

PHOOL CHANDRA & ANR.

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v.

STATE OF U.P.

(Crl. M.P. No. 25683 of 2013)

IN

(Special Leave Petition (Crl.) No. 2448 of 2014)

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MARCH 10, 2014

**[DR. B.S. CHAUHAN, J. CHELAMESWAR, JJ.]**

*Constitution of India, 1950: Article 136 - Special leave petition - Maintainability of - In the instant case, petitioners were convicted by trial court - Appeal before High Court - Bail granted by High Court - Application by petitioner for early hearing of appeal wherein order passed to put up the case before appropriate Bench - SLP against the order of the High Court - Held: The power u/Article 136 is to be invoked not in a routine manner but in very exceptional circumstances when a question of law of general public importance arises or impugned decision shocks the conscience of the court - This overriding and exceptional power vested in Supreme Court has to be exercised sparingly and only in furtherance of the cause of justice - Under the constitutional scheme, ordinarily the last court in the country in ordinary cases is meant to be the High Court - The Supreme Court as the Apex Court in the country is meant to deal with important issues like constitutional questions, questions of law of general importance or where grave injustice has been done to a party - It is a pity that the time of the Court which is becoming acutely precious because of the piling arrears has to be wasted on hearing such matters - There is an urgent need to put a check on such frivolous litigation - Bar to realise that great burden upon the Bench of dispensing justice imposes a simultaneous duty upon them to share this burden and it is their duty to see that the burden should not needlessly be*

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- A *made unbearable - The petition was filed by the petitioners and accepted to do so by the Advocate-on-Record without any sense of responsibility - If the court has directed to list the application before another Bench, none of the petitioners' right got violated - The court expressed displeasure for the attitude and course adopted by the petitioners and the Advocate-on-Record - SLP dismissed - Administration of justice.*

- C *Subedar v. The State of UP, AIR 1971 SC 125: 1971 (1) SCR 826; Arunachalam v. P.S.R. Setharathnam & Anr., AIR 1979 SC 1284: 1979 (3) SCR 482; Pritam Singh v. The State, AIR 1950 SC 169; The Bharat Bank Ltd., Delhi v. The Employees of Bharat Bank Ltd, Delhi etc., AIR 1950 SC 188; Manish Goel v. Rohini Goel, AIR 2010 SC 932: 2010 (2) SCR 239; Mathai @ Joby v. George & Anr., (2010) 4 SCC 358: 2010 (3) SCR 533; Varinderpal Singh v. Hon'ble Justice M.R. Sharma & Ors., 1986 Supp SCC 719; Ramrameshwari Devi & Ors. v. Nirmala Devi & Ors., (2011) 8 SCC 249; Gurgaon Gramin Bank v. Khazani & Anr., AIR 2012 SC 2881; Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr., AIR 1975 SC 1331: 1975 (3) SCR 619; Kadra Pahadiya & Ors. v. State of Bihar, AIR 1997 SC 3750 : 1997 (3) SCR 32- relied on.*

#### Case Law Reference:

- |   |                   |           |         |
|---|-------------------|-----------|---------|
| F | 1971 (1) SCR 826  | relied on | Para 7  |
|   | 1979 (3) SCR 482  | relied on | Para 7  |
|   | AIR 1950 SC 169   | relied on | Para 8  |
|   | AIR 1950 SC 188   | relied on | Para 9  |
| G | 2010 (2) SCR 239  | relied on | Para 10 |
|   | 2010 (3) SCR 533  | relied on | Para 12 |
|   | 1986 Supp SCC 719 | relied on | Para 12 |
| H | (2011) 8 SCC 249  | relied on | Para 12 |

AIR 2012 SC 2881      relied on      Para 12      A  
1975 (3) SCR 619      relied on      Para 13  
1997 (3) SCR 32      relied on      Para 13

CRIMINAL APPELLATE JURISDICTION : SLP (Criminal)      B  
No. 2448 of 2014.

From the Judgment and Order dated 14.05.2013 of the High Court of Judicature at Allahabad in Criminal Appeal No. 4309 of 2012.

Ajit Kumar Pande for the Petitioners.      C

The following order of the Court was delivered

O R D E R

1. This petition has been filed against the order dated 14.5.2013 passed by High Court of Judicature at Allahabad while dealing with the application for early hearing in Criminal Appeal No. 4309 of 2012.      D

2. The petitioners stood convicted for the offences punishable under Sections 363/366/506 of Indian Penal Code, 1860, (hereinafter referred to as the 'IPC') in Sessions Trial No. 879 of 2010 (State of U.P. v. Phool Chandra & Anr.) arising out of Case Crime No. 28 of 2009, Police Station Utraon, District Allahabad in which FIR was lodged on 8.2.2009 by one Bhola Nath alleging that his daughter Kumari Manita aged 14 years, student of class 10th had gone to school on 6.2.2009 but did not return. He also expressed suspicion that his neighbour Sharda Prasad Gupta might be involved in the incident. In pursuance of the aforesaid complaint, investigation ensued and the victim Manita was recovered by the police on 12.2.2009. After completing the investigation, the chargesheet was filed against the petitioners and some other persons under the aforesaid Sections of the IPC and after conclusion of the trial, vide judgment and order dated 8.10.2012, the petitioners      E  
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A stood convicted under Sections 363/366/506 IPC and rigorous imprisonment for a period of 7, 8 and 3 years respectively, had been imposed alongwith fines and further sentence in case of default in making payment. Some of the co-accused who also faced the trial were acquitted.

B 3. Aggrieved, the petitioners preferred Criminal Appeal No. 4309 of 2012 before the High Court and vide order dated 20.11.2012 they had been enlarged on bail.

C 4. The petitioners moved an application for early hearing of the Criminal Appeal wherein the Court was pleased to pass the following order:

"The case is released.

D Put up this case before appropriate Bench."

Hence this petition.

E 5. This matter was heard on 17.12.2013, however, Shri Pardeep Kumar Yadav who argued the case, could not satisfy the court regarding the maintainability of the petition against the impugned order. Thus, we requested him to call the Advocate-on-Record in the second round. Shri Ajit Kumar Pande, learned Advocate-on-Record, appeared, argued and thereafter sought time as he could not satisfy the court regarding the maintainability of the petition, nor he could explain what was the grave urgency for seeking early hearing of the criminal appeal when the petitioners had been enlarged on bail, and particularly, when many people are waiting in the jail and their cases are not being heard by the Allahabad High Court for 20-30 years. He sought time to satisfy the court regarding its maintainability and, hence, the matter had been adjourned several times.

H 6. This petition has been filed with a delay of 108 days. Though, during this period, had the petitioners made any attempt, their application for early hearing could have been

heard by the appropriate Bench of Allahabad High Court, however, no effort was made. A

7. It is a settled principle of law that the power under Article 136 of the Constitution of India, 1950 (hereinafter referred to as 'Constitution') is to be invoked not in a routine manner but in very exceptional circumstances when a question of law of general public importance arises or a decision sought to be impugned before this Court shocks the conscience of the court. This overriding and exceptional power vested in this Court has to be exercised sparingly and only in furtherance of the cause of justice. (Vide: *Subedar v. The State of UP*, AIR 1971 SC 125; and *Arunachalam v. P.S.R. Setharathnam & Anr.*, AIR 1979 SC 1284). B C

8. The Constitution Bench of this Court in *Pritam Singh v. The State*, AIR 1950 SC 169 cautioned that the wide discretionary power vested in this Court should be exercised sparingly and in exceptional cases only when special circumstances are shown to exist. D

9. Another Constitution Bench in *The Bharat Bank Ltd., Delhi v. The Employees of Bharat Bank Ltd, Delhi etc.*, AIR 1950 SC 188, reiterated the caution couching it in a different phraseology and said that this Court would not, under Article 136 of the Constitution, constitute itself into a Tribunal or Court just settling disputes and reduce itself into a mere Court of error. The power under Article 136 of the Constitution is an extraordinary power to be exercised in rare and exceptional cases and on well-known principles. E F

10. In *Manish Goel v. Rohini Goel*, AIR 2010 SC 932, this Court while dealing with a similar case held as under: G

"Article 136 of the Constitution enables this Court, in its discretion to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal H

A in the territory of India. Undoubtedly, under Article 136 in  
the widest possible terms, a plenary jurisdiction  
exercisable on assuming appellate jurisdiction has been  
conferred upon this Court. However, it is an extra-ordinary  
B jurisdiction vested by the Constitution in the Court with  
implicit trust and faith and thus, extraordinary care and  
caution has to be observed while exercising this  
jurisdiction. There is no vested right of a party to approach  
this Court for the exercise of such a vast discretion,  
C however, such a course can be resorted to when this court  
feels that it is so warranted to eradicate injustice. Such a  
jurisdiction is to be exercised by the consideration of  
justice and call of duty. The power has to be exercised with  
great care and due consideration but while exercising the  
power, the order should be passed taking into  
D consideration all binding precedents otherwise such an  
order would create problems in the future. The object of  
keeping such a wide power with this Court has been to  
see that injustice is not perpetuated or perpetrated by  
decisions of courts below. More so, there should be a  
question of law of general public importance or a decision  
E which shocks the conscience of the court are some of the  
prime requisites for grant of special leave. Thus, unless it  
is shown that exceptional and special circumstances exist  
that substantial and grave injustice has been done and that  
the case in question presents features of sufficient gravity  
F warranting review of the decision appealed against, such  
exercise should not be done."

11. In *Mathai @ Joby v. George & Anr.*, (2010) 4 SCC  
358, this Court while dealing with a similar case observed that  
G now-a-days it has become a practice of filing SLPs against all  
kinds of orders of the High Court or other authorities without  
realising the scope of Article 136. Hence, the court felt it  
incumbent on it to reiterate that Article 136 was never meant  
to be an ordinary forum of appeal at all like Section 96 or even  
H Section 100 of the Code of Civil Procedure, 1908. Under the

constitutional scheme, ordinarily the last court in the country in ordinary cases was meant to be the High Court. The Supreme Court as the Apex Court in the country was meant to deal with important issues like constitutional questions, questions of law of general importance or where grave injustice has been done to a party. If the Supreme Court entertains all and sundry kinds of cases it will soon be flooded with a huge amount of backlog and will not be able to deal with important questions relating to the Constitution or the law or where grave injustice has been done, for which it was really meant under the Constitutional Scheme. After all, the Supreme Court has limited time at its disposal and it cannot be expected to hear every kind of dispute. The court expressed its sympathy with the judges as they struggle with an unbearable burden. The judges spend late nights trying to read briefs for a Monday or a Friday. When each of the 13 Benches have to dispose off about 60 cases in a day, the functioning of the Supreme Court of India is a far cry from what should be desiderate for disposal of cases in a calm and detached atmosphere.

All these are aberrations in the functioning of the Apex Court of any country. Of-lately, there has been an increase in the trend of litigants rushing to the courts, including this court, for all kinds of trivial and silly matters which results in wastage of public money and time. A closer scrutiny of all such matters would disclose that there was not even a remote justification for filing the case. It is a pity that the time of the Court which is becoming acutely precious because of the piling arrears has to be wasted on hearing such matters. There is an urgent need to put a check on such frivolous litigation. Perhaps many such cases can be avoided if learned counsel who are officers of the court and who are expected to assist the court tender proper advice to their clients. The Bar has to realise that the great burden upon the Bench of dispensing justice imposes a simultaneous duty upon them to share this burden and it is their duty to see that the burden should not needlessly be made unbearable. The Judges of this Nation are struggling bravely

A against the odds to tackle the problem of dispensing quick justice. But, without the cooperation of the gentlemen of the Bar, nothing can be done.

B 12. It is high time that the Courts should come down heavily upon such frivolous litigation and unless we ensure that the wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigation. In order to curb such kind of litigation, the courts have to ensure that there is no incentive or motive which can be ensured by imposing exemplary costs upon the parties as well as on learned counsel who act in an irresponsible manner. (Vide: *Varinderpal Singh v. Hon'ble Justice M.R. Sharma & Ors.*, 1986 Supp SCC 719; *Ramrameshwari Devi & Ors. v. Nirmala Devi & Ors.*, (2011) 8 SCC 249; and *Gurgaon Gramin Bank v. Khazani & Anr.*, AIR 2012 SC 2881)

D 13. Many a times this Court has expressed its anguish and unhappiness about the time of the Court being wasted for petty matters. (See: *Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr.*, AIR 1975 SC 1331; and *Kadra Pahadiya & Ors. v. State of Bihar*, AIR 1997 SC 3750).

F 14. In view of the above, we are of the considered opinion that this petition has been filed by the petitioners and accepted to do so by the Advocate-on-Record without any sense of responsibility. If the Hon'ble Judge has directed to list the application before another Bench, we fail to understand as which of the petitioners' right got violated. There could have been some reasonable cause for the Hon'ble Judge to pass such an order.

G We have no words to express our displeasure for the attitude and course adopted by the petitioners and the Advocate-on-Record. The special leave petition is dismissed.

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S.L.P. dismissed.

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