Designated Court, which was confirmed by this Court.

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The petitioner contended that the petitioner filed this petition as the next friend of the two convicts, who were under a legal disability due to their intense obsession that the person who was responsible for desecrating the Harmandir Sahib could not be allowed to survive and had no right to live being guilty of such a high act of sacrilege against divinity; that the said obsession led the two convicts to believe that the perpetrator of the sacrilege against divinity was the Government of the day and justice could not be expected from it.

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The respondent contended that if the aggrieved person was allowed to take the law in his own hands and later plead disability on the ground that his action emanated from an acute obsession, he deserved the death penalty.

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Dismissing the writ petition, this Court,

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**HELD :** 1.1. Neither the provisions of the Code of Criminal Procedure, 1973 nor any other statute permitted a third party stranger to question the correctness of the conviction and sentence imposed by the Court after a regular trial. [901-D]

1.2. The disability must be one which the law recognises. A mere obsession based on religious belief or any other personal philosophy cannot be regarded as a legal disability of the type recognised by the Code of Criminal Procedure or any other law which would permit initiation of proceedings by a third party, be he a friend. [902 F-G]

1.3. It is hazardous to allow a third party to initiate proceedings under Article 32 challenging the order passed by the Designated Court and confirmed by this Court on the mere ground that the convicts had acted under such an obsession. [902-H, 903-A]

1.4. In the instant case itself the co-accused who have been acquitted by the Designated Court and whose acquittal has been confirmed by this Court would run the risk of a fresh trial and a possible conviction. [902-H]

1.5. It was stated in the petition that it was filed on behalf of the two convicts; but it was clarified in paragraph 4 of the petition that the convicts instructed that none of their relations should file any petition seeking justice or mercy for them. Therefore, this petition was not filed on instructions given by the two convicts or at their behest. [900-D]

1.6. The petitioner has no 'locus standi' to move this Court under Article 32 of the Constitution for challenging the conviction and sentence awarded to the two convicts by this Court's order of July 15, 1992, reported in *State of Maharashtra v. Sukhdev Singh*, [1992] 3 SCC 700. [903-F]

*Simranjit Singh Mann v. Union of India*, JT (1992) 5 SC 441, explained.

*S.P. Gupta v. Union of India*, [1981] Suppl. SCC 87; *M. Krishna Swami v. Union of India & Ors.*, JT (1992) 5 SC 92 and *Janata Dal v. H.S. Chowdhary & Ors.*, [1991] 3 SCC 756, referred to.

CRIMINAL APPELLATE JURISDICTION : Writ Petition (Criminal) No. 585 of 1992.

(Under Article 32 of the Constitution of India.)

Dr. B.L. Wadehra, Ashok Kumar Sharma and M.S. Butalia for the Petitioner.

A Altaf Ahmed, Addl. Solicitor General, Ms. A. Subhashini, A.S. Bhasme and S.M. Jadhav for the Respondent.

The following Order of the Court was delivered :

B The petitioner, Karamjeet Singh, who claims to be the 'next friend' of the convicts Sukhdev Singh @ Sukha and Harjinder Singh @ Jinda by reason of his having participated along with them in Kar Seva for the restoration of Harminder Sahib, in Golden Temple, Amritsar, has filed this petition under Article 32 of the Constitution questioning the legality and validity of their conviction and sentence by the Designated Court, Pune and the confirmation thereof by this Court by its judgment rendered on C July 15, 1992, See : *State of Maharashtra v. Sukhdev Singh*, [1992] 3 SCC 700. Though it is stated in the petition that it is being filed 'on behalf of the aforesaid two convicts it is clarified in paragraph 4 thereof that the said convicts 'have given oral and written instructions that none of their relations should file any petition seeking justice or mercy for them'. It is, D therefore, clear that this petition is not filed on instructions given by the two convicts or at their behest. The petition is strongly opposed by the learned Additional Solicitor General on behalf of the respondent.

E The question which falls for determination in this petition is identical to the one which had arisen for consideration by this Court in the case of *Simranjit Singh Mann v. Union of India*, JT (1992) 5 SC 441, namely, whether a third party who is a total stranger to the prosecution culminating in the conviction of the accused, has any '*locus standi*' to challenge the conviction and sentence awarded to them, by invoking Article 32 of the Constitution ? This Court after considering the relevant provisions of the F Code of Criminal Procedure, 1973 and Order XXI of the Supreme Court Rules came to the conclusion that such a petition by a third party stranger is not maintainable. In taking this view this Court relied on the observations in *S.P. Gupta v. Union of India*, [1981] Suppl. SCC 87, *M. Krishna Swami v. Union of India & Ors.*, JT (1992) 5 SC 92 and in particular the observations in *Janata Dal v. H.S. Chowdhary & Ors.*, [1991] 3 SCC 756 to the G following effect :

H "Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, *it is for them and them alone* to raise all such questions and challenge

the proceedings initiated against them at the appropriate time before the proper forum *and not for third parties under the garb of public interest litigants.*"

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(Emphasis supplied)

On this line of reasoning we in that case observed as under :

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"The two convicts could, if so minded, have raised the contention in the earlier proceedings but a third party, a total stranger to the trial commenced against the two convicts, cannot be permitted to question the correctness of the conviction recorded against them. If that were permitted any and every person could challenge convictions recorded day in and day out by courts even if the persons convicted do not desire to do so and are inclined to acquiesce in the decision."

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We, therefore, took the view that neither the provisions of the Code of Criminal Procedure, 1973 nor any other statute permitted a third party stranger to question the correctness of the conviction and sentence imposed by the Court after a regular trial.

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Learned counsel for the petitioner contended that the petitioner had filed this petition as the next friend of the two convicts who were under a legal disability due to their intense obsession that the person who was responsible for desecrating the Harminder Sahib cannot be allowed to survive and has no right to live being guilty of such a high act of sacrilege against divinity. He submitted that the said obsession led the two convicts to believe that the perpetrator of the sacrilege against divinity was the Government of the day and justice could not be expected from it and hence they would themselves have to mete out the 'punishment' to the said authorities responsible for the demolition of the Akaal Takht. He submitted that the two convicts were under such legal disability and hence the petitioner, as their next friend, was entitled to move this petition under Article 32 of the Constitution. In support of the contention that the petitioner was the next friend of the two convicts reliance was placed at the hearing on a letter purported to have been written on March 30, 1992 by one of the convicts Harjinder Singh @ Jinda to Balwinder Singh wherein a reference was made to the petitioner. We assume that the petitioner is a

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- A friend of the two convicts and had brushed shoulders with them during Kar Seva at Harminder Sahib. Learned counsel, therefore, invited our attention to the observations in paragraph 7 of the judgment in *Simranjit Singh Mann's* case wherein we observed :
- B "Ordinarily, the aggrieved party which is affected by any order has the right to seek redress by questioning the legality, validity or correctness of the order, unless such party is a minor, an insane person or is suffering from any other disability which the law recognises as sufficient to permit another person, e.g. next friend, to move the Court on his behalf. If a guardian or a next friend initiates proceedings for and on behalf of such a disabled aggrieved party, it is in effect proceedings initiated by the party aggrieved and not by a total stranger who has no direct personal stake in the outcome thereof."
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- D We are afraid these observation do not permit a mere friend like the petitioner to initiate the proceedings of the present nature under Article 32 of the Constitution. The observations relied upon relate to a minor or an insane or one who is suffering from any other disability which the law recognises as sufficient to permit another person, e.g. next friend, to move
- E the Court on his behalf; for example see : Sections 320(4a), 330(2) read with section 335(1)(b) and 339 of the Code of Criminal Procedure. Admittedly, it is not the case of the petitioner that the two convicts are minors or insane persons but argued the learned counsel that since they were suffering from an acute obsession such obsession amounts to a legal
- F disability which permits the next friend to initiate proceedings under Article 32 of the Constitution. We do not think that such a contention is tenable. The disability must be one which the law recognises. A mere obsession based on religious belief or any other personal philosophy cannot be regarded as a legal disability of the type recognised by the Code of
- G Criminal Procedure or any other law which would permit initiation of proceedings by a third party, be he a friend. It must be remembered that the repercussions of permitting such a third party to challenge the findings of the Court can be serious, e.g. in the instant case itself the co-accused who have been acquitted by the Designated Court and whose acquittal has been confirmed by this Court would run the risk of a fresh trial and a
- H possible conviction. It is, therefore, hazardous to allow a third party to

initiate proceedings under Article 32 challenging the order passed by the Designated Court and confirmed by this Court on the mere ground that the convicts had acted under such an obsession. Such a submission, argued the learned Additional Solicitor General, is fraught with grave consequences and would, we agree, shake the very foundation of the rule of law on which a civilised society is based if the aggrieved person is allowed to take the law in his own hands and later plead disability on the ground that his action emanated from an acute obsession that his victim had by his action forfeited the right to live and deserved to be punished with death. Such a submission cannot be countenanced.

Lastly it was submitted that this case differed from the earlier case because the petitioner has come as a next friend. He also submitted that the sentiments of the entire Sikh community expressed through their leaders of all hues should be taken note of by the Court. We appreciate their sentiments but that cannot alter the legal position. Besides, as a matter of record we may also state that even Simranjit Singh Mann had in the earlier petition by his affidavit dated August 25, 1992 contended that he was filing the writ petition as the next friend of the condemned prisoners. That petition was dismissed for want of '*locus standi*' and we see no distinguishing feature in the present petition to take a different view.

In the result, we hold that the petitioner has no '*locus standi*' to move this Court under Article 32 of the Constitution for challenging the conviction and sentence awarded to the two convicts by this Court's order of July 15, 1992. The petition is, therefore, summarily rejected.

V.P.R.

Petition dismissed.