A NARINDER SINGH ARORA

v.

STATE (GOVT. OF NCT OF DELHI) AND ORS.

(Criminal Appeal No.2184 of 2011)

B DECEMBER 5, 2011

[H.L. DATTU AND CHANDRAMAULI KR. PRASAD, JJ.]

Judgment – Requirement of a Judge to act fairly as also to act above suspicion of unfairness and bias – Test of "real C *likelihood of bias"– Appellant lodged complaint whereafter charges were framed against the respondents u/ss.498-A, 304-B r/w s.34 and s.302 of IPC by 'PR', Additional District & Sessions Judge – Thereafter, the case was listed before 'SND', Additional Sessions Judge for trial, however, the Judge* D *recused from hearing the matter for personal reasons – Accordingly, the case was withdrawn from the Court of 'SND' and transferred to the Court of 'SMC', Additional Sessions Judge – Eventually accused respondents were tried and acquitted vide judgment passed by 'MG', Additional Sessions* E *Judge – Appellant preferred revision petition before the High Court – The same was dismissed vide impugned final Judgment passed by Judge, 'SND' – Held: Apparently the fact of earlier recusal of the case at the trial by 'SND' himself, was not brought to his notice in the revision petition before the* F *High Court by either of the parties to the case – Therefore, 'SND' owing to inadvertence regarding his earlier recusal, dismissed the revision petition by the impugned Judgment – The impugned Judgment, passed by 'SND' subsequent to his recusal at trial stage for personal reasons, is against the* G *principle of natural justice and fair trial – A person who tries a cause should be able to deal with the matter placed before him objectively, fairly and impartially – No one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind or impartially*

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– A person, trying a cause, must not only act fairly but must be able to act above suspicion of unfairness and bias – In view of the aforesaid facts and reasons, the impugned Judgment of the High Court in Criminal Revision is set aside and the matter is remanded to the High Court for fresh disposal of the revision petition filed by the appellant.

Manak Lal v. Dr. Prem Chand Singhvi **AIR 1957 SC 425: 1957 SCR 575;** *A.K. Kraipak v. Union of India* **(1969) 2 SCC 262: 1970 (1) SCR 457;** *S. Parthasarathi v. State of A.P.* **(1974) 3 SCC 459: 1974 (1) SCR 697;** *G. Sarana (Dr.) v. University of Lucknow* **(1976) 3 SCC 585: 1977 (1) SCR 64;** *Ranjit Thakur v. Union of India* **(1987) 4 SCC 611: 1988 (1) SCR 512;** *Secy. to Govt., Transport Deptt.* v. *Munuswamy Mudaliar* **(1988) Supp. SCC 651 – relied on.**

R. v. Camborne JJ, ex p Pearce **(1955) 1 QB 41 and** *R. v. Gough* **(1993) 2 All ER 724 (HL) – referred to.**

Case Law Reference:

1957 SCR 575	**relied on**	**Para 5**
1970 (1) SCR 457	**relied on**	**Para 6**
1974 (1) SCR 697	**relied on**	**Para 7**
1977 (1) SCR 64	**relied on**	**Para 8**
1988 (1) SCR 512	**relied on**	**Para 9**
(1988) Supp. SCC 651	**relied on**	**Para 10**
(1955) 1 QB 41	**referred to**	**Para 11**
(1993) 2 All ER 724 (HL)	**referred to**	**Para 12**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2184 of 2011.

A From the Judgment & Order dated 01.09.2010 of the High Court of Delhi in Criminal Revision No. 555 of 2003.

Kamini Jaiswal for the Appellant.

P.P. Malhotra, ASG, Sadhna Sandhu (for Anil Katiyar), B Dhuruv Tamta (for Binu Tamta) for the Respondents.

The Order of the Court was delivered by

ORDER

C **H.L. DATTU, J.**

Leave granted.

1. The present appeal, by way of special leave, is directed D against the Judgement and Order dated 01.09.2010 of the High Court of Delhi in Criminal Revision No. 555 of 2003 whereby the High Court has dismissed the revision petition preferred by the appellant against the Judgment and Order dated 22.03.2003 passed by Learned Additional Sessions Judge in Sessions Case No. 104 of 2001. E

2. Since we intend to remand the matter to the High Court for fresh disposal, it is not necessary to go into the factual matrix. Suffice to state that the appellant had filed a complaint against the respondents dated 24.11.1988 which was F registered as FIR No. 393 of 1988 at P.S.- Srinivaspuri, New Delhi. Subsequently, the charges were framed against the respondents under Sections 498-A, 304-B read with Section-34 and Section 302 of the IPC by Shri. Prithvi Raj, learned Additional District & Sessions Judge dated 15.05.1995. G Thereafter, the case was listed before Shri. S.N. Dhingra, Additional Sessions Judge for the trial, however, the learned Judge had recused from hearing the matter for personal reasons vide Order dated 25.09.2000. The said Order is extracted below:

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"*25-09-2000*

Present:- Spl. P.P. for the State

All the accused on bail.

For personal reason I do not want to try this case. The case be sent to Ld. Sessions Judge, Delhi for marking it to some other court. Put up on 11-10-2000 to find out to which court case has been allocated.

A.S.J. New Delhi
25-09-2000"

3. Accordingly, the case was withdrawn from the Court of Shri. S.N. Dhingra, Additional Sessions Judge and transferred to the Court of Shri. S.M. Chopra, Additional Sessions Judge *vide* the Order dated 29.09.2000 of the Sessions Judge. Eventually the accused respondents were tried and acquitted vide Judgment and Order dated 22.03.2003 passed by Ms. Manju Goel, Additional Sessions Judge. Being aggrieved by the Judgment and Order, the appellant preferred a revision petition before the High Court. The same was dismissed *vide* impugned final Judgment and Order dated 01.09.2010 passed by learned Judge, Shri. Justice S.N. Dhingra.

4. It is apparent that the fact of earlier recusal of the case at the trial by learned Shri Justice S.N. Dhingra himself, was not brought to his notice in the revision petition before the High Court by either of the parties to the case. Therefore, Shri Justice S.N. Dhingra, owing to inadvertence regarding his earlier recusal, has dismissed the revision petition by the impugned Judgment. In our opinion, the impugned Judgment, passed by Shri Justice S.N. Dhigra subsequent to his recusal at trial stage for personal reasons, is against the principle of natural justice and fair trial.

5. It is well settled law that a person who tries a cause should be able to deal with the matter placed before him objectively, fairly and impartially. No one can act in a judicial

A capacity if his previous conduct gives ground for believing that he cannot act with an open mind or impartially. The broad principle evolved by this Court is that a person, trying a cause, must not only act fairly but must be able to act above suspicion of unfairness and bias. In the case of *Manak Lal* v. *Dr. Prem*
B *Chand Singhvi,* AIR 1957 SC 425, it was observed:

> "5. ... every member of a tribunal that [sits to] try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that Judges should be able to act
C impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him
D in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done."

6. In the case of *A.K. Kraipak* v. *Union of India, (1969) 2*
E *SCC 262,* this Court, while discussing the rule of bias, has observed:

> "15. ... At every stage of his participation in the deliberations of the Selection Board there was a conflict between his interest and duty. Under those circumstances
F it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. ... In
G deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct."

7. In the case of *S. Parthasarathi* v. *State of A.P., (1974)*
H *3 SCC 459,* this Court has applied the "real likelihood" test and

restored the decree of the trial court which invalidated compulsory retirement of the appellant by way of punishment. This Court observed:

> "16. ... We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right-minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The court will not inquire whether hewas really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision...."

8. In the case of *G. Sarana (Dr.)* v. *University of Lucknow,* (1976) 3 SCC 585, this Court had referred to the judgments of *A.K. Kraipak* v. *Union of India (Supra) and S. Parthasarathi* v. *State of A.P. (Supra)* and observed:

> "11. ... the real question is not whether a member of an administrative board while exercising quasi-judicial powers or discharging quasi-judicial functions was biased, for it is difficult to prove the mind of a person. What has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration."

9. In *the case of Ranjit Thakur v. Union of India,* (1987)

A 4 SCC 611, this Court has held:

> "15. ... The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether
B Respondent 4 was likely to be disposed to decide the matter only in a particular way.
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> 16. It is the essence of a judgment that it is made after due observance of the judicial process; that the court or tribunal passing it observes, at least the minimal requirements of
C natural justice; is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial 'coram non judice'.
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D 17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, 'Am I biased?'; but to look at the mind of the party
E before him."

10. In the case of *Secy. to Govt., Transport Deptt. v. Munuswamy Mudaliar,* (1988) Supp. SCC 651, this Court considered the question as to whether a party to the arbitration agreement could seek change of an agreed arbitrator on the
F ground that being an employee of the State Government, the arbitrator will not be able to decide the dispute without bias. While reversing the judgment of the High Court, which had confirmed the order of the learned Judge, City Civil Court directing the appointment of another person as an arbitrator,
G this Court observed:

> "12. Reasonable apprehension of bias in the mind of a reasonable man can be a ground for removal of the arbitrator. A predisposition to decide for or against one
H party, without proper regard to the true merits of the dispute

is bias. There must be reasonable apprehension of that predisposition. The reasonable apprehension must be based on cogent materials. See the observations of Mustill and Boyd, Commercial Arbitration, 1982 Edn., p. 214. Halsbury's Laws of England, 4th Edn., Vol. 2, para 551, p.282 describe that the test for bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias."(emphasis supplied)

11. In the case of *R. v. Camborne JJ, ex p Pearce, (1955) 1 QB 41,* the Divisional Court of the Queen's Bench Division, after reviewing a large number of authorities including *R. v. Sussex JJ, ex p McCarthy (Supra)* held: "In the judgment of this Court the right test is that prescribed by Blackburn, J., namely, that to disqualify a person from acting in a judicial or quasi-judicial capacity upon the ground of interest (other than pecuniary or proprietary) in the subject-matter of the proceeding, a real likelihood of bias must be shown. This Court is further of opinion that a real likelihood of bias must be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries.

12. In the case of *R. v. Gough,* (1993) 2 All ER 724 (HL), the House of Lords while applying the "real likelihood" test, by using the expression "real danger", has observed thus:

"... In my opinion, if, in the circumstances of the case (as ascertained by the court), it appears that there was a real likelihood, in the sense of a real possibility, of bias on the part of a justice or other member of an inferior tribunal, justice requires that the decision should not be allowed to stand. I am by no means persuaded that, in its original form, the real likelihood test required that any more rigorous criterion should be applied. Furthermore the test as so stated gives sufficient effect, in cases of apparent bias, to

A the principle that justice must manifestly be seen to be done, and it is unnecessary, in my opinion, to have recourse to a test based on mere suspicion, or even reasonable suspicion, for that purpose."

B 13. In view of the aforesaid facts and reasons, we set aside the impugned Judgment and Order dated 01.09.2010 of the High Court in Criminal Revision No.555 of 2003 and remand the matter to the High Court for fresh disposal of the revision petition filed by the appellant in accordance with law. We clarify that we have not expressed any opinion on the merits of the C case. Ordered accordingly.

B.B.B. Appeal disposed of.