A MADAN MOHAN

v.

STATE OF RAJASTHAN & ORS.

(Criminal Appeal No.2178 of 2017)

B DECEMBER 14, 2017

[R.K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Party: Necessary party – Criminal case – Complainant-appellant filed application under s.193 praying for summoning respondent no.2 and 3 along with the other accused to face trial as C *they were also involved in the commission of offence along with the other accused persons – Sessions judge allowed the application and accordingly summoned respondent no.2 and 3 issuing non-bailable warrant of arrest against them – Respondent no.2 and 3 filed revision – Complainant-appellant at whose instance the order* D *was passed by the Sessions judge, however, was not impleaded as party in the revision – Single judge of High Court allowed the revision in part and set aside the portion of the order of Sessions judge which had directed issuance of non-bailable warrant of arrest of respondent no.2 and 3 while maintaining summoning order – On appeal, Held: The Single judge of High Court failed to see that* E *the complainant at whose instance the Sessions Judge had passed the order and had allowed his application under s.193 was a necessary party to the criminal revision along with the State – The complainant should have been impleaded as respondent along with the State in the revision – In other words, the complainant also had* F *a right of hearing in the revision because the order impugned in the revision was passed by the Session Judge on his application.*

Judicial propriety: Judicial independence – While remanding the case to the subordinate court, the superior court cannot issue a direction to the subordinate court to either "allow" the case or G *"reject" it – No superior Court in hierarchical jurisdiction can issue such direction/mandamus to any subordinate court commanding them to pass a particular order on any application filed by any party – The judicial independence of every Court in passing the orders in cases is well settled – It cannot be interfered with by any Court including superior Court – In the instant case,* H

single judge of High Court set aside the portion of the order of Sessions judge which had directed issuance of non-bailable warrant of arrest of respondent no.2 and 3 while summoning them – High Court then proceeded to issue further direction to respondent no.2 and 3 to surrender before the trial court and move the application for regular bail which would be considered and allowed by that court on the same day on which it is moved – Such directions amount to usurping the powers of that Court and would amount to interfering in the discretionary powers of the subordinate Court – Such order is, therefore, not legally sustainable. A B

Bail: Duty/power of court while deciding bail application – Held: It is the sole discretion of the Sessions Judge to find out while hearing the bail application as to whether any case on facts is made out for grant of bail by the accused or not – If made out then to grant the bail and if not made out, to reject the bail – In either case, i.e., to grant or reject, the Sessions Judge has to apply his independent judicial mind and accordingly pass appropriate reasoned order keeping in view the facts involved in the case and the legal principles applicable for grant/rejection of the bail. C D

Allowing the appeal, the Court

HELD: 1. The complainant should have been impleaded as respondent along with the State in the revision. In other words, the Complainant also had a right of hearing in the Revision because the order impugned in the Revision was passed by the Session Judge on his application. This aspect of the case was, however, not noticed by the Single Judge. Second and more importantly was that the Single Judge grossly erred in giving direction to the Sessions Judge to consider the bail application of respondent Nos.2 and 3 and "allow" it on the "same day". The High Court had no jurisdiction to direct the Sessions Judge to "allow" the application for grant of bail. Indeed, once such direction had been issued by the High Court then what was left for the Sessions Judge to decide except to follow the directions of the High Court and grant bail to respondent Nos. 2 and 3. In other words, in compliance to the mandatory directions issued by the High Court, the Sessions Judge had no jurisdiction to reject the bail application but to allow it. No superior Court in hierarchical jurisdiction can issue such direction/mandamus to E F G H

A any subordinate Court commanding them to pass a particular order on any application filed by any party. The judicial independence of every Court in passing the orders in cases is well settled. It cannot be interfered with by any Court including superior Court. [Paras 14-17] [228-D-G]

B 2. When an order is passed, it can be questioned by the aggrieved party in appeal or revision, as the case may be, to the superior Court. It is then for the Appellate/Revisionery Court to decide as to what orders need to be passed in exercise of its Appellate/Revisionery jurisdiction. Even while remanding the case to the subordinate Court, the Superior Court cannot issue a C direction to the subordinate Court to either "allow" the case or "reject" it. If any such directions are issued, it would amount to usurping the powers of that Court and would amount to interfering in the discretionary powers of the subordinate Court. Such order is, therefore, not legally sustainable. It is the sole discretion of D the Sessions Judge to find out while hearing the bail application as to whether any case on facts is made out for grant of bail by the accused or not. If made out then to grant the bail and if not made out, to reject the bail. In either case, i.e., to grant or reject, the Sessions Judge has to apply his independent judicial mind and accordingly pass appropriate reasoned order keeping in view the E facts involved in the case and the legal principles applicable for grant/rejection of the bail. In this case, the Single Judge failed to keep in his mind this legal principle. It is for this reason, such directions were wholly uncalled for and should not have been given. This Court cannot countenance issuing of such direction F by the High Court. At best, the High Court could have made an observation to the effect that the respondent Nos.2 and 3 (accused persons) are at liberty to approach the Sessions Judge for grant of bail and, if any application is filed, it would be decided by the Sessions Judge on its merits and in accordance with law expeditiously but not beyond it. The direction given by the High G Court to the Sessions Judge to "consider and allow" the bail application made by respondent Nos. 2 & 3 in Sessions Trial Case on the same day on which it was moved is set aside. So far as the direction by which cognizance of the case against respondent Nos.2 and 3 was taken by the Sessions Judge, the Single Judge H has upheld it. It is not questioned here. In the light of this, the

respondent Nos.2 and 3 have to submit themselves to the jurisdiction of the Sessions Judge and raise the pleas which are available to them in law. [Paras 18-23] [228-H; 229-B-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2178 of 2017.

From the Order dated 28.04.2017 of the High Court of Judicature for Rajasthan at Jaipur in CRLRP No. 477 of 2017.

Rajesh Sharma, Om Prakash Tehariya, Rajeev Kumar, Ms. Shalu Sharma, Advs for the Appellant.

Ritesh Agrawal, S. Rishabh, Ajay Kapoor, Milind Kumar, Advs for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. This appeal is filed by the Complainant against the final judgment and order dated 28.04.2017 passed by the High Court of Judicature for Rajasthan at Jaipur in S.B. Criminal Revision Petition No.477 of 2017 whereby the High Court partly allowed the criminal revision petition filed by respondent Nos.2 and 3 herein and set aside that part of the order dated 19.11.2016 passed by the Sessions Judge, Sawai Madhopur in Session Trial No.44/2016 whereby the Session Judge while allowing the application filed under Section 193 of the Criminal Procedure Code, 1973 (hereinafter referred to as "the Code") by the appellant (Complainant) issued non-bailable warrants against respondent Nos. 2 & 3 for their arrest.

3. The facts of the case lie in a narrow compass so also the issue involved in the appeal is short. They, however, need mention *infra*.

4. Two accused, namely, Vimlesh Kumar and Janak Singh are facing trial for the offences punishable under Sections 120-B, 363, 366, 368, 370 (4) and 376 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") read with Section 3/4 and 16/17 of POCSO Act, in Sessions Trial No.44/2016. It is pending in the Court of District and Sessions Judge, Sawai Madhopur. The Sessions trial began pursuant to FIR No.110/2014 filed by the complainant-Madan Mohan (appellant herein) in Police Station, Piloda. A charge sheet has since been filed against two accused mentioned above.

A 5. The appellant filed an application under Section 193 of the Code in the Sessions Trial complaining therein that the names of respondent Nos.2 and 3 - Ashish Meena and Vimal Meena though figured prominently in all the material documents filed along with the charge-sheet, yet for no justifiable reasons, their names were deleted from the charge-sheet whereas only the names of two accused, i.e., Vimlesh and Janak Singh B were retained to face the trial.

6. The appellant, therefore, prayed that respondent Nos.2 and 3 be summoned for being arrayed as accused persons along with Vimlesh Kumar and Janak Singh to face the trial because, according to him, respondent Nos.2 and 3 are also involved in the commission of the offence C along with other two accused.

7. The Sessions Judge, by order dated 19.11.2016, allowed the application finding *prima facie* case against respondent Nos.2 and 3 and accordingly summoned both by issuing non-bailable warrant of arrest against them. D

8. Respondent Nos.2 and 3 felt aggrieved and filed Criminal Revision under Section 197 of the Code in the High Court at Rajasthan out of which this appeal arises. The complainant-appellant herein at whose instance the order was passed by the Sessions Judge was, however, not impleaded as party in the revision. E

9. By impugned order, the Single Judge allowed the revision in part and set aside that portion of the order of the Sessions Judge which had directed issuance of non-bailable warrant of arrest of respondent Nos.2 and 3 while summoning them. The High Court then proceeded to issue further direction to respondent Nos.2 and 3 to surrender before F the Trial Court and move the application for their regular bail, which would be considered and allowed by that Court on the same day on which it is moved. A further liberty was granted to respondent Nos. 2 and 3 to raise the contentions at the time of framing of the charges.

10. It is apposite to quote in verbatim the impugned order:

G **"1. Heard learned counsel for the accused/petitioners.**

2. This Criminal Revision Petition has been preferred on behalf of the accused/petitioners against the order dated 19.11.2016 passed by learned Sessions Judge, Sawai Madhopur whereby the application filed under Section 193 H

Cr.P.C. by the complainant-Madan Mohan Meena has been allowed and the cognizance for the offences punishable under Sections 363 & IPC and Section 5/6 POCSO Act in the alternative Section 376(2)(g) IPC has been taken against the petitioners, Ashish Meena & Vimal Meena, and they have been called through non-bailable warrants.

3. During the course of arguments, learned counsel for the petitioners restricts his prayer to the extent that the order summoning the accused/petitioners through non-bailable warrants may be quashed.

4. This fact is undisputed that after thorough investigation made by the Police, charge-sheet for the offences punishable under Sections 363, 366, 368, 370(4), 376, 120-B IPC and Section 3/4 and 16/17 of the POCSO Act was filed only against Vimlesh Kumar and Janak Singh. Accused/ petitioners, Ashish Meena and Vimal Meena, were not charge-sheeted. Vide order impugned dated 19.11.2016, petitioners have been summoned through non-bailable warrants for the offences mentioned above.

5. Taking all the facts and circumstances of the case into consideration in totality, it appears that the order to the extent of summoning the petitioners, Ashish Meena and Vimal Meena, through non-bailable warrants does not appear justified and is liable to be quashed and set aside. However, the petitioners, Ashish Meena and Vimal Meena, are directed to surrender before the learned trial Court and to move application for their regular bail, which will be considered and allowed by that Court on the same day on which it is moved.

6. It is also made clear that the accused/petitioners will be at liberty to raise the contentions raised before this Court at the time of framing of charges before the learned trial Court.

7. The Criminal Revision Petition stands disposed off accordingly."

(Emphasis supplied)

A 11. Against the impugned order of the High Court, the complainant has felt aggrieved and after obtaining the leave has filed this appeal by way of special leave in this Court.

12. Heard learned counsel for the parties.

13. Having heard the learned counsel for the parties and on perusal
B of the record of the case, we are constrained to allow the appeal and set aside the order to the extent mentioned below.

14. In our considered opinion, the Single Judge seemed to have passed the impugned order without application of judicial mind inasmuch as he committed two glaring errors while passing the order. First, he
C failed to see that the complainant at whose instance the Sessions Judge had passed the order and had allowed his application under Section 193 of the Code was a necessary party to the criminal revision along with the State. Therefore, he should have been impleaded as respondent along with the State in the revision. In other words, the Complainant also
D had a right of hearing in the Revision because the order impugned in the Revision was passed by the Session Judge on his application. This aspect of the case was, however, not noticed by the Single Judge.

15. Second and more importantly was that the Single Judge grossly erred in giving direction to the Sessions Judge to consider the bail
E application of respondent Nos.2 and 3 and "allow" it on the "same day".

16. In our considered opinion, the High Court had no jurisdiction to direct the Sessions Judge to "allow" the application for grant of bail. Indeed, once such direction had been issued by the High Court then what was left for the Sessions Judge to decide except to follow the
F directions of the High Court and grant bail to respondent Nos. 2 and 3. In other words, in compliance to the mandatory directions issued by the High Court, the Sessions Judge had no jurisdiction to reject the bail application but to allow it.

17. No superior Court in hierarchical jurisdiction can issue such
G direction/mandamus to any subordinate Court commanding them to pass a particular order on any application filed by any party. The judicial independence of every Court in passing the orders in cases is well settled. It cannot be interfered with by any Court including superior Court.

18. When an order is passed, it can be questioned by the aggrieved
H party in appeal or revision, as the case may be, to the superior Court. It

is then for the Appellate/Revisionery Court to decide as to what orders need to be passed in exercise of its Appellate/Revisionery jurisdiction. Even while remanding the case to the subordinate Court, the Superior Court cannot issue a direction to the subordinate Court to either "allow" the case or "reject" it. If any such directions are issued, it would amount to usurping the powers of that Court and would amount to interfering in the discretionary powers of the subordinate Court. Such order is, therefore, not legally sustainable.

19. It is the sole discretion of the Sessions Judge to find out while hearing the bail application as to whether any case on facts is made out for grant of bail by the accused or not. If made out then to grant the bail and if not made out, to reject the bail. In either case, i.e., to grant or reject, the Sessions Judge has to apply his independent judicial mind and accordingly pass appropriate reasoned order keeping in view the facts involved in the case and the legal principles applicable for grant/rejection of the bail. In this case, the Single Judge failed to keep in his mind this legal principle.

20. It is for this reason, in our view, such directions were wholly uncalled for and should not have been given. This Court cannot countenance issuing of such direction by the High Court.

21. In our view, at best, the High Court could have made an observation to the effect that the respondent Nos.2 and 3 (accused persons) are at liberty to approach the Sessions Judge for grant of bail and, if any application is filed, it would be decided by the Sessions Judge on its merits and in accordance with law expeditiously but not beyond it.

22. We are, therefore, constrained to set aside the direction given by the High Court to the Sessions Judge to "consider and allow" the bail application made by respondent Nos. 2 & 3 in Sessions Trial Case No.44/2016 on the same day on which it was moved.

23. So far as the direction by which cognizance of the case against respondent Nos.2 and 3 was taken by the Sessions Judge, the Single Judge has upheld it. It is not questioned here. In the light of this, the respondent Nos.2 and 3 have to submit themselves to the jurisdiction of the Sessions Judge and raise the pleas which are available to them in law.

24. In view of foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order to the extent indicated above

A is set aside. The Session Judge would now decide the application for bail, if made by Respondent Nos. 2 and 3, on its merits and in accordance with law, if not so far decided.

Devika Gujral Appeal allowed.