

A KESHAV PRASAD SHARMA

v.

INDIAN OIL CORPORATION & ORS.
(SLP (CRL.) NOS. 1646-1647 OF 2009)

B JANUARY 25, 2011

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

C *Constitution of India, 1950 – Article 136 – Application under s.319 Cr.P.C. to implead respondents no. 3 to 9 as co-accused in the trial of the petitioner – Trial Court allowed the application – High Court set aside the order of trial court – Special leave petitions – Plea of petitioner that question of prejudice is not relevant in proceedings u/s.319 – Held: The question of prejudice in proceedings u/s.319 may not be*

D *relevant at the stage of proceedings before the trial court u/ s.319 but it is certainly relevant to proceedings under Article 136 which is discretionary jurisdiction – Article 136 is not a regular form of appeal – It is a residual provision which enables the Supreme court to interfere with any order of any*

E *court or tribunal in its discretion and in exceptional circumstances – It is not a regular forum of appeal like s.100 or s.96, CPC – In the instant case, the impugned judgment of High Court did not cause any prejudice to the petitioner*

F *since no observation on the merits of the case was made by the High Court against the petitioner – Merely because the petitioner alleged that the respondent Nos. 3 to 9 were also guilty of the same crime is not relevant to interfere with the impugned judgment u/Article 136 when no prejudice had been caused to the petitioner – Trial court directed to complete the trial uninfluenced by any observations made by*

G *the High Court – Special leave petitions dismissed – Code of Criminal Procedure, 1973 – s.319 – Code of Civil Procedure, 1908 – ss.96, 100.*

H *Lok Ram vs. Nihal Singh and Anr. (2006) 10 SCC 192;*

Bholu Ram vs. State of Punjab and Anr. (2008) 9 SCC 140; *Suman vs. State of Rajasthan and Anr.* 2009 (13) SCALE 716
– Referred to. A

Case Law Refetrence:

(2006) 10 SCC 192	Referred to	Para 4	B
(2008) 9 SCC 140	Referred to	Para 4	
2009 (13) SCALE 716	Referred to	Para 4	

CRIMINAL APPELLATE JURISDICTION : SLP (Crl.) No. 1646-1647 of 2009. C

From the Judgment & Order dated 19.12.2008 of the High Court of Punjab & Haryana at Chandigarh in Criminal Misc. No 52791-M of 2007 and Crl. Rev. No. 71 of 2008. D

Dr. Abhishek Manu Singhvi, Amit Bhandari, Ajay Veer Singh, Nitin Jain, Mohd. Irshad Hanif for the Petitioner.

Dr. Rajiv Dhawan, R.S. Cheema, K.V. Viswanathan, Kamal Mohan Gupta, Kawaljit Kochar, Ashok K. Sharma, Kusum Chaudhary, D.P. Singh, Tarannum Cheema, Sanjay Jain, Anuj Prakash, Abhishek Kaushik, Samir Ali Khan for the Respodents. E

The following order of the Court was delivered F

ORDER

Heard leave counsel for the appearing parties.

These special leave petitions have been filed against the impugned judgment of the Punjab & Haryana High Court dated 19.12.2008. G

It appears that in the trial of the petitioner an application was filed by the public prosecutor to implead respondents No. H

A 3 to 9 herein as co-accused under Section 319 of the Code of Criminal Procedure. That application was allowed by the trial court, but the High Court has set aside the said order.

B We have carefully perused the impugned order of the High Court. We find that there is no observation made by the High Court on the merits of the case which in any manner prejudice the trial of the petitioner. The learned counsel for the petitioner has relied on the decisions of this Court in *Lok Ram Vs. Nihal Singh & Anr.*, (2006) 10 SCC 192, *Bholu Ram Vs. State of Punjab & Anr.*, (2008) 9 SCC 140 and *Suman Vs. State of Rajasthan & Anr.*, 2009 (13) SCALE 716.

C On the basis of these judgments the learned counsel for the petitioner has submitted that the question of prejudice is not relevant in proceedings under Section 319 Cr.P.C. We are of the opinion that it may not be relevant at the stage of proceedings before the trial court under Section 319 Cr.P.C. but it is certainly relevant to proceedings under Article 136 of the Constitution of India, which is discretionary jurisdiction.

D Article 136 of the Constitution of India is not a regular form of appeal at all. It is a residual provision which enables the Supreme Court to interfere with any order of any court or tribunal in its discretion and in exceptional circumstances. It is not a regular forum of appeal like Section 100 or Section 96 of the Code of Civil Procedure. Hence, the question of prejudice is certainly relevant to proceedings in Article 136 of the Constitution of India.

E In the present case, the impugned judgment of the High Court does not cause any prejudice to the petitioner since no observation on the merits of the case has been made by the High Court against the petitioner. Merely because the petitioner alleged that the aforementioned respondent Nos. 3 to 9 were also guilty of the same crime is not relevant for us to interfere with the impugned judgment of the High Court under Article 136

H

of the Constitution of India, when no prejudice has been caused to the petitioner.

A

The State has not filed any special leave petition before us and the position may have been different if a special leave petition had been filed by the State.

B

We direct the trial court to complete the trial uninfluenced by any observations made by the High Court in the impugned judgment expeditiously, preferably within six months from the date of production of a copy of this Order.

C

With these observations, the special leave petitions are dismissed.

D.G.

Special Leave Petitions dismissed.